

# **European Prison Rules**

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## Chapter 1

### **Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules<sup>1</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;

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1. When this recommendation was adopted, and in application of Article 10.2.c 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.

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 No. R (89) 12 on education in prison, No. R (93) 6 concerning prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison, No. R (97) 12 on staff concerned with the implementation of sanctions and measures, No. R (98) 7 concerning the ethical and organisational aspects of health care in prison, No. 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 No. 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 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 No. 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*

63 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 cooperate 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**

*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.



## **Chapter 2**

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

#### **Introduction**

Prison standards reflect the commitment to treat prisoners justly and fairly. They need to be spelt out clearly, for the reality is that public pressure may easily lead to the violation of the fundamental human rights of this vulnerable group.

The first attempt to set such standards in Europe was made in 1973 with the introduction of the European Standard Minimum Rules for the Treatment of Prisoners by Resolution No. R (73) 5 of the Committee of Ministers. They sought to adapt the United Nations Standard Minimum Rules for the Treatment of Prisoners, which were initially formulated as far back as 1955, to European conditions.

In 1987 the European Prison Rules were thoroughly revised to allow them, in the words of the Explanatory Memorandum “to embrace the needs and aspirations of prison administrations, prisoners and prison personnel in a coherent approach to management and treatment that is positive, realistic and contemporary”.

The current revision has the same overall objective. Like its predecessors, it is informed both by earlier prison standards and by the values of the European Convention on Human Rights. Since 1987, however, there have been many developments in prison law and practice in Europe. Evolutionary changes in society, crime policy, sentencing practice and research, together with the accession of new member states to the Council of Europe, have significantly altered the context for prison management and the treatment of prisoners.

Key factors in this evolution have been the ever-growing body of decisions of the European Court of Human Rights (ECtHR) that have applied the Convention for the Protection of Human Rights and Fundamental Freedoms to the protection of fundamental rights of prisoners as well as the standards for the treatment of

prisoners that are being set by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). These developments led the European Committee on Crime Problems (CDPC) to entrust the Council for Penological Co-operation (PC-CP) with the task of bringing the rules into line with best current practice.

The recommendation that contains the new version of the European Prison Rules similarly recognises the contribution of the ECtHR and the CPT. In addition, the Recommendation emphasises that sight must never be lost of the principle that imprisonment should only be used as a last resort, the so-called *ultima ratio* principle. It seeks to reduce the prison population to the lowest possible level. The desirability of doing this is recognised in Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation. This recommendation stresses the importance of using deprivation of liberty only for the most serious offences. The *ultima ratio* principle should be applied to restrict the detention of both untried and sentenced prisoners. In the case of convicted prisoners serious consideration should be given to alternative sentences that do not entail imprisonment. States should also consider the possibility of decriminalising certain offences or classifying them so that they do not carry penalties of imprisonment.

Since 1987, the European Prison Rules have grown in status. They are now regularly referred to by the ECtHR and the CPT. The new version of the rules should be of even more assistance to these bodies as they reflect the latest development in best prison practice. National courts and inspecting bodies are encouraged to do the same, not least because the growing transfer of prisoners amongst member states requires that transferring states must have confidence that prisoners will be well treated in the countries to which they are sent.

The present rules address questions the rules of 1987 did not consider. They seek to be comprehensive without burdening member states with unrealistic demands. It is recognised that the implementation of these rules will require considerable efforts by some Council of Europe member states. The rules offer guidance to member states that are modernising their prison law and will assist prison administrations in deciding how to exercise their authority even where the rules have not yet been fully implemented in national law. The rules refer to measures that should be implemented in “national law” rather than to “national legislation”, as they recognise that law making may take different forms in the member states of the Council of Europe. The term “national law” is designed to include not only primary legislation passed by a national parliament but also other binding regulations and orders, as well as the law that is made by courts and tribunals in as far as these forms of creating law are recognised by national legal systems.



## **Part I**

### *Basic principles*

A feature of the new European Prison Rules is that the first nine rules set out the fundamental principles that are to guide the interpretation and implementation of the rules as a whole. The principles are an integral part of the rules rather than being part of the preamble or of specific rules. Prison administrations should seek to apply all rules to the letter and in the spirit of the principles.

#### *Rule 1*

When deprivation of liberty is used questions of human rights inevitably arise. Rule 1 underlines this truth in the context of requiring respect for prisoners. Such respect in turn demands the recognition of their essential humanity.

#### *Rule 2*

This rule complements Rule 1 by emphasising that the undoubted loss of the right to liberty that prisoners suffer should not lead to the assumption that prisoners automatically lose their political, civil, social, economic and cultural rights as well. Inevitably, rights of prisoners are restricted by their loss of liberty, but such further restrictions should be as few as possible. These rules as a whole spell out some steps that can be taken to reduce the negative consequences of loss of liberty. Any further restrictions should be specified in law and should be instituted only when they are essential for the good order, safety and security in prison. Restrictions of their rights that may be imposed should not derogate from the rules.

#### *Rule 3*

This rule emphasises the limits to the restrictions that may be placed on prisoners. It highlights the overall principle of proportionality that governs all such restrictions.

#### *Rule 4*

It sometimes happens that governments are accused of treating their prisoners better than other members of society. Although this accusation is rarely true in practice, Rule 4 is designed to make it clear that the lack of resources cannot justify a member state allowing prison conditions to develop that infringe the human rights of prisoners. Nor are policies and practices that routinely allow such infringements acceptable.

*Rule 5*

Rule 5 emphasises the positive aspects of normalisation. Life in prison can, of course, never be the same as life in a free society. However, active steps should be taken to make conditions in prison as close to normal life as possible and to ensure that this normalisation does not lead to inhumane prison conditions.

*Rule 6*

Rule 6 recognises that prisoners, both untried and sentenced, will eventually return to the community and that prison life has to be organised with this in mind. Prisoners have to be kept physically and mentally healthy and provided with opportunities to work and to educate themselves. Where it is known that prisoners are going to serve long terms, these have to be carefully planned to minimise damaging effects and make the best possible use of their time.

*Rule 7*

Rule 7 emphasises the importance of involving outside social services. The rules should encourage an inclusive rather than an exclusive policy. This necessitates promoting close co-operation between the prison system and outside social services and in involving civil society through voluntary work or as prison visitors, for example.

*Rule 8*

Rule 8 places prison staff at the centre of the whole process of implementing the rules and achieving the humane treatment of prisoners generally.

*Rule 9*

Rule 9 raises the need for inspection and monitoring to the status of a general principle. The importance of such inspection and monitoring is spelled out in part VI of the rules.

*Scope and application*

*Rule 10*

Rule 10 defines which persons are to be considered as prisoners in terms of these rules. This rule stresses that a prison, and no other site, is the place where persons who have been remanded in custody by a judicial authority and persons who are deprived of their liberty following conviction are to be detained. The terminology varies from country to country. Custodial institutions of various kinds such as

penitentiaries and work colonies may also hold prisoners and therefore be regarded as prisons for the purpose of these rules.

This rule acknowledges that next to remand prisoners or sentenced offenders other categories can be held in prisons by virtue of provisions in national law, such as immigration detainees. These persons, as long as they are detained in prisons are also to be treated as prisoners in terms of these rules. A prison is by definition not a suitable place to detain someone who is neither suspected nor convicted of a criminal offence. Consequently, immigration detainees should only be held in prison in exceptional cases, for example because of known potential for violence or when in-patient treatment is required and no other secure hospital facility is available.

The rules apply not only to every person “detained in a prison” within the meaning of the rules, but also to persons who, while not actually staying within the perimeter of the prison, nevertheless administratively belong to the population of that prison. That implies that persons enjoying furloughs or participating in activities outside the physical boundaries of the prison facilities, for whom the prison administration is still formally responsible, must be treated in terms of the rules.

This rule covers situations where (for instance, owing to overcrowding of prisons) persons, who in terms of this rule should be placed in a prison (temporarily) are held in other establishments such as police stations or other premises that they cannot leave at will. It goes without saying that imprisonment in facilities other than prisons should be a measure of last resort, lasting as short a time as possible and that the authorities in charge of these premises should do their utmost to live up to the standards set by these rules and offer sufficient compensation for deficient treatment.

#### *Rule 11*

Rule 11 complies with the exigencies of Article 37.c of the International Convention of the Rights of the Child, which requires special detention facilities for young persons who are children within the meaning of this convention and forbids detention of children together with adults. Only when the best interests of the child indicate it, does this convention allow a departure from the general rule.

It cannot be ruled out totally that in exceptional circumstances children may be detained in prisons for adults. For example, if there are very few children in a prison system, detaining them separately may mean that they are totally isolated. If children are held in a prison for adults they should be treated with special concern for their status and needs. If held in such a prison, children, like other prisoners, benefit from the protection of the European Prison Rules, but further regulations are required to ensure that they are treated appropriately. Rule 36 contains some special provisions for children who are in prison because one of their parents is detained there.

*Rule 12*

Rule 12 is the mirror image of Rule 11 but applies to persons suffering from mental illness. They too should ideally not be held in prisons but rather in mental institutions, which have their own standards. However, the rules recognise that in reality persons suffering from mental illness are sometimes held in prisons. In those circumstances there should be additional regulations that take account of their status and special needs. Such regulations should offer protection that goes beyond the European Prison Rules, which automatically applies to such persons as they are detained in a prison.

*Rule 13*

Rule 13 outlaws discrimination on unjustified grounds. In this respect it follows closely the wording of Protocol No. 12 to the European Convention on Human Rights. However, it does not mean that formal equality should triumph where the result would be substantive inequality. Protection for vulnerable groups is not discrimination, nor is treatment that is tailored to the special needs of individual prisoners unacceptable.

**Part II**  
**Conditions of imprisonment**

*Admission*

*Rule 14*

Adequate admission and detention procedures for prisoners are vital for the protection of liberty. This rule translates the right to liberty and security in Article 5 of the ECHR into the prison context by seeking to ensure that only persons whose detention is legally justified are admitted. Persons who are detained contrary to Rule 14 should be entitled to take proceedings by which the lawfulness of their detention shall be decided by a court.

*Rule 15*

The emphasis on record keeping in this rule bears the same reason as in Rule 14. Meticulous record keeping for each prisoner should continue throughout the time that the prisoner is kept in prison. Access to such records should be regulated by national law to ensure that the privacy of prisoners is respected, while balancing that against legitimate state interests. Good records of a prisoner's state of health on admission are also a vital protective measure. Such records should ideally be made following a medical examination, but prison officials generally should be

encouraged to record anything that shows ill health immediately, including injuries that could disappear by the time the medical practitioner examines the prisoner.

*Rule 16*

Rule 16 lists a number of steps that have to be taken as soon as possible after admission. While not everything can be done at the same time as admission, issues that have to be dealt with as soon as possible are flagged here, so that prison officials at the admission stage are referred to more substantive provisions. Medical examinations in particular should be done promptly, ideally on the same day and always within 24 hours after admission. Such examinations should be conducted routinely also when a prisoner is re-admitted to prison. Risk and security classification also cannot be postponed. Attention also needs to be paid at an early stage to the personal and welfare needs of prisoners. This may require making contact promptly with social welfare services outside prison too. Similarly, a prompt start must be made with treatment and training programmes for sentenced prisoners.

*Allocation and accommodation*

*Rule 17*

Rule 17 stresses the importance of allocating prisoners appropriately. Allocation decisions should generally be taken in a way that does not create unnecessary hardship for prisoners or their families, including the children of prisoners, who need access to them. It is particularly important that where security categories are used to allocate prisoners, the least restrictive categories should be used, as high security imprisonment often brings with it, in practice, additional hardships for prisoners. Similarly, all prisoners should be held as near to their homes as possible or the place where they would best be reintegrated into society, in order to facilitate communication with the outside world as required by Rule 24. It is also important to consider only relevant categories when making allocation decisions. Thus, for example, the fact that someone is serving a life sentence does not necessarily mean they should be placed in a particular prison or under a particularly restrictive regime (Cf. Rule 7 of Recommendation Rec(2003)23 on the management of life-sentenced and other long-term prisoners. See also: CPT's visit to Ukraine in September 2000 [CPT/Inf (2002)23]).

It should be recognised that prisoners have a direct interest in decisions about their allocation. They should therefore be consulted as far as possible and reasonable requests acceded to, although the final decision is necessarily that of the authorities. Such consultation should take place before they are allocated or transferred, although this may not always be possible with initial allocations that are routinely to the local prison or are made to meet the needs of continuing criminal investigations. If, in exceptional cases, requirements of safety and security make it

necessary for prisoners to be allocated or transferred before they can be consulted, the consultation should take place subsequently. In such cases there must be a real possibility of reversing the decision if the prisoners had good reason for being allocated to a different prison. In accordance with Rule 70 prisoners may request the proper authorities to allocate or transfer them to a certain prison. They may also use the same procedures to seek to have a decision relating to allocation or transfer reversed.

The treatment of prisoners may be severely disrupted by transferring them. While it is recognised that transfers may be unavoidable, and may in some instances be in the best interests of a prisoner, unnecessary successive transfers should be avoided. The advantages and disadvantages of a transfer should be weighed carefully before it is undertaken.

#### *Rule 18*

This rule concerns accommodation. Developments in European human rights law have meant that rules about accommodation have to be strengthened. Conditions of accommodation collectively, and overcrowding in particular, can constitute inhuman or degrading treatment or punishment and thus contravene Article 3 of the ECHR. This has now been fully recognised by the European Court of Human Rights in a number of decisions (see, for example, *Kalashnikov v. Russia*, No. 47095/99, judgment of 15/07/2002). Moreover, the authorities have to consider the special needs of prisoners: to accommodate a severely disabled person in prison without providing additional facilities may amount to inhuman or degrading treatment (*Price v. the United Kingdom*, No. 33394/96, judgment of 10/07/2001).

Physical accommodation includes both space in cells and issues such as access to light and air. The importance of access to natural light and fresh air is reflected in the separate Rule 18.2 and underlined by the CPT in its 11th General Report [CPT/Inf (2001)16] in paragraph 30. Windows should not be covered or have opaque glass. It is recognised that in Northern Europe it may not always be possible to read or work by natural light in winter.

Rule 18 includes some new elements. The first, in Rule 18.3, is intended to compel governments to declare by way of national law specific standards which can be enforced.

Such standards would have to meet wider considerations of human dignity as well as practical ones of health and hygiene. The CPT, by commenting on conditions and space available in prisons in various countries, has begun to indicate some minimum standards. These are considered to be 4 square metres for prisoners in shared accommodation and 6 square metres for a prison cell. These minima are related, however, to wider analyses of specific prison systems, including studies of how much time prisoners actually spend in their cells. These minima should not be regarded as the norm. Although the CPT has never laid down such a norm

directly, indications are that it would consider 9 to 10 square metres as a desirable size for a cell for one prisoner. This is an area in which the CPT could make an ongoing contribution that would build on what has already been laid down in this regard. What is required is a detailed examination of what size of cell is acceptable for the accommodation of various numbers of persons. Attention needs to be paid to the number of hours that prisoners spend locked in the cells when determining appropriate sizes. Even for prisoners who spend a large amount of time out of their cells, there must be a clear minimum space, which meets standards of human dignity.

Another important innovation is Rule 18.4, which provides for national strategies enshrined in law to deal with overcrowding. Prison populations are as much a product of the operation of criminal justice systems as they are of crime rates. This needs to be recognised both in general criminal justice strategies and in specific rules relating to what happens when prisons are threatened with a level of overcrowding that would result in a failure to meet the minimum norms that governments are required to set by Rule 18.3. Rule 18.4 does not stipulate how overcrowding should be reduced. In some countries for instance, new admissions are restricted or even stopped when maximum capacity has been reached. Prisoners whose continued liberty does not constitute a serious danger to the public are put on a waiting list. A strategy to deal with overcrowding requires at least the establishment of clear maximum capacity levels for all prisons. Recommendation No. R (99) 22 of the Committee of Ministers on prison overcrowding and prison population inflation should be considered both when overall strategies and when specific national rules to prevent overcrowding are developed.

Rule 18.5 retains the principle of single cells, which, especially for long term and life prisoners, constitute their homes, although it is not always followed. (Rule 96 emphasises that the principle applies in a similar way to untried prisoners.) Some departures from this principle are merely ways of dealing with overcrowding and are unacceptable as long-term solutions. Existing prison architecture along with other factors may also make it difficult to accommodate prisoners in single cells. However, when new prisons are built the requirement of accommodation in single cells should be taken into account.

The rule recognises that the interests of prisoners may require an exception to the principle of housing them in single cells. It is important to note that this exception is limited to instances where prisoners would benefit positively from joint accommodation. This requirement is underlined by Rule 18.6, which stipulates that only prisoners who are suitable to associate shall be accommodated together. Non-smokers should not be compelled to share accommodation with smokers, for example. Where accommodation is shared, the occurrence of any form of bullying, threat or violence between prisoners should be avoided by ensuring adequate staff supervision. The CPT has pointed out (11th General Report [CPT/Inf (2001)16], paragraph 29) that large-capacity dormitories are inherently undesirable. They

hold no benefits for prisoners that are not outweighed by single cells for sleeping purposes. Single cells at night do not imply a limit on association during the day. The benefit of privacy during sleeping hours needs to be balanced with the benefit of human contact at other times (see Rule 50.1).

The importance of ensuring appropriate accommodation is further strengthened in the new version of the rules by treating it in combination with issues of allocation. The allocation rules have been reinforced by stating clearly and simply the various categories of prisoners that must be separated from each other. The requirement in Rule 18.8.c for separating older prisoners from younger prisoners should be read in combination with Rule 11, which requires that persons under the age of 18 years should be kept out of adult prisons entirely. The separation of young prisoners from adults includes the peremptory international requirement, set by Article 37.3.c of the United Nations Convention on the Rights of the Child, for the separation of children and adults: children in that context are defined as any person under the age of 18 years. Rule 18.8.c is intended also to provide for the additional separation of younger prisoners, sometimes referred to as young adults, who may be older than 18 years of age, but who are not yet ready to be integrated with other adult prisoners: this is in line with the more flexible definition of a juvenile in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

It is now recognised that the separation between various categories of prisoners referred to in Rule 18.8 needs not always be rigid. However, these forms of separation were introduced to protect potentially weaker prisoners, whose vulnerability to abuse has not ceased. Rule 18.9 provides for relaxation of the strict separation requirements but limits it to cases where prisoners consent to it. In addition such relaxation must form part of a deliberate policy on the part of the authorities that is designed to benefit prisoners. It should not merely be a solution to practical problems, such as overcrowding.

Rule 18.10, which requires that the least restrictive security arrangements compatible with the risk of prisoners escaping or harming themselves or others should be used, also allows for the protection of society to be taken into consideration when deciding on appropriate accommodation.

### *Hygiene*

#### *Rule 19*

Rule 19 emphasises both cleanliness of institutions and the personal hygiene of prisoners. The significance of institutional hygiene has been underlined by the ECtHR which has held that unhygienic, unsanitary conditions, which are often found in combination with overcrowding, contribute to an overall judgment of degrading treatment: (*Kalashnikov v. Russia*, No. 47095/99, judgment of 15/07/2002;



*Peers v. Greece*, No. 28524/95, judgment of 19/04/2001; *Dougoz v. Greece*, No. 40907/98, judgment of 06/03/2001). The CPT has also noted, “Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment” (2nd General Report [CPT/Inf (92)3], paragraph 49).

There is a link between institutional and personal hygiene as the prison authorities must enable prisoners to keep themselves and their quarters clean by providing them, as required by Rule 19, with the means to do so. It is important that the authorities take overall responsibility for hygiene, also in the cells where prisoners sleep, and that they ensure that these cells are clean when prisoners are admitted. Conversely, all prisoners can, if able to do so, be expected at least to keep themselves and their immediate environment clean and tidy. Although the rules do not deal directly with beards, as they did in the past, personal cleanliness and tidiness include proper care of hair, including the trimming or shaving of beards, for which provision must be made by the authorities. However, heads should never be shaved as matter of routine or for disciplinary reasons, as this is inherently humiliating (see *Yankov v. Bulgaria*, No. 39084/97, judgment of 11/12/2003).

Provision for the sanitary needs of women referred to in Rule 19.7 includes ensuring that women have access to sanitary protection as well as means of disposal. Provision also needs to be made for pregnant or breast feeding women to bath or shower more often than twice a week.

In the context of hygiene, access to various facilities is of particular importance. These include sanitary facilities and baths and showers. Such access requires the close attention of the prison authorities to ensure both that the facilities are available and that access to them is not denied.

### *Clothing and bedding*

#### *Rule 20*

The issues of clothing and bedding are closely related to those of hygiene: inadequate clothing and unsanitary bedding can all contribute to a situation which may be held to contravene Article 3 of the ECHR. The specific provisions of Rules 20 and 21 indicate to the prison authorities what active steps must be taken to avoid such a situation. Cleanliness extends to a requirement that underclothes, for example, are changed and washed as often as hygiene may require.

Note that Rule 20 must be read with Rule 97 which explicitly gives untried prisoners the choice of wearing their own clothes. The rules do not stipulate whether or not sentenced prisoners should be compelled to wear uniforms. They do not outlaw or encourage such a practice. However, if sentenced prisoners are compelled to wear uniforms of any kind, they must meet the requirements of Rule 20.2.

This rule places a new emphasis on prisoners' dignity in respect of the clothing that must be provided. As it applies to all prisoners, it means that any uniforms that may be provided to sentenced prisoners should not be degrading and humiliating: uniforms that tend towards the caricature of the "convict" are therefore prohibited. Protection of prisoners' dignity also underlies the requirement that prisoners who go outside the prison should not wear clothes that identify them as prisoners. It is particularly important that when they appear in court they are provided with clothing appropriate for the occasion.

Implicit in the requirement in Rule 20.3 that clothing should be maintained in good condition, is that prisoners should have facilities for washing and drying their clothes.

#### *Rule 21*

Rule 21 is largely self-explanatory. Beds and bedding are very important to prisoners in practice. "Bedding" in this rule includes a bed frame, mattress and bed linen for each prisoner.

#### *Nutrition*

#### *Rule 22*

Ensuring that prisoners receive nutritious meals is an essential function of prison authorities. The change of the heading to "nutrition" from "food" reflects this change of emphasis. There is no prohibition of self-catering arrangements in the rule, but where there are such arrangements they must be implemented in a way that enables prisoners to have three meals daily. In some countries, prison authorities allow prisoners to cook their own meals, as this enables them to approximate a positive aspect of life in the community. In such cases they provide prisoners with adequate cooking facilities and enough food to be able to meet their nutritional needs.

Rule 22.2 now specifically obliges national authorities to embody the requirements for a nutritious diet in national law. These requirements would have to reflect the nutritional needs of different groups of prisoners. Once such specific standards are in place, internal inspection systems as well as national and international oversight bodies will have a basis for determining whether the nutritional needs of prisoners are being met in the way that the law demands.

## Legal advice

### Rule 23

This rule deals with the right to legal advice that all prisoners have. In this it follows Principle 18 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment rather than older international prison standards which focused on prisoners awaiting trial and failed to recognise explicitly that all prisoners have a right to legal advice. Such advice may cover both criminal and civil litigation, as well as other matters such as the drafting of a will. Precisely what is regarded as legal advice and who may be regarded as a legal adviser may vary slightly from state to state and is best regulated by national law.

Rule 23 is designed to give practical substance to prisoners' entitlement to legal advice. The prison authorities are directed to assist by drawing legal aid to the attention of prisoners. They should also seek to assist in other ways, for example, by providing prisoners with writing materials to make notes and with postage for letters to lawyers when they are unable to afford it themselves (see *Cotlet v. Romania*, No. 38565/97, judgment of 03/06/2003). The particular needs of untried prisoners for legal advice and facilities to make use of it are emphasised in Rule 98.

Prison authorities must also facilitate the giving of legal advice by ensuring its confidentiality. The right of access of prisoners to confidential legal advice and to confidential correspondence with lawyers is well established and has been recognised by the European Court of Human Rights and European Commission of Human Rights in a long line of decisions (see in particular *Golder v. the United Kingdom*, No. 4451/70, judgment of 21/02/1975; *Silver and Others v. the United Kingdom*, Application Nos. 5947/72 *et al.*, judgment of 25/03/1983). There are different ways in which this can be achieved in practice. For example, prison standards have long specified that meetings between prisoners and their lawyers should take place within the sight of but not within the hearing of prison officials (see Rule 93 of the United Nations Standard Minimum Rules for the Treatment of Prisoners). This may still be the best solution to ensuring access to confidential legal advice but other ways of achieving the same outcome may be sought. Specific methods of ensuring the confidentiality of legal correspondence should also be developed.

Restrictions on such confidentiality by prison authorities are only justified if there are compelling reasons for it and must be subject to review (see *Peers v. Greece*, No. 28524/95, judgment of 19/04/2001, paragraph 84, and *A.B. v. the Netherlands*, No. 37328/97, judgment of 29/01/2002, paragraph 83). When, exceptionally, a judicial authority does place restrictions on the confidentiality of communications

with legal advisers in an individual case, the specific reasons for the restrictions should be stated and the prisoner should be provided with these in writing.

Rule 23.6 is designed to assist prisoners by giving them access to legal documents which concern them. Where for reasons of security and good order it is not acceptable to allow them to keep these documents in their cells, steps should be taken to ensure that they are able to access them during normal working hours.

#### *Contact with the outside world*

##### *Rule 24*

Loss of liberty should not entail loss of contact with the outside world. On the contrary, all prisoners are entitled to some such contact and prison authorities should strive to create the circumstances to allow them to maintain it as best as possible. Traditionally, such contact has been by way of letters, telephone calls and visits, but prison authorities should be alert to the fact that modern technology offers new ways of communicating electronically. As these develop, new techniques of controlling them are emerging too and it may be possible to use them in ways that do not threaten safety or security. Contact with the outside world is vital for counteracting the potentially damaging effects of imprisonment (see further paragraphs 22 and 23 of Recommendation Rec(2003)23 on the management by prison administrations of life-sentence and other long-term prisoners). Rule 99 makes it clear that untried prisoners should also be allowed to keep in contact with the outside world and that restrictions, if any, on such contact should be particularly carefully limited.

The reference to families should be interpreted liberally to include contact with a person with whom the prisoner has established a relationship comparable to that of a family member even if the relationship has not been formalised.

Article 8 of the ECHR recognises that everyone has a right to respect for their private and family life and correspondence and Rule 24 can be read as setting out the duties that the prison authorities have to ensure that these rights are respected in the inherently restrictive conditions of the prison. This also includes visits, as they are a particularly important form of communication.

To adhere to the limits set by Article 8.2 of the ECHR on interference with the exercise of this right by a public authority, restrictions on communication should be kept to the minimum. At the same time, Rule 24.2 recognises that communication of all kinds can be restricted and monitored for purposes of internal good order, safety and security of the prison (see the general discussion of these concepts in Part IV). It may also be necessary to limit communication in order to meet the needs of continuing criminal investigations, to prevent the commission of further crime and to protect victims of crime. Restrictions on these grounds should be imposed with particular caution, as they require decisions about matters

often outside the knowledge of the normal operations of the prison authorities. It may be good policy to require court orders before making restrictions on these grounds. Monitoring too should be proportionate to the threat posed by a particular form of communication and should not be used as an indirect way of restricting communication. Care should be taken to minimise particular difficulties and delays encountered by prisoners who need to communicate in a foreign language.

The rules according to which restrictions are also imposed are also important: they must be spelt out clearly, “in accordance with law” as required by Article 8.2 of the ECHR and not be left to the discretion of the prison administration (see *Labita v. Italy*, No. 26772/95, judgment of 06/04/2000). The restriction must be the least intrusive justified by the threat. Thus, for example, correspondence can be checked to see that it does not contain illegal articles but needs only to be read if there is a specific indication that its contents are illegal. Visits, for example, should not be forbidden if they pose a threat to security but a proportionate increase in their supervision should be applied. Moreover, in order to justify a restriction, the threat must be demonstrable; an indefinite period of censorship, for example, is not acceptable. In practical terms, the restrictions will vary depending on the type of communication involved. Letters, and with modern technology, telephone calls, are easily checked. Electronic communications such as e-mails still pose a higher security risk and may be limited to a small category of prisoners. The security risks may change and therefore the rules do not lay down specific guidelines on this.

An additional specific limit on restrictions is contained in Rule 24.2, which is intended to ensure that even prisoners who are subjected to restrictions are still allowed some contact with the outside world. It may be good policy for national law to lay down a minimum number of visits, letters and telephone calls that must always be allowed.

The reference to “specific restrictions ordered by a judicial authority” in Rule 24.2 is designed to deal with the cases where additional restrictions which are necessary for the investigation that is being carried out may be imposed on remand prisoners. Even in these instances, however, they may not be totally isolated.

Some types of communication may not be prohibited at all. Not surprisingly, the ECtHR has taken particular exception to attempts to limit correspondence with European human rights organs (see, for example, *Campbell v. the United Kingdom*, No. 13590/88, judgment of 25/03/1992). Rule 24.3 specifies that national law should lay down that such communication will be allowed as well as communication with, for example, a national ombudsman and the national courts.

The particular significance of visits, not only for prisoners but also for their families, is emphasised in Rule 24.4. It is important that where possible intimate family visits should extend over a long period, for example, 72 hours, as is the case in many eastern European countries. Such long visits allow inmates to have

intimate relations with their partners. Shorter “conjugal visits” for this purpose can be demeaning to both partners.

Rule 24.5 places a positive duty on the prison authorities to facilitate links with the outside world. One way in which this can be done is to consider allowing all prisoners leave from prison in terms of Rule 24.7 for humanitarian purposes. The ECtHR has held that this must be done for the funeral of a close relative, where there is no risk of the prisoner absconding (*Ploski v. Poland*, No. 26761/95, judgment of 12/11/2002). Humanitarian reasons for leave may include family matters such as the birth of a child.

Specific attention is paid in Rule 24.6, Rule 24.8 and Rule 24.9 to ensuring that prisoners receive basic information about their close family and that basic information about prisoners reaches those on the outside to whom it will be of particular interest. Prisoners should be assisted, where necessary, in communicating this information. The rule seeks to strike the difficult balance that must be maintained between giving prisoners a right to notify certain circumstances to significant others in the outside world; placing a duty on the authorities to do so in some circumstances; and recognising the right of prisoners not to have information about themselves made available when they do not want it to be disclosed. Where prisoners present themselves at prison at their own volition rather than following arrest it is not necessary for the authorities to inform their families of their admission.

Rule 24.10 deals with an aspect of contact with the outside world which is related to the ability to receive information, which is part of the right to freedom of expression guaranteed by Article 10 of the ECHR.

Rule 24.11 is an innovation in the European Prison Rules designed to ensure that prison authorities respect the increased recognition that the European Court of Human Rights has now given to prisoners’ right to vote (see *Hirst v. the United Kingdom (No. 2)*, No. 74025/01, judgment of 30/03/2004). Here too, the prison authorities can and should play a facilitative role and not make it difficult for prisoners to vote (*Iwanczuk v. Poland*, No. 25196/94, judgment of 15/11/2001). This rule builds on the early Resolution (62) 2 on the electoral, civil and social rights of prisoners stipulated in Chapter B, paragraphs 5 and 6:

“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.

A prisoner permitted to vote shall be afforded opportunities to inform himself of the situation in order to exercise his right.”

Rule 24.12 seeks to maintain a balance in this highly controversial area of communication by prisoners. Freedom of expression is the norm but public authorities are allowed to restrict freedom of expression in terms of Article 10.2

of the ECHR. The use of the term “public interest” allows prohibition of such communication on grounds other than those relating to internal concerns with safety and security. These would include restrictions in order to protect the integrity of victims, other prisoners or staff. However, the term “public interest” will need to be interpreted relatively narrowly so as not to undermine what prisoners are being allowed by this rule.

### *Prison regime*

#### *Rule 25*

Rule 25 underlines that the prison authorities should not concentrate only on specific rules, such as those relating to work, education and exercise, but should review the overall prison regime of all prisoners to see that it meets basic requirements of human dignity. Such activities should cover the period of a normal working day. It is unacceptable to keep prisoners in their cells for 23 hours out of 24, for example. The CPT has emphasised that the aim shall be that the various activities undertaken by prisoners should take them out of their cells for at least eight hours a day [see CPT’s 2nd General Report (CPT/Inf (92) paragraph 47)].

Particular attention should be paid to ensure that prisoners that are not in work, such as prisoners who have passed the retirement age, are kept active in other ways.

This rule also makes specific reference to the welfare needs of prisoners and thereby provides the impulse for the prison authorities to see that the multiple welfare needs of prisoners are catered for, either by the prison service or welfare agencies within other parts of the state system. Specific reference is made to the need to provide support to prisoners, both male and female, who may have been physically, mentally or sexually abused.

Note also that Rule 101 allows untried prisoners to request access to the regimes for sentenced prisoners.

### *Work*

#### *Rule 26*

Note that work by untried prisoners is dealt with in Rule 100 and work by convicted prisoners in Rule 105. The positioning of Rule 26 in the general section represents a major departure from previous practice, for work has historically been conceived as something that is available to (and compulsory for) sentenced prisoners only. There is now widespread recognition that untried prisoners are entitled to work, too. The provisions in Rule 26 apply to all types of work performed by prisoners, whether they are untried prisoners who elect to do so or sentenced prisoners who may be compelled to work.

Rule 26.1 emphasises anew that no work performed by a prisoner should be punishment. This is designed to combat an obvious potential abuse. Instead, the positive aspect should be emphasised. Work opportunities offered to prisoners should be relevant to contemporary working standards and techniques and organised to function within modern management systems and production processes. It is important, as Rule 26.4 indicates in general terms, that women have access to employment of all kinds and are not limited to forms of work traditionally regarded as the province of women. Work should have a broadly developmental function for all prisoners: the requirement that it should if possible enable them to increase their earning capacity serves the same function.

The principle of normalisation, inherent in Rule 5, underpins much of the detail on work in Rule 26. Thus, for example, provisions for health and safety, working hours and even involvement in national social security systems should mirror that for workers on the outside. This approach builds on that adopted by Resolution No. R (75) 25 of the Committee of Ministers on Prison Labour. The same approach should inform the level of remuneration for prisoners. All prisoners should ideally be paid wages which are related to those in society as a whole.

Rule 26 also contains provisions designed to prevent the exploitation of prison labour. Thus Rule 26.8 is designed to ensure that the profit motive does not lead to the positive contribution that work is supposed to make toward the training of prisoners and the normalisation of their lives in prison being ignored.

Rule 26.17 recognises that while work may form a key part of the daily routine of prisoners, it should not be required to the exclusion of other activities. Of these, education is specifically mentioned but contact with others, such as welfare agencies for example, may be an essential part of the regime of a particular prisoner.

#### *Exercise and recreation*

##### *Rule 27*

It is important to emphasise, as the placement of Rule 27 does, that all prisoners, including those subject to disciplinary punishment, need exercise and recreation, although these activities should not be compulsory. Opportunities for exercise and recreation must be made available to all prisoners rather than only as part of a treatment and training programme for sentenced prisoners. This is in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners, which deal with exercise and sport. The importance of exercise for all prisoners is underlined by the CPT in its 2nd General Report [CPT/Inf (92)3], paragraph 47. The one-hour a day period of physical exercise is a minimum that should be applied to all prisoners who do not get sufficient exercise through their work. Facilities for outdoor exercise should be sufficient to permit prisoners to exert themselves physically.



Provision for physical exercise should be complemented by recreational opportunities to make prison life as normal as possible. The organisation of sport and recreation provide an ideal opportunity for involving prisoners in an important aspect of prison life and for developing their social and interpersonal skills. It is also an occasion on which prisoners can exercise their right of association. This right is protected by Article 11 of the ECHR and, while it is severely limited in the prison context by the requirements of good order, it is not entirely forbidden (see also the comment on Rule 52.3 in Part IV).

Rule 27.5 provides for prisoners who have a need for physical exercise of a specialised nature, for example, a prisoner who has been injured may require additional exercises to build up wasted muscles.

### *Education*

#### *Rule 28*

This rule makes general provision for the education of all prisoners. Additional aspects of education for sentenced prisoners are considered in Rule 106. Prison authorities should pay special attention to the education of young prisoners and those with special educational needs such as prisoners of foreign origin, disabled prisoners and others. This is in line with Recommendation No. R (89) 12 of the Committee of Ministers on education in prison, which refers specifically to the education needs of all prisoners. The rule emphasises the importance of the prison authorities providing for prisoners who have particular educational needs and of integrating the provision of education into the educational system in the community. It is also important that where prisoners obtain formal qualifications while in prison the certificates recording these qualifications should not indicate where they were obtained.

The library should be seen as a facility for all prisoners and as an important recreational resource. It also has a key place in the provision of education in prison. The adequately stocked library should contain books in the various languages that prisoners read. It should also comprise legal materials including copies of the European Prison Rules and similar instruments as well as the regulations applicable to the prison for prisoners to consult. Other materials that may be held in the library include electronically stored information.

### *Freedom of thought, conscience and religion*

#### *Rule 29*

Prison rules have hitherto regarded the place of religion in prison as unproblematic and limited themselves to positive provision on how best to organise religious life in

prison. However, the increase in some countries of prisoners with strong religious views requires a more principled approach as well as a positive requirement.

Rule 29.1 seeks to recognise religious freedom as well as freedom of thought and conscience as required by Article 9 of the ECHR.

Rule 29.2 adds a positive requirement on prison authorities to assist in respect of religious observance as well as the observance of beliefs. There are various steps that should be taken in this regard. Rule 22 already requires that religious preferences be taken into account when prisoners' diets are determined. So far as is practicable, places of worship and assembly shall be provided at every prison for prisoners of all religious denominations and persuasions. If a prison contains a sufficient number of prisoners of the same religion, an approved representative of that religion should be appointed. If the number of prisoners justifies it and conditions permit, such appointment should be on a full-time basis. Such approved representatives should be allowed to hold regular services and activities and to pay pastoral visits in private to prisoners of their religion. Access to an approved representative of a religion should not be refused to any prisoner.

Rule 29.3 provides safeguards to ensure that prisoners are not subject to pressure in the religious sphere. The fact that these matters are dealt with in the general section underlines the requirement that religious observance should not be seen primarily as part of a prison programme but as a matter of general concern to all prisoners.

### *Information*

#### *Rule 30*

This rule underlines the importance of informing prisoners of their rights and duties in a language which they can understand. Steps also need to be taken to ensure that they remain properly informed. Prisoners will not only be interested in the material and formal conditions of their detention but also in the progress of their case and, in so far as they are sentenced, in how much time has still to be served and their eligibility for early release. For this reason it is important that the prison administration keep a file on these matters for prisoners to consult. For a better understanding of the treatment of prisoners, their families should have access to the rules and regulations that determine the treatment of their next of kin.

### *Prisoners' property*

#### *Rule 31*

The protection of the property of prisoners, including money, objects of value and other effects is something that may cause difficulties in practice, as prisoners are

vulnerable to theft of their property. Rule 31 contains detailed procedures to be followed from admission onwards to prevent this. These procedures also serve to safeguard staff from allegations that they may have misappropriated property belonging to prisoners. The rule also provides, subject to restrictions, for prisoners to purchase or otherwise obtain goods that they may need in prison. In the case of food or drink, see also the obligation of the authorities to provide prisoners with adequate nutrition in terms of Rule 22.

#### *Transfer of prisoners*

##### *Rule 32*

Prisoners are particularly vulnerable when being transported outside prison. Accordingly, Rule 32 provides safeguards. Rule 32.3 is specifically designed to ensure that prisoners are not exploited by making transfers dependent on their ability to pay for them. It also provides that the public authorities remain responsible for prisoners when they are being transported. Exceptions may be made where prisoners elect to be involved in civil actions.

#### *Release of prisoners*

##### *Rule 33*

This rule recognises that the question of release of prisoners does not concern only sentenced prisoners. It is important that prisoners who may not be legally detained further are released without delay (*Quinn v. France*, No. 18580/91, judgment of 22/03/1995). The various steps that have to be taken in terms of Rule 33 are designed to ensure that all prisoners, including those who are untried, are assisted in the transition from prison to life in the community.

#### *Women*

##### *Rule 34*

This rule is a new provision to deal with the reality that prisoners who are women are a minority in the prison system, and who can easily be discriminated against. It is designed to go beyond the outlawing of negative discrimination and to alert the authorities to the reality that they need to take positive steps in this regard. Such positive steps need to recognise, for example, that precisely because of their small numbers women may suffer disadvantages by being relatively isolated and that strategies therefore need to be devised to deal with this isolation. Similarly, the provision in Rule 26.4, that there must be no discrimination on the basis of gender in the type of work provided, needs to be complemented by positive initiatives to

ensure that women are not in practice still discriminated against in this respect by being housed in small units where less, or less interesting, work is on offer.

The requirement of giving access to special services for women prisoners is stated in general terms in order to allow for the imaginative development of a range of positive measures. However, one area stands out and this is recognised in Rule 34.2. Women prisoners are particularly likely to have suffered physical, mental or sexual abuse prior to imprisonment. Their special needs in this respect are highlighted in addition to the general attention to be paid to all such prisoners in Rule 25.4. Similar emphasis on the needs of women in this regard is also found in Rule 30.*b* of Rec(2003)23 on the management by prison administrations of life-sentence and other long-term prisoners.

It is important to recognise that women's special needs cover a wide range of issues and should not be seen primarily as a medical matter. For this reason too, the provisions dealing with pregnancy and childbirth and facilities for parents with children in prison are removed from the medical context and placed in this and the following rule.

Where women are taken to outside facilities they should be treated with dignity. It is not acceptable, for example, for them to give birth shackled to a bed or piece of furniture.

#### *Detained children*

##### *Rule 35*

This rule is designed in the first instance to keep children out of prisons, which are seen as institutions for the detention of adults. Children are defined following Article 1 of the United Nations Convention on the Rights of the Child as all persons below the age of 18 years.

The European Prison Rules as a whole are designed to deal primarily with the manner of detention of adults in prison. Nevertheless, the rules incorporate within their scope children who are detained on remand or following a sentence in any institution. The rules therefore apply to protect such children in prison. This is important, for children continue to be detained in "ordinary" prisons, although this practice is widely recognised to be undesirable. In addition, these rules, although geared to adults, may offer useful general indications of the minimum standards that should apply to children in other institutions as well.

Since children constitute an exceptionally vulnerable group, prison authorities should ensure that the regimes provided for detained children follow the relevant principles set out in the United Nations Convention on the Rights of the Child

and Recommendation No. R (87) 20 on social reactions to juvenile delinquency. Particular attention should be given to:

- protecting them from any form of threat, violence or sexual abuse;
- providing adequate education and schooling;
- helping them to maintain contact with their families;
- providing support and guidance in their emotional development; and
- providing appropriate sport and leisure activities.

These requirements are laid out in paragraph 2 of Recommendation Rec(2003)23 on the management by prison administrations of life-sentence and other long-term prisoners, and should be applied to all children.

Further protection of detained children must be sought in specialist standards, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the so-called Havana Rules, adopted by General Assembly Resolution 45/113 of 14 December 1990). Indirect reference is made to them in Rule 35.3.

Rule 35.4 states the general principle that children should be detained separately from adults. It allows an exception for the best interests of a child. In practice, however, it will normally be in the best interests of children to be held separately. In the rare instances where this is not the case, such as where there are very few children in the prison system at all, careful steps should be taken to ensure that children are not at risk of abuse from adult prisoners (all this is spelt out further in the UN Standard Minimum Rules for the Administration of Juvenile Justice (Rule 26.3); the UN Rules for the Protection of Juveniles Deprived of their Liberty (Rule 29) and in the CPT 12th General Report (CPT/Inf (99)12, paragraph 25).

### *Infants*

#### *Rule 36*

Whether infants should be allowed to stay in prison with one of their parents and, if so, for how long, is a vexed question. Ideally, parents of infants should not be imprisoned but that is not always possible. The solution adopted here is to emphasise that the best interests of the infant should be the determining factor. However, the parental authority of the mother, if it has not been removed, should be recognised, as should that of the father. It should be emphasised that where

infants stay in a prison they are not to be regarded as prisoners. They retain all the rights of infants in free society. No upper limit is set in the rule for the age that infants may reach before they have to leave their parent behind in prison. There are considerable cultural variations on what such a limit should be. Moreover, the needs of individual infants vary enormously and it may be in the interests of a particular infant to be kept beyond the norm with the parent in prison.

*Foreign nationals*

*Rule 37*

This rule reflects the growing importance of issues surrounding foreigners in European prisons by incorporating them in a separate rule. It applies to both untried and sentenced prisoners. It closely follows Rule 38 of the United Nations Standard Minimum Rules on the Treatment of Prisoners and is in line with the Vienna Convention on Consular Relations. The underlying principle is that foreign nationals may be in particular need of assistance when a state other than their own is exercising the power of imprisoning them. This assistance is to be provided by representatives of their countries. Prison officials should also note that foreign prisoners may qualify for transfer under the European Convention of the Transfer of Sentenced Prisoners or in terms of bilateral arrangements and should inform such prisoners of the possibility (see paragraph 25 of Recommendation Rec(2003)23 on the management by prison administrations of life-sentence and other long-term prisoners).

Rule 37.3 recognises that foreign prisoners may have other special needs. In some countries these prisoners may also receive visits by representatives of organisations concerned with the welfare of foreign prisoners. More details on how to deal with the needs of such prisoners are contained in Recommendation No. R (84) 12 concerning foreign prisoners.

*Ethnic or linguistic minorities*

*Rule 38*

The increasingly diverse prison population of Europe means that a new rule is required to ensure that particular attention is paid to the needs of ethnic and linguistic minorities. Rule 38 states this proposition in general terms. Prison staff need to be sensitised to the cultural practices of various groups in order to avoid misunderstandings.

### **Part III**

### **Health**

#### *Health care*

##### *Rule 39*

This rule is a new one and has its basis in Article 12 of the International Covenant on Economic, Social and Cultural Rights, which establishes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. Alongside this fundamental right, which applies to all persons, prisoners have additional safeguards as a result of their status. When a state deprives people of their liberty it takes on a responsibility to look after their health in terms both of the conditions under which it detains them and of the individual treatment that may be necessary. Prison administrations have a responsibility not simply to ensure effective access for prisoners to medical care but also to establish conditions that promote the well-being of both prisoners and prison staff. Prisoners should not leave prison in a worse condition than when they entered. This applies to all aspects of prison life, but especially to health care.

This principle is reinforced by Recommendation No. R (98) 7 of the Committee of Ministers to member states concerning the ethical and organisational aspects of health care in prison and also by the CPT, particularly in its 3rd General Report (CPT/Inf (93) 12). There is also an increasing body of case law coming from the European Court of Human Rights, which confirms the obligation of states to safeguard the health of prisoners in their care.

#### *Organisation of prison health care*

##### *Rule 40*

The most effective way of implementing Rule 40 is that the national health authority should also be responsible for providing health care in prison, as is the case in a number of European countries. If this is not the case, then there should be the closest possible links between the prison health care providers and health service providers outside the prison. This will not only allow for a continuity of treatment but will also enable prisoners and staff to benefit from wider developments in treatments, in professional standards and in training.

Recommendation No. R (98) 7 of the Committee of Ministers requires that “health policy in custody should be integrated into, and compatible with, national health policy”. As well as being in the interest of prisoners, this is in the interest of the health of the population at large, especially in respect of policies relating to infectious diseases that can spread from prisons to the wider community.

The right of prisoners to have full access to the health services available in the country at large is confirmed by Principle 9 of the UN Basic Principles for the Treatment of Prisoners. The CPT's 3rd General Report also lays great emphasis on the right of prisoners to equivalence of health care. It is also an important principle that prisoners should have access to health care free of charge (Principle 24 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment). A number of countries experience great difficulty in providing health care of a high standard to the population at large. Even in these circumstances prisoners are entitled to the best possible health care arrangements and without charge. The CPT has stated that even in times of grave economic difficulty nothing can relieve the state of its responsibility to provide the necessities of life to those whom it has deprived of their liberty. It has made clear that the necessities of life include sufficient and appropriate medical supplies (see, for example, the Report on Moldova [CPT/Inf (2002) 11]).

Nothing in these rules prevents a state from allowing prisoners to consult their own doctor at their own expense.

#### *Medical and health care personnel*

##### *Rule 41*

A basic requirement to ensure that prisoners do have access to health care whenever required is that there should be a medical practitioner appointed to every prison. The medical practitioner referred to should be a fully qualified medical doctor. In large prisons a sufficient number of doctors should be appointed on a full-time basis. In any event, a doctor should always be available to deal with urgent health matters. This requirement is confirmed in Recommendation No. R (98) 7 of the Committee of Ministers.

In addition to doctors, there should be other suitably qualified health care personnel. In some eastern European countries, paramedics (sometimes called *feldshers*) reporting to a doctor also deliver medical assistance and care. Another important group will be properly trained nurses. In 1998, the International Council of Nurses published a statement which said, among other things, that national nursing associations should provide access to confidential advice, counselling and support for prison nurses. (The Nurse's Role in the Care of Prisoners and Detainees, International Council of Nurses, 1998).

In dealing with prisoners, doctors should apply the same professional principles and standards that they would apply in working outside prisons. This principle was



confirmed by the International Council of Prison Medical Services when it agreed the Oath of Athens:

“We, the health professionals who are working in prison settings, meeting in Athens on September 10, 1979, hereby pledge, in keeping with the spirit of the Oath of Hippocrates, that we shall endeavour to provide the best possible health care for those who are incarcerated in prisons for whatever reasons, without prejudice and within our respective professional ethics”.

This is also required by the first of the UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

#### *Duties of the medical practitioner*

##### *Rule 42*

In line with Recommendation No. R (98) 7 on ethical and organisational aspects of health care in prison, the idea underlying the duties of prison doctors is that they should give appropriate medical care and advice to all the prisoners for whom they are clinically responsible. In addition, their clinical assessments of the health of prisoners shall be governed solely by medical criteria. Rule 42 makes it clear that the task of the medical practitioner begins as soon as any person is admitted to a prison. There are several important reasons why prisoners should be medically examined when they first arrive in prison. Such an examination will:

- enable medical staff to identify any pre-existing medical conditions and ensure that appropriate treatment is provided;
- allow appropriate support to be provided to those who may be suffering the effects of the withdrawal of drugs;
- help to identify any traces of violence which may have been sustained before their admission to prison; and
- allow trained staff to assess the mental state of the prisoner and provide appropriate support to those who may be vulnerable to self-harm.

An examination will only be obviously unnecessary if it is required neither by the prisoner’s state of health nor by public health needs. Details of any injuries noted should be forwarded to the relevant authorities.

Following on from this initial examination the medical practitioner should see all prisoners as often as their health requires it. This is particularly important in respect of prisoners who may be suffering from mental illness or are mentally disordered, who are experiencing drug or alcohol withdrawal symptoms or who are under particular stress because of the fact of their imprisonment. Recommendation

No. R (98) 7 of the Committee of Ministers makes extensive reference to the care of prisoners with alcohol- and drug-related problems and draws attention to the recommendations of the Council of Europe Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (the Pompidou Group). In a judgment in April 2003 (*McGlinchey and Others v. the United Kingdom*, No. 50390/99, judgment of 29/04/2003), the European Court of Human Rights found a violation of Article 3 of the ECHR in respect of the medical treatment of a heroin addict who died during detention.

In several European countries there is a real concern about the spread of infectious diseases, such as tuberculosis (TB). This is a threat to the health of both prisoners and prison staff and also to the community at large. This fact has been recognised by the heads of government of the Baltic Sea States, who issued a joint statement in June 2002, noting that “overcrowded prisons with infected inmates and with poor hygiene and sanitation are a dominant threat in the field of communicable diseases in the region”. Medical practitioners working in prisons need to be particularly alert when examining persons who have been newly admitted to prison to identify any who have a communicable disease. When conditions are overcrowded or there is poor hygiene, there also needs to be a programme of regular screening. In such situations there should be a programme for the treatment of prisoners suffering from such illnesses. In one of its country reports, the CPT noted the inadequate supply of anti-TB drugs, a sporadic supply of which can lead to the onset of multi-drug resistant TB, and invoked the principle that the prison authorities had a clear obligation to provide a consistent supply of drugs (Report to the Latvian Government CPT/Inf (2001) 27). Arrangements also need to be made when necessary for clinical reasons to isolate prisoners for their own benefit and for the safety of other persons. Recommendation No. R (98) 7 of the Committee of Ministers proposes that vaccination against hepatitis B should be offered to prisoners and staff.

In recent years an increasing number of prisoners have been found to be carrying the HIV virus. In some countries the practice has been to automatically segregate such prisoners. There is no clinical justification for doing this and this practice should be discouraged. Reference is made to the norms contained in Recommendation No. R (93) 6 of the Committee of Ministers to member states on prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison. Recommendation No. R (98) 7 of the Committee of Ministers reinforces this point and also stresses that an HIV test should be performed only with the consent of the prisoner concerned and on an anonymous basis.

World Health Organisation guidelines (WHO Guidelines on HIV infection and Aids in prisons, Geneva, 1993) make it absolutely clear that testing for HIV should not be compulsory and HIV infected prisoners should not be segregated from others unless they are ill and need specialised medical care.

Rule 42.2 provides that if a prisoner is released before the completion of his treatment, it is important that the medical practitioner establish links with medical services in the community so as to enable the prisoner to continue his treatment following release. This is particularly important where the released prisoner suffers from an infectious disease such as tuberculosis, or where a mental or physical disease or defect might impede the prisoner's successful resettlement in society.

#### *Rule 43*

This rule implies that individual prisoners are entitled to regular, confidential access to appropriate levels of medical consultation, which is at least the equivalent to that available in civil society. The conditions under which prisoners are interviewed about their health should be the equivalent of those that apply in civil medical practice. Wherever possible they should take place in appropriately equipped consulting rooms. It is unacceptable for consultation to take place with groups of prisoners or in the presence of other prisoners or non-medical staff. During medical examinations prisoners shall not be handcuffed or physically separated from the medical practitioner.

Under no circumstances should they be required to disclose to other staff their reasons for seeking a consultation if they have to submit their request for access to a doctor to them. The arrangements for seeking a medical consultation should be made clear to prisoners on admission to the prison.

The medical records of individual prisoners should remain under the control of the medical practitioner and should not be disclosed without the prior written authorisation of the prisoner. In some countries, prison health care services come under the jurisdiction of civilian health care provision. In addition to the benefits discussed above, such arrangements also help to establish clearly that medical records are not part of general prison records.

The treatment provided as a result of consultation and diagnosis should be that which is in the best interests of the individual prisoner. Medical judgments and treatments should be based on the needs of the individual prisoner and not on the needs of the prison administration. Recommendation No. R (98) 7 of the Committee of Ministers emphasises that prisoners should give informed consent before any physical examination or treatment, as does the CPT's 3rd General Report.

Recommendation No. R (98) 7 of the Committee of Ministers notes the need to pay special attention to the needs of prisoners with physical handicaps and to provide facilities to assist them along lines similar to those in the outside environment. In a judgment in July 2001 (*Price v. the United Kingdom*, No. 33394/96, judgment of 10/07/2001) the European Court of Human Rights found a violation of Article 3 of the ECHR in respect of the treatment of a severely handicapped person in prison

despite the fact that it found no evidence of any positive intention on the part of the prison authorities to humiliate or debase the applicant.

One consequence of the increase in the length of sentences in some jurisdictions is that the prison administration has to respond to the needs of growing numbers of elderly prisoners. In some countries, the recent trend towards mandatory life or long sentences has led to a significant increase in prisoners who will become old in prison. Prison administrations will need to give particular consideration to the different problems, both social and medical, of this group of prisoners. This may require the provision of a range of specialist facilities to deal with the problems arising from a loss of mobility or the onset of mental deterioration.

Special considerations will apply to prisoners who become terminally ill and a decision may have to be made as to whether such prisoners should be released early from their sentences. Any diagnosis made or advice offered by prison medical staff should be based on professional judgment and in the best interests of the prisoner. Recommendation No. R (98) 7 of the Committee of Ministers indicates that the decision as to when such patients should be transferred to outside hospital units should be taken on medical grounds. In a judgment in November 2002 (*Mouisel v. France*, No. 67263/01, judgment of 14/11/2002) the European Court of Human Rights found a violation of Article 3 of the ECHR in respect of the medical treatment of a terminally ill prisoner. It noted a positive obligation on the state to offer adequate medical treatment and criticised the fact that the prisoner had been handcuffed to a hospital bed. In another case in October 2003, (*Hénaf v. France*, No. 65436/01, judgment of 27/11/2003) the Court found a violation of Article 3 of the ECHR in the treatment of a sick prisoner who had been chained to a hospital bed.

Recommendation No. R (98) 7 of the Committee of Ministers makes reference to the treatment of prisoners who are on hunger strike. It stresses that clinical assessment of a hunger striker should only take place with the express permission of the patient unless there is a severe mental disorder, which requires transfer to a psychiatric service. Such patients should be given a full explanation of the possible harmful effects of their action on their long-term well-being. Any action that the medical practitioner (doctor) takes must be in accordance with national law and professional standards.

Medical practitioners or qualified nurses should not be obliged to pronounce prisoners fit for punishment but may advise prison authorities of the risks that certain measures may pose to the health of prisoners. They have a particular duty to prisoners who are held in conditions of solitary confinement for whatever reason: for disciplinary purposes; as a result of their “dangerousness” or their “troublesome” behaviour; in the interests of a criminal investigation; at their own request. Following established practice, (see for example Rule 32.3 of the UN Standard Minimum Rules for the Treatment of Prisoners) such prisoners should be

visited daily. Such visits can in no way be considered as condoning or legitimising a decision to put or to keep a prisoner in solitary confinement. Moreover, medical practitioners or qualified nurses should respond promptly to request for treatment by prisoners held in such conditions or by prison staff as required by paragraph 66 of Recommendation No. R (98) 7 on ethical and organisational aspects of health care in prison.

#### *Rules 44 and 45*

These two rules address the medical practitioner's duties to inspect and to advise upon the conditions of detention. The conditions under which prisoners are detained will have a major impact on their health and well-being. In order to meet their responsibilities, therefore, prison administrations should ensure appropriate standards in all those areas that may affect the health and hygiene of prisoners. The physical conditions of the accommodation, the food and the arrangements for hygiene and sanitation should all be designed in such a way as to help those who are unwell to recover and to prevent the spread of infection to the healthy. The medical practitioner has an important role to play in checking that the prison administration is meeting its obligations in these respects. When this is not the case, the medical practitioner should draw this to the attention of the prison authorities. Recommendation No. R (98) 7 of the Committee of Ministers notes that the ministry responsible for health has a role to play in assessing hygiene in the prison setting.

#### *Health care provision*

##### *Rule 46*

This rule requires the prison administration to ensure that it has, in addition to facilities for general medical, dental and psychiatric care, suitable arrangements in place to provide specialist consultation and in-patient care. This will require a close link between the prison and the medical services in civil society since it is unlikely that prison health care services will themselves be able to make adequate arrangements for the full range of specialisations. In planning for specialist care particular attention should be given to the needs of vulnerable groups, especially women and older prisoners.

Access to specialist facilities may often require the transfer of the prisoner to another location. Prison administrations will need to ensure that arrangements for escorting prisoners are suitable and do not lead to delays in treatment or additional anxiety for the prisoner. The conditions in which prisoners are transported should be appropriate to their medical condition.

*Mental health*

*Rule 47*

This rule addresses mental health issues. The conditions of imprisonment may have a serious impact on the mental well-being of prisoners. Prison administrations should seek to reduce the extent of that impact and should also establish procedures to monitor its effects on individual prisoners. Steps should be taken to identify those prisoners who might be at risk of self-harm or suicide. Staff should be properly trained in recognising the indicators of potential self-harm. Where prisoners are diagnosed as mentally ill they should not be held in prison but should be transferred to a suitably equipped psychiatric facility. In a judgment in April 2001, (*Keenan v. the United Kingdom*, No. 27229/95, judgment of 03/04/2001) the European Court of Human Rights found a violation of Article 3 of the ECHR in the case of a prisoner who had committed suicide in respect of a lack of medical notes, a lack of psychiatric monitoring and segregation which was incompatible with the treatment of a mentally ill person. In its 3rd General Report, the CPT stated that suicide prevention is a matter falling within the purview of the prison health care service. It should ensure that there is an adequate awareness of this subject throughout the establishment and that appropriate procedures are in place.

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 says in Article 35 that persons with mental disorder should not be subject to discrimination in penal institutions. In particular, the principle of equivalence of care with that outside penal institutions should be respected with regard to their health care. Such persons should be transferred between penal institution and hospital if their health needs so require. Appropriate therapeutic options should be available for persons with mental disorder detained in penal institutions. Involuntary treatment for mental disorder should not take place in penal institutions except in hospital units or medical units suitable for the treatment of mental disorder. An independent system should monitor the treatment and care of persons with mental disorder in penal institutions.

*Other matters*

*Rule 48*

The CPT's 3rd General Report underlines the need for "a very cautious approach" when there is any question of medical research with prisoners, given the difficulty of being sure that issues of consent are not affected by the fact of imprisonment. All applicable international and national ethical standards relating to human experimentation should be respected.

## **Part IV**

### **Good order**

#### *General approach to good order*

##### *Rule 49*

Referring to Rule 49, it may be recalled that it is important that good order should be maintained in prisons at all times. This will be achieved if there is a proper balance between considerations of security, safety, discipline and the obligation imposed by Article 10 of the International Covenant on Civil and Political Rights that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. Lord Justice Woolf, in his report on the Strangeways (Manchester Prison) riots insisted that for the avoidance of prison disturbances it was essential to treat prisoners with justice, fairness and equity.

The majority of prisoners accept the reality of their situation. Provided they are subject to appropriate security measures and fair treatment they will not try to escape or seriously disrupt normal life in prison. All well-ordered communities, including prisons, need to operate within a set of rules and regulations that are perceived by the members of the community to be fair and just. In prisons these regulations will be designed to ensure the safety of each individual, both staff and prisoner, and each group has a responsibility to observe those rules and regulations. On occasion some individuals will deviate from these regulations and for that reason there has to be a clearly defined system of hearings, discipline and sanctions which is applied in a just and impartial manner.

Certain prisoners may be tempted to escape. Hence prison authorities should be able to assess the danger posed by each individual prisoner in order to make sure that each one is subject to the appropriate conditions of security, neither too high nor too low.

Only in extreme circumstances can use of force be justified as a legitimate method of restoring order. This must be the last resort. In order to avoid abuse there has to be a specific and transparent set of procedures for use of force by staff.

##### *Rule 50*

Rule 50 provides for further guidelines so as to avoid unnecessary restrictions to prisoners’ rights to communicate. Good order in all its aspects is likely to be achieved when clear channels of communication exist between all parties. On this basis, provided there are no related security concerns, prisoners should be allowed to discuss issues relating to the general conditions of imprisonment. It is in the interest of prisoners as a whole that prisons should run smoothly and they may

well have useful suggestions to make. For this and other reasons, they should be given the opportunity to pass on their opinions to the prison administration. It is up to the national prison administrations to decide what form communications with prisoners will take. Some may allow prisoners to elect representatives and form committees that can express the feelings and interests of their fellow-inmates. Other administrations may opt for different forms of communication. Where prisoners are allowed association in some form or another, prison management and staff should prevent representative bodies from wielding power over other prisoners or abusing their position to influence life in prison in a negative way. Prison regulations may stipulate that prisoners' representatives are not entitled to act on behalf of individual prisoners.

### *Security*

#### *Rule 51*

Security measures are addressed in Rule 51. There are three main reasons for requiring that the security measures to which prisoners are subject shall be the minimum necessary to achieve their secure custody:

- staff are likely to identify more easily those prisoners who do require a high level of security if their numbers are restricted;
- the lower the level of security, the more humane the treatment is likely to be;
- security is expensive and the higher the level, the greater the cost. It makes financial sense not to have prisoners in a higher security category than is necessary.

Physical and technical security arrangements are essential features of prison life, but on their own they are not sufficient to ensure good order. Security also depends on an alert staff who interact with prisoners, who have an awareness of what is going on in the prison and who make sure that prisoners are kept active in a positive way. This is often described as dynamic security and is much more qualitative than one which is entirely dependent on static security measures. The strength of dynamic security is that it is likely to be proactive in a way which recognises a threat to security at a very early stage. Where there is regular contact between staff and prisoners, an alert member of staff will be responsive to situations which are different from the norm and which may present a threat to security, and thus will be able to prevent escapes more effectively. This subject is referred to in 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, paragraph 18.a.

Assessment of risk can help to identify those prisoners who present a threat to themselves, to staff, to other prisoners and to the wider community. Rule 51.3 lists the main objectives of security risk assessment. Criteria for such evaluation have



been developed in many countries. They include: the nature of the crime for which the prisoner was convicted; the threat to the public were the prisoner to escape; previous history of attempting to escape and access to external help; the potential for threat to other prisoners and in the case of pre-trial prisoners, the threat to witnesses. Risk assessments in prison should take account of assessments made by other appropriate agencies, such as the police.

In many prison systems there is an assumption that all pre-trial prisoners must be held in high security conditions. This is not always necessary and it should be possible to apply an assessment of security risk to this group of prisoners if they were to escape, as well as to those who have been sentenced.

In some countries, the judge who passes sentence specifies the security of the regime in which the prisoner should be held. In other countries, prisoners who are sentenced to life imprisonment or who are sentenced under a particular law are automatically held in the highest security conditions, regardless of any personal risk assessment.

Rule 51.5 requires that security levels should be reviewed at regular intervals as the sentence is served. It is often the case that a person becomes less of a security risk as his sentence progresses. The prospect of progressing to a lower security category during the sentence can also act as an incentive for good behaviour.

### *Safety*

#### *Rule 52*

Prisons should be places where everyone is and feels safe. Rule 52 applies therefore to prisoners, staff and all visitors. If it will never be possible to eliminate completely the risk of violence and other events such as fire, it should be possible to reduce these risks to a minimum by putting in place a proper set of procedures. As with security, safety implies a balance of different considerations and the techniques of dynamic security mentioned in Rule 51 can equally contribute to improved safety in prison. Excessive control can be as prejudicial to safety as insufficient control. A safe environment exists when there is consistent application of a clear set of procedures. In all cases, prisons should be equipped with adequate fire fighting equipment and instruction notices on its use, the reporting of outbreaks of fire, the evacuation of buildings, external assembly points and procedures for checking that all prisoners and staff are accounted for.

The importance of carrying out a proper risk assessment on all prisoners on grounds of safety as well as security has been underlined by a finding of the European Court of Human Rights (see *Edwards v. the United Kingdom*, No. 46477/99, judgment of 14/03/2002), in which the Court found in the light of the existing circumstances

that there had been a violation of the right to life in respect of a pre-trial prisoner who was kicked to death in his cell by his cellmate.

There has been a growing tendency in some prison systems to separate categories of prisoners or individuals. Instead, prison authorities should strive to create environments in which all prisoners can be safe and free from abuse and should have a set of procedures that enable all prisoners to mix without fear of assault or other violence, namely to ensure that prisoners are able to contact staff at all times, including at night. Where it is necessary to keep some individuals or groups separate because of their particular vulnerability, (for instance, sexual offenders, mentally disturbed prisoners or those from a minority ethnic or religious group) they should have as full a set of daily activities as possible.

*Special high security or safety measures*

*Rule 53*

Since the publication of the European Prison Rules in 1987 there has been a significant increase in a number of states in the use of special high security or safety measures for individual prisoners or groups of prisoners. For this reason it has been considered appropriate to introduce a new rule to cover these practices.

Rule 53.1 emphasises that special high security or safety measures shall only be applied in exceptional circumstances. The reason for this is that if large numbers of prisoners are assigned to special maximum security facilities there will be a danger that, for many, these conditions will be excessive and disproportionate to the potential threat which they pose. As a general rule, prisoners should only be subject to special high security or safety measures where their behaviour has shown them to pose such a threat to safety and security that the prison administration has no other choice. Any assignment to such conditions should be for as short a time as possible and should be subject to continuous review of the individual prisoner's behaviour.

Some special security facilities involve the virtual isolation of prisoners. These matters are referred to in paragraph 20 of 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.

Long-term prisoners are not necessarily dangerous prisoners and the regime applicable to the latter should not be extended to encompass them. The treatment of dangerous prisoners is dealt with by Recommendation No. R (82) 17 concerning custody and treatment of dangerous prisoners.

The European Court of Human Rights has issued several judgments about the application of special security measures against prisoners. In four cases it has found violations of Article 3 (prohibition of torture) of the European Convention on

Human Rights (*Indelicato v. Italy*, No. 31143/96, judgment of 18/10/2001; *Labita v. Italy*, No. 26772/95, judgment of 06/04/2000; *van der Ven v. the Netherlands*, No. 50901/99, judgment of 04/02/2003, and *Lorsé and Others v. the Netherlands*, No. 52750/99, judgment of 04/02/2003). In another case it was held that restrictions on correspondence amounted to a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights because of and due to Article 13 (right to an effective remedy) in that the plaintiff was unable to make an effective appeal against decisions to extend special security measures imposed on him (*Messina v. Italy*, No. 25498/94, judgment of 28/09/2000). The United Nations Committee against Torture has expressed concern at the severe conditions of detention imposed on prisoners in the highest security category in one member state (CAT/C/CR/29/3 Conclusions and recommendations of the Committee against Torture: Spain, 23/12/2002). The CPT has also made adverse comment on the special security measures applied against a number of prisoners in some of the states it has visited.

### *Searching and controls*

#### *Rule 54*

This rule lays down that in each prison there should be a clearly understood set of procedures which describe in detail the circumstances in which searches should be carried out, the methods to be used and their frequency. These procedures must be designed to prevent escape and also to protect the dignity of prisoners and their visitors.

Procedures for regularly searching living accommodation such as cells and dormitories should be provided to make sure that security features, including doors and locks, windows and grilles, have not been tampered with. Depending on the security category of the prisoner, his personal property should also be subject to searches from time to time. Staff who are to carry out searches need to be specially trained to achieve a balance between ensuring that they can detect and prevent any escape attempt or secretion of contraband goods while at the same time respecting the dignity of prisoners and respect for their personal possessions. When a prisoner's personal living space or possessions are being searched, he should normally be present.

Individual prisoners, particularly those subject to medium or maximum security restrictions, will also have to be personally searched on a regular basis to make sure that they are not carrying items which can be used in escape attempts, or to injure other people or themselves, or which are not allowed, such as illegal drugs. The intensity of such searches will vary according to circumstances. For example, when prisoners are moving in large numbers from their place of work back to their living accommodation it is normal to subject them to "rub-down" searches. Because of the intrusive nature of such searches, special attention should be paid

to respecting the dignity of the person when carrying them out. Personal searches should not be conducted unnecessarily and should never be used as a form of punishment.

On other occasions, especially if there is reason to believe that an individual prisoner has something secreted about his person or when he is designated as a high-risk prisoner, it will be necessary to carry out what is known as a “strip search”. This involves requiring prisoners to remove all clothing and to show that they have nothing hidden about their person. The rule lists the considerations to be covered by the procedures dealing with personal searches of prisoners. The European Court of Human Rights has found a violation of Article 3 of the European Convention on Human Rights in requiring a prisoner to strip naked in the presence of women (*Valasinas v. Lithuania*, No. 44558/98, judgment of 24/07/2001) or in proceeding with certain body searches, because of the frequency and method used (*Van der Ven v. the Netherlands*, No. 50901/99, judgment of 04/02/2003). Prisoners should never be required to be completely naked for the purpose of a search.

Prison staff should never carry out internal body searches of a prisoner, for example, by inserting a finger or any instrument into a prisoner’s body cavities, on any grounds. If there are grounds for suspecting that a prisoner may have hidden drugs or any other item that is forbidden in his body, arrangements should be made to keep him or her under close supervision until such time as he expels any item he may have in his body. If internal body searches are carried out by a medical practitioner, close attention should be paid to the World Medical Association Statement on Body Searches of Prisoners (October 1993). Rule 54.6 does not preclude the possibility of using modern technology to scan a prisoner’s body.

There should be clearly defined procedures for making sure that visitors to prisoners do not attempt to breach reasonable security requirements, for example, by bringing into the prison articles that are not allowed. These procedures may include the right to search visitors in person while taking into consideration that visitors are not themselves prisoners and that the obligation to protect the security of the prison has to be balanced against the right of visitors to their personal privacy. The procedures for searching women and children need to be sensitive to their needs, for example, by ensuring that a sufficient proportion of staff carrying out searches is female. Personal searches should not be carried out in public view.

It may be necessary to search professional visitors, such as legal representatives, social workers and doctors, while taking care not to infringe the right of confidential professional access, namely approving a protocol for searching with the appropriate professional bodies.

*Criminal acts*

*Rule 55*

Rule 55 makes it clear that it is important to recognise that the rule of law does not end at the prison gate. In the interest of victims, when a criminal act has or is thought to have taken place in prison, an investigation procedure similar to that which is used in civil society should operate. In some countries special judges or prosecutors are appointed to carry out this function in prisons. In others the civil prosecutor or police are advised and given the opportunity to investigate as if the offence had taken place outside the prison. It may be that an incident which is serious in the prison context will not be regarded as worthy of investigation by the criminal investigatory authorities. In some countries one way of dealing with these matters is that the prison authorities and the investigatory authorities agree a policy concerning which incidents the prosecutor or police wish to be referred to them.

*Discipline and punishment*

*Rule 56*

This rule stresses that disciplinary procedures shall be mechanisms of last resort. By their nature prisons are closed institutions in which large groups of people, usually of one sex, are held against their will in confined conditions. From time to time it is inevitable that some prisoners will break the rules and regulations of the prison in a variety of ways. Hence, there has to be a clear set of procedures for dealing with such incidents.

*Rule 57*

Rule 57 makes it clear that disciplinary offences should be precisely defined and procedures should respect the principles of justice and fairness. This means that all prisons should have a set of regulations which clearly lists the acts or omissions that constitute a breach of prison discipline and that are liable to lead to formal disciplinary action. Hence, all prisoners should know in advance what are the rules and regulations of the prison. The legal status of these regulations should be clear. In many countries they will require parliamentary approval. Rule 57.2 lists the elements that should be included in the regulations.

*Rule 58*

This rule stipulates that if a member of staff decides that a prisoner has breached any of the disciplinary regulations, that fact should be reported to the competent authority as soon as possible. In some countries it is customary to issue informal warnings for minor breaches of discipline before resorting to disciplinary action,

which constitutes for the prisoner a first warning. However, care must be taken to ensure that the use of such warnings is fair and consistent and does not give rise to a system of unofficial sanctions.

The charge should be heard by the competent authority without undue delay. In some countries independent magistrates or specialist judges are appointed, which brings judicial independence and a greater likelihood that proper procedures will be observed. In other countries there is a special board for disciplinary hearings. In others these cases are heard by the head of the prison. Where disciplinary hearings are conducted by prison management it is important to ensure that they have received appropriate training and that they have not had any prior knowledge of the case that they are to hear.

#### *Rule 59*

In line with this rule any prisoner who is to be charged under a disciplinary proceeding has the right to know the details of the charge in advance and should be given sufficient time to prepare a proper defence. If a prisoner is held in isolation pending the hearing, the procedure should not be delayed unjustifiably as a result of internal or external investigation. In all cases the accused prisoner should be present at the hearing of the case.

The CPT has endorsed several of the elements of Rule 59 in a number of its reports (for example, CPT/Inf (2003) 1 Report to the Government of Cyprus on the visit to Cyprus carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 to 30 May 2000, Strasbourg, 15 January 2003; CPT/Inf (2001)27 Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 January to 3 February 1999, Strasbourg, 22 November 2001; CPT/Inf (2002) 16 Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 18 May 2001, Strasbourg, 27 August 2002).

The right of an accused prisoner to have legal representation when facing a serious charge has been confirmed by the European Court of Human Rights (*Ezeh and Connors v. the United Kingdom*, Nos. 39665/98 and 40086/98, judgments of 09/10/2003).

#### *Rule 60*

This rule implies that the clearly defined and published list of disciplinary offences should be accompanied by a complete list of punishments which may be imposed on any prisoner who commits one of these offences. These punishments should

always be just and proportionate to the offence committed. The list of punishments should be set down in a legal act approved by the appropriate authority. Staff shall not have a separate informal system of punishments that bypasses the official procedures.

In the case of *Ezeh and Connors* mentioned above, the European Court of Human Rights found that the right of prison governors in England and Wales to add up to 42 days to the time a prisoner spent in prison was a breach of Article 6 (right to a fair trial) of the European Convention on Human Rights.

Punishments may include a formal recorded warning, exclusion from work, forfeiture of wages (where these are paid for prison work), restriction on involvement in recreational activities, restriction on use of certain personal possessions, restriction on movement in the prison. Restrictions on family contact, but not a total prohibition, may also be used as a punishment. Such punishment should be used only where the offence relates to such family contacts or where staff are assaulted in the context of a visit.

All disciplinary hearings should be conducted on an individual basis. If, for example, there has been a mass refusal to obey a rule or an assault involving a number of prisoners, the case of each person must be heard and punishments imposed on an individual basis.

There are specific prohibitions against all forms of corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment. The European Court of Human Rights has found that shaving the head of a prisoner as a disciplinary measure is a breach of Article 3 (prohibition of torture) of the European Convention on Human Rights (*Yankov v. Bulgaria*, No. 39084/97, judgment of 11/03/2004). It is now widely held that a reduction of diet is a form of corporal punishment and constitutes inhuman treatment; this reflects professional opinion that has developed in recent years.

Solitary confinement, mentioned in Rule 60.5, refers to all methods of removing prisoners from association with other prisoners by placing them alone in a cell or a room. It should not be considered an appropriate punishment other than in the most exceptional circumstances. This rule is confirmed by Principle 7 of the United Nations Basic Principles for the Treatment of Prisoners. There are various forms of solitary confinement. The most extreme occurs when an individual is held entirely on his or her own and is subject to sensory deprivation by lack of access to light, sound or fresh air in what are often called “dark cells”. This form of isolation should never be imposed as a punishment. Another form of solitary confinement occurs when a prisoner is held in a single cell with access to normal light and air and can hear prisoners moving in adjacent areas. This type of punishment should only be used in exceptional circumstances and for short periods of time. During this period, prison staff shall make regular and reasonably frequent contact with these prisoners (see the commentary on Rule 42). The CPT pays

particular attention to the use of solitary confinement or any conditions similar to it. It has noted that “solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible” (CPT, 2nd General Report on the CPT’s Activities, paragraph 56).

It must be stressed that the requirement of one hour of daily outdoor exercise for prisoners (Rule 27.1) applies equally to inmates placed in solitary confinement as a punishment. Such prisoners should also be provided with reading material. The same applies to prisoners under special high security (Rule 53).

Rule 60.6 relates to the use of instruments of restraint as means of security or to prevent injury. These must never be used as a form of punishment. Instruments of restraint may include handcuffs, chains, irons, straitjackets and any form of electronic control of the person.

#### *Rule 61*

This rule lays down that if the prisoner is found guilty of the charge, he or she should have the right of appeal to a higher independent authority. The disciplinary regulations should specify what this authority is and how any appeal can be prepared and lodged and should ensure that the appeal process can be speedily concluded.

#### *Rule 62*

In some countries it has been common practice to appoint prisoners as group leaders, often in a living or working unit and to require them to report to the authorities on the behaviour of other prisoners and to make recommendations which affect the way they are treated. In other situations prisoners have been given authority over prisoners in punishment or segregation units.

#### *Double jeopardy*

#### *Rule 63*

No prisoner should be punished twice for the same offence. This rule should be interpreted in the light of member states’ international engagements, in particular those obligations undertaken in the framework of the implementation of international treaties which contain provisions on the rule of *non bis in idem*.



*Use of force*

*Rule 64*

Rule 64 reinforces the principle that staff may only use force within clearly defined limits and in response to a specific threat to security or good order.

As a general rule, prevention of a violent incident is always better than having to deal with one. Alert staff who know their prisoners will be able to identify the disruptive elements and to prevent violent acts.

Good professional relationships between staff and prisoners are an essential element of dynamic security in de-escalating potential incidents or in restoring good order through a process of dialogue and negotiation. Only when these methods fail or are considered inappropriate should physical methods of restoring order be considered. When force has to be used against prisoners by staff it should be controlled and should be at the minimum level necessary to restore order.

*Rule 65*

This rule lists the main issues to be dealt with in the procedures which should be in place defining the use of force (when it may be used, who is entitled to use it, who is entitled to authorise its use and the reporting mechanisms to be observed after any use of force).

*Rule 66*

This rule makes it clear that staff should not have to rely on simply overpowering troublesome prisoners by a show of superior physical force. There is a variety of control and restraint techniques in which staff can be trained which will allow them to gain control without injuring either themselves or the prisoners involved. Management should be aware of what these are and should ensure that all staff are competent in the basic skills and that sufficient staff are trained in advanced techniques.

*Rule 67*

This rule deals with the intervention of law enforcement agencies in prison. In exceptional circumstances it may be that the level of prisoner violence is so great that prison staff cannot contain it themselves and will need to call on another law enforcement agency, such as the police. Such a course of action needs to be handled with great care. In dealing with violence, prison staff will always be conscious that they will have to deal with prisoners after the incident has been resolved and life has returned to normal. This means that they will usually try to avoid using force and in any event will be reluctant to use inordinate or indiscriminate force.

This may not be a consideration for other law enforcement officials who do not normally work in the prison setting and who come in only to resolve a violent incident. In order to prevent excessive use of force in these circumstances it is recommended that the prison authorities agree a standing protocol with the senior management of any other agency that may be called on to help to resolve a violent incident. All staff likely to be involved should be made aware of the contents of this protocol before entering the prison.

*Instruments of restraint*

*Rule 68*

This rule is largely identical to Rule 39 in the previous rules. Since the 1987 rules were published, there has been a much greater use of instruments of restraint on prisoners in a variety of circumstances in a number of member states. However, the principles to be applied to the use of instruments of restraint have not changed in the intervening years. It is worth repeating the relevant section of the explanatory memorandum to the 1987 rules. “The use of such apparatus in coercive circumstances rightly bears implications that are morally repugnant to civilised conduct. Their use must, therefore, be strictly controlled and avoided wherever possible. There are, however, inevitably occasions on which physical restraint will need to be applied with the additional help of specially designed equipment or instruments in order to prevent physical injury to the prisoners concerned or to staff, escape or unacceptable damage. These rules are designed to set acceptable limits within which such restraint may be employed”.

Routine use of instruments of restraint is not acceptable, for example, to escort prisoners to the prison.

The former Rule 39.b has been deleted. This allowed the use of instruments of restraint on medical grounds, by direction and under the supervision of the medical practitioner. The circumstances covered by the new Rule 68.2.b (formerly Rule 39.c) still permit the exceptional use of restraint on the basis of the need to protect the prisoner or others.

Rule 68.4 provides for the ultimate authority for the use of instruments of restraint to be vested in law or regulation and not depend on the discretion of the prison administration.

*Weapons*

*Rule 69*

This rule regulates the use of weapons in and around prisons. Staff who work directly with prisoners may carry weapons, such as sticks or batons, for their own defence.

Good practice implies that these weapons should not be carried in an ostentatious or threatening manner. Larger batons should not be carried routinely but should be stored in strategic positions so that they are available to be issued quickly in an emergency. Other than in situations of immediate and major emergency, it is not good practice to allow staff who work directly with prisoners to carry firearms or similar weapons which may either be used inappropriately or may fall into the hands of prisoners. The CPT has also dealt with this matter in its reports on Portugal (CPT Inf (96) 31, paragraph 149), and on Slovenia (CPT Inf 2002 (36), paragraphs 13 and 14).

In some prison systems, staff guarding the external security of the prison carry firearms. These staff should have clear instructions about the circumstances in which these weapons may be used. This must only be when there is immediate threat to life, either of the officer concerned or of someone else. An escaping prisoner may be stopped by the use of a firearm if the prisoner presents an immediate threat to the life of another person or cannot be stopped by any other means. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are quite explicit on this point: "In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life" (Principle 9).

Prison administrations should establish clear guidelines and procedures for the use of firearms together with a training programme for staff who may be authorised to use them. The procedures should include formal arrangements for the investigation of any incident in which firearms are used.

### *Requests and complaints*

#### *Rule 70*

This rule makes a distinction between making requests and lodging complaints. Prisoners must have ample opportunity to make requests and must have avenues of complaint open to them both within and outside the prison system. The prison authorities shall not obstruct or punish the making of requests or complaints but shall facilitate the effective exercise of the rights embedded in this rule. This does not preclude the introduction of legal mechanisms to deal summarily with minor issues.

Requests of prisoners concern favours or facilities that they are not entitled to by right, but which may be granted by the prison management or other competent authorities. For instance, in some penitentiary systems extra visits may be allowed, though prisoners have no right to them. The same applies to requests for permission to leave the prison to attend the funeral of a relative and requests for transfer to a specific prison or prison unit. In most cases the director will be

entitled to decide, but in some jurisdictions specific requests can only be granted by judicial authorities or must be decided at ministerial level.

Complaints are formal objections against decisions, actions or lack of action of the prison administration or other competent authorities. In some jurisdictions the appropriate penitentiary remedy is called an “objection” or an “appeal”. The term “appeal” in this rule, however, is reserved for legal action against a denial of a request or the rejection of a complaint.

Provision may also be made for specialised complaints procedures. Ideally, national law should allow prisoners also to complain against the decisions, conduct or inactivity of medical personnel to existing national medical disciplinary bodies.

This rule does not require that requests or complaints be submitted in writing. Given the illiteracy of quite a number of prisoners, a prisoner should be able to ask to meet the civil servant or the competent agency in order to transmit the request or the complaint orally (CPT/Inf (96) 18 – Visit to Slovenia in 1995), and the authorities have the obligation to put it in a written form.

The competent authorities should deal promptly with requests and complaints and should accompany this with reasons making it clear whether action will be taken and if so, what action. This also applies to requests or complaints from prisoners’ relatives or organisations referred to in Rule 70.6.

Complaints can lead to antagonistic attitudes of the parties involved, which can harm the relations between prisoners and staff. Therefore it seems sensible to try mediation first. This calls for a mediation mechanism to be inserted in the penitentiary legislation. This task could be entrusted, for example, to a member of a local supervisory committee or a judicial authority. If the conflict cannot be resolved by mediation, the prisoner must still have the right to lodge a formal complaint. National law can state that complaints about trivial matters can be declared inadmissible.

The requests are submitted to the prison administration or another authority empowered to decide on the matter. Prisoners must have the opportunity to convey complaints to any authority inspecting or supervising the prison regardless of previous or simultaneous complaints. When this authority is not empowered to handle the complaint itself it should send it on to the competent body.

Complainants shall be allowed to communicate on a confidential basis with the independent authorities entrusted with the handling of complaints and appeals. The decisions of these authorities shall be made accessible to prisoners.

Requests and complaints should be registered for the benefit of the prison administration itself and for inspection by visiting bodies. (CPT/Inf (2002) 1 – Visit to Bulgaria in 1999 and CPT/Inf (2001) 20 – Visit to “The former Yugoslav Republic of Macedonia” in 1998). An analysis of the substance of requests and complaints can contribute to a better management of the institution.

The right to make requests and complaints is primarily granted to prisoners but national law may allow third parties to act on behalf of a prisoner, for instance when a prisoner’s mental or physical condition prevents him from acting himself and he does not have a lawyer to act on his behalf. Relatives of a prisoner are entitled to complain where the prisoner’s rights may be infringed, while organisations that have the interests of prisoners at heart may also be allowed by the director to bring such complaints. However, Rule 70.6 allows the prisoner to oppose the complaint being made in this way.

When, after an internal appeal has failed, a complaint is successfully made to an independent authority complainants must have confidence that the decision of that authority will be executed fully and promptly by the prison administration.

To ensure the effective exercise of the right to lodge complaints, forms, stationery and, if necessary, stamps should be provided to prisoners. The complaint forms should be freely available to prisoners at a specified place (for example, the library), thereby enabling a prisoner to avoid asking for them specifically. A system of transmission should be devised so that prisoners are not obliged to personally hand the confidential access envelope to prison staff (CPT/Inf (91) 15 – Visit to the United Kingdom: England/Wales 1990).

Confidential communication with national and international bodies authorised to receive complaints is essential. This rule does not attempt to prescribe an exclusive model of a complaints procedure but sets out the basic requirements such procedures should comply with in order to be considered to represent effective remedies in terms of Article 13 of the ECHR (see *Van der Ven v. the Netherlands*, No. 50901/99, judgment of 04/02/2003). What is important is that the complaint procedure ends with a final binding decision taken by an independent authority. The member states are free to designate the independent authority that has the power to handle complaints. This can be an ombudsman or a judge (enforcement magistrate or executing or supervisory judge), a supervising prosecutor, a court, or a public defender (CPT/Inf (2002) 14 – Visit to Georgia in 2001).

Authorities involved in handling complaints should exchange views and experiences on a regular basis, the aim being to harmonise as far as possible their practice (CPT/Inf (96) 9 – Visit to Spain 1991).

## **Part V**

### **Management and staff**

#### *Prison work as a public service*

##### *Rule 71*

This rule requires prisons to be under the responsibility of public authorities, separate from military, police or criminal investigation services. Prisons are places that should be placed under the control of the civil power. Imprisonment is part of the criminal justice process and in democratic societies people are sent to prison by independent judges. The administration of prisons should not be directly in the hands of the army or any other military power. In some countries the head of the prison administration is a serving member of the armed forces who has been seconded or sent for a limited time to the prison administration to carry out that role. Where this is the case, this person shall be acting in a civilian capacity as head of the prison administration.

It is important that there should be a clear organisational separation between the police and the prison administrations. In most European countries the administration of the police comes under the ministry of the interior while the administration of prisons comes under the ministry of justice. The Committee of Ministers of the Council of Europe has recommended that “there shall be a clear distinction between the role of the police and the prosecution, the judiciary and the correctional system.” (Recommendation Rec(2001)10, the European Code of Police Ethics).

##### *Rule 72*

This rule underlines the ethical context of prison management. Without a strong ethical context the situation where one group of people is given considerable power over another can easily become an abuse of power. This ethical context is not just a matter of the behaviour of individual members of staff towards prisoners.

Those with responsibility for prisons and prison systems need to be persons who have a clear vision and a determination to maintain the highest standards in prison management.

Working in prison therefore requires a unique combination of personal qualities and technical skills. Prison staff need personal qualities which enable them to deal with all prisoners in an even-handed, humane and just manner.

*Rule 73*

This rule places a positive obligation on prison authorities to ensure the observance of the rules concerning staff.

*Rule 74*

This rule concerns the relationship between first line prison staff and the prisoners under their care. Special attention has to be paid to these staff members because of the human dimension of their contacts with prisoners.

*Rule 75*

This rule deals with the conduct of staff in performing their duties. The staff are to treat prisoners in a manner which is decent, humane and just; to ensure that all prisoners are safe; to make sure that prisoners do not escape; to make sure that there is good order and control in prisons; to provide prisoners with the opportunity to use their time in prison positively so that they will be able to resettle when they are released. This work requires great skill and personal integrity. Those who undertake this work need to gain the personal respect of the prisoners. High personal and professional standards should be expected of all prison staff but especially of those who are going to work directly with prisoners.

*Selection of prison staff*

*Rule 76*

This rule relates to the selection, training and conditions of recruitment of prison staff. Recruitment is very important. The prison administration should have a clear policy to encourage suitable individuals to apply to work in prisons and to inform them of the required ethical rules.

Many prison authorities have great difficulty in recruiting staff of a high quality. This can be for a variety of reasons. It may be due to low salary levels. It may be because the standing of prison work in the local community is very low. It may be because of competition from other law enforcement agencies, such as the police. Therefore, prison administrations should pursue an active recruitment policy.

*Rule 77*

This rule deals with the staff selection criteria. The prison administration should introduce a clear set of procedures to test the integrity and humanity of the applicants and how they are likely to respond to difficult situations which they may face so as to ensure that only those applicants who are suitable are in fact selected to join the prison system.

*Rule 78*

This rule is a consequence of Rule 71. If staff are to be committed to their work on a long-term basis, they need to be secure in their employment. In jurisdictions where there are prisons that are managed by private contractors, individual members of staff employed by these contractors should be approved by the prison authority before working with prisoners. They should also be employed on a permanent basis.

*Rule 79*

This rule underlines the need to ensure attractive salaries and working conditions. The standing of a profession is measured in large part by the level of salary which it attracts. Governments should recognise that prison staff are entitled to a proper remuneration corresponding to the public service character of prison work as well as to their difficult and sometimes dangerous work, while also taking into consideration that if staff are not paid at an appropriate level this may lead to corruption.

In many countries prisons are in very isolated locations, thus depriving not only staff but also their families of access to schools, to medical facilities, to shops and to other social activities. In addition, many prison staff are expected to transfer regularly from one prison to another, to uproot their families and to move them to places that are sometimes far away. In some countries prison staff were keen to continue to be part of the ministry of the interior in order to benefit from a higher status (access to free health care, to free education, to free housing and to free or subsidised transport and holidays). In such circumstances, other conditions of employment are as important as levels of pay and should be carefully examined.

*Rule 80*

This rule refers to part-time staff. In smaller prisons it may be necessary to recruit some staff, especially for specialist tasks, on a part-time basis. They should have the same conditions of employment *pro rata* as full-time staff.

*Training of prison staff*

*Rule 81*

This rule addresses the requirements for initial training of newly selected staff. This training should be adequate and should emphasise the ethical context of their work.



Staff should then be given the necessary technical training. They need to be made aware of security requirements and to learn how to keep proper records and what sort of reports need to be written.

The proper training of staff is a requirement that continues from the moment of recruitment to that of final retirement. There should be a regular series of opportunities for continuing development for staff of all ages and ranks.

Their training should also extend to the wide range of international and regional human rights standards concerned with deprivation of liberty (rules emanating from the European Court of Human Rights and the Committee for the Prevention of Torture (CPT)).

#### *Prison management*

##### *Rule 82*

This rule recalls that there should be no discrimination in the selection of staff. Women should have the same opportunities as men to work in prisons and should be paid the same salaries, given the same training and have the same opportunities for promotion and for assignment to posts requiring specific abilities. These principles shall be applied to staff belonging to racial, cultural, religious or sexual minorities. In some prisons a substantial number of prisoners come from these minority groups. Where this is the case, prison authorities should make an effort to recruit sufficient proportions of staff from similar backgrounds.

##### *Rule 83*

This rule requires that member states should ensure that individual prisons are managed to a consistent standard which conforms with international human rights instruments. One way of achieving this is by having a system of internal auditing and inspection to ensure that relevant law is being implemented different from and complementary to the independent inspection which is referred to in Part VI of these rules.

Rule 83.b refers to the need for good communication between prisons and within each prison. Given the increasing sophistication of operational routines and regimes there is a need for management to encourage and facilitate a style of working in which staff can learn from each other, share experiences and work together for the benefit of the prisoners in their care.

##### *Rule 84*

This rule contains provisions related to the prison director. Given what has been said in previous rules about the need for a sense of purpose, leadership and vision,

it is essential that there should be in each prison a director who has been carefully selected for his suitability to carry out what is one of the most complex tasks in public service.

*Rule 85*

The balance between men and women on the prison staff is designed to have a positive effect and to contribute to the normalisation of prison life. It should also serve to minimise the risk of sexual harassment or mistreatment of prisoners.

*Rule 86*

This rule concerns the requirement to arrange appropriate consultations on the conditions of employment between the management and the staff. Prison systems are hierarchical organisations but this does not mean that staff should be treated unreasonably or without respect for their position. In most countries staff are entitled to belong to trade unions. If there is no formal trade union, staff should at least have a recognised negotiation machinery. Trade union and other staff representatives should not be penalised for the work which they do in representing their fellow members of staff.

*Rule 87*

Prisons are institutions in which people have priority and in which human relationships are important. Rule 87 stresses that the proper functioning of these relationships depends on good communication.

In most European prison systems a significant proportion of prisoners are foreign nationals, many of whom do not speak the native language of the country. The director and majority of personnel should be able to speak the language of the majority of prisoners. However, the needs of other prisoners also have to be recognised and, if possible, some staff should be able to speak the language of any significant minorities. Where necessary an interpreter should be available as stipulated in Rule 37.4.

*Rule 88*

In a small number of member states some prisons are now managed by private contractors. Rule 88 stresses that all European Prison Rules without exception apply also to them.

*Specialist staff*

*Rule 89*

This rule deals with the need for prison services to have a sufficient number of appropriate specialists to work with prisoners. Health is an important issue in all prisons and prisoners have a right to proper health care. These matters are dealt with more fully in Part III of these rules. One way of providing the prisoners with proper health care is by ensuring that a properly qualified doctor is always available to deal with any urgent medical matter.

If prisons are to fulfil their functions and to help prisoners to rehabilitate themselves, they need to have sufficient specialist staff. These should work alongside and complement the custodial staff. Given that almost all prisoners will one day return to their communities, it is important that volunteers from the community be encouraged to come into prisons to contribute to many of the activities which take place.

*Public awareness*

*Rule 90*

This rule reflects that it is important that the public and the media be aware of the values within which its prisons operate. The prison administration should develop good relations with their local public and media, and inform them about the daily realities of prison life. Prison administrations should encourage prison directors to meet regularly with groups in civil society, including non-governmental organisations, and where appropriate to invite them into the prison. The media and representatives of local communities should be encouraged to visit prisons, provided care is taken to safeguard the privacy of prisoners.

*Research and evaluation*

*Rule 91*

This is the third set of what are now known as the European Prison Rules since 1973. The rules are likely to require further updating as time passes because of developments in civil society, the expanding jurisprudence from the European Court of Human Rights and the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Rule 91 recognises that fact in encouraging 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**

#### *Rules 92 and 93*

These rules intend to make a clear distinction between the inspection of prisons by governmental agencies that are responsible for the effective and purposeful spending of the allocated budget and monitoring of conditions of detention and treatment of prisoners by an independent body.

Reports by national and international NGOs, the findings of the CPT and various decisions of the ECtHR show that, even in countries with well developed and relatively transparent prison systems, independent monitoring of conditions of detention and treatment of prisoners is essential to prevent inhuman and unjust treatment of prisoners and to enhance the quality of detention and of prison management. The establishment of independent national monitoring bodies in addition to a government-run inspectorate should not be seen as an expression of distrust of the quality of governmental control but as an essential additional guarantee for the prevention of maltreatment of prisoners.

These rules are compatible with the requirements of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (to be referred to as A/RES/57/199, adopted by the United Nations General Assembly on 18 December 2002) regarding setting up and maintaining domestic preventive mechanisms, which in these rules take the form of independent supervisory bodies.

The rules leave room for the various forms monitoring bodies may have. Some countries will opt for a prison ombudsman, others for a national supervising committee. Other formats are not precluded by this rule, as long as the authorities involved are independent and well equipped to perform their duties.

#### *Governmental inspection*

##### *Rule 92*

This rule uses the neutral term “governmental agency”. This agency can be part of one ministry, for example, the ministry of justice or the ministry of the interior, or can be an agency under the control of more than one ministry. The essential point is that such an agency or inspectorate is established by, and reports to, the highest authorities.

The ways in which governmental inspection is organised will vary from mere checking of the bookkeeping of prisons to in-depth and on-the-spot audits, which take into account all aspects of prison administration and of the treatment of

prisoners. What is important is that the results of these inspections are reported to the competent authorities and made accessible to other interested parties without undue delay.

These rules do not specify how planning and control systems and audits should be organised, as this is for the governmental authorities to decide.

### *Independent monitoring*

#### *Rule 93*

In the member states of the Council of Europe, different models of independent monitoring of conditions of imprisonment can be found. In some countries an ombudsman has powers in this respect; in other states this task is entrusted to judicial authorities, often combined with the power to receive and handle complaints of prisoners. This rule does not intend to prescribe one single form of monitoring but underlines the need for the high quality of such independent supervision. This presupposes that these monitoring bodies are supported by a qualified staff and have access to independent experts.

It is important that the findings of these bodies, together with any observations that may have been submitted by the management of the prison concerned, are open to the public. Reports of the monitoring bodies may contain proposals and observations concerning existing or draft legislation.

Independent monitoring bodies should be encouraged to forward copies of their reports and the responses of the governments concerned to international bodies authorised to monitor or inspect the prisons, such as the European Committee for the Prevention of Torture. This would assist these international bodies to plan their visits and allow them to keep their finger on the pulse of the national penitentiary systems. Because of their limited financial resources and the increase the number of states to be visited, international bodies must rely increasingly on communication with independent national monitoring bodies.

In many penitentiary systems individual prisons are being monitored in some way or another by boards of visitors, consisting of (professionally) interested volunteers recruited from the community. A common approach of these boards is that its members take turns to visit the prison, talk to prisoners about their worries and complaints and, in most cases, try to mediate between the prison management and the prisoners to find solutions for perceived problems.

Though it is self-evident that the existence of local boards of visitors can guarantee more intensive and involved monitoring, in small countries with only a few prisons and a small prison population independent monitoring by a national authority could be sufficient.

## **Part VII**

### **Untried prisoners**

#### *Status as untried prisoners*

##### *Rule 94*

This rule is primarily intended to establish a definition. It implies that a prisoner who has been convicted and sentenced in a final judgment to imprisonment for one sentence, but who is awaiting a decision on conviction for another offence, should be considered to be a sentenced prisoner.

#### *Approach regarding untried prisoners*

##### *Rule 95*

This rule describes the basic approach regarding untried prisoners in positive terms. It emphasises that they should be treated well because their rights have not been restricted by a criminal sentence. The ECtHR has stressed that this presumption applies also to the legal regime governing the rights of such persons and the manner in which they should be treated by prison guards (*Iwanzcuk v. Poland*, No. 25196/94, paragraph 53, judgment of 15/11/2001). They deserve the special protection of the state.

All untried prisoners must be presumed innocent of a crime. Rule 95.2 therefore provides additional safeguards for them.

Rule 95.3 emphasises that the prisoners can enjoy all the safeguards of Part II and also take part in activities such as work, education, exercise and recreation as described in that part. Part VII as a whole is designed to assist untried prisoners by spelling out more fully to what their status entitles them additionally.

#### *Accommodation*

##### *Rule 96*

This rule restates the principle about the desirability of single cells (cf. Rule 18.5) in the context of untried prisoners. As such if prisoners are often held only for relatively short periods, single cells may be more desirable. As untried prisoners spend often more time in their cells than other prisoners, these should be of adequate size.

Care should be taken to allow even prisoners held for a short time to have exercise, recreation and association as required by the rules in Part II, in order to avoid detention in single cells becoming a form of solitary confinement.

*Clothing*

*Rule 97*

This rule should be read in conjunction with Rule 20. It emphasises that untried prisoners are entitled to wear their own clothes. Where they do not have suitable clothes of their own, the clothes that are provided to them by the prison authorities should not make them look like sentenced prisoners.

*Legal advice*

*Rule 98*

This rule emphasises that positive efforts must be made by the prison authorities to assist prisoners who are facing criminal charges. It should be read together with Rule 23.

*Contact with the outside world*

*Rule 99*

This rule emphasises that restrictions on contact with the outside world should be kept to a minimum in the case of untried prisoners. It should be read together with Rule 24.

*Work*

*Rule 100*

It is often forgotten that untried prisoners are allowed to work in prison, even if they cannot be compelled to do so. The only exception is that all prisoners may be required in the interests of hygiene by Rule 19.5 to keep their persons, clothing and sleeping accommodation clean and tidy. Rule 100 underlines the importance of providing work also for untried prisoners and of ensuring that they are treated properly and rewarded adequately for such work.

*Access to the regime for sentenced prisoners*

*Rule 101*

This rule recognises that there might be an interest in untried prisoners beginning the regime offered to sentenced prisoners even before they have been sentenced, for example when this concerns drug or alcohol misuse or sex offences. Information

on the regime they could possibly be offered should therefore be given during this period of detention, so as to allow them to formulate a request to participate.

## **Part VIII**

### *Objective of the regime for sentenced prisoners*

#### *Rule 102*

This rule states the objectives of the regime for prisoners in simple, positive terms. The emphasis is on measures and programmes for sentenced prisoners that will encourage and develop individual responsibility rather than focusing narrowly on the prevention of recidivism.

The new rule is in line with the requirements of key international instruments including Article 10.3 of the International Covenant on Civil and Political Rights (ICCPR), which specifies that, “The penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation.” However, unlike the ICCPR, the formulation here deliberately avoids the use of the term “rehabilitation”, which carries with it the connotation of forced treatment. Instead, it highlights the importance of providing sentenced prisoners, who often come from socially deprived backgrounds, the opportunity to develop in a way that will enable them to choose to lead law-abiding lives.

In this regard, Rule 102 follows the same approach as Rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners. It is an enabling provision for what follows. The new rule replaces the current Rules 64 and 65, whose general principles, which are applicable to all prisoners, are included in Parts I and II of the new rules.

### *Implementation of the regime for sentenced prisoners*

#### *Rule 103*

This rule provides a point of departure for a regime designed to meet the objective for sentenced prisoners. It emphasises the need to take action without delay in order to involve prisoners in the planning of their careers in prison, in a way that makes the best use of the programmes and facilities that are on offer. Sentence planning is a vital part of this but it is recognised that such plans need not be drawn up for prisoners serving a very short term. It is important that such planning be based on adequate information that should be drawn from as wide a range of reliable sources as possible. It should draw on the assessments of probation and other agencies if these are available.



Rule 103 also gives an overview of the various strategies that can be adopted in such a regime. The programmatic aspects of work, education and other activities are only mentioned as they are considered in separate rules in this part, but these are not the only strategies which may be envisaged. Rule 103.5 points out the importance of complementing them with medical, psychological and social work intervention, where appropriate.

Rule 103.6 points out that a systematic plan to use regular leave should be part of the overall regime for sentenced prisoners. Its potential use should be considered when the manner in which the sentence is to be served is planned after a prisoner is admitted to sentenced status. This rule builds on the more detailed Recommendation No. R (82) 16 of Committee of Ministers on prison leave and in particular the recognition in that recommendation of the importance of prison leave as a means of facilitating social reintegration.

Rule 103.7 acknowledges the increasing recognition that the techniques of restorative justice may be used with sentenced prisoners who wish directly or indirectly to make reparation for their offences. It is important that such participation is voluntary and does not amount to an indirect form of further punishment. Reference is made to the norms contained in Recommendation No. R (87) 21 on assistance to victims and the prevention of victimisation and Recommendation No. R (99) 19 on mediation in penal matters.

Rule 103.8 underscores the importance of the Recommendation Rec(2003)23 of the Committee of Ministers on the management by prison administrations of life sentence and other long-term prisoners.

#### *Organisational aspects of imprisoning sentenced prisoners*

##### *Rule 104*

This rule ensures that imprisonment of sentenced prisoners is organised in a way that facilitates their regime: they should be accommodated and grouped in a way that best allows this. The rule sets out how the plans that have been drawn up are to be implemented. Practical steps also need to be taken to review regularly initial decisions on how individual prisoners should be dealt with.

When prisoners are transferred, the impact of such transfers on their individual sentencing plans should be borne in mind. When prisoners arrive in the prisons to which they are transferred, their sentencing plans should be reviewed in order to make any changes required.

*Work by sentenced prisoners*

*Rule 105*

This rule relates only to work by sentenced prisoners. It should be read in conjunction with Rule 26 that contains the general rules about work. Rule 105 reflects the important role that work plays in the regime for sentenced prisoners, but at the same time emphasises that it should not be an additional form of punishment. All the safeguards contained in Rule 26 apply to sentenced prisoners as well.

Although the prison authorities may still elect to make work compulsory, this is subject to the limitations that the conditions of such work shall be in conformity with all applicable standards and controls which apply in the outside community.

Rule 105.4 requires the authorities to remunerate all sentenced prisoners who are willing to work. The recognition of this principle will contribute to ensuring that the opportunity to work does not allow favour to be shown in distributing work places. It will also encourage sentenced prisoners to volunteer both for work and for educational and other programmes.

The provision in Rule 105.5 for deduction from prisoners' work-related income for reparative purposes provides further scope for integrating the techniques of restorative justice to which reference is made in Rule 103.7 into the prison regime for sentenced prisoners.

*Education of sentenced prisoners*

*Rule 106*

This rule deals with the education of sentenced prisoners only and should be read in conjunction with Rule 26, which contains the general provisions about education of prisoners. Rule 106 emphasises the central role that education and skills training play in the regimes for sentenced prisoners and the duty of the authorities to encourage the educational endeavours of sentenced prisoners and to provide appropriate educational programmes for them.

*Release of sentenced prisoners*

*Rule 107*

The provisions in Rule 107.1 supplement for sentenced prisoners the stipulations in Rule 33 in respect of release in general. Rule 107 should be read together with Recommendation Rec(2003)22 of the Committee of Ministers on conditional release (parole). As this recommendation requires, special attention should be paid to enabling sentenced prisoners to lead law-abiding lives in the community.

Pre-release regimes should be focused on this end and links made with the community in the manner set out in Rule 107 and further elaborated in the recommendation.

The reference to agencies in Rule 107.4 must be understood to include probation services, for where prisoners are to be released conditionally, co-operation with the agency responsible for supervising the conditional release is particularly important.

## **Part IX**

### **Updating the rules**

#### *Rule 108*

As knowledge of best prison practice is constantly evolving, it is essential that the European Prison Rules reflect this evolution. A mechanism should be created to ensure that updates are undertaken regularly. Such updates should be based on scientific research and consider carefully the relationship between the rules and other instruments, standards and recommendations in the penal sphere. The need for the rules to be regularly updated was stressed in Resolution No. 4 of the 26th Conference of European Ministers of Justice (MJU-26 (2005) Resolution 4 Final, paragraph 11).



## Chapter 3

### Revision of the European Prison Rules

A contextual report by Andrew Coyle, scientific expert

#### I. Introduction

Throughout the course of the second half of the 20th century there was a growing consensus about the need for the international regulation of punishment and particularly of the form of judicial punishment which we know as imprisonment. Very soon after the approval by the United Nations (UN) of the Universal Declaration of Human Rights, the General Assembly of the UN approved the Standard Minimum Rules for the Treatment of Prisoners (UNSMRs). This was an acknowledgement in 1957 that there were certain standards which should be universally applied wherever human beings were deprived of their liberty.

In developing its role as a regional human rights institution, the Council of Europe decided that the UNSMRs should be reinforced at a regional level and given a European perspective. This led to the adoption of the European Standard Minimum Rules for the Treatment of Prisoners in 1973 (Resolution (73) 5). At that point, the Council of Europe consisted of about 15 member states. By the beginning of 1987 the Council had expanded to 21 states and the Committee of Ministers adopted a new set of European Prison Rules (Recommendation No. R (87) 3). In approving this recommendation in February 1987, the Committee of Ministers noted:

“that significant social trends and changes in regard to prison treatment and management have made it desirable to reformulate the Standard Minimum Rules for the Treatment of Prisoners, drawn up by the Council of Europe (Resolution (73) 5) so as to support and encourage the best of these developments and offer scope for future progress”.

In the years since 1987, the membership of the Council of Europe has expanded to borders undreamed of by its founding members. From the late 1980s it began the process of admitting states in central Europe and thereafter ever further east and south, so that in 2006 it includes 46 states, stretching from the Atlantic to the Pacific Ocean and from the Arctic to the Caucasus.

The states which now constitute the Council of Europe have a variety of different traditions of imprisonment and different understandings of what constitute the essential elements of imprisonment. In many of the founding member states,

imprisonment was traditionally reserved for those offenders who had committed the most serious offences or who were considered to be a real threat to public safety. In addition, the use of prison for those who were under investigation or awaiting trial was, at least in principle, restricted to those who were accused of very serious crimes, were thought to be at risk of absconding from justice or to be likely to threaten witnesses. In all of these states the death penalty had been abolished and in the majority of them had been replaced by life imprisonment. In many states it was understood that deprivation of liberty constituted the main punishment in a prison sentence and that the experience of imprisonment should not include any additional punitive elements.

The situation in some of the states which joined the Council of Europe from the late 1980s onwards was more complicated. Rates of imprisonment were as many as five or six times greater than in the founding states. Pre-trial detention was the norm for anyone under criminal investigation and the conditions in pre-trial investigative isolation were inhuman and degrading. Overcrowding in pre-trial isolators frequently was so bad that up to three prisoners had to share one bed, sleeping in shifts. Poor diet and a lack of space, fresh air and natural light made these prisons places where it was almost impossible to remain healthy. Infectious diseases were common, with up to 10% of prisoners suffering from active tuberculosis. Most of these states still practiced the death penalty when they acceded to the Council of Europe, although they were required to impose an immediate moratorium and to commit to abolition of the death penalty within two years of joining. In some states there was legal provision that the punitive nature of the prison regime should be increased for some types of prisoner.

Since 1987, there have been significant changes in the use of imprisonment in many countries, in both the founding and the newer accession states. In addition, since 1990, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has visited every member state several times and has published detailed reports on prison conditions in individual states, as well as making recommendations on a series of broader issues in its general reports. The European Court of Human Rights has admitted an increasing number of applications by or on behalf of individuals in a wide range of member states concerning breaches of the European Convention on Human Rights in respect of their treatment in prison.

Also, since 1987 the Committee of Ministers has approved a number of important recommendations concerning prisoners and imprisonment. They include:

- Recommendation No. R (89) 12 on education in prison;
- Recommendation No. R (92) 16 on the European rules on community sanctions and measures;

- Recommendation No. R (93) 6 concerning prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prisons;
- Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions and measures;
- Recommendation No. R (98) 7 concerning the ethical and organisational aspects of health care in prison;
- Recommendation No. 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.

For all of these reasons, it was appropriate that the European Prison Rules contained in Recommendation No. R (87) 3 should again be revised. This has been done and the revised rules have been published as Recommendation Rec(2006)2.

The terms of reference of the present report were to identify:

- significant problems and new possibilities for the management of prison systems;
- the results of recent research bearing on the management of prisons and prisoners;
- the need for provisions on matters not covered by the present European Prison Rules;
- examples of good contemporary prison practice.

In the course of implementing these terms of reference, a number of key regional themes were identified and they form the basis of this report.

## **II. Increase in prison population levels and resultant overcrowding**

“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 the efficient management of penal institutions.”<sup>2</sup>

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2. Council of Europe Committee of Ministers Recommendation No. R (99) 22 of the Committee of Ministers to member states concerning prison overcrowding and prison population inflation.

Prison populations have been rising in many of the Council's member states, although in a number, such as the Czech Republic, Latvia, Lithuania and the Russian Federation, there have been significant reductions in recent years and in some, such as Cyprus, Denmark, Malta and Slovenia there have only been relatively small increases. Measured according to the number of prisoners per 100 000 of the national population, the highest levels of imprisonment in Council member states are in the Russian Federation (532), Ukraine (416), Estonia (339) and Latvia (337), while the lowest levels are in Iceland and Monaco (39), Cyprus (50) and Liechtenstein (53).

### **Imprisonment rates and trends in selected countries<sup>3</sup>**

	Latest	1998	1995
Russian Federation	550	688	622
Estonia	339	330	295
Poland	209	148	163
Slovakia	165	138	138
Hungary	164	132	124
United Kingdom: England and Wales	144	125	99
Spain	141	114	102
Portugal	124	146	124
Netherlands	123	85	66
Italy	97	85	87
Germany	96	96	81
Turkey	95	102	82
France	91	86	89
Republic of Ireland	85	71	57
Greece	82	68	56
Sweden	81	60	65
Finland	71	50	59
Denmark	70	64	66
Croatia	68	46	51
Slovenia	56	38	41
Iceland	39	38	44

In many member states the available prison places have not kept pace with the increase in the number of prisoners. This has led to significant overcrowding. In a number of instances this overcrowding is concentrated in pre-trial prisons. It is sometimes difficult to get an accurate picture of overcrowding levels since few countries have an exact specification of what space each prisoner is entitled to. Judging from the reports of the CPT, it is clear that in a number of countries which claim to have sufficient capacity for their prison population there is in

<sup>3</sup> *World Prison Brief*: [www.prisonstudies.org](http://www.prisonstudies.org) accessed in August 2005.



fact significant overcrowding. When considering sufficiency of accommodation and overcrowding it is important to look beyond the personal space available to prisoners in their cells or rooms. Overcrowding also has severe implications in terms of the pressure which is placed on cooking resources, on hygiene and sewage facilities, on work, education and other resources and on the space available for visits.

### **III. Factors influencing the increase in the use of imprisonment**

There is little evidence that increases in prison populations bear any relation to changes in crime rates. Instead, they appear to be influenced by other factors. This was noted by the heads of European prison administrations at their 12th conference in November 2002:

“In the course of this conference we have been reminded several times that the way prisons are managed in individual countries is linked closely to the social structures within each state. Prisons do not exist in vacuum. To a large extent, they reflect the values to which each society adheres. One example of this is the use which society makes of imprisonment. Several speakers... expressed the opinion that levels of imprisonment in each country are usually influenced much more by political decisions than by levels of crime or rates of detection of crime. A society can choose to have a high or low rate of imprisonment and this choice is reflected in the sentencing patterns adopted by individual judges. In recent years a number of European countries, especially in the West, have decided, either consciously or by default, to have higher rates of imprisonment. They have done this through the introduction of more punitive legislation or as a result of politicians and the media encouraging judicial authorities to send more people to prison for longer periods of time.”<sup>4</sup>

Similarly, reductions in rates of imprisonment are often influenced by wider political decisions and by changes in criminal justice administration. The most dramatic reduction in the rate of imprisonment in any member state in recent years has occurred in the Russian Federation, where the prison population stood at 1 009 863 in 1998 and had fallen to 763 054 by January 2005. Speaking in 2002, Yuri Kalinin, Russian Vice Minister of Justice commented:

“The penal system cannot change on its own, separately from society as a whole. Its reform is possible only as part of a wider range of measures aimed at creating a democratic state and at the introduction of legal and judicial reforms.”<sup>5</sup>

In a wide-ranging analysis of the developments which were taking place in the Russian Federation, Kalinin explained how they involved political will, legislative change, the involvement of key areas of the criminal justice process, especially the judiciary and the prosecution service, and the need to reassure the public and the media that the changes in the prison system would not threaten public safety.

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4. European Committee for Crime Problems 2002: cdap/docs 2002/cdap (2002) 28; see [www.coe.int/T/E/Legal\\_co-operation/Steering\\_Committees/Cdpc/](http://www.coe.int/T/E/Legal_co-operation/Steering_Committees/Cdpc/)

5. Kalinin, Y., *The Russian Penal System: Past, Present and Future*, London, ICPS, 2002.

Finland provides a good case study of how rates of imprisonment can be subject to influences other than crime rates. In the 1950s, the Finnish rate of imprisonment was one of the highest in western Europe, four times higher than its Nordic neighbours, at about 187 prisoners per 100 000 of the population. Over succeeding decades, its rate of imprisonment fell significantly to 154 per 100 000 in 1960, 113 in 1970, 106 in 1980, 69 in 1990 and 55 in 2000. This did not happen by accident. Rather, the decrease was the result of deliberate, long-term and systematic policy choices.<sup>6</sup> In the first place, there was clear political will and consensus to bring down the imprisonment rate. This involved key politicians, government officials and academics. The judiciary was closely involved in developing the changes and in a number of respects sentencing practice changed in advance of new legislation. It should be noted that crime control has never been a party political issue in election campaigns in Finland. Finally, the role of the media was of crucial importance, with a general absence of populist reporting on criminal justice matters.

In both Denmark and the Netherlands in 1995, the rate of imprisonment was 66 per 100 000. By 2004 the rate of imprisonment in Denmark had risen to 70, while that in the Netherlands had almost doubled to 123. The difference in this increase in two broadly comparable countries cannot be explained solely on the basis of criminal justice factors. In the same way, one needs to look beyond criminal justice considerations to explain why the rate of imprisonment in Spain is 141 per 100 000, while that of its neighbour France is 91; or why that of Hungary is 164, while that of neighbouring Slovenia is 56.

#### **IV. The purposes of imprisonment**

In trying to discover why rates of imprisonment in many countries have increased, even though there have not been comparable changes in rates or seriousness of crime, one should first consider what prison is meant to achieve and what society expects of it. This question of purpose is an important one because unless there is some clarity about this it will be difficult to discover whether or not imprisonment is effective. If we wish to know whether or not prison achieves its purposes we have to understand what these are. In the western tradition there have generally been four main justifications for imprisoning a convicted offender. They are punishment, deterrence, reform and protection of the public.

According to international standards, there should be a presumption that accused persons will not be held in custody unless there are specific reasons why this needs to be done. In the European context, this principle was confirmed in Recommendation No. R (80) 11 of the Committee of Ministers. In general terms, the reasons for detention will be that an accused person might pose a genuine threat to public safety, attempt to abscond, threaten witnesses or otherwise attempt

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6. Lappi-Seppälä, T., "Sentencing and Punishment in Finland: The Decline of the Repressive Ideal" in *Punishment and Penal Systems in Western Countries*, edited by M. Tonry and R. Frase, New York, Oxford University Press, 2001.

to pervert the course of justice. It follows, therefore, that the main purpose of imprisoning accused persons is to prevent any of these occurrences. The key European Prison Rule in this regard is No. 95.1:

“The regime for unconvicted prisoners may not be influenced by the possibility that they may be convicted of a criminal offence in the future.”

*a. Punishment*

The essential feature of imprisonment in a democratic state is that it is a form of punishment or retribution imposed on an individual by a legitimate judicial authority in response to some legal wrong that the individual has committed. All member states of the Council of Europe have abolished the use of the death penalty and corporal punishment as judicial punishments. This leaves imprisonment as the most severe punishment available to any court. A central factor influencing levels of imprisonment in a country is the decision by a society about how much punishment it wishes to inflict on those who break the criminal law. Such a decision is likely to be based not solely on criminal justice considerations, such as rates of crime, but also on political and social factors. An understanding of this fact goes some way to explaining the discrepancy in rates of imprisonment between countries which do not appear to have any noticeable difference in crime rates.

Throughout the majority of the 20th century there was a consensus in most western European countries that the punishment of imprisonment should be reserved for those who had committed the most serious crimes and this remains the view of the Council of Europe. However, this principle is no longer universally accepted and the increase in rates of imprisonment in a number of countries can be traced to recent tendencies to imprison offenders who might previously have received non-prison sentences and also to impose longer sentences than was previously the case.<sup>7</sup> In addition, there has been a growing tendency in some situations to make use of forms of preventive detention, for example, by means of sentences of indeterminate length.

Another important factor affecting the number of people in prison has been the decision in most countries to respond to the major social problem of drug abuse through criminal justice channels. There is general agreement that there should be severe punishment for major drug suppliers. It is not clear that taking a similarly punitive approach to those involved with illegal drugs for their own use or in petty drug dealing as a means of feeding their personal habit is an efficient method of tackling drug abuse as a social problem. This report is not a place to enter into

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7. In November 2004 the chief executive of the National Offender Management Service of England and Wales noted that in the previous year “the courts jailed 3 000 people for thefts such as shoplifting or stealing a bicycle, even though they did not have any previous convictions” (*The Guardian*, 17 November 2004).

this debate. However, it should be noted that one immediate consequence of this approach has been the incarceration of increasing numbers of drug abusers and of people who commit property crime in order to feed their drug habit. In general terms, punishing such people by sending them to prison does little to encourage them to break their habit and many of them are recidivist offenders.

*b. Deterrence*

In terms of criminal justice, there are two main forms of deterrence: individual and general. Individual deterrence occurs when the prospect of being sent to prison deters an individual from committing a specific crime, or when the fact of having been sent to prison makes one decide never to commit crime again. General deterrence exists when we see someone else being sent to prison for an offence and that makes us decide that we had better not commit a similar offence for fear that the same might happen to us.

The high levels of repeat offending among those who have been served a prison sentence suggests that imprisonment does not act as an effective form of deterring individuals from crime, although we cannot calculate how many crimes are avoided because potential criminals are deterred by the prospect of imprisonment. The most important factor in terms of deterrence is certainty, or at least a high probability, of detection, rather than an anticipation of punishment.

Despite lack of evidence about the efficacy of prison as a deterrent, politicians in a number of European jurisdictions have responded to concerns about crime by introducing more punitive criminal justice legislation and by calling for more punitive sentences. These factors have contributed to increased prison populations.

*c. Reform*

The concept of prison as a place of personal reform grew from the 19th century onwards in a number of western European countries. The notion that prison can be a place where individuals can be taught to change their behaviour is attractive on a number of counts. In the first place, it provides a positive justification for what would otherwise be a negative form of punishment of the criminal. The notion of prison as a place where personal reform can be engineered and encouraged is also attractive to the personnel who work in prisons and who wish to do more professionally than merely deprive prisoners of their liberty. This concept was often described as rehabilitation, which technically means helping prisoners to put on again the cloak of citizenship.

The idea of using the prison as a place of reform is likely to be particularly attractive if it can be linked in some way to efforts to reduce crime but it is very difficult to make any direct connection between the use of imprisonment and national crime

rates. In recent years, some jurisdictions have introduced to prisons the target of “reducing recidivism” or “reducing re-offending”. If crime is regarded as a series of acts committed by a relatively small, identifiable group of people who are different from the majority of law-abiding citizens, then the objective of changing the behaviour of this small group as a result of their experience in prison should lead to a reduction in the amount of crime that they commit after they are released. If one holds that this small group of people are likely to be responsible for a disproportionate amount of crime, then any reduction in their rate of committing crime will in due course lead to an overall reduction in crime. This argument has proved attractive to politicians who need to find a way of responding to public fear of crime.

The general principle that human beings can be encouraged to change their future patterns of behaviour for the better is a sound one but the question of whether this can be achieved in conditions of captivity is very problematic. The reality is that prison is essentially a world set apart from normality. The links which many prisoners have with the social structures which the rest of us take for granted are at best tenuous. It is true that in many prisons some staff carry out sterling work in attempting to provide prisoners with opportunities to change themselves and their behaviour. A few individuals may be changed for the better by their experiences in prison, but they will always be a small minority and it can be argued that such change comes about despite the prison environment rather than because of it. In many instances, the best that prison staff can hope to achieve with prisoners is to minimise the negative effects of imprisonment and to help prisoners to use their time in prison to create a personal infrastructure which will help them on release. In the words of the Swedish prison and probation service (KVV):

“There is an unavoidable, built-in contradiction between society’s motives for locking away a person and the desire to, at the same time, rehabilitate him to a normal life. Prison shall therefore be formed so as to promote an inmate’s readjustment to society and to work against the harmful effects of the deprivation of liberty.”<sup>8</sup>

#### *d. Public protection*

Another stated purpose of imprisonment is protection of the public from those who commit crime, particularly in a persistent way. This argument is known as incapacitation. In the short term this argument can be valid, particularly as regards public protection in specific neighbourhoods where a significant proportion of crime is being committed by identifiable individuals. However, this type of crime tends to be low level, attracting relatively short prison sentences. The persons concerned may be taken out of the community for a short period of time but they are likely soon to return. An added problem is that many of the crimes which

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8. Quoted on the KVV website: [www.kvv.se](http://www.kvv.se)

destabilise communities are not resolved by removing one or two individuals. For example, when small time drug dealers are removed from a local neighbourhood it will often be a matter of days, if not hours, before they are replaced by new drug dealers.

There is also an issue of public protection in respect of those people whose behaviour is such that it presents a serious threat to the safety of society. Some of them may already be in prison, convicted of serious crimes, particularly of violence against the person, and still give every indication that, if they were to be released, they would continue to present a real threat to the public. It may well be necessary that these people should be in prison for as long as they present a threat to the public, however long that may be. In any one country the number of people falling into this category is likely to be small.

In a number of countries there are indications that governmental reaction to the threat of terrorism is leading to a weakening of legal protection regulating the use of imprisonment. In Italy, for example, concerns have been raised about the use of Article 41 *bis* of the law on penitentiary administration (Law 354/75). Following concerns raised in 1995, the CPT report of 2003<sup>9</sup> raised serious reservations about the implementation of this regulation, which the Italian Government subsequently rejected.<sup>10</sup> Article 41 *bis* grants emergency powers to suspend the normal prison regime for certain prisoners and to impose strict security with severe limits on association with other prisoners and communication with those outside prison. Initially, these powers were temporary and had to be reconfirmed by the Senate. In December 2002, the article was amended to make the provision permanent and to extend it to apply to those suspected or convicted of terrorist crimes. Previously it had only applied to those involved in organised crime, that is, the Mafia. The European Court of Human Rights has made several rulings in respect of these matters.<sup>11</sup>

In the United Kingdom, along with the Anti-Terrorism, Crime and Security Act (2001), the government introduced an order derogating from Article 5 of the

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9. CPT/Inf (2003) 27, Report to the Government of Italy on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 13 to 25 February 2000, Strasbourg, 29 January 2003.

10. CPT/Inf (2003) 17, Follow-up report of the Italian Government in response to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to Italy from 13 to 25 February 2000, Strasbourg, 29 January 2003.

11. For example, in the cases of *Labita v. Italy* (European Court, No. 26772/95 – judgment of 06/04/2004) and *Indelicato v. Italy* (European Court, No. 31143/96, judgment of 18/10/2001), the Court found failings in terms of Article 3 of the Convention. In the *Indelicato* judgment it ruled on the absolute prohibition on torture and inhuman treatment or punishment, even in cases of emergency as a result of the fight against terrorism and organised crime. On the violation of Article 8 of the Convention, the Court gave its ruling in various cases regarding detention under the Article 41 *bis* system. In the case of *Messina v. Italy* (European Court, No. 25498/94, judgment of 28/09/2000) the Court found Italy guilty of a violation of Article 8 of the Convention because of restrictions on correspondence and of Article 13 of the Convention in that the plaintiff was unable to make an effective appeal against decisions to extend the Article 41 *bis* restrictions.

European Convention on Human Rights (ECHR) in order to allow the Home Secretary to certify and detain foreign nationals suspected of involvement in international terrorism. A Privy Counsellor review of the act (carried out by senior politicians of all parties) strongly recommended that these powers of indefinite detention be replaced as a matter of urgency by new legislation, which should not require derogation from the ECHR.<sup>12</sup> The government rejected this recommendation.<sup>13</sup> In due course, the House of Lords ruled that detention under these circumstances was illegal (*R v. Secretary of State for the Home Department, ex parte A and others, X and another*, [2002] UKHL 56).

*e. Exile*

In the Soviet Union and its allied countries, the main justification for imprisonment was as a means of responding to what was seen as an individual's deviance from the expected unswerving loyalty to the state. The same principle had been employed under the Russian Tsar. Imprisonment usually took the form of exile to remote areas where there was a need for labour to exploit natural resources. Later in the Soviet era, economic zones were created specifically to exploit the labour of convicts. As a result the prison system (originally known as Gulag and latterly as Guin) became one of the most important contributors to the Soviet economy.

Following the break-up of the Soviet Union this justification for imprisonment was at first weakened and then collapsed in most of the countries involved. This process was accelerated by the accession of central and eastern European countries to the Council of Europe. One consequence of this was that in a number of these countries in the late 1980s and the early 1990s there was a significant reduction in the number of people held in prison. This decrease has continued in some countries, most notably in the Russian Federation, as previously mentioned. However, some of the countries experienced subsequent increases, which continue today. There is room for debate about the extent to which these recent increases have been as a result of these countries adopting, at least in part because of the discussions which have taken place under the auspices of the Council of Europe, the justifications for imprisonment which historically have been used in western Europe, as described above.

## **V. Prison administration and staff**

*a. The responsible ministry*

Responsibility for the administration of prisons must lie with a national or regional government department. The Council of Europe strongly recommends

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12. Privy Counsellor Review Committee, *Anti-Terrorism, Crime and Security Act 2001 Review, Report*, December 2003, The Stationery Office, London.

13. Response to the Report of the Anti-Terrorism, Crime and Security Act 2001 Review Reference: Stat055/2003. 18 December 2003. Available at: [www.homeoffice.gov.uk/n\\_story.asp?item\\_id=743](http://www.homeoffice.gov.uk/n_story.asp?item_id=743)

that the most appropriate department is the ministry of justice, where it exists, and since the end of the 1980s the Council has required all new accession states to transfer prison administration to this department. This is now the case in all but two jurisdictions: in Spain, but not in Catalonia, it comes under the Ministry of the Interior and in England and Wales, where there is no ministry of justice, prison administration comes under the Home Office. The main reason for this requirement by the Council of Europe is as a means of separating the functions of the police service, which is generally responsible for the investigation of crime and the arrest of suspects, from that of the prison service, which is responsible for the detention of accused and convicted persons as directed by the courts. This was confirmed by the Committee of Ministers in its recommendation that “there shall be a clear distinction between the role of the police and the prosecution, the judiciary and the correctional system”.<sup>14</sup>

*b. An ethical context*

It must always be remembered that all prisoners are persons. No matter what crime they may be accused or convicted of, they remain human beings, entitled to respect. This principle is articulated in the United Nations International Covenant on Civil and Political Rights (ICCPR), Article 10:

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

This principle should influence prison staff in the way they carry out all their duties. It is also the foundation stone of good prison management. The need to operate within the context enshrined in Article 10 of the ICCPR is universal and is one of the defining features of good prison management. By observing this there can be an assurance that torture and inhuman or degrading treatment under any form will always be prohibited, and that staff will give priority to treating all prisoners and detainees with humanity and respect.

*c. The duties of prison staff*

In some respects the prison system can be described as the most forgotten element of criminal justice. Very few members of the public know, or indeed care very much, about what goes on behind the high walls of its prisons. Yet prison work is a very important part of the public service. Prison staff have three main responsibilities and the relationship between each of them can be complex.

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14. Council of Europe Committee of Ministers Recommendation Rec(2001)10, the European Code of Police Ethics.



### *Public safety*

Prison staff contribute to public safety by detaining large numbers of persons who have broken the criminal law, some of whom pose a real danger to other people. This means that security must always be an important consideration. Staff have a duty to make sure that prisoners, especially those who are dangerous, do not escape.

### *Good order*

Prisons should be safe places for everyone who is involved in them. This includes prisoners, prison staff and everyone else who has reason to visit a prison. Most prisons are large, anonymous establishments, where groups of people, mostly young men, many of them with mental health or social problems, are held against their will with limited opportunities to take part in positive activities. In this sort of environment it is a challenging responsibility to maintain a positive atmosphere and to prevent sporadic unrest or even violence.

### *Reintegration into society*

Prisons should not be places merely of detention. Instead, while they are detained, prisoners should be given every opportunity to develop their skills and personal relationships in a way which will make it less likely that they will reoffend after they are released. Helping prisoners to achieve these aims demands great commitment from prison staff.

Maintaining a proper balance between these three sets of responsibilities presents a professional challenge to prison staff. The three duties of ensuring public safety, maintaining good order and encouraging rehabilitation can be regarded as the three legs of a stool. If the balance is not maintained, the stool of good prison management will topple over. For example, this is liable to happen if there is not enough control and also if control is too repressive. The challenging nature of prison work has been recognised by the Committee of Ministers.<sup>15</sup>

### *d. Recruitment, training and support of staff*

In the first place, prison administrations must have a clear understanding of the role which they want prison staff to undertake and then to set standards which will ensure that they recruit staff who have the potential to carry out this public service. It is not sufficient, as still happens in some regions of the world, to use conscripts who are undertaking one or two years of compulsory military service as prison guards. The same care should be exercised in recruiting prison staff as is taken in recruiting other public servants such as policemen, teachers and nurses.

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15. Council of Europe Committee of Ministers Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions and measures.

Having made sure that the staff who are recruited are of adequate quality, the next requirement is to give them appropriate training. It is not sufficient to send them immediately to work in a prison and to expect them to learn on the job from more experienced staff. Most prison administrations in Council of Europe member states now have some form of training for new recruits, although the length and quality of this training varies significantly. The length of initial training varies from a few weeks in England and Wales, to two years, in Denmark. In some countries, particularly in eastern Europe, training for junior prison staff is still linked very closely with that of the police and often concentrates on military matters such as drilling and use of weapons. In other countries, such as the Netherlands, the curriculum for training prison staff is linked closely to that of other institutional workers, such as those in psychiatric hospitals and youth care centres. In some countries in eastern Europe, such as the Russian Federation, the training of future senior prison staff involves the equivalent of a university course, lasting for up to four years.

In undertaking their difficult work, prison staff need to have ongoing support from senior management. Throughout the course of their career, staff should be given regular opportunities to enhance their skills and to learn about new professional developments, technical advances and comparative international experiences. This is particularly important within the European context because of the work carried out by the Council of Europe in the prison environment, including that of the Court of Human Rights and the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). There is an increasing amount of case law about prisons emanating from the European Court of Human Rights. In addition, the Committee for the Prevention of Torture has now developed a comprehensive set of standards which it expects to be observed in all the prisons which it visits. Staff need to be informed about all of these. The Council of Europe regularly arranges seminars on these and similar issues, both on a multilateral and a bilateral basis with member states.

## **VI. Living conditions**

The development of modern prison systems dates from the 19th century and a significant proportion of the buildings which are currently in use as prisons in a number of European countries were constructed between the middle of the 19th and 20th centuries. These buildings are frequently no longer suitable for use in the 21st century and their maintenance leaves a lot to be desired. In each of its country reports, the CPT pays close attention to the physical conditions of detention and regularly reports that these fall far below acceptable standards in respect of basic matters of human decency such as sleeping arrangements, hygiene and access to washing facilities, sewage and cooking provisions. When these conditions are inadequate this may also have an adverse effect on staff.

In many countries prisons tend to be self-sufficient institutions. In the normal course of events all the daily needs of prisoners are met from inside the prison. It will have its own kitchen, laundry and health care unit and will probably have workshops and classrooms. It will also have rooms or cells where prisoners stay when they are not involved in other activities.

The tradition in most western European countries has been that prisoners should be held overnight in individual cells. When the Council of Europe published its first set of prison standards in 1973 and, even when they were revised in 1987 and published as the European Prison Rules (EPRs), there was a general expectation that convicted prisoners would spend the majority of each day out of their cells, involved in work, training or education, and would be in their cells only to sleep and for other short periods. This expectation is reflected in the wording of EPR 14.1: "Prisoners shall normally be lodged overnight in individual cells...". Although the penal legislation in many countries still indicates that prisoners should undertake a full day's activities, the reality in many countries is that increasingly prisoners spend long periods of each day locked in their cells. In this situation, the size of the cell and the facilities available in it take on greater significance. This is even more important when two or more prisoners are required to live in a cell which was originally designed for one person because of the overcrowding described earlier in this report.

The tradition in central and eastern European countries was quite different. Single cell accommodation was reserved for very dangerous prisoners and for those undergoing punishment for breach of prison rules. The majority of prisoners were accommodated overnight in large dormitories, often with scores of others. Again, the expectation was that all of these prisoners would go each day to workshops where they would be involved in production of one kind or another. In the evening and at other times when not working, prisoners would usually have access to a compound or garden area surrounding their living accommodation. In many of these countries the prison industries have shrunk considerably and prisoners now have to spend much of their time restricted to the living accommodation.

The arrangements for living and sleeping in prisons should reflect the culture of the local society. With that proviso, the most important consideration is that the accommodation should be used according to its design. For example, a small cell intended to be used only for sleeping during the night may well be sufficient for that purpose. If, on the other hand, a prisoner has to live in that space for 23 hours each day, it will not be sufficient. Similarly, if a cell was designed with the capacity to accommodate four prisoners overnight and does so, there can be no objection. However, if the four prisoners have to stay there all day and night, only coming out for one hour daily in the fresh air, that is not acceptable. The situation becomes quite intolerable if the cell built for one has to hold anything between two and 10 prisoners for long periods, or that designed for four has to hold a dozen or more.

If living accommodation is to be shared, it is important that there is a careful selection of prisoners, so as to prevent bullying or intimidation.

These are problems which, to varying degrees, affect virtually every prison system in Europe. They attract critical attention from the CPT and increasingly from the European Court of Human Rights.

## **VII. Activities and regimes for prisoners**

“The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”<sup>16</sup>

The European Prison Rules and other international human rights standards require that prisons should not be places of boredom and monotony. Instead, prisoners should be able to use their time in prison positively, to improve their education, to learn new personal and work skills and to prepare themselves for release. While most prison administrations subscribe to this view, their ability to deliver a full programme of activities for all prisoners is often restricted. The increase in numbers of prisoners has not been matched by a parallel increase in resources and as a consequence many prisoners spend long periods of each day locked in their cells or rooms, with little to keep them occupied. Even where there are opportunities for work or other activities this frequently is of low quality with little rehabilitative value. In many instances, work amounts to little more than domestic cleaning and maintenance, with little evidence that prisoners are being equipped with skills which will be useful to them on release. There are also problems in a number of countries about finding appropriate work for the increasingly diverse types of prisoners, including those who are mentally disturbed or who are affected by drug abuse. In many member states, traditional forms of work for prisoners have become irrelevant to the changing work market and there is a need to devise new systems of work and activities for prisoners. This is a particular problem in a number of eastern European countries.

Most prison systems attempt to provide some form of education for prisoners, but this is often available only for a small proportion of the total number. Many prisons provide limited access to cultural and sports activities and a small number provide a degree of psychological support for individual prisoners. In general, however, it is hard to find conclusive evidence that the experience of prison provides those who undergo it with any meaningful preparation for life after release.

These are all issues which attract comment from the CPT in its reports on visits to member states. It is sufficient to refer to two examples among many. In Finland, the Committee noted in 2000 that in some prisons a great number of prisoners

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16. International Covenant on Civil and Political Rights, Article 10.3.

spent up to 23 hours per day locked in their cells with little to occupy their time.<sup>17</sup> They reported in 2001 on a similar situation in Greece where the vast majority of prisoners seen by the committee spent the bulk of their day in complete idleness.<sup>18</sup>

## **VIII. Family and other contacts**

Prisoners place a high importance on contact with their families and close friends and the need for these relationships to be maintained and developed is recognised in all member states, although the methods of achieving this vary considerably. There are also significant differences in arrangements for prison visiting between those states which were members before 1987 and some of those which joined the Council subsequently.

In a number of member states, contacts between pre-trial prisoners and their families and friends have to be approved by the prosecuting or judicial authorities. Such decisions are often based on factors to do with the investigation of the case rather than on the right of prisoners to make contact with their families.

In all states where pre-trial prisoners are allowed to have visits these usually take place under direct staff supervision and are of short duration. The CPT has expressed continuing concern at the restriction on visits for pre-trial prisoners in Denmark. Despite previous recommendations, at the time of the 2002 visit the CPT found that the imposition of restrictions (supervised weekly visits limited to 30 minutes, withholding or monitoring of correspondence, prohibition of telephone calls) continued to lie within the sole discretion of the police, who had received no instructions on the circumstances under which such restrictions could be applied.<sup>19</sup> These restrictions are not universal. In Spain, for example, the General Penitentiary Law and the Penitentiary Regulations make no distinction between pre-trial and convicted prisoners with regard to visits and communications.

In all countries sentenced prisoners are allowed to have contact with their families and friends, although the conditions in which visits take place vary enormously. In England and Wales, for example, they usually take place in a general visiting room where staff can see, but not necessarily hear, everything that is going on. In many cases prisoners are required to wear a distinctive piece of clothing which identifies them as prisoners. Visitors, including children of

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17. CPT/Inf (2000) 14, Follow-up report of the Finnish Government in response to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to Finland from 7 to 17 June 1998.

18. CPT/Inf (2001) 18 (Part 2), Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 26 October to 2 November 1999.

19. CPT/Inf (2002) 18, Report to the Government of Denmark on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 28 January to 4 February 2002.

prisoners, are required to sit on the opposite side of a table. Visits last for two hours at most, even for prisoners serving long sentences. In Austria, visits for sentenced prisoners last up to 30 minutes each week. During its visit to Ireland in 2002, the CPT found in one prison that:

“... visiting arrangements remained unsatisfactory ... the visiting facilities offered no privacy and became very noisy when several prisoners received visits at the same time. In short, prisoners and their visitors are not yet able to meet under conditions conducive to the maintenance of positive relationships.”<sup>20</sup>

In Spain, prisoners who are not entitled to home leave may receive one family or intimate visit per month of not less than one hour and not more than three hours. All closed prisons must have suitable facilities for family/intimate visits. A number of Scandinavian prison systems have similar arrangements for what are usually described as conjugal visits. In some of these countries, the prisoner and the visitor are allowed to go into a room, furnished with a bed and a shower, for a period of up to three hours.

The most humane type of visits for prisoners and family members are to be found in a number of eastern European countries, where sentenced prisoners may receive private visits from their spouses, partners and families, at regular intervals, for up to three days. These visits take place in small flats within the security of the prison. The family visitors bring with them sufficient food for the period. There are usually communal sitting, cooking and play areas for children and up to a dozen separate bedrooms for prisoners and their partners. During these few days, prisoners can lead a relatively normal life with family members. While these visits are widely available in principle, it should be noted that in practice, distance and expense prohibits many families from making such visits.

In all countries, sentenced prisoners are allowed to send and receive personal correspondence although this may be subject to checking by staff. Most systems now allow prisoners access to pay telephones subject to certain restrictions. These are often subject to monitoring by staff on security grounds.

In a number of countries, severe restrictions are increasingly imposed on high security prisoners when they meet family or friends. In England and Wales, for example, these prisoners are separated from their visitors by a glass screen. There are very restricted visiting conditions for high security prisoner in countries such as Italy and the Netherlands.

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20. CPT/Inf (2003) 36, Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 20 to 28 May 2002.

## IX. Health care

The health profile of prisoners compared to the community as a whole is very poor.<sup>21</sup> Health care is a major concern in European prisons and in many states deficiencies in the provision of health care have been noted. In 1998, the Committee of Ministers of the Council of Europe adopted a recommendation on prison health care.<sup>22</sup> The recommendation stresses the requirement that prison health care should be of a standard equivalent to that in the outside community; it calls for the same ethical principles to guide practice in prison as in general practice; it emphasises that the primary concern of medical staff should be the health needs of the prisoner and that all their decisions should be based solely on medical judgements.

In the course of its regular visits the CPT pays particular attention to the provision of medical services and evaluates these against the international human rights standards on prison health care. In its 11th General Report it noted:

“The CPT is aware that in periods of economic difficulties... sacrifices have to be made, including in penitentiary establishments. However, regardless of the difficulties faced at any given time, the act of depriving a person of his liberty always entails a duty of care which calls for effective methods of prevention, screening, and treatment. Compliance with this duty by public authorities is all the more important when it is a question of care required to treat life-threatening diseases.”<sup>23</sup>

Medical staff have important roles relating to the human rights obligations of states to prisoners. They may play a part in preventing torture by ensuring that when prisoners arrive from police custody with injuries or sustain injuries in prison these are fully recorded and reported to the appropriate authorities. Ireland was criticised by the CPT in 2002 for failing to properly record injuries displayed by prisoners on their arrival.<sup>24</sup>

There are particular health problems in prisons in a number of member states in central and eastern Europe. In many of them tuberculosis is a major issue, although recent interventions from the World Health Organisation, the European Union, the Council of Baltic Sea States, the International Committee of the Red Cross and other organisations have brought the problem under control in some states. Multi-drug resistant tuberculosis (MDRTB) is a more severe form of TB, which

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21. Coyle, A. and Stern, V., “Captive Populations: Prison health care” in Healy J and McKee M, *Accessing health care: Responding to Diversity*, Oxford, OUP, 2004.

22. Council of Europe Committee of Ministers Recommendation No. R (98) 7 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).

23. CPT/Inf (2001) 16, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 11th General Report on the CPT’s activities covering the period 1 January to 31 December 2000.

24. CPT/Inf (2003) 36, Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 20 to 28 May 2002.

can occur as a consequence of inconsistent prescribing practices or transmission from an infected person. For example, an expert mission from the CBSS visited Lithuania in 2003 and found a serious problem of MDRTB in the prisons.<sup>25</sup>

The proportion of HIV infected prisoners is now a major problem in some member states, as are Hepatitis B and C. World Health Organisation (WHO) guidelines,<sup>26</sup> the Council of Europe Committee of Ministers Recommendation (98) 7 and the CPT<sup>27</sup> all make it absolutely clear that testing for HIV should not be compulsory and that HIV positive prisoners should not be segregated unless they are ill and in need of specialised medical care. Despite this, the CPT has found routine testing in a number of countries as well as automatic segregation of infected prisoners.

Prison administrations sometimes face a dilemma in attempting to secure a balance between the requirements of prison security and attempts to contain the spread of blood-borne diseases such as HIV/Aids and hepatitis B and C. For example, public health officials are likely to advocate the provision of condoms to prevent transmission through sexual activity, of disinfectants to aid the cleaning of shared needles and of clean needles in exchange for used ones. These measures are very controversial in the prison setting since they require prison administrations to accept that sexual activity and intravenous drug use take place. In its recent declaration on prison health, the WHO advocates that “harm reduction becomes the guiding principle of policy on the prevention of HIV/Aids and hepatitis transmission in penitentiary systems.”<sup>28</sup>

In a number of member states, prisoner suicides are a cause for concern. Comparative suicide rates are difficult to obtain but data is available for France (120 suicides in 2003 giving a rate of 22.8 per 100 000<sup>29</sup>), Portugal (19 suicides in 2002) and England and Wales (94 in 2003). Dealing with mentally ill or suicidal prisoners often occasions comment by the CPT and the committee has severely criticised the treatment of a suicidal prisoner in Germany whose hands and feet were strapped to a bed for 36 hours.<sup>30</sup> In 2001, the ECHR found that the United Kingdom had violated Article 3 of the Convention, which prohibits torture and

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25. Arnadottir, T., Lycke Ellingsen, I. and Tsereteli, Z. “Assessment of Communicable Disease Control in Lithuanian prisons”, report of an expert mission to Lithuania carried out 17-21 March 2003. Available at: [www.baltichealth.org/getfile.php/46750.354/Lithuania%20Prison%20Evaluation.doc](http://www.baltichealth.org/getfile.php/46750.354/Lithuania%20Prison%20Evaluation.doc)

26. WHO Global Programme on Aids, WHO Guidelines on HIV infection and Aids in prisons. WHO: Geneva 1993. Available online at: [www.ceeprn.lt/EasyCEE/sys/files/WHO%20guidelines%20on%20HIV%20and%20AIDS%20in%20prison.pdf](http://www.ceeprn.lt/EasyCEE/sys/files/WHO%20guidelines%20on%20HIV%20and%20AIDS%20in%20prison.pdf)

27. CPT/Inf (93) 12, 3rd General Report on the CPT's activities covering the period 1 January to 31 December 1992.

28. Declaration made by the annual conference of the WHO European Network for Prison and Health held in Moscow, 23 to 25 October 2003.

29. Country Report on Human Rights Practices 2003 (France). Bureau of Democracy, Human Rights and Labor, US Department of State. February, 2004. Available online at: [www.state.gov/g/drl/rls/hrrpt/2003/27837.htm](http://www.state.gov/g/drl/rls/hrrpt/2003/27837.htm)

30. CPT/Inf (2003) 20, Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 3 to 15 December 2000.



inhuman or degrading treatment or punishment, in the case of a prisoner who had committed suicide. The finding was in respect of the lack of medical notes, lack of psychiatric monitoring and segregation incompatible with the proper treatment of a mentally ill person.<sup>31</sup>

The WHO and the Council of Europe argue for close links between prison and public health services and it is worth noting in this context that France in 1994 and England and Wales in 1998 started a process of placing the management of prison health services under the public health services.<sup>32</sup> Early results suggest that this transfer of responsibility has improved the quality of health care given to prisoners.<sup>33</sup> Similar arrangements have been in place in Norway for many years.

## **X. Length of sentences and life imprisonment**

European ministers of justice have noted that the increasing number and length of long-term prison sentences has contributed to the overall increase in the number of prisoners in many European countries.<sup>34</sup> There are various possible explanations for this trend, including increasing concern about general levels of crime as well as a reaction to specific crimes, such as those of a sexual nature. In England and Wales, for example, the law has recently been changed so that in some cases a sentence of life imprisonment will now mean actual detention for natural life.<sup>35</sup>

On accession to the Council of Europe, states are required to impose an immediate moratorium on the death penalty and to abolish this as a punishment within two years. As a result, the death penalty is no longer used in any member state and in most states it has been replaced by the sentence of life imprisonment. There is a wide variation in the conditions of life imprisonment in member states. In western Europe, the judiciary determines the length of sentence, leaving the conditions of detention, including the level of security, to be determined by the prison administration. The tradition in many states of central and eastern Europe has been that courts have also laid down the strictness of the regime in which individual prisoners are to be held according to the nature of the offence and whether the person has previous convictions. In some states, this arrangement has continued in part in respect of the new category of prisoners sentenced to life imprisonment. In some it is stipulated that life sentence prisoners should spend up to ten years in isolation or at best mixing only with a small number of similar

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31. *Keenan v. the United Kingdom*, No. 27229/95.

32. Healy, J. and McKee, M. *Accessing Health Care, Responding to Diversity*, Oxford, OUP, 2004.

33. CPT/Inf (2001) 10, Report to the Government of France on the visit to France carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 14 to 26 May 2000.

34. 24th Conference of European Ministers of Justice 4 to 5 October 2001, Moscow (Russian Federation) Resolution No. 2 on the implementation of long-term sentences. Available online at: [www.coe.int/T/E/Legal\\_Affairs/Legal\\_co-operation/Conferences\\_and\\_high-level\\_meetings/European\\_Ministers\\_of\\_Justice/2001\(Moscow\)Resolution2.asp](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Conferences_and_high-level_meetings/European_Ministers_of_Justice/2001(Moscow)Resolution2.asp)

35. Criminal Justice Act (2003), Schedule 21.

prisoners. During this time they have very limited access to activities and contact with the outside world is minimal. These arrangements were a matter of concern for European ministers of justice who, when they met in 2001, noted the need to provide decent detention conditions for those serving long-term and life sentences, without sacrificing security, order and discipline in penal institutions.<sup>36</sup> This matter was taken on board by the Council of Europe, and Committee of Ministers Recommendation Rec(2003)23 on the management by prison administrations of life sentence and other long-term prisoners, sets the standards which should be applied to the treatment of these prisoners.

## **XI. Prison discipline**

Until recently the methods used for maintaining discipline and imposing disciplinary sanctions in prisons did not attract a great deal of external attention. This has begun to alter in recent years. In 2002, the ECHR found the United Kingdom to be in violation of Article 6 of the Convention, which sets out the right to a fair trial.<sup>37</sup> This was in reference to the situation where prisoners were punished by prison governors by adding days to their sentence to be served, thus reducing the remission they were entitled to expect. These disciplinary proceedings were deemed not to constitute a fair hearing. As a result of this judgement, serious disciplinary charges are now referred to an independent adjudicator and in such cases accused prisoners are allowed to have legal representation at the hearing.

In Cyprus, the prison regulations provide that a prisoner shall not be punished without first being informed of the offence with which he is charged and being given the possibility of defending himself. However, in 2000 the CPT reported that in Cyprus prisoners received no written notification of the charges they faced or of the timing of the hearing.<sup>38</sup> Furthermore, they had no right to call witnesses on their own behalf and there was no provision for legal representation. In Latvia in 1999, the CPT was told that prisoners were only seen in person in the event of a very serious disciplinary offence. In other circumstances prisoners had the opportunity of stating their point of view in writing. The CPT recommended that there should be an oral hearing in all disciplinary cases.<sup>39</sup> Following its visit to Malta in 2001, the CPT reported that prisoners were not allowed to call witnesses

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36. 24th Conference of European Ministers of Justice 4 to 5 October 2001, Moscow (Russian Federation) Conclusions Report by the Secretary General of the Council of Europe. Available online at: [www.coe.int/T/E/Legal\\_Affairs/Legal\\_co-operation/Conferences\\_and\\_high-level\\_meetings/European\\_Ministers\\_of\\_Justice/2001\(Moscow\)Conclusions.asp](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Conferences_and_high-level_meetings/European_Ministers_of_Justice/2001(Moscow)Conclusions.asp)

37. Case of *Ezeh and Connors v. the United Kingdom*, Application Nos. 39665/98 and 40086/98 respectively.

38. CPT/Inf (2003) 1, Report to the Government of Cyprus on the visit to Cyprus carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 22 to 30 May 2000.

39. CPT/Inf (2001) 27, Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 24 January to 3 February 1999.

on their own behalf and could not cross-examine evidence against them or make statements in mitigation if found guilty by the prison director.<sup>40</sup>

## **XII. Solitary confinement**

“Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.”<sup>41</sup>

“Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment: in any event, all forms of solitary confinement should be as short as possible.”<sup>42</sup>

The CPT has expressed concern in a number of its reports about the conditions of solitary confinement in a number of countries. In 2000, it indicated that in each of the four prisons visited in France the conditions of the solitary confinement cells fell short of the minimum standard in one or more regard.<sup>43</sup> In Latvia, it considered the conditions of detention in the disciplinary cells at the central prison to be unacceptable.<sup>44</sup>

Concerns have also been raised in respect of a number of countries about the practice of holding numbers of pre-trial prisoners in solitary confinement for lengthy periods as a matter of course. In Denmark, the use of solitary confinement for remand prisoners by court order during investigation has featured prominently in the ongoing dialogue between the CPT and the Danish authorities. The committee stressed that all forms of solitary confinement without appropriate mental or physical stimulation are likely in the long term to have damaging effects, resulting in the deterioration of mental faculties and social abilities.<sup>45</sup> The overall use of solitary confinement by court order has consistently decreased in recent years. Despite these changes the CPT has continued to express concern about this matter.<sup>46</sup> In December 2003, the ECHR ruled that a case brought by a Danish prisoner who had been detained on remand in isolation was admissible under

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40. CPT/Inf (2002) 16, Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 13 to 18 May 2001.

41. UN Basic Principles for the Treatment of Prisoners, Principle 7.

42. CPT/Inf (92) 3, 2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991.

43. CPT/Inf (2001) 10, *op. cit.*

44. CPT/Inf (2001) 27, Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 24 January to 3 February 1999.

45. CPT/Inf (1997) 4, Report to the Danish Government on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 29 September to 9 October 1996.

46. CPT/Inf (2002) 18, Report to the Government of Denmark on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 28 January to 4 February 2002.

Article 3 of the Convention.<sup>47</sup> The CPT has also expressed concern over several years about the strict conditions in which pre-trial prisoners are held in Sweden. Following its visit in 1998, the CPT called for changes to the law to allow appeals against such restrictions<sup>48</sup> and in 2003 they noted that satisfactory measures had still not been taken.<sup>49</sup>

In recent years a number of prison systems have introduced special maximum security conditions for some prisoners who are thought to present a special risk to the state or to other prisoners. In many cases this amounts either to individual solitary confinement or to confinement in very small numbers. The Committee of Ministers has made a specific recommendation about the management of so-called dangerous prisoners.<sup>50</sup> As a general rule, prisoners should only be kept in conditions of close confinement if their behaviour shows that they pose such a threat to safety and security that they cannot be held in any other manner.

In some countries, prisoners are held in virtual solitary confinement, not as a punishment, but solely because of the nature of their offence or the threat which they are thought to pose to the state. In recent years, for example, there has been an increasing tendency in some states automatically to hold prisoners accused or convicted of terrorist offences or organised crime in solitary confinement. The CPT has commented critically on arrangements in the Netherlands,<sup>51</sup> Turkey<sup>52</sup> and the United Kingdom.<sup>53</sup> The ECHR has ruled several times against Italy in terms of its management of this type of prisoner.<sup>54</sup> In respect of Spain, the UN Committee against Torture has expressed concern at the severe conditions of detention of those in the highest security category.<sup>55</sup>

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47. Case of *Rohde v. Denmark*, No. 69332/01.

48. CPT/Inf (99) 4, Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 15 to 25 February 1998.

49. CPT/Inf (2003) 27, Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which visited Sweden from 27 January to 5 February 2003.

50. Council of Europe Committee of Ministers Recommendation No. R (82) 17 of the Committee of Ministers to member states concerning custody and treatment of dangerous prisoners (adopted by the Committee of Ministers on 24 September 1982 at the 350th meeting of the Ministers' Deputies).

51. CPT/Inf (2002) 30, Report to the Authorities of the Kingdom of the Netherlands on the visits carried out to the Kingdom in Europe and to the Netherlands Antilles by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in February 2002.

52. CPT/Inf (2002) 8, Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 2 to 14 September 2001.

53. CPT Reports to the Government of the United Kingdom CPT/Inf (2002) 6 and CPT/Inf (2003) 18.

54. *Labita v. Italy*, No. 26772/95, *Indelicato v. Italy*, 31143/96, *Messina v. Italy*, Application No. 25498/94.

55. CAT/C/CR/29/3 Conclusions and recommendations of the Committee against Torture, Spain, 23/12/2002. Available online at: [www.unhchr.ch/tbs/doc.nsf](http://www.unhchr.ch/tbs/doc.nsf)

### **XIII. Separation of prisoners**

It is wrong to regard prisoners as a homogenous group and to deal with them all indiscriminately. Gender differences should be respected, with women separated from men and in many respects treated differently. Similarly, juvenile prisoners should be kept separate from adults, both for their protection and also with the intention that they can be given additional opportunities for personal reform. Prisoners should also be separated according to their legal status, with those who are awaiting trial or who have not been convicted of any offence being kept separate from those who have been convicted. Specific comment is made later in this report on these different groups.

Reference has already been made to the duty of prison staff to ensure that prisons are safe places. This means that no prisoner should be subject to verbal or physical violence or fear of violence from any other prisoner or member of staff. Prisons can be intimidating places, especially for those who are different from the majority, for example, because of their personality, their sexual orientation or their offence. There can sometimes be a tendency on the part of prison authorities to respond to these issues in a negative manner by restricting the activities of the vulnerable groups, keeping them locked in units on their own, away from the rest of the prisoners. A likely consequence of this reaction is that, through no fault of their own, these prisoners will have a very impoverished regime, without access to many of the activities available to other prisoners. Unlike the groups previously mentioned, such as women, juveniles and those in pre-trial detention, there is no reason in principle why these other vulnerable groups should not be able to take a full part in prison activities. Locking them up separately “for their own safety” should be a matter of last resort, to be done only when absolutely necessary. As a first resort, the authorities should make clear, both by their own actions and by regulations, that mistreatment of vulnerable prisoners will not be tolerated and that, where it is discovered, those responsible will be punished.

### **XIV. Pre-trial detention**

“Being presumed innocent until proved guilty, no person charged with an offence shall be placed in custody pending trial unless the circumstances make it strictly necessary. Custody pending trial shall therefore be regarded as an exceptional measure.”<sup>56</sup>

Reference has already been made several times in this report to pre-trial prisoners and the problems in many member states with their conditions of detention. These conditions should be at least as good as those for convicted prisoners. Unfortunately, in many member states their conditions are the most overcrowded; they have the worst accommodation and are given least access to the facilities

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56. Council of Europe Committee of Ministers Recommendation No. R (80) 11 of the Committee of Ministers to member states concerning custody pending trial. (Adopted by the Committee of Ministers on 27 June 1980 at the 321st meeting of the Ministers’ Deputies).

of the prison. Pressure on accommodation means that in a number of states pre-trial prisoners are not segregated from convicted prisoners. In some countries, investigating authorities may restrict the number of visits to be received by pre-trial prisoners as well as the persons who may visit them. Regime activities for pre-trial prisoners are limited in many countries.

In 2001, the Committee of Ministers approved the terms of reference agreed by the Committee on Crime Problems (CDPC) for a committee of experts on pre-trial detention and its implications for the management of penal institutions<sup>57</sup> (PC-DP) which was entrusted with updating Recommendation No. R (80) 11 concerning custody pending trial, in the light of new developments in the use of pre-trial detention, taking into account Recommendation 1245 (1994) on the detention of persons pending trial adopted by the Parliamentary Assembly and the reply given by the Committee of Ministers on 11 September 1995. The work was put on hold until the adoption of a recommendation containing the new European Prison Rules and it is expected that the draft recommendation on remand in custody will be adopted in the course of 2006. It will deal in particular with the contemporary legal and judicial justification for the use of remand in custody and with ways to prevent undue restriction of rights of remand prisoners and provision of facilities to prepare their defence, etc.

## **XV. Children and young people**

The UN Convention on the Rights of the Child defines a child as anyone under the age of 18, unless national legislation provides otherwise. The convention states that children should not be deprived of their liberty unless there is absolutely no other option and then only for the shortest possible time.

There are noticeable differences in policy in member states towards juvenile offenders. Although there appears to have been a hardening of attitudes in recent years to young people who commit crime, in most of the existing EU countries educational and reformatory measures have been predominant.<sup>58</sup> In Germany, for example, children aged 14-17 are dealt with under the Youth Court Law which makes it clear that its exclusive aim is rehabilitation. The Youth Court is required to choose from amongst a range of sanctions specifically for children. Courts may decide to treat young adults, aged between 18 and 20, as if they were juveniles and use the juvenile sentencing measures. More than 60% of young adults are sentenced as juveniles. In France, the law applying to juveniles emphasises measures of protection, help, supervision and education. Educational measures take priority over penal measures. Children under the age of 13 can never be subject

57. Decision cdpc/117/220601.

58. Muncie, J., "Youth Justice: globalisation and multi-modal governance" in Newburn, T. and Sparks, R., (Eds.) *Criminal Justice and Political Cultures*, Willan, United Kingdom, 2004.

to penal measures.<sup>59</sup> Juveniles can only be remanded in custody before a trial for one month and this period can only be renewed once. In Belgium and Scotland, the principle of the welfare of the child is the prime determinant of the approach to juvenile delinquency. In Belgium, most police forces have special youth brigades often run by police officers with social work training. In Scotland, the “children’s hearing system” has been in place since 1968 and ensures that when measures need to be applied the welfare of the child is the main factor to be considered.<sup>60</sup> In England and Wales, children aged 12 or over may be given a “detention and training order” of up to two years. Half of the time must be served in custody and half under supervision in the community. There were also several hundred 12-14 year olds held in “secure training centres” outside the prison system but within the penal system. The treatment of juveniles in detention in England and Wales has been criticised by the United Nations Committee on the Rights of the Child which expressed concern that “between April 2000 and February 2002, 296 children sustained injuries as a result of restraints and measures of control applied in prison.” The committee also expressed concern about the placement of children in juvenile detention and in solitary confinement in prisons.<sup>61</sup> In a recommendation on its third periodic report on Luxembourg (15 May 2002), the United Nations Committee against Torture recommended that Luxembourg refrain from placing minors in adult prisons for disciplinary purposes.<sup>62</sup>

## XVI. Women

The proportion of women in the prisons of European countries varies considerably within a narrow band. The highest proportion is found in Portugal with 8.1% and the lowest in Northern Ireland with 2.1%. Higher proportions than the average are found in Spain (7.9%), the Netherlands (6.8%) Finland and Luxembourg (6.1%) and Hungary and Latvia (6%). Countries with proportions below 3% are Lithuania (2.8%), Poland (2.7%), and Slovakia (2.5%).<sup>63</sup> Women have been particularly affected by increasingly tough anti-drugs laws in some countries and this has led to a much faster increase in the rate of imprisonment for women than for men.

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59. Coyle, A., “Penal Policy” in Compston, H., (Ed.), *Handbook of Public Policy in Britain, France and Germany*. Palgrave, Cambridge, 2004.

60. Muncie, J., “Youth justice: globalisation and multi-modal governance” in Newburn, T. and Sparks, R., (Eds.) *Criminal Justice and Political Cultures*, Willan, United Kingdom, 2004.

61. United Nations Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations, United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add 188, 9 October 2002 .

62. Committee Against Torture Issues Conclusions and Recommendations on Reports of Luxembourg and Saudi Arabia: Calls for End to Placement of Minors in Luxembourg Prisons; Restriction and Possible Abolition of Use of Solitary Confinement Urges Saudi Arabia to Re-Examine Use of Corporal Punishment; Incorporation of Crime of Torture into Domestic Law. (Press Release) 28th session, 15 May 2002. Available online at: [www.unhcr.ch/hurricane/hurricane.nsf/](http://www.unhcr.ch/hurricane/hurricane.nsf/)

63. Figures from *World Prison Brief* at March 2004. Available online at: [www.prisonstudies.org](http://www.prisonstudies.org)

The international and European human rights instruments, norms and guidelines have largely neglected women prisoners as a group.<sup>64</sup> Little consideration is given in the instruments to the specific problems women face as the primary carers of children or to the backgrounds from which women prisoners come, which are often backgrounds of abuse and violence.<sup>65</sup> The small number of women prisoners, never more than one in 10 of all prisoners, presents difficulties for prison administrations which have to decide if women are to be concentrated in one place, with the implication that they will be distant from their homes, or held nearer their homes in small units, in which case the facilities they need might not be available.

The CPT has made an attempt to fill this vacuum by setting out in its 10th General Report the standards it expects to see in the treatment of women in detention.<sup>66</sup> The committee is of the view, for example, that prisoners should only be searched by staff of the same gender and any search requiring prisoners to undress should be done out of sight of staff of the opposite gender. In principle, women should be held separately from men. However, where some gender association is occurring in prison the committee recognises that this can be positive providing prisoners agree and are properly supervised. Babies should not be born in prison. Pregnant women should never be shackled or restrained to beds or other furniture.

## **XVII. The mentally ill**

In many countries there is evidence of the large proportion of prisoners who have mental health problems.<sup>67</sup> The European Prison Rules are quite specific about how inappropriate it is for the mentally ill to be held in prison:

“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.”

In practice, many member states find difficulty in defining when an individual's state of mental health is “incompatible with detention in a prison”. This is generally a clinical rather than a legal decision. There are inevitably “grey areas” where it is agreed that a person has a mental health problem but it is not clear that the degree of illness is incompatible with detention in a prison. The presence of a large number of such prisoners can make it very difficult to achieve their humane and decent treatment.

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64. Stern, V., *A Sin Against the Future*, Penguin, London, 1998, p. 218.

65. Hooper, C., *Abuse, Interventions and Women in Prison: A Literature Review*, Home Office and Her Majesty's Prison Service, London, 2003.

66. CPT/Inf (2000) 13, 10th General Report on the CPT's activities covering the period 1 January to 31 December 1999.

67. In England and Wales the Office for National Statistics found that 78% of male remand prisoners, 64% of male sentenced prisoners and 50% of female prisoners were suffering from a personality disorder (Office for National Statistics), *Psychiatric morbidity among prisoners in England and Wales*, London, HMSO, 1998.



## **XVIII. Older prisoners**

Traditionally, the vast majority of prisoners have been young men but in recent years, in a number of countries, the age profile of prisoners has been increasing. This has happened for a variety of reasons, not least of which is the fact that the length of sentences being passed in some jurisdictions has shown a gradual increase. The abolition of the death penalty in all European states has also contributed to the increase in the number of prisoners serving very long sentences.

The structure of prisons and the way daily life in them is organised reflects the fact that, until now, most prisoners are relatively fit younger persons. Many of them have accommodation blocks several stories high, linked by steep stairs and with no lifts. Where there are shared living arrangements there will often be bunk beds with no steps or ladders to the higher bunks. Prisoners are expected to move quickly from one location to another, for example, when moving in large groups to outdoor exercise or to visits or to workshops. Little allowance is made for older prisoners who cannot move quickly.

In some prison systems, units have been provided for older prisoners, with ramps, lifts, handrails and wheelchairs. All the indications are that the need for such facilities is likely to continue and to expand. Unless there is provision in legislation for the release of elderly prisoners, especially those who become incapacitated, prisons may well have to build what in effect will be geriatric units to care for these prisoners in a humane manner.

## **XIX. Foreigners and ethnic minorities**

Prisons in all countries have always held disproportionate numbers of marginalised and minority groups of citizens. This fact has become increasingly noticeable in recent years due to a number of factors, such as the increasing marginalisation of certain groups and the increase in transnational movement. In many member states, an increasing proportion of prisoners are foreign nationals. The proportion in Austria, Estonia, Italy, Malta and the Netherlands is over 30%, in Belgium and Cyprus it is over 40%. In Luxembourg it is 63.9%, out of a total of 352 prisoners.<sup>68</sup> In England and Wales, 11% of all prisoners are foreign nationals, but this figure rises to 20% for women.<sup>69</sup>

It also appears that minority ethnic groups are over-represented in many prison systems but it is difficult to be precise about this since many countries do not collect statistics relating to ethnicity. An exception is England and Wales, which reported that 22% of male prisoners and 29% of female prisoners were from ethnic minorities and that 35% of these were foreign nationals.<sup>70</sup> Linked to this issue,

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68. All figures from *World Prison Brief* at March 2004. Available online at: [www.prisonstudies.org](http://www.prisonstudies.org)

69. Home Office, *Prison Statistics England and Wales*, The Stationery Office, London, 2002.

70. *Ibid.*

there has been an increase in a number of countries in the proportion of prisoners who are non-national residents of countries.

Many of the prejudices that exist in society against minority groups are reflected in the world of the prison. The report of the European Commission against Racism and Intolerance (ECRI) pertaining to racism and xenophobia in relation to imprisonment includes a number of references to abuses in prisons. The commission's report on Austria<sup>71</sup> mentioned reports of ill-treatment of non-citizens – including some asylum-seekers – by police and prison officers. Its 3rd Report on Belgium,<sup>72</sup> while noting the reported reduction in the average period of detention, expressed concern at the continuing widespread use of detention for asylum seekers in Belgium, particularly in respect of accompanied and unaccompanied minors. Although precise figures are difficult to find, there is little dispute that Roma people are over-represented in a number of central European prison systems. As regards Italy, there were reports of ill-treatment by police, prison guards or other prisoners towards immigrants and non-EU citizen detainees, especially North Africans. Some NGOs reported that the authorities reacted slowly to such reports and that the penalties imposed are minimal and often suspended.<sup>73</sup>

The dangers of discrimination, racism and xenophobia in the prison setting are likely to require ever increasing vigilance in all countries in the immediate future.

## **XX. The prisoner as a person**

If prisons are to be places where decency and humanity are respected, it follows that the persons who are held in them need to be regarded as more than prisoners; they need also to be seen as people and, within the restrictions of their detention, to be treated as citizens. This fact is increasingly recognised in a number of countries in a variety of ways. Over the last 15 years, for example, the Scottish Prison Service has conducted regular surveys of prisoners as a means of discovering what their priorities are in matters such as contact with their families, relationships with staff, dietary issues, cleanliness and hygiene and health care provision.<sup>74</sup> The responses to these surveys have been used to set the service's priorities for change.

There are also indirect ways of giving the prisoners a voice in how they are treated, for example, through the activities of the non-governmental organisations which are active in a number of countries. NGOs can also provide a channel of communication between the prisoner and the outside world in a way which increases understanding on both sides. A good example of this is the French

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71. ECRI (99) 7, Report on Austria made public on 13 March 1999. Available online at: [www.coe.int/T/E/human\\_rights/Ecri](http://www.coe.int/T/E/human_rights/Ecri)

72. ECRI (2004) 1, 3rd Report on Belgium Adopted on 27 June 2003 made public on 27 January 2004. Available online at: [www.coe.int/t/E/human\\_rights/ecri](http://www.coe.int/t/E/human_rights/ecri)

73. ECRI (98) 48.

74. See for example the *Seventh Prisoner Survey*, published by the Scottish Prison service in 2005.

organisation GENEPI (Groupement Etudiant National d'Enseignement aux Personnes Incarcérées) which since 1976 has contributed to the reintegration of prisoners by developing links between the prison world in France and students in higher education. Some NGOs are concerned not only with the treatment of prisoners but also do important work in helping prisoners' families to cope with the effect of the imprisonment of a family member.

## **XXI. Independent oversight of prisons**

Prisons are by their nature secret places and their high walls and fences not only keep prisoners in, but they also keep the public out. However, prisons operate on the authority of citizens and their governments and these have a responsibility to monitor what happens inside prisons in their name. This monitoring is most effective when prisons operate in as transparent a manner as possible, encouraging members of the public to visit prisons, to help with activities such as education and religious activities and to befriend individual prisoners where appropriate. Where security requirements allow, prisoners should also be permitted to leave prison from time to time.

However, this sort of transparency is not sufficient on its own. Reports by national and international NGOs, the findings of the CPT and various decisions of the ECHR show that, even in countries with well developed and relatively transparent prison systems, independent monitoring of conditions of detention and treatment of prisoners is essential to prevent inhuman and unjust treatment of prisoners and to enhance the quality of detention and of prison management.

Member states of the Council of Europe have different traditions of independent prison monitoring. In a number of countries, such as France and Spain, there is a tradition of oversight of prisons which is essentially judicial in nature. In France, there is also a national commission<sup>75</sup> which oversees prisons and other places of detention. In this tradition, the focus tends to be on treatment of individual prisoners rather than on more general oversight of the prison system.

In eastern Europe, oversight of prisons is often exercised by the Office of the Prosecutor General. Another model is that which was established in the Netherlands in 2005, with an inspectorate based within the Ministry of Justice, but separate from the prison system. The United Kingdom has had separate prison inspectorates since 1982 and since the 19th century has also had independent monitoring boards for individual prisons.

The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted by the United Nations in 2002, creates an important incentive for the establishment of national independent monitoring bodies. This optional protocol requires the signatories

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75. Commission nationale de déontologie et de sécurité.

to establish one or several independent national bodies to visit places, such as prisons, where people are deprived of their liberty.

## **XXII. Future revision of the European Prison Rules**

The European Prison Rules have now been revised twice since they were first published in 1973. These revisions have been carried out to reflect the different traditions of imprisonment in the increased number of member states and also because of what the Committee of Ministers in 1987 described as “significant social trends and changes in regard to prison treatment and management”. Current indications are that these “trends and changes” in the world of prisons are likely to continue for the foreseeable future. There are a number of basic standards for the treatment of prisoners which are unchanging and must always be respected. These have been expressed continuously in succeeding versions of the rules. However, there are a number of features of how these standards are applied which can change as new situations develop. Examples of changes in recent years have been attitudes to the manner in which prisoners should be encouraged to maintain links with their families and friends. Another area where there has been significant development has been in relation to health care.

While the European Prison Rules are founded on long-standing human rights principles which are unlikely to change, the detail contained in individual rules is subject to continuous development. To that extent, the rules should not be regarded as tablets of stone but rather as dynamic and living. Their future interpretation will be influenced, as the current revision has been, by the expanding case law of the European Court of Human Rights and the recommendations of bodies such as the Committee for the Prevention of Torture. For these reasons, the rules need to be kept under continuous scrutiny. Their revision is an onerous task for the Council of Europe, but it is one which will undoubtedly need to be taken on board again within a reasonable time frame.

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