

Strasbourg, 18 May 2017

**EUROPEAN COMMITTEE ON LEGAL CO-OPERATION**  
**(CDCJ)**

**Codifying instrument of European rules  
on the administrative detention of migrants  
1<sup>st</sup> Draft**

Draft text submitted to key stakeholders and civil society  
**for comment by Friday 30 June 2017**  
to the Secretariat of CDCJ ([DGI-CDCJ@coe.int](mailto:DGI-CDCJ@coe.int))

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

A. <sup>1</sup>Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose, inter alia, of safeguarding and realising the ideals and principles which are their common heritage;

B. Taking note of the increasing numbers of migrants held in administrative detention in the member states of the Council of Europe and noting the fundamental distinction between criminal and administrative detention,

C. Taking note of the developing case-law of the European Court of Human Rights on immigration detention, particularly in relation to the guarantees provided by the Convention,

Taking note of the many standards and recommendations adopted by various bodies of the Council of Europe regarding the situation and rights of migrants in administrative detention, including those of the Parliamentary Assembly and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as well as of the European Convention on Human Rights, of the many legislative acts of the European Union governing the detention of third-country nationals by European Union member states, and those of United Nations treaty bodies and of UNHCR, including the International Convention on the protection of the Rights of All Migrant Workers and Members of Their Families (1990), Body of Principles for the Protection of all persons under any forms of detention or imprisonment (1988), and Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention,

D. Taking note of the variety of purposes, scope, content and legal application of the aforesaid standards and recommendations to member states of the Council of Europe,

E. Taking note of the Declaration by European National Preventive Mechanisms against torture on the need for Council of Europe rules on immigration detention, (Strasbourg, 22 November 2013), and, in particular, the need to codify the rules on immigration detention that are applicable to member states of the Council of Europe, taking as a model the European Prison Rules,

F. Agreeing on the desirability of codifying these standards and recommendations,

Recommends that governments of member states:

- be guided in their legislation, policies and practice relating to the administrative detention of non-nationals who are deprived of their liberty within the context of migration and asylum by the rules contained in the appendix hereto;

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<sup>1</sup> Lettering only for purposes of facilitating examination of the preamble. To be removed once approved by the European Committee on Legal Co-operation.

- take every step to translate and disseminate these rules as widely as possible and, in particular, among relevant judicial and administrative authorities, detention staff and individual migrants in administrative detention.

## **APPENDIX TO THE DRAFT RECOMMENDATION**

### **Part A - General Provisions**

#### *Title*

- A.1 These rules are to be referred to as the European Rules on the Conditions for the Administrative Detention of Migrants.

#### *Definitions*

- A.2 The terms set out below have the meanings indicated for the purposes of these rules.

- i. Administrative detention

Administrative detention refers to the deprivation of liberty of a migrant in a closed detention centre, pursuant to an order or decision of a competent authority, in application of laws relating to migration and asylum, excluding remands in custody pursuant to a criminal charge or detention following a criminal conviction and other restrictions of liberty.

- ii. Closed detention centre

A closed detention centre is a place where migrants held within it are deprived of their liberty and specifically designed for that purpose.

- iii. Migrant

A migrant is:

- a person who has travelled, for whatever reason, either in transit or to a country of destination of which she or he is not a national, whether lawfully or unlawfully;
- or
- a person whose permission to reside in a country has expired or been withdrawn and who remains in that country.

iv. Child

Child means any person under the age of 18 years old.<sup>2</sup>

v. Unaccompanied child

An unaccompanied child is a child who has been separated from both parents and other relatives and is not in the care of an adult who, by law or by the practice of the state concerned, is responsible for doing so.<sup>3</sup>

vi. Vulnerable person

A vulnerable person means any individual in a specific situation of vulnerability, in particular any individual belonging to a group or community that is at a higher risk of being subjected to discriminatory practices, violence or hardship than other groups – at a given time in a given situation.

*Scope, application and relations between these Rules, other international treaties or national law*

A.3 The rules apply to migrants held in administrative detention and relate to the conditions of the places and situations in which they are held.

A.4 Nothing in this instrument of codification shall be construed as limiting or derogating from any of the rights recognised by the international legal norms by which the Rules were inspired.<sup>4</sup>

A.5 The provisions of this instrument of codification shall not prejudice any more favorable provisions that already exist in domestic law or international law and standards.

**Part B - Basic principles**

This part sets out basic principles relating to migrants held in administrative detention in application of laws relating to migration and asylum.

*Right to liberty and detention as last resort*

B.1 Every migrant has the right to liberty. Migrants may only be deprived of their liberty for the reasons set out in Article 5 of the Convention for the Protection of Human

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<sup>2</sup> United Nations Convention on the Rights of the Child, Article 1.

<sup>3</sup> CM Recommendation CM/Rec(2007)9 on life projects for unaccompanied migrant minors, para. 5; UN Committee on the Rights of the Child, General Comment No 6 (2005), para. 7 Treatment of unaccompanied and separated children outside their country of origin; UNHCR, Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, February 1997, para. 3.1.

<sup>4</sup> European Convention on human Rights (ECHR), Article 53; EU Charter of Fundamental Rights, Article 53.

Rights and Fundamental Freedoms and in particular paragraphs 1(b) and 1(f). Detention should be for the shortest time possible<sup>5</sup> and imposed only as a measure of last resort and after full consideration of all sufficient but less coercive<sup>6</sup> alternatives, in particular as concerned migrants in vulnerable situations.<sup>7</sup>

#### *Individual decision only*

B.2 Decisions or orders concerning the administrative detention shall be taken on an individual basis,<sup>8</sup> in accordance with the law, and after consideration of all relevant facts pertaining to the individual, including careful examination of the necessity of detention in each particular case.<sup>9</sup> Collective decisions concerning the detention of groups of migrants are not permissible.<sup>10</sup>

#### *Protection from all forms of ill-treatment*

B.3 Migrants in administrative detention shall be treated with respect for their dignity and human rights.<sup>11</sup> They shall not be subject to torture or to inhuman or degrading treatment or punishment.<sup>12</sup> Appropriate measures shall be taken to protect them, and in particular migrants in situation of vulnerability, from all forms of ill-treatment and abuse.<sup>13</sup>

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<sup>5</sup> Twenty Guidelines on Forced Return, Guideline 8.1; CM Recommendation Rec(2003)5 on measures of detention of asylum-seekers, Principle 4 - second sentence, PACE Resolution 1707(2010), No. 9.1.10 ; Directive 2008/115/EC, Article 15(1); Directive 2013/33/EU, Article 9(1); EU Regulation No 604/2013 – Dublin III, Article 28(3); CPT, Report on the 2014 visit to Spain (CPT/Inf(2015)9), paragraph 9; Report on the 2014 visit to Denmark (CPT/In(2014)25), paragraph 75.

<sup>6</sup> Twenty Guidelines on Forced Return, Guideline 6.1; CM Recommendation Rec (2003)5, Principle 6; Directive 2008/115/EC, Article 15(1); Directive 2013/33/EU, Article 8(2).

<sup>7</sup> UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Guideline 9; PACE Resolution 1509 (2006) No. 12.4. (third sentence); See, among other authorities, *Yoh-Ekale Mwanje v. Belgium*, no. 10486/10, § 124; *Abdullahi Elmi and Aweys Abubakar v. Malta*, nos. 25794/13 and 28151/13, § 146; *Popov v. France*, nos. 39472/07 and 39474/07, §§ 118-119, 146; *Mohamad v. Greece*, no. 70586/11, § 84.

<sup>8</sup> Directive 2013/33/EU, Article 8(2).

<sup>9</sup> CM Recommendation Rec(2003)5, Principle 4 sentence 1); PACE Resolution 1707(2010),No. 9.1.1, No. 9.1.6.

<sup>10</sup> Article 4, Protocol 4 to the European Convention on Human Rights; ECtHR, *Hirsi Jamaa and Others v. Italy* (GC), No. 27765/09, 23 February 2012.

<sup>11</sup> ECHR, Article 1; European Prison Rules, Rule 1; *Khlaifia and Others v. Italy* [GC], no. 16483/12,, §§ 158, 160, 162 and 184; *M.S.S. v. Belgium and Greece* {GC}, 30696/09, § 223; *Hirsi Jamaa and Others v. Italy* [GC], 27765/09, § 122; UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Guideline 8, para. 48 (ii); ICCPR (International Covenant on Civil and Political Rights), Articles 7, 10 and 17; UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, General Assembly resolution 43/173 of 9 December 1988; United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), Rule 1.

<sup>12</sup> ECHR, Article 3. See also, among other authorities, *M.S.S. v. Belgium and Greece*, cited above, §§ 217-218; *Khlaifia and Others v. Italy*, cited above, § 162; *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, §100; *Rahimi v. Greece*, no. 8687/08, § 61; *Kanagaratnam and Others v. Belgium*, no. 15297/09, §80; *Sharifi and Others v. Italy and Greece*, no. 16643/09, § 188 ; Mandela Rules, Rule 1.

<sup>13</sup> UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Guideline 9; European prison rules, rule 7; *Khlaifia and Others v. Italy*, cited above, § 161; *Z. and Others v. the United Kingdom* [GC], no. 29392/95, § 73, *Mubilanzila Mayeka and Kaniki Mitunga*, no. 13178/03, § 53 *O.M. v. Hungary*, no. 9912/15, § 53.

### *Permissible limitation of rights*

- B.4 There shall be no interference with the exercise by migrants of their fundamental rights except and only as may be provided for by the Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>14</sup>

### *Asylum application not a reason for detention*

- B.5 A migrant shall not be held in administrative detention for the sole reason of having made an application for asylum or any other form of international protection.<sup>15</sup>

### *Screening of vulnerable groups*

- B.6 Migrants should be screened to assess whether or not they are vulnerable. The screening shall take place during detention and, preferably, before the detention decision or order is made.<sup>16</sup> Appropriate protective action should be taken whenever a person is assessed as vulnerable.

### *Identification and assistance to victims of trafficking*

- B.7 Due diligence should be exercised by all relevant actors in identifying victims of trafficking among persons placed in administrative detention.<sup>17</sup> Should, as a result, victims of trafficking be identified in a closed detention centre, they should be released and offered a recovery and reflection period of at least 30 days, during which they shall be entitled to assistance, including appropriate accommodation, psychological and material assistance, access to emergency medical treatment, counselling and information, in particular as regards their legal rights and the services available to them.<sup>18</sup>

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<sup>14</sup> ECHR, Articles 5, and 8 to 11.

<sup>15</sup> Directive 2013/32/EC, Article 28(1) and Directive 2013/33/EU, Article 8(1); EU Regulation No 604/2013 – Dublin III, Article 28(1); UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Guidelines 1, 2, 4.1; UN Convention Relating to the Status of Refugees, Article 31; *Ilias and Ahmed v. Hungary*, no. 47287/15, § 64.

<sup>16</sup> Directive 2013/33/EU, Articles 11, 21, 22; Directive 2008/115/EC, Article 16(3); Return Handbook (October 2015), item 15.4.

<sup>17</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Article 10, paras. 1 and 2 and para. 127 of its Explanatory Report; *Rantsev v. Cyprus and Russia*, no. 25965/04.

<sup>18</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Article 12, paragraphs 1 and 2 and Article 13; Directive 2011/36 /EU on preventing and combatting trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA Article 11.



### *Facilities specifically designed for detention*

B.8 Migrants in administrative detention shall be accommodated in facilities that are specifically designed for the reasons for their detention<sup>19</sup> and offer material conditions and a regime that is appropriate to their legal situation and staffed by suitably qualified personnel.<sup>20</sup>

### *Detention free of discrimination*

B.9 The conditions under which migrants are held in administrative detention shall be free of any 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.<sup>21</sup>

### *Prohibition of holding in ordinary prison*

B.10 Migrants subject to an administrative detention decision or order shall not be held in an ordinary prison,<sup>22</sup> subject to principle B.11 below.

### *Holding in ordinary prison – exception*

B.11 Where, due to exceptional circumstances, it is necessary to hold migrants subject to an administrative detention decision or order in an ordinary prison, they shall be kept separated from prisoners and the conditions of their detention shall be subject to the European Rules on Conditions of Administrative Detention of Migrants.<sup>23</sup>

### *Detention in police detention facility*

B.12 Where it is necessary to hold migrants subject to an administrative detention decision or order in a police cell or other ordinary police detention facility, the period of detention shall be kept to a strict minimum and under no circumstances shall such persons be required to share a cell with a person suspected or convicted of a criminal offence.<sup>24</sup>

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<sup>19</sup> Directive 2008/115/EC, Article 16.1, Directive 2013/33/EC, Article 10(1).

<sup>20</sup> CPT, 7<sup>th</sup> General Report (CPT/Inf (97) 10), paragraph 29; 19<sup>th</sup> General Report (CPT/Inf(2009)27), paragraph 79; Report on the 2014 visit to Ireland (CPT/Inf(2015)38), paragraph 19.

<sup>21</sup> ECHR Article 14; EU Charter of Fundamental Rights, Article 23; Mandela Rules, Rule 2.1; European Prison Rules, Rule 13.

<sup>22</sup> Directive 2008/115/EC, Article 16.1; CPT, 19<sup>th</sup> General Report (CPT/Inf (2009) 27), paragraph 79; Report on the 2014 visit to Ireland (CPT/Inf(2015)38), paragraph 19; CM Recommendation Rec(2003)5, Principle 10.28 and 10.4.

<sup>23</sup> Twenty Guidelines on Forced Return, Guideline 10.4; CM Recommendation Rec(2003)5, Principle 10 last sentence) ; Directive 2008/115/EC, Article 16(1).

<sup>24</sup> CPT, 7<sup>th</sup> General Report CPT/Inf (97)10, paragraph 27; *Efremidze v. Greece*, no. 33225/08, § 41; *Horshill v Greece*, no. 70427/11, § 47.

## *Pregnant women*

- B. 13 Pregnant women should not be detained if the detention would harm their health or that of the child.<sup>25</sup> Arrangements shall be made for pregnant women to be able to give birth in a hospital outside the detention facility.<sup>26</sup> When exceptionally a child is born in administrative detention, the authorities shall provide all necessary support and facilities.<sup>27</sup> A child born in an administrative detention centre shall be registered free of charge and without delay immediately after birth in line with applicable national and international standards and issued with a birth certificate.<sup>28</sup> The birth certificate shall not mention that the child was born in detention.<sup>29</sup>

## *Children detention as last resort*

- B.14 Children shall not be held in administrative detention, except as a measure of last resort and for the shortest possible period of time, and after having established that other less coercive alternative measures cannot be applied effectively.<sup>30</sup> All efforts shall be made to release the detained children and place them in accommodation suitable for children.<sup>31</sup> In the case of children with adult family members, the authorities should verify that placement of the family with the children in administrative detention is a measure of last resort for which no alternative is available.<sup>32</sup>

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<sup>25</sup> UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-seekers and Alternatives to Detention, Guideline 9.3; Directive 2013/33, Article 11(1); Directive 2008/115, Article 3(9), Article 16(3).

<sup>26</sup> Mandela Rules, Rule 28.

<sup>27</sup> European Prison Rules, Rule 34.3.

<sup>28</sup> UN Convention on the Rights of the Child Article 7(1); ICCPR, Article 24(2); UNHCR ExCom, Conclusion on Refugee Children, No. 47 (XXXVIII) – 1987, para. (f) and (g); UN Human Rights Council, Resolution on Rights of the Child, 20 March 2012, A/HRC/19/L.31, paras. 16(c) and 29-30; UN Human Rights Council, Resolution on Action on Birth Registration and the Right of Everyone to Recognition Everywhere as a Person Before the Law, 15 March 2012, A/HRC/19/L.24, paras. 1-4; CM Recommendation Rec(2009)13 on the nationality of children, *IV, para 23*.

<sup>29</sup> Mandela Rules, Rule 28.

<sup>30</sup> CM Recommendation Rec(2003), Principle 20; Twenty Guidelines on Forced Return, Guideline 11.1; Directive 2008/115/EC Article 15(1), Article 17(1); Directive 2013/33, Article 11(2), 11(3); UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Guideline 9.2; UNHCR's position regarding the detention of refugee and migrant children in the migration context, January 2017; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, cited above, §§ 53-59, 101-102; *Popov v. France*, cited above; *Muskhadzhiyeva and Others v. Belgium*, no. 41442/07, §§ 73-75; *A.B. and Others v. France*, no. 11593/12, §§ 120,124; *R.M. and M.M. v. France*, no. 33201/11, §§ 83, 87; *A.M. and Others v. France*, no. 24587/12, §§ 64, 68; *R.K. and Others v. France*, no. 68264/14, §§ 82, 86; *R.C. and V.C. v. France*, no. 76491/14, §§ 52, 56.

<sup>31</sup> Directive 2013/33/EU, Article 11(2) and 11(3); CM Recommendation Rec(2003)5, Principle 22 second sentence; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, cited above, §§ 83, 103.

<sup>32</sup> *Popov v. France*, *ibid*; *Muskhadzhiyeva and Others v. Belgium*, *ibid*; *A.B. and Others v. France*, *ibid*; *R.M. and M.M. v. France*, *ibid*; *A.M. and Others v. France*, *ibid*; *R.K. v. France*, *ibid*; *R.C. v. France*, *ibid*; CM/Rec(2003)5, Principle 22 second sentence.

### *Best interest of the child*

B.15 Whenever a child is held in administrative detention, he or she shall be treated in a manner which takes into account the needs of children of his or her age.<sup>33</sup> The best interests of the child shall be a primary consideration in all actions.<sup>34</sup> The views of the child held in administrative detention shall be taken in consideration according to age and maturity.<sup>35</sup>

### *Age assessment procedure*

B.16 If the age of a migrant is disputed or uncertain and there are reasons to believe that he or she is a child, the migrant shall be presumed to be a child and shall be accorded special protection measures pending the conclusions of appropriate age assessment procedures.<sup>36</sup> If, once the age assessment procedure is completed, the authorities are still in doubt concerning the migrant's age, they shall assume that the migrant is a child.<sup>37</sup>

### *Unaccompanied children*

B.17 Concerning unaccompanied children, steps should be taken to trace the child's family members living in and outside the host State and notify them of the child's placement in detention.<sup>38</sup>

B.18 If detained, all efforts shall be made to release the unaccompanied child and place him or her in alternative and non-custodial care arrangements suitable for children, which might include residential homes and foster arrangements.<sup>39</sup> These arrangements should be appropriately staffed and take into account the needs of

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<sup>33</sup> UN Convention on the Rights of the Child, Articles 3(2) and 37 (c); ICCPR, Article 24(1) ; ICESCR, Article 10(3); EUCFR, Article 24(1); PACE Resolution 1810(2011), para. 5.2; *Rahimi v. Greece*, cited above, §108; *Popov v. France*, cited above, §§ 140, 147.

<sup>34</sup> Twenty Guidelines on forced return, Principle 11(5); Directive 2008/115/EC, Article 17(5); Directive 2013/33/EU, Article 11(2); UN Convention on the Rights of the Child, Article 3 (2) and Article 3 in conjunction with Article 22; EU Charter of Fundamental Rights of the European Union, 2012/C 326/02, Article 24 (2); PACE Resolution 1810 (2011), No 5.2.

<sup>35</sup> UN Convention on the Rights of the Child, Article 12(1); Directive 2013/33/EU Article 23 (2.d); PACE Resolution 1810 (2011), item 5.11; EU Charter of Fundamental Rights of the European Union, 2012/C 326/02, Article 24 (1), Directive 2013/32/EU, Article 25(6).

<sup>36</sup> Council of Europe Convention on Action against Trafficking in Human Beings Article 10, paragraph 3); Directive 2013/32/EU, Art. 25(5); PACE Resolution 1810(2011), No. 5.10; PACE Resolution 2020(2014), No. 9.4.

<sup>37</sup> Directive 2013/32/EU, Article 25(5), Committee on the Rights of the Child, General Comment No.6, para. 31.

<sup>38</sup> UN Convention on the Rights of the Child, Article 10, Article 22(2); Directive 2013/33/EU Article 24(3), PACE Resolution 1810 (2011), para. 5.12 and 5.14.

<sup>39</sup> Directive 2013/33/EU Article 11(2), Article 24(2)(d) ; *Mohamad v. Greece*, 70586/11 §§ 82-86.

children of their age.<sup>40</sup> They shall be accommodated separately from adults<sup>41</sup> and shall never be detained in prison accommodation.<sup>42</sup>

### *Competent guardian*

B.19 A competent guardian should be appointed to an unaccompanied child as soon as possible, in order to ensure that the child's best interests and overall well-being are protected and safeguarded.<sup>43</sup>

### *Migrants with severe impairments or disabilities*

B.20 As a general rule, migrants with severe<sup>44</sup> long-term physical, mental, intellectual and sensory impairments should not be detained.<sup>45</sup>

## **Part C – Legal Remedies**

The rules in this part relate to the legal remedies for migrants held in administrative detention in application of laws relating to migration and asylum.

### *Right to challenge the lawfulness of detention*

C.1 Migrants in administrative detention shall have the right to challenge the lawfulness of detention, including the conditions of detention, before an independent judicial authority.<sup>46</sup>

C.2 Migrants in administrative detention shall be informed of their right to challenge the lawfulness of detention.<sup>47</sup>

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<sup>40</sup> Directive 2013/33/EU, Article 11(3), Directive 2008/115/EC, Article 17(4); CPT, Report on the 2013 visit to Cyprus (CPT/Inf(2014)31, paragraph 35, Report on the 2014 visit to Denmark (CPT/Inf(2014)25), paragraph 77; CM Recommendation Rec(2003)5, principles 22 and 23); PACE Resolution 1810 (2011) para. 5.9.

<sup>41</sup> Directive 2013/33/EU Article 11(3); PACE Resolution 1810 (2011), para. 5.9.

<sup>42</sup> Directive 2013/33/EU Article 11(3).

<sup>43</sup> Directive 2013/32/EU, Article 25(1)a; Directive 2013/33/EU, Article 24(1), EU Charter of Fundamental Rights, Article 26; Committee on the Rights of the Child, General Comment No. 6, paras. 21, 33; PACE Resolution 1810(2011), para. 5.5; EU Fundamental Rights Agency – European Commission, *Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, EU Publications Office: Luxembourg, June 2014, pp. 15-16; PACE Resolution 1810(2011) para. 5.5; UN Committee on the Rights of the Child, General Comment No 6 (2005), paras 21 and 33; UNHCR Detention Guidelines (Guideline 9.2 para.56).; *Rahimi v. Greece*, cited above, §§ 88-94.

<sup>44</sup> See *Tekin Yildiz v Turkey*, no. 22913/04 §72.

<sup>45</sup> UN Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Guideline 9.5.

<sup>46</sup> ECHR, Article 5§4; Directive 2008/115/EC, Article 15; Directive 2013/33/EU, Article 9; Directive 2013/32/EU art. 26; EU Charter of Fundamental Rights, Article 47, UN Universal Declaration of Human Rights, Article 8; International Covenant on Civil and Political Rights, Article 9((4)); Twenty Guidelines on forced return, Guideline 9; PACE Resolution 1707(2010), item 9.2.10; CCPR General Comment No. 35, Article 9, para. 18.

<sup>47</sup> Directive 2013/33/EU article 9 (4); Twenty Guidelines on forced return, Principle 6.2, PACE Resolution 1509 (2006) para. 12.5.

C.3 Judicial review shall be as speedy as possible after the launch of the relevant proceedings either on application by the migrant or ex officio.<sup>48</sup>

#### *Review of detention*

C.4 The continuing appropriateness and lawfulness of a migrant being held in administrative detention shall be reviewed at regular intervals of reasonable length,<sup>49</sup> either on application by the migrant concerned or ex officio,<sup>50</sup> by a competent administrative or judicial authority and, in the case of prolonged periods of detention, supervised by a judicial authority.<sup>51</sup>

#### *Access to legal advice and representation*

C.5 Migrants in administrative detention shall have the right to legal assistance and representation<sup>52</sup> and the relevant authority shall provide them with all reasonable facilities for gaining access to such services.<sup>53</sup> Legal advice shall be provided in a language the migrant understands or is reasonably presumed to understand.<sup>54</sup>

Migrants in administrative detention may consult on any legal matter with a legal adviser of their own choice and on their own expenses.<sup>55</sup>

C.6 Unaccompanied children should be provided with a legal representative free of charge.<sup>56</sup>

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<sup>48</sup> Directive 2008/115/EC, Article 15(2), Directive 2013/33/EU art. 9.3 ; *Suso Musa v. Malta*, no. 42337/12, § 51.

<sup>49</sup> Directive 2008/115/EC, 15.3; Directive 2013/33/EU Article 9.5, PACE Resolution 1707(2010), item 9.3; PACE Resolution 1521(2006), item 16.5; PACE Resolution 1707(2010), item 9.2.10; UNHCR (Guideline 7.v); Detention Guidelines (Principle 7.v); *Herczegfalvy v. Austria*, no. 10533/83, §75; *Magalhaes Pereira v. Portugal*, no. 44872/98, §41.

<sup>50</sup> Directive 2008/115/EC, Article 15(3); Directive 2013/33/EU, Article 9(5); PACE Resolution 1707(2010) items 9.2.10, 9.3.3.) ; PACE Resolution 1521(2006) (item 16.6) ; UNHCR Detention Guideline 7 para 47(v).

<sup>51</sup> Directive 2008/115/EC, Article 15(3); Directive 2013/33, Article 9(5); Twenty Guidelines on forced return, Principle 8.2; CCPR General Comment No. 35, Article 9 ; UNHCR Detention Guideline 3 para. 17.

<sup>52</sup> Directive 2013/33/EU, Article 9(6); Directive 2008/115/EC, Article 13(3-4); UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 17; UN Convention relating to the Status of Refugees, Article 23; Regulation (EU) 604/2013, Article 27(6); UNHCR Detention Guideline 3 para. 17.

<sup>53</sup> European Prison Rules, Rule 23.1.

<sup>54</sup> UNHCR Detention Guidelines (Guideline 7), para. 47 (i) ; *Čonka v. Belgium*, no. 51564/99, § 44; UN Body of Principles for the Detention of All Persons under Any Form of Detention or Imprisonment, Principle 14; Directive 2008/115/EC, Article 13(3); Directive 2013/32/EU, Articles 8, 12(1)(b), 15(3)(c), 17(3), 46(7)(a); The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Rule 2.1

<sup>55</sup> European Prison Rules, Rule 23.2.

<sup>56</sup> UN Committee on the Rights of the Child, General Comment No. 6 (2005), paras. 33-38 and 69; as well as by the CPT (see 19th General Report CPT/Inf (2009) 27, para. 98).

- C.7 Access to legal assistance shall include the right to speak in private with a lawyer or other suitably qualified person.<sup>57</sup> Consultations and other communications, including correspondence about legal matters, between migrants in administrative detention and their legal advisers shall be confidential.<sup>58</sup>
- C.8 Access to legal assistance shall include representation by a lawyer or other suitably qualified person in hearings before judicial or administrative authorities in determination of any issue arising out of the migrant's administrative detention, including the legality of the detention and the initial detention decision or order as well as the conditions of detention.<sup>59</sup>
- The migrant shall also have the opportunity to be legally represented at formal interviews ("*auditions*") with the relevant authority, the outcome of which may result in material or significant changes in the migrant's conditions of detention.<sup>60</sup>
- C.9 Migrants in administrative detention shall have access to free legal assistance and representation. This may be subject to conditions of resources<sup>61</sup> and/or the payment of a financial contribution to the cost of the legal services provided that such condition or requirement of a financial contribution does not arbitrarily restrict access to legal assistance and representation.<sup>62</sup>
- C.10 Any lawyer or other suitably qualified person appointed to represent a migrant in administrative detention shall be informed in advance by the relevant authority of any formal interview ("*auditions*") with the migrant, the outcome of which may result in material or significant changes in the migrant's conditions of detention.<sup>63</sup>

#### *Procedures on requests and complaints*

- C.11 Procedures on requests and complaints should be accessible for all migrants in administrative detention, paying attention to the particular needs of children,<sup>64</sup> migrants with disabilities and other migrants in a situation of vulnerability.<sup>65</sup>

<sup>57</sup> Directive 2013/33/EU Art. 10.4; CPT, 13th General Report (CPT/Inf (2003) 35), para 81 and 82; 7th General Report (CPT (97) 10), para. 31.

<sup>58</sup> Mandela rules, Rule 61; UNHCR Detention Guidelines (Guideline 7), para. 47 (ii).

<sup>59</sup> Directive 2013/33/EU, Article 9(6) ; Directive 2008/155/EC, Article 13(3); Directive 2013/32/EU, Articles 21(2)3) (22).

<sup>60</sup> CPT, 19<sup>th</sup> General Report (CPT/Inf (2009) 27), paragraph 86; Directive 2013/33/EU art. 9.6.

<sup>61</sup> UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 17; EU Directive 2013 article 9.7.

<sup>62</sup> UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 17.1; Directive 2013/33/EU, Article 9(8)(a) ; UNHCR, Guidelines, Guideline 7, par. 47(ii) ; Directive 2013/32/EU, Article 46, Regulation (EU) No 604/2013, Article 27(6).

<sup>63</sup> UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 17.1; Directive 2013/33/EU article 9.6.

<sup>64</sup> Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (Part V item d); The United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("The Havana Rules", 1990), paras.75-78; CPT, Report on the 2014 visit to "The former Yugoslav Republic of Macedonia" (CPT/Inf(2016)8), paragraph 134.

<sup>65</sup> UNHCR Detention Guidelines (Guideline 9.5).

- C.12 Migrants in administrative detention shall have the right to make complaints, to be heard in the course of their investigation directly or through a representative, and to be protected from any reprisals for having lodged a complaint or for having provided evidence in support of any such complaint.<sup>66</sup>
- C.13 If a request or complaint is rejected, reasons shall be given and the migrant concerned shall have the right to appeal to an independent authority.<sup>67</sup>
- C.14 These rights should be enjoyed by children independently of any adult family members that may be accompanying them.<sup>68</sup>

## Part D – Detention Procedures

The rules in this part relate to the procedures that shall apply to migrants held in administrative detention in application of laws relating to migration and asylum.

### *Lawful grounds for detention*

- D.1 All procedures relating to the administrative detention of migrants shall be prescribed by law,<sup>69</sup> and the detention itself shall be lawful, proportionate and not arbitrary<sup>70</sup>. Detention shall be ordered by a judicial or administrative authority.<sup>71</sup> The detention decision or order shall state the reasons in fact and in law on which it is based.<sup>72</sup>
- D.2 Migrants in administrative detention shall only be detained for as short a period as possible and for only so long as strictly necessary. They shall be released as soon as the reasons for their detention cease to apply.<sup>73</sup> In no case shall the detention be for an unlimited period of time.
- D.3 A migrant may only be held in administrative detention after full consideration has been given by the competent authorities to the possibility of having recourse to less coercive alternative and non-custodial measures.<sup>74</sup> The individual circumstances of the migrant, especially his or her vulnerability, shall be taken into consideration.<sup>75</sup>

<sup>66</sup> Bangkok Rules, Rule 25,1; Mandela Rules, Rule 56.

<sup>67</sup> European Prison Rules, Rule 70.3; UNHCR Guidelines, Guideline 8 para 48 (xv); UN Body of Principles, Principle 33.4.

<sup>68</sup> UN Convention on the Rights of the Child, Article 19.

<sup>69</sup> ECHR, Article 5; Twenty Guidelines on Forced Return, Guideline n° 6; Directive 2013/33/EC, Article 8(3).

<sup>70</sup> PACE Resolution 1707(2010), items 9.1.3, 9.1.5, 9.1.7

<sup>71</sup> Directive 2008/115/EC, Article 15(2) ; Directive 2013/33/EU, Article 9(2).

<sup>72</sup> UNHCR Guidelines, Guidelines 4 and 4.2 ; Directive 2013/33/EU art. 9.2; Directive 2008/115/EU art. 15.5; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 10; *Ilias and Ahmed v. Hungary*, cited above, §§ 67-68; *Khlaifia and Others v. Italy*, cited above, § 105; *Lokpo and Touré v. Hungary*, 10816/10, §§ 23-24 (concerning the prolongation of the applicants' detention).

<sup>73</sup> Directive 2013/33/EU, Article 9; Directive 2008/155/EC, Article 15(1), 15.4, 15.5 and 15(6); Regulation (EU) No 604/2013, Article 28(3).

<sup>74</sup> Twenty Guidelines on Forced return, Guideline 6.1; CM Recommendation Rec (2003)5, Principle 6; Directive 2008/115/EC, Articles 7(3) and 15(1), Directive 2013/33/EU (Articles 8(2) and 8(4)).

<sup>75</sup> Directive 2013/33/EU Article 8.2.

### *Procedures on reception*

D.4 On arrival in an administrative detention facility, the following information relating to the migrant shall be recorded:<sup>76</sup>

- Identity, confirmed or presumed;
- Date and hour of admission;
- An inventory of the migrant's possessions, including an indication of those that are retained for safekeeping.

D.5 On arrival in an administrative detention facility, the detained migrant shall be informed of the internal rules of the facility and of his or her rights and duties.<sup>77</sup> The information shall be communicated orally in a language and manner the migrant understands or is reasonably presumed to understand and in writing.<sup>78</sup>

### *Information on rights and obligations*

D.6 Migrants in administrative detention shall be informed promptly, in a language they understand or are reasonably presumed to understand, of the legal and factual reasons for their detention and the procedures laid down in national law for challenging the detention decision or order<sup>79</sup>, as well as of the possibility to request free legal assistance and representation. They shall also be informed of their right to communicate, if they wish, with the consular authorities of their country<sup>80</sup> and/or other person of their choice in order to inform them of their situation.<sup>81</sup>

### *Access to asylum and other procedures*

D.7 The fact of being held in administrative detention shall not be an obstacle to a migrant submitting and pursuing a claim for asylum<sup>82</sup> or a claim for any other form of international protection. Asylum applications from such migrants should be given priority.<sup>83</sup>

### *Access to third party assistance*

D.8 Migrants in administrative detention shall have access to the United Nations High Commissioner for Refugees (UNHCR), consular assistance from their national authorities, and assistance from national and international organisations and bodies

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<sup>76</sup> European Prison Rules, Rule 15.1; Mandela Rules, Rule 7, (a), (c) and (e).

<sup>77</sup> European Prison Rules, Rule 30.1, Twenty Guidelines on Forced Return, Guideline 10.7; Directive 2008/115/EC, Article 16(5), Directive 2013/33/EU, Article 10(5); Mandela Rules, rule 54.

<sup>78</sup> European Prison Rules, Rule 30. 1 and 2; CPT, Report on the 2006 visit to Romania (CPT/Inf(2008)41), paragraph 61, Report on the 2007 visit to the Netherlands (Antilles) (CPT/Inf(2008)2), paragraph 36.

<sup>79</sup> Twenty Guidelines on forced return, Principle 6.2.

<sup>80</sup> Mandela Rules, Rule 62,2, European Prison Rules, Rule 37,1.

<sup>81</sup> Directive 2008/115/EC, Article 15(2), 16(2), 16(5), Directive 2013/33/EU, Articles 9(2), 9(4) and 10(5); CPT, 19th General Report (CPT/Inf (2009) 27), para. 86.

<sup>82</sup> CM Recommendation Rec(2003)5, Principle 7; EU Charter of Fundamental Rights, Article 18; Regulation (EU) No. 604/2013, Article 3(1); ); Directive 2013/32/EU art. 8; Universal Declaration of Human Rights, Article 14; UNHCR Detention Guidelines, Guideline 1.

<sup>83</sup> CM Recommendation Rec(2003)5, Principle 8.



as well as non-governmental organisations recognised by the States concerned working with migrants.<sup>84</sup>

## Part E - Communication with the outside world

The rules in this part relate to the communication of migrants held in administrative detention in application of laws relating to migration and asylum with the outside world.

E.1 Migrants in administrative detention shall be allowed to communicate, both orally and in writing, as often as possible, with any person of their choice.<sup>85</sup>

Unaccompanied children should be able to maintain contact with their family through correspondence and visits, except if contrary to the best interest of the child.<sup>86</sup> Where separation of a child or children from their parents is unavoidable in the context of detention, both parents and child are entitled to essential information from the State on the whereabouts of the other unless contrary to the best interest of the child.<sup>87</sup>

E.2 Communications between migrants in administrative detention and the outside world shall not be monitored or censored, except where such measures are in accordance with law and are necessary in a democratic society in the interests of national security, public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.<sup>88</sup>

E.3 Migrants in administrative detention shall be allowed to receive visits from family members,<sup>89</sup> legal representatives, national and international non-governmental and intergovernmental organisations,<sup>90</sup> competent consular officials and any person of their choice, and in conditions that respect privacy.<sup>91</sup> Children should have the opportunity to make regular contact with and receive visits from social workers<sup>92</sup> and their guardian.<sup>93</sup> Limits may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the detention facility, provided the visits are not thereby severely restricted or

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<sup>84</sup> UNHCR Guidelines, (Guideline 7, para 47 (vii)); Directive 2013/33/EU, Article 5(1), 10(3) and 10(4); Directive 2008/115/EC, Articles 16(2), 16(4) and 16(5); PACE Resolution 1509 (2006), item 12.6; PACE Resolution 1521 (2006), item 16.5; CPT, 19<sup>th</sup> General Report (CPT/Inf(2009)27), para. 83; CM Recommendation Rec(2003)5, Principle 16; UN, Body of Principles, Principle 33; CM Recommendation Rec(2003)5, Principle 16 ; PACE Resolution 1707(2010), item 9.2.8.

<sup>85</sup> European Prison Rules, Rule 24.1.

<sup>86</sup> UN Convention on the Rights of the Child, Article 9(4) and Article 37(c); Committee on the Rights of the Child, General Comment No. 6 (2005): Treatment of unaccompanied and separated children outside their country of origin, para. 63; Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (17 November 2010) (IV. A, 6. Deprivation of liberty part 21 (a).

<sup>87</sup> UN Convention on the Rights of the Child, Article 9(4).

<sup>88</sup> ECHR, Article 8

<sup>89</sup> Directive 2013/33 art. 10.4; European Prison Rules, Rule 24.1.

<sup>90</sup> Directive 2013/33/EU, Article 10(4); Directive 2008/115/EC, Article 16(4).

<sup>91</sup> Directive 2013/33/EU, Article 10(4); CPT, Report on the 2011 visit to the Netherlands, para 72; PACE Resolution 1707 (2010) item 9.2.8; CM Recommendation Rec(2003)5, Principle 18, PACE Resolution 1637(2008) no. 9.9.

<sup>92</sup> CPT, 19th General Report (CPT/Inf (2009) 27), paragraph 99.

<sup>93</sup> UN CRC, General Comment No.6 (2005): Treatment of unaccompanied and separated children outside their country of origin, para 63.

rendered impossible.<sup>94</sup> In the case of women who have suffered domestic violence, they should be informed of their right to refuse a visit.<sup>95</sup>

- E.4 Representatives of the United Nations High Commissioner for Refugees shall have the right to communicate with and visit migrants in administrative detention who have made applications for asylum or other international protection, or who may wish to make such an application.<sup>96</sup> That possibility shall also apply to an organisation which is working on the territory of the State concerned on behalf of the UNHCR pursuant to an agreement with that State.<sup>97</sup>
- E.5 Authorized bodies responsible for identifying victims of trafficking and victims of torture or of inhuman or degrading treatment or punishment should have access to administrative detention facilities for the purposes of carrying out the necessary identification and procedures.<sup>98</sup>

## Part F - Material conditions

The rules in this part relate to the material conditions for migrants held in administrative detention in application of laws relating to migration and asylum.

### *Accommodation*

- F.1 Accommodation for migrants in administrative detention shall respect human dignity and, so far as possible, their privacy.<sup>99</sup>
- F.2 Accommodation shall be adequately furnished, clean and in a good state of repair at all times.<sup>100</sup> It should have natural light and allow circulation of fresh air. Adequate heating and/or cooling suitable to climatic conditions should be provided.<sup>101</sup>

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<sup>94</sup> Directive 2013/33/EU, Article 10(4); CPT, Report on the 2014 visit to the Czech Republic (CPT/Inf(2015)18), paragraph 41, Report on the 2011 visit to the Netherlands (CPT/Inf(2012)21), paragraph 72, Report on the 2009 visit to Hungary (CPT/Inf(2010)16), paragraph 44 and Report on the 2009 visit to Austria (CPT/Inf(2010)5), paragraph 49); *Kurkowski v. Poland*, no. 36228/06, §§ 100-105.

<sup>95</sup> Bangkok Rules, Rule 44.

<sup>96</sup> Directive 2013/33/EU, Article 10(3) ; Directive 2013/32/EU art. 8 ; UNHCR Guidelines, Guideline 7 para 47 (vii), Guideline 8 para 48 (vii); European Prison Rules par. 37; Directive 2013/33/EU Art.10.3, 18.2 (c).

<sup>97</sup> Directive 2013/33/EU, Article 10(3) and 18.2 (b) ; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 16(2); UNHCR Guidelines (Guideline 7) para 47 (vii); CPT/Inf(97) 10 §31; CPT/Inf(2009) 27 §83, 87.

<sup>98</sup> Convention on Action against trafficking in human beings, Article 10; para. 127 of the Explanatory Report to the Convention.

<sup>99</sup> European Prison Rules, Rule 18.1; CPT, Report on the 2011 visit to Greece (CPT/Inf(2012)1), paragraph 38, Report on the 1993 visit to Belgium (CPT/Inf(94)15), paragraph 253.

<sup>100</sup> Twenty Guidelines on Forced Return, Guideline 10.2 (first sentence); European Prison Rules, Rules 19.1 and 2; CPT, Report on the 2014 visit to “the former Yugoslav Republic of Macedonia” (CPT/Inf(2016)8), paragraph 113; Mandela Rules, Rule 17.

<sup>101</sup> Mandela Rules, Rules 13 and 14; European Prison Rules, rule 18.2,(a).

- F.3 Accommodation shall offer sufficient living space for the number of migrants held in the facility.<sup>102</sup> Maximum limits shall be set for the number of migrants required to share sleeping accommodation.
- F.4 The design and layout of the closed detention centres shall avoid, so far as possible, a prison-like environment.<sup>103</sup>
- F.5 Men and women shall not be required to share accommodation, particularly sleeping accommodation and sanitary facilities, with members of the opposite sex unless the latter are family members and all individuals concerned consent thereto.<sup>104</sup>
- F.6 The principle of family unity shall be respected.<sup>105</sup> Family members shall be accommodated together<sup>106</sup> and provided with distinct accommodation guaranteeing adequate privacy.<sup>107</sup> Children shall not be separated from other members of their family also held in administrative detention<sup>108</sup> except when such separation is in the best interests of the child.
- F.7 Children shall be accommodated separately from unrelated adults.<sup>109</sup> Accommodation should be adequate for their needs and according to their age.<sup>110</sup>
- F.8 Procedures and physical facilities of detention centres should be appropriately adapted, and in so far as is reasonably possible, to reflect the specific needs of migrants with disabilities and ensure assistance with their daily routine, their autonomy, comfort and dignity. Where exceptionally, it is necessary to detain a migrant for whose disability the detention centre is not specifically adapted, special arrangements should be made to assure the migrant's comfort in accordance with international standards.<sup>111</sup>

<sup>102</sup> Twenty Guidelines on Forced Return, Guideline 10.2 (first sentence).

<sup>103</sup> Twenty Guidelines on Forced Return, Guideline 10.2(second sentence); PACE Resolution 1707(2010) item 9.2.2.

<sup>104</sup> Directive 2013/33/EU, Article 11(5).

<sup>105</sup> UN Convention on the Rights of the Child Article 10; Directive 2013/33/EU, Article 12; Directive 2008/115/EC, Article 14(1)(a), Article 17(5); ECHR, Article 8; *A.B. and Others v. France*, cited above; *R.M. and M.M. v. France*, cited above; *A.M. and Others v. France*, cited above; *R.K. and Others v. France*, cited above; *R.C. and V.C. v. France*, cited above; *Popov v. France*, cited above.

<sup>106</sup> Twenty Guidelines on Forced Return, Guideline 10.4 last sentence,11.2; CM Recommendation Rec (2003) 5, Principle 21; UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-seekers and Alternatives to Detention, Guideline 8, paragraph 48 (v); Directive 2008/115/EC, Article 17(2); Directive 2013/33/EU, Article 11(4)-(5).

<sup>107</sup> Directive 2013/33/EU, Article 11(4), Directive 2008/115/EC, Article 17.2; Twenty Guidelines on Forced Return, Guideline 11.2.

<sup>108</sup> UN Convention on the Rights of the Child, Article 9(1). CM Recommendation Rec(2003)5, Principle 21; CPT 19th General Report [CPT/Inf (2009) 27, para. 100; Directive 2008/115/EC Article 17),Directive 2013/33/EU (Reception Conditions Directive) (Article 11.4.).

<sup>109</sup> Directive 2013/33/EU, Article 11(3), PACE Resolution 1810 (2011), para. 5.9; PACE Resolution 1810 (2011), item 5.9 last sentence.

<sup>110</sup> Directive 2008/115/EC, Article 17(4).

<sup>111</sup> *Asalya v. Turkey*, no. 43875/09, § 50; UN Convention on the Rights of Persons with Disabilities, Article 14 (2); Interim Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, submitted on 28 July 2008 by the Office of the United Nations High Commissioner for Human Rights to the 63rd session of the General Assembly of the UN (A/63/175), paras. 50 and 54; see also, mutatis mutandis, ECtHR, *Zarzycki v. Poland* No. 15351/03);

### *Food & drinking water*

- F.9 Migrants in administrative detention shall be provided with a nutritious diet, comprising three meals a day served at reasonable intervals, and prepared and served hygienically.<sup>112</sup> The food shall be appropriate to the detainee's age, health and, so far as possible, religious<sup>113</sup> and cultural background. Pregnant and breastfeeding women should be entitled to a special diet free of charge.<sup>114</sup>
- F.10 Drinking water shall be available at all times within the detention facility.<sup>115</sup>
- F.11 Migrants in administrative detention 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.<sup>116</sup>

### *Sanitation & hygiene*

- F.12 Migrants in administrative detention shall have access to sanitary facilities that are hygienic and respect privacy<sup>117</sup> and take into account the specific needs of women and men, as well as of babies and small children.<sup>118</sup> Migrants should be provided with a basic sanitary kit, free of charge.<sup>119</sup> Women must have access to sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of women and children.<sup>120</sup>
- F.13 Washing facilities, with hot and cold water, and toilet facilities shall be sufficient for the number of migrants held in the administrative detention facility in order to ensure adequate standards of personal and general hygiene, as well as privacy.<sup>121</sup>

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UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Guideline 9.5. More generally, EU Charter of Fundamental Rights, Article 26.

<sup>112</sup> European Prison Rules, Rules 22.1; 22,3 and 22,4.

<sup>113</sup> UNHCR Detention Guidelines, Guideline 8, para 48 (xi); Mandela Rules, Rule 3.

<sup>114</sup> UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Guideline 8, para. 48 (xi).

<sup>115</sup> European Prison Rules, Rule 22.5; Mandela Rules, Rule 22.2.

<sup>116</sup> European Prison Rules, Rule 31.5.

<sup>117</sup> European Prison Rules, rule 19.3; Mandela rules, rule 15.

<sup>118</sup> CPT standards (see, for instance, Report on the 2014 visit to "the former Yugoslav Republic of Macedonia", para. 120); *Melnītis v. Latvia*, no. 30779/05, § 76-77.

<sup>119</sup> CPT standards (see, Greece: 2011 visit, § 38; and The former Yugoslav Republic of Macedonia: 2014 visit, § 120); see, *Melnītis v. Latvia*, *ibid.*

<sup>120</sup> Bangkok rules, Rule 5.

<sup>121</sup> European Prison Rules, Rule 19.4; UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, Guideline 8, para. 48 (x); Mandela Rules, Rule 16.

### *Clothing and bedding*

- F.14 Migrants in administrative detention shall be allowed to wear their own clothing provided it is clean and in good repair, and otherwise dress in such manner as they wish provided it does not interfere with the order and security in the institution.<sup>122</sup> Wherever necessary, appropriate clothing shall be made available to them.<sup>123</sup>
- F. 15 Migrants in administrative detention shall have access to a laundry and be provided with cleaning products for washing their clothes on a regular basis. They should also have the possibility to repair their clothes as necessary.<sup>124</sup>
- F.16 Migrants in administrative detention shall have access to clean bed-sheets and blankets/quilts free of charge.<sup>125</sup>

### *Cash & personal possessions*

- F. 17 Secure facilities under the responsibility of the administration shall be available to migrants in administrative detention for the storage of their cash and personal possessions.<sup>126</sup>

### *Special situations*

- F.18 Where it is necessary, for reasons beyond the control of the authorities, to detain a migrant subject to an administrative detention decision or order in any place that is not specifically designed for the purpose, all steps shall be taken to ensure that it is for as short a period of time as possible and that for so long as it continues the migrant is provided with meals, health care, and suitable means for sleeping; has access to suitably equipped sanitary and washing facilities; is able to exercise in the open air on a daily basis; and, if the migrant is detained whilst travelling, access is given to his or her luggage and other personal possessions,<sup>127</sup> except for reasons of public safety and security.<sup>128</sup>

## **Part G – Personal development**

The rules set out in this part relate to access to and participation in activities of personal developments by migrants held in administrative detention in application of laws relating to migration and asylum.

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<sup>122</sup> European Prison Rules, rule 97.2.

<sup>123</sup> European Prison Rules, rule 20.1.

<sup>124</sup> CPT, Report on the 2007 visit to Croatia (CPT/Inf(2008)29), paragraph 35, European Prison Rules, rule 19.6.

<sup>125</sup> European Prison Rules, Rule 21; Mandela Rules, Rule 21.

<sup>126</sup> Mandela Rules, Rule 67.1; European Prison Rules, Rule 31.7.

<sup>127</sup> CPT, 7th General Report (CPT (97) 10), paragraph 26.

<sup>128</sup> ECHR case law on confinement in transit zones (*Amuur v. France*; *Shamsa v. Poland*; *Mogoş and Others v. Romania* (dec.); *Mahdid and Haddar v. Austria* (dec.); and *Riad and Idiab v. Belgium*).

## *Freedom of movement*

G.1 Migrants in administrative detention shall be at liberty to move freely within the detention facility. Restrictions<sup>129</sup> to their freedom of movement within the detention facility should only be such strictly necessary to maintain good order by taking into account the requirements of security, safety and discipline.<sup>130</sup>

## *Activities, outdoor exercise, leisure, and education*

G.2 Migrants in administrative detention shall have daily access to the open air<sup>131</sup> and access to indoor exercise, a day room and recreational activities, as well as to the internet, press, radio and television.<sup>132</sup> These activities and facilities shall cater for the needs of both women and men on an equal footing and in the case of children, be appropriate to their age.<sup>133</sup> Access to internet shall be subject only to limitations prescribed by articles 8 and 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which are necessary.<sup>134</sup>

G.3 Migrants in administrative detention should have access to a range of purposeful activities according to the length of the detention.<sup>135</sup>

G.4 Children should have access to education.<sup>136</sup> The form and content of the education may be subject to the length of the child's anticipated detention.<sup>137</sup>

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<sup>129</sup> Article 2 of Protocol no. 4 to the ECHR; CPT's 19<sup>th</sup> General report, § 79.

<sup>130</sup> 7<sup>th</sup> General Report of the CPT, para.29.

<sup>131</sup> Directive 2013/33/EU, Article 10(2); *Popov v. France*, cited above, §95.

<sup>132</sup> CPT, 7<sup>th</sup> General Report (CPT/Inf(97)10), paragraph 29, Report on the 2014 visit to Denmark (CPT/Inf(2014)25), paragraph 82, Report on the 2014 visit to "the former Yugoslav Republic of Macedonia" (CPT/Inf(2016)8), paragraph 133; UNHCR Detention Guidelines, Guideline 8 para 48 (xii); European Prison Rules, Rule 24.10; European Convention on Human Rights, Article 10.

<sup>133</sup> CPT, 10<sup>th</sup> General Report (CPT/Inf (2000) 13), paragraph 25; UN Convention on the Rights of the Child, Article 31(1), Directive 2008/115/EC, Article 17(3).

<sup>134</sup> Case-law of the European Court of Human Rights, see *Janovskis v. Lithuania*, no. 21575/08, judgment of 17 January 2017, and *Kalda v. Estonia*, no. 17419/10, judgment of 19 January 2016.

<sup>135</sup> CPT, 7<sup>th</sup> General Report (CPT/Inf(97)10), paragraph 29; Report on the 2013 visit to Cyprus (CPT/Inf(2014)31), paragraph 45; UNHCR Detention Guidelines (Guideline 8) para 48 (viii, xii, xiii).

<sup>136</sup> UN Convention on the Rights of the Child, Article 31; UNHCR, Guidelines on Determining the Best Interests of the Child, May 2008; see also CPT, 19<sup>th</sup> General Report (CPT/Inf (2009) 27); and on international safeguards for children in situation of detention see Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 March 2015, A/HRC/28/68.

<sup>137</sup> Twenty Guidelines on Forced Return, guideline 11.3; Directive 2008/115/EC Article 17(3); Committee on the Rights of the Child, General Comment No. 6 (2005), para. 63; UN Rules for the protection of juveniles deprived of their liberty (adopted by UNGA Res. 45/113 of 14 December 1990), para. 38.

## *Religion*

G.5 The right of migrants to freedom of thought, conscience and religion shall be fully protected in administrative detention facilities.<sup>138</sup> Migrants shall be able to practise their religion, either alone or in groups, participate in religious services, and wear clothing or display items of religious significance.<sup>139</sup> Freedom to manifest the migrant's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.<sup>140</sup>

## **Part H – Health Care**

The rules in this part relate to the provision of health care and medical services to migrants held in administrative detention in application of laws relating to migration and asylum.

### *General conditions*

H.1 Migrants in administrative detention shall receive the necessary health care which shall include, at least, emergency health care and essential treatment of illness and of serious mental disorders, carried out by qualified health practitioners. Where there is a disability, or other medical or mental health concern,<sup>141</sup> appropriate care and treatment shall be provided.<sup>142</sup> Regular monitoring<sup>143</sup> and adequate support shall be provided to vulnerable migrants taking into account their particular situation.<sup>144</sup> Assessments may be undertaken even where the migrant does not present any signs or symptoms of illness upon arrival.

This health care shall be appropriate to gender specific needs.<sup>145</sup>

H.2 Detainees with disabilities should be assessed as to their medical needs and swiftly and systematically identified on arrival at the closed detention centre.<sup>146</sup>

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<sup>138</sup> ECHR, Article 9; European Prison Rules, Rule 29.1.

<sup>139</sup> CPT, Report on the 2014 visit to “the former Yugoslav Republic of Macedonia” (CPT/Inf(2016)8), paragraph 120; ICCPR 18; UN Convention Relating to the Status of Refugees, Article 4; UNHCR Detention Guidelines, Guideline 8, para 48 (ix).

<sup>140</sup> ECHR, Article 9(2)

<sup>141</sup> CPT, 19th General Report (CPT/Inf (2009) 27), paragraphs 90 and 91, Report on its 2014 visit to Finland (CPT/(2015)25), paragraphs 35 and 36; Recommendation CommDH (2001)19 of the Commissioner for Human Rights (Recommendation 8).

<sup>142</sup> UNHCR Guidelines, Guideline 8, pg. 48 (vi); CPT 19th General Report (2009), para. 90; CPT 10<sup>th</sup> General Report (2000), para. 32 ; Directive 2013/33/EU, Article 11(1); PACE Resolution 1509(2006), No. 12.4 last sentence; PACE Resolution 1637(2008), item 9.13; Recommendation CommDH (2001)19 of the Commissioner for Human Rights, Recommendation 8.

<sup>143</sup> UNHCR Detention Guideline (Guideline 7) para 47 (iv).

<sup>144</sup> Directive 2013/33/EU, Article 11(1) ; UNHCR Detention Guideline ( Guideline 7) para 47 (iv).

<sup>145</sup> Directive 2013/33/EU, Article 19 ; CPT, 10th General Report (CPT/Inf(2000)13), paras. 32 and 33); UNHCR Detention Guidelines (Guideline 9.3).

<sup>146</sup> UNHCR Detention Guidelines, Guideline 9.5 para 63.

- H.3 Counselling services shall be available to migrants in administrative detention, particularly in cases of vulnerability.<sup>147</sup>
- H.4 Particular efforts shall be made to provide migrants who have been subject to physical or mental or sexual abuse, torture or ill-treatment,<sup>148</sup> whether prior to detention or whilst detained, with appropriate medical advice, counselling and with the necessary physical and mental health-care.<sup>149</sup>
- H.5 Only health staff shall be present during medical examinations unless it is of the view that exceptional circumstances exist or it requests a staff member of the detention centre to be present for security reasons.<sup>150</sup> If it is necessary for non-health staff to be present during medical examinations, such staff should be of the same gender as the detained migrant and examinations shall be carried out in a manner that safeguards privacy, dignity and confidentiality.<sup>151</sup>
- H.6 Arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency.<sup>152</sup>
- H.7 Migrants in administrative detention shall be entitled to consultation by a doctor of their own choice, although they may be required to cover the costs of such a consultation.<sup>153</sup>
- H.8 Medical confidentiality shall be observed. Medical files shall not be accessible to non-health staff in the administrative detention centre except in case of emergency.<sup>154</sup>
- H.9 No detained migrant shall, even with his or her consent, be subjected to any medical or scientific experimentation which may be detrimental to his or her health.<sup>155</sup>
- H.10 Migrants in administrative detention shall be fully informed about the treatment being offered to them. Whenever members of the health staff are unable to make a proper diagnostic evaluation because of language problems, a qualified interpreter shall be provided without undue delay.<sup>156</sup>

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<sup>147</sup> CPT, Report on the 2014 visit to Finland (CPT/(2015)25) ; Directive 2013/33/EU, Article 11(1)

<sup>148</sup> CPT, 7th General Report (CPT/Inf(97)10), para. 31.

<sup>149</sup> CM Recommendation Rec(2003)5, Principle 13; Bangkok Rules, Rule 42.4; Directive 2013/33/EU, Articles 11(2), 19, 23(4), 25; CPT report on its visit to Finland, 22 September to 2 October 2014, CPT/(2015)25, para. 36; UNHCR Detention Guidelines, Guideline 9.1 paras 49-50.

<sup>150</sup> Bangkok Rules, Rule 11.1.

<sup>151</sup> Bangkok Rules, Rule 11.2.

<sup>152</sup> European Prison Rules, Rule 41.2; CPT 19th General Report (2009), Safeguards for irregular migrants deprived of their liberty, para.91.

<sup>153</sup> CPT, 7th General Report (CPT/Inf(97)10), para. 31.

<sup>154</sup> CPT, 19th General Report (CPT/Inf(2009)27), paragraph 92; UNHCR Detention Guidelines (Guideline 7) para 47; Mandela Rules, rule 32, 1, c).

<sup>155</sup> UN, Body of Principles for the Protection of all persons under any form of detention or imprisonment, Principle 22; International Covenant on Civil and Political Rights, Article 7.

<sup>156</sup> CPT, 19th General Report (2009), para. 92.



H.11 Authorities responsible for administrative detention facilities and their managers shall ensure that relevant public health policies, rules and procedures are correctly applied.<sup>157</sup>

H.12 If detained, children should have full access to child-specific health-care services.<sup>158</sup>

#### *On arrival*

H.13 A medical examination by health staff should be offered to migrants upon arrival to the place of detention.<sup>159</sup> At least, the following information relating to the migrant shall be recorded:

- Any visible injuries and statements about prior ill-treatment;
- Evidence of sexual abuse and other forms of violence that may have been suffered prior to admission;
- Evidence of transmissible diseases;
- Any other relevant medical information voluntarily provided by the migrant.

Migrants may be required to subject themselves to medical screening on public health grounds.<sup>160</sup>

Whenever injuries are recorded that are consistent with allegations of ill-treatment, the information should be immediately and systematically brought to the attention of the competent authority.<sup>161</sup>

#### *Gender specific health care*

H.14 If a migrant in administrative detention requests that he or she be examined or treated by same sex health staff, such requests shall be granted, to the extent possible, except for situations requiring urgent medical intervention.<sup>162</sup>

H.15 If detained, pregnant and breastfeeding women should be provided with the necessary health care, including advice on their health and diet and monitoring by a qualified health practitioner.<sup>163</sup> Childcare facilities or arrangements for nursing mothers shall be provided in administrative detention facilities.

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<sup>157</sup> ECRI General Policy Recommendation N°16, Recommendations 15, 21, 22.

<sup>158</sup> Mandela Rules, Rule 29.1, (b); UNHCR Guidelines, Guideline 9.2; UN Convention on the Rights of the Child, Article 24(1).

<sup>159</sup> UN, Body of Principles for the Protection of all persons under any form of detention or imprisonment, Principle 24; CPT, 19th General Report (CPT/Inf(2009)27), para 82.

<sup>160</sup> Directive 2013/33/EU, Article 13.

<sup>161</sup> CPT 23<sup>rd</sup> General report (2013) para. 77 ; CPT 19<sup>th</sup> General report, § 96; *Labita v. Italy* [GC], no. 26772/95, § 131; *Assenov and Others v. Bulgaria*, no. 24760/94, § 102; *Tymoshenko v. Ukraine*, no. 49872/11, § 232; *Austrianu v. Romania*, no. 16117/02, § 66; *Habimi and Others v. Serbia*, no. 19072/08, § 71; Bangkok rules, Rule 7.1.

<sup>162</sup> Bangkok Rules, Rule 10.2.

<sup>163</sup> Bangkok Rules, Rule 48 (1); *Mahmundi and Others v. Greece*, no. 14902/10, § 70.

H.16 Migrants in administrative detention who have suffered sexual or gender based violence shall be provided with appropriate medical advice, counselling and with the necessary physical and mental health care.<sup>164</sup>

## **Part I - Order, discipline and safety**

The rules set out in this part relate to the measures taken to ensure the safety and protection of migrants held in administration detention in application of laws relating to migration and asylum as well as the order and discipline within such facilities.

### *Maintaining order*

I.1 Good order in the administrative detention centres shall be maintained by taking into account the requirements of security, safety and discipline, while also providing migrants in administrative detention with living conditions which respect human dignity.<sup>165</sup>

### *Use of force and restraints*

I.2 Staff shall not use force against migrants in administrative detention except in cases of self-defense, attempted escape, or active or passive physical resistance to a lawful order.<sup>166</sup>

I.3 Instruments of restraint shall never be applied as a sanction.<sup>167</sup>

I.4 Where force is deployed or instruments of restraint are applied, it shall always be proportionate, the minimum necessary and for the shortest necessary time.<sup>168</sup>

### *Security Measures*

I.5 The security measures applied to migrants in administrative detention shall be the minimum necessary to achieve their secure detention.<sup>169</sup>

I.6 Personal searches of migrants held in closed detention centres (including their personal belongings and rooms) shall be conducted with respect to the human dignity and privacy as well as the principles of proportionality, legality and necessity.<sup>170</sup>

I.7 Migrants shall only be searched by staff of the same gender.<sup>171</sup>

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<sup>164</sup> UNHCR Guidelines, Guideline 9.3, para. 61.

<sup>165</sup> International Covenant on Civil and Political Rights, Article 10; European Prison Rules, Rule 49; PACE Resolution 1707(2010), item 9.2.11.

<sup>166</sup> European Prison Rules, rule 64.1; PACE Resolution 1707(2010), item 9.2.12; *Assenov and Others*, cited above, § 94; *Tekin v. Turkey*, no. 22496/93, § 53.

<sup>167</sup> European Prison Rules, Rule 60.6.

<sup>168</sup> European Prison Rules, Rule 64.2; Mandela Rules, Rule 48.1.

<sup>169</sup> European Prison Rules, Rule 51.1.

<sup>170</sup> European Prison Rules, Rule 54.4; Mandela Rules, Rule 50; Bangkok Rules, Rule 19.

<sup>171</sup> European Prison Rules, Rule 54.5; Bangkok Rules, Rules 19.

## *Discipline*

- I.8 Migrants held in administrative detention shall be informed in writing and orally in a language and manner they understand or are reasonably presumed to understand, of the regulations governing discipline and of their rights and duties in detention.<sup>172</sup>
- I.9 Any act or omission that is to be considered as a disciplinary offence<sup>173</sup> in a closed detention centre shall be prescribed by law or by the relevant public administrative authority, as appropriate. Only conduct which constitutes a threat to good order, safety or security may be defined as a disciplinary offence.<sup>174</sup> Moreover, acts and omissions of a child nature shall not be the object of disciplinary action.
- I.10 Disciplinary procedures shall be mechanisms of last resort.<sup>175</sup> Whenever possible, the authorities of administrative detention facilities shall use mechanisms of restoration and mediation to resolve disputes with and among migrants in administrative detention.<sup>176</sup>
- I.11 Clear disciplinary procedures should be both formally established and applied in practice. They should provide migrants in administrative detention with a right to be heard and to appeal to a competent and independent authority<sup>177</sup> against any sanctions imposed.<sup>178</sup>
- I.12 Sanctions shall in all cases be proportionate.<sup>179</sup> Collective sanctions and corporal sanctions including all forms of inhuman or degrading punishment shall be prohibited.<sup>180</sup> Sanctions shall not include a permanent prohibition on family contact.<sup>181</sup>
- I.13 Solitary confinement or isolation may be imposed as a sanction or measure only in exceptional cases and for a specified period of time, which shall be as short as possible.<sup>182</sup>

## *External inspection*

- I.14 Closed detention centres shall be subject to external inspection on a regular basis by qualified and experienced persons appointed by a competent public authority.<sup>183</sup>

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<sup>172</sup> European Prison Rules, Rule 30.1; UNHCR Detention Guidelines (Guideline 7) para 47 (i).

<sup>173</sup> European Prison Rules, Rule 57.2.a.

<sup>174</sup> European Prison Rules, Rule 57.1.

<sup>175</sup> European Prison Rules, Rule 56.1 and 60.5.

<sup>176</sup> European Prison Rules, Rule 56.2; Mandela Rules, Rule 38.1.

<sup>177</sup> European Prison Rules, Rule 61; CPT, Report on the 2006 visit to France (CPT/Inf(2007)44), paragraph 76, Report on the 2008 visit to Bulgaria (CPT/Inf(2010)29), paragraph 45, 19<sup>th</sup> General Report (CPT/Inf (2009) 27), paragraph 88, Report on the 2009 visit to Ukraine (CPT/Inf(2011)29), paragraph 71.

<sup>178</sup> 2<sup>nd</sup> General CPT Report (CPT/Inf (92) 3) – para. 55.

<sup>179</sup> European Prison Rules, Rule 60.2; Mandela Rules, Rule 39,2.

<sup>180</sup> European Prison Rules, Rule 60.3.

<sup>181</sup> European Prison Rules, Rule 60.4; Mandela Rules, Rule 43,3.

<sup>182</sup> European Prison Rules, Rule 60.5; Mandela Rules rule 45.1.

<sup>183</sup> Twenty Guidelines on Forced Return, Guideline 10.5 last sentence; 2<sup>nd</sup> General CPT Report (CPT/Inf (92) 3) -para. 54; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 29.1.

- I.15 Closed detention centres shall be subject to regular monitoring by independent national and international bodies on the basis of unannounced visits.<sup>184</sup>
- I.16 Migrants in administrative detention shall have the right to communicate freely and in full confidentiality with the persons who inspect the places of detention, subject to reasonable conditions to ensure security and good order in such places.<sup>185</sup>

#### *Investigation into complaints of abuse*

- I.17 Complaints by migrants in administrative detention regarding ill-treatment or abuse, in particular torture or other cruel, inhuman or degrading treatment by staff or fellow detainees at the detention facility as well as any reports or indications to this effect shall be promptly and effectively investigated and appropriately and effectively remedied<sup>186</sup> and procedures should be put in place for this purpose.<sup>187</sup>

#### *Handling emergencies*

- I.18 Appropriate procedures shall be in place in administrative detention facilities to ensure the safety of migrants in administrative detention in the event of an emergency.<sup>188</sup>

### **Part J – Personnel**

The rules set out in this part relate to the staff of administrative detention facilities in which migrants are held in application of laws relating to migration and asylum.

#### *Job Mission*

- J.1 Staff of closed detention centres shall:<sup>189</sup>
- carry out all their duties in accordance with national law and international standards;
  - protect and respect the fundamental rights and freedoms of migrants in administrative detention as enshrined in national law and international standards, in particular Convention for the Protection of Human Rights and Fundamental Freedoms;

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<sup>184</sup> CPT, 19<sup>th</sup> General Report (CPT/Inf (2009)27), para. 89; Twenty Guidelines on Forced Return (guideline 10.5 last sentence); PACE Resolution 1707(2010) item 9.2.15.

<sup>185</sup> UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 29.2.

<sup>186</sup> UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, Rule 25, UN Body of Principles, Principle 33, CM Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse – para. 44 ; CPT, 19th General Report (CPT/Inf(2009)27), para.89, 23rd General Report (CPT/Inf (2013) 29), paras 77 and 79.

<sup>187</sup> Twenty Guidelines on Forced Return, Guideline 10.6 first sentence; Mandela Rules, rule 57.3.

<sup>188</sup> European Prison Rules, Rule 52.2.

<sup>189</sup> CM Recommendation CM/Rec(2012)5 on the European Code of Ethics for Prison Staff; para. 1.

- ensure that migrants in administrative detention are safe and held in humane and dignified conditions that comply with relevant national law and international standards.

J.2 Staff shall be bound by the confidentiality rules provided for in national law in relation to any information they obtain in the course of their work.<sup>190</sup>

### *Conduct*

J.3 Staff shall respect and protect human dignity and human rights of all persons.<sup>191</sup> They shall at all times treat migrants in administrative detention and all other persons in the detention facility with politeness and respect.<sup>192</sup>

J.4 Staff shall not inflict, instigate or tolerate any act of torture or other inhuman or degrading treatment or punishment. Staff shall respect and protect the physical, sexual and psychological integrity of migrants in administrative detention, including against assault by fellow detainees or any other person.<sup>193</sup>

J.5 Staff shall respect plurality and diversity and not discriminate against any migrants in administrative detention on the basis of sex, sexual orientation and gender identity, age, race, colour, language, religion or other belief, political or other opinion, national or social origin, association with a child, property, birth or other status. Staff shall take full account of the need to challenge and combat racism, religious intolerance, xenophobia and homophobia as well as to promote gender sensitivity and prevent sexual harassment of any form.<sup>194</sup>

### *Recruitment and training*

J.6 Staff should be sufficiently numerous to effectively carry out the various duties incumbent upon them.

J.7 When selecting staff for administrative detention facilities for migrants the emphasis shall be placed on the need for integrity, humanity, professional capacity and personal suitability for the complex work that they will be required to do.<sup>195</sup> They should possess the qualities of personality and character as well as the professional qualifications necessary for their functions.<sup>196</sup> Men and women shall be represented

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<sup>190</sup> Directive 2013/33/EU, Articles 18(7), 25(2), 24(4).

<sup>191</sup> CM Recommendation Rec(2012)5 on the European Code of Ethics for Prison Staff, para 11.

<sup>192</sup> CM Recommendation Rec(2012)5 on the European Code of Ethics for Prison Staff, para. 11 and 14.

<sup>193</sup> CM Recommendation Rec(2012)5 on the European Code of Ethics for Prison Staff, para. 12-13.

<sup>194</sup> CM Recommendation Rec(2012)5 on the European Code of Ethics for Prison Staff, paras. 23-24; International Covenant on Civil and Political Rights, Article 26.

<sup>195</sup> European Prison Rules, Rules 77.

<sup>196</sup> Committee of Ministers Recommendation No. R (97)12 on staff concerned with the implementation of sanctions and measures.

in a balanced manner,<sup>197</sup> taking into consideration the needs of the detained migrants.

J.8 Staff of administrative detention centres shall receive appropriate basic training on the following topics:

- Relevant national and international instruments<sup>198</sup> and more specifically those relating to the protection of human rights;
- Interpersonal communication<sup>199</sup>;
- Relevant language skills<sup>200</sup>;
- Intercultural communication and familiarity with the cultural needs of the migrants held in the administrative detention centre;<sup>201</sup>
- First aid.<sup>202</sup>

J.9 Depending on their specific duties, the staff of administrative detention centres shall receive additional training on how to detect symptoms of stress, symptoms of mental health problems and risks of self-harm and suicide amongst detained migrants; and on the remedial action to be taken in such cases, including support and referral to specialists.<sup>203</sup>

Additional training shall also be provided on the needs of women<sup>204</sup> and of vulnerable groups, in particular children<sup>205</sup> and on identifying victims of trafficking and referring them to appropriate assistance.

Relevant staff should also receive training on how to screen and identify migrants for vulnerability, in particular victims of torture or of inhuman or degrading treatment or punishment and on referring them to appropriate assistance.

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<sup>197</sup> European Prison Rules, Rule 85; Twenty Guidelines on Forced Return, guideline 10.3; Report to the Maltese Government on the visit to Malta carried out by the CPT from 18 to 22 January 2004, CPT/Inf(2005)15, para. 61; 10th General Report of the CPT, CPT/Inf(2000)13, para. 23; 19th General Report of the CPT, CPT/Inf(2009)27, para 99.

<sup>198</sup> Recommendation No. R (97) 12 on Staff concerned with the implementation of Sanctions and Measures, para.14-15; European Prison Rules, Rule 81.4; Mandela Rules, Rule 76,1,a).

<sup>199</sup> Twenty Guidelines on Forced Return, Guideline 10.3.

<sup>200</sup> Twenty Guidelines on Forced Return, Guideline 10.3.

<sup>201</sup> Twenty Guidelines on Forced Return, Guideline 10.3; CPT, 7th General Report (CPT (97) 10), paragraph 29; Report on the 2014 visit to the Czech Republic (CPT/Inf(2015)18), paragraph 37, Report on the 2015 visit to Luxembourg (CPT/Inf(2015)30), paragraph 111.

<sup>202</sup> Bangkok rules 33,2 ; Mandela rules rule 76,1,d).

<sup>203</sup> Directive 2013/33/UE, Article 25(2); Twenty Guidelines on Forced Return, (guideline 10.3); Bangkok Rules, Rule 35.

<sup>204</sup> Bangkok Rules, rule 33.

<sup>205</sup> EASO indicators on RC Indicator 38.4; of the Directive 2008/115/EC, Article 17(4); Directive 2013/33/EU, Articles 11(3), 24(4).