

## 1312<sup>th</sup> meeting, 4 April 2018

10 Legal questions

### 10.1 European Committee on Crime Problems (CDPC)

b. Explanatory Memorandum to Recommendation CM/Rec(2018)5 concerning children with imprisoned parents

Item to be considered by the GR-J at its meeting on 20 March 2018

#### A. The need for a recommendation

The number of children in Council of Europe member States who have one or more parents in prison at any given time is estimated to be some 2.1 million.<sup>2</sup> To this number, should be added the significant number of children of former prisoners and the number of adults who, in their childhood, have experienced having one or more parents in prison. Viewed from this perspective, children who have, or have had, a parent in prison may experience trauma, anxiety or other concerns which may be detrimental to their life and well-being. These children have thus far, remained largely outside the scope of public attention and concern. This situation is aggravated by the fact that related and reliable data is not sought and is therefore lacking at local, national and European levels. As a result, measures that need to be taken urgently in order to prevent the potential harm which parental imprisonment can cause, are currently inadequate in many European countries.

Aside from the psychological, emotional and practical reasons for this group of children maintaining contact with their parents when separated as a result of parental imprisonment, there are also legal obligations. Children with a parent in prison have a human right to maintain a relationship with their parent, particularly where this separation has resulted from a decision made by the State involved. Under Article 9(3) of the 1989 United Nations Convention on the Rights of the Child (UNCRC), an international treaty to which all COE member States are party:

*“States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.”*

Thus, the maintenance of child-parent relationships post-imprisonment is not something which should be aspired to, it is an international legal obligation of member States. Furthermore, “[w]here such separation results from any action initiated by a State Party, such as the detention, imprisonment of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child” (Article 9(4) UNCRC).<sup>3</sup>

<sup>1</sup> This document has been classified restricted until examination by the Committee of Ministers.

<sup>2</sup> COPE network extrapolation using World Prison Brief figures for Council of Europe States and based on a 1999 study undertaken by the French institute for statistics, INSEE, which determined a parenting rate of 1.3 children per male prisoner. [See Appendix 1 for samples of national statistics for children with imprisoned parents in Europe].

<sup>3</sup> ‘Shall’ is used throughout the recommendations for obligations reflecting the intentions of the UNCRC and also in order to underline the importance of certain principles and standards.

Indeed, there is abundant psychological research which demonstrates that children with a parent in prison are at significantly greater risk of suffering multiple adverse effects if support interventions are lacking.<sup>4</sup> This may include, in addition to the interruption of caregiving responsibilities - economic difficulties, loss of shelter, family breakdown, stigma and mental health problems. Evidence-based studies suggest that regular quality contact with an imprisoned mother or father can help promote healthy development as well as resilience and can serve as a deterrent to destructive behaviour and crime in children.<sup>5</sup> A transnational psychological study of children separated from a parent in prison in four European countries found that 25 per cent of prisoners' children are at greater risk of mental health difficulties.<sup>6</sup>

Research also points to the need for positive interventions to enable imprisoned parents to maintain agency as a parent during their incarceration.<sup>7</sup> While some prisons in Europe are pioneering positive initiatives aimed at preserving the child-parent bond and allowing children to spend quality time with their imprisoned parent, many prisons do not provide suitable facilities for children to experience meaningful contact with their imprisoned parent, and children's best interests and needs are frequently seen as incompatible with security concerns. It should nevertheless be stressed that child-parent and family relations should not only be used as a tool to prevent reoffending and work towards crime desistance: children and families need help and assistance in their own right recognising that problems in child-parent and family relations may exist prior to imprisonment and continue after release.

The impact of a parent's incarceration on a child's life may take effect whenever a child is in contact with representatives of the criminal justice system. For example, a child may be present when police arrest a parent, during court proceedings and later at prison visits and other occasions when they have contact with the imprisoned parent, such as when the parent is brought to a meeting to discuss the child's welfare. The overall operation of the criminal justice system, and of prisons in particular, can negatively affect the child-parent bond. In many cases the imprisonment may also stigmatise these children at school, in the neighbourhood and in society and have an adverse impact on the development of the children's personality.

Respecting children's rights and needs by the police, by the judiciary and by prison services should be considered as a matter of urgency and effective measures should be taken in this respect.

Prison services need to integrate visiting rights with security considerations when allowing contact visits with children and families, longer term visits, prison leave, etc. Practice in some countries demonstrates that security is not compromised in most cases and that it would be inappropriate, based on the relatively small percentage of cases when a child is used to smuggle in drugs or other forbidden objects into prison, to refuse child-friendly direct contact visits to those prisoners whose behaviour does not compromise prison security. Allowing more frequent and better-quality contact between children and their parent in prison benefits not only the child, but also their imprisoned parent, prison staff and the prison in general, reducing tension among prisoners and self-destructive behaviour, improving good order and dynamic security in prison and providing better opportunities for successful reintegration.

Child-parent relationships, built on confidence and trust, are important to children's wellbeing and development. Experts agree that separation due to parental incarceration can adversely impact children in the long-term, increasing vulnerability to feelings of abandonment, attachment difficulties, emotional maladjustment and personality disorders.<sup>8</sup> Quality contact with the parent can help mitigate these difficulties; the imprisoned parent has a key role in maintaining such contact. It is also recognised that

<sup>4</sup> See, for example: Jones, A. D. (ed) (2013) *Children of Prisoners: Interventions and Mitigations to Strengthen Mental Health*, Huddersfield: University of Huddersfield, referred to as the Coping Project

<sup>5</sup> See, for example: Jones, *Ibid.*; Poehlmann, J. et al. (2010) 'Children's contact with their incarcerated parents: research findings and recommendations', *American Psychologist* 65(6): 575.; and Murray, J. (2005) 'The effects of imprisonment on families and children of prisoners', in A. Lieblich and S. Maruna (eds) *The effects of imprisonment*, Cullompton, Devon: Willan Publishing, 442-492.

<sup>6</sup> Jones, *op. cit.*

<sup>7</sup> See, for example: Wilczark, G.L. and Markstrom, C.A. (1999) 'The effects of parent education on parental locus of control and satisfaction of incarcerated fathers', *International Journal of Offender Therapy and Comparative Criminology*, 43(1): 90-102; LaRosa, J.J., and Rank, M.G. (2001) 'Parenting education and incarcerated fathers', *Journal of Family Social Work*, 6(3): 15-33; Nurse, A. M. (2002) *Fatherhood Arrested: Parenting From Within the Juvenile Justice System*, Nashville, TN: Vanderbilt University Press; Hawley, J., Murphy, I. and Souto-Otero, M. (2013) *Prison education and training in Europe: Current state-of-play and challenges*, Council of Europe/GHK Consulting.

<sup>8</sup> See, for example: Jones, *op. cit.*; Poehlmann, *op. cit.*; Murray, *op. cit.*

many prison environments are lacking appropriate facilities and policies which can impact on the quality of contact.<sup>9</sup>

Imprisoned mothers and fathers are frequently under stress, and prison visiting areas tend to be noisy, with limited opportunities for privacy. While most prisons recognise the importance of child-parent contact, there are often an insufficient number of specially trained staff, inadequate visiting facilities and a lack of suitable provisions/opportunities for play and joint activities. In some prisons, physical contact between children and their imprisoned parent is restricted or prohibited. Few opportunities exist for children and parents to experience ordinary family life, or to strengthen their relationship or, in some cases, form a bond with their fathers or mothers. These conditions may prevent children and their accompanying caregivers from visiting a parent in prison and jeopardise the child's healthy development. Additionally, the parent's chances of a smooth reintegration into his or her family upon release are at risk, thus preventing the child from enjoying a more ordinary family life even after the imprisonment has ended.

Societal attitudes are important. The Project Metropolitan study in Sweden and the United Kingdom (2007) posited that more family-friendly prison policies and more sympathetic public attitudes acted as protective factors for children with imprisoned parents.<sup>10</sup> This is why advocacy work by civil society organisations and other social movement bodies must accompany efforts to implement support policies for children, thus changing attitudes in the long-term, including working closely with the media.<sup>11</sup>

Failing to provide children with opportunities to maintain regular quality contact with their imprisoned parent following separation contravenes international law, standards and policies. The Council of Europe Convention on Contact concerning Children (2003) specifies and reinforces the basic right of children and their parents to maintain contact, taking into account the aforementioned Article 9 of the United Nations Convention on the Rights of the Child (1989) which enshrines the right of a child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except when this is contrary to the child's best interests. States have a positive obligation to facilitate contact.<sup>12</sup> The Council of Europe Strategy on the Rights of the Child (2016-2021) explicitly recognises that children with imprisoned parents are one of society's most vulnerable and marginalised groups of children, and require protection against exclusion and discrimination.

Yet, despite these obligations, adequate prison-based facilities and policies lack consistency in protecting the right to contact of the estimated 2.1 million children separated from a parent in prison on a given day each year in the 47 Council of Europe member States [see Appendix 1 for samples of children affected across different Council of Europe States].

All of the criminal justice agencies, other state institutions, particularly health, education, child and family and social welfare agencies, municipalities and civil society organisations have a key part to play in this context. Prisons, prison governors and staff have a unique and key part to play in supporting and protecting children with imprisoned parents; a role which can concretely improve the lives and opportunities for these children, while benefiting all stakeholders and society in general. Parents' time in prison must include the opportunity for them to (re)build a positive, nurturing relationship with their child, and to prepare for a smooth transition into society, particularly into family life upon release.

At international level, attention to this fundamentally important issue is increasing. Indeed, the European Parliament, in its report on prison systems and conditions and its Resolution (2015/2062(INI))<sup>13</sup> specifically mentions children with a parent in prison. The 11<sup>th</sup> European Forum on the Rights of the Child (7-8 November 2017, Brussels) has also dedicated special attention to this question.<sup>14</sup>

<sup>9</sup> See, for example: *Case of Horych v. Poland (Application no. 13621/08). Judgment.* Strasbourg, 17 July 2012.

<sup>10</sup> Murray, J., Janson, C.G. and Farrington, D.P. (2007) 'Crime in adult offspring of prisoners: A cross-national comparison of two longitudinal samples', *Criminal Justice and Behavior*, 43(1), 133-149.

<sup>11</sup> Such as those carried out by Children of Prisoners Europe and its member organisations. Online. Available online: <http://childrenofprisoners.eu/>

<sup>12</sup> Nick and Hokkanen v. Finland. no. 24627/94, ECHR (First Chamber), 23 September 1994. Decision of 15 May 1996.

<sup>13</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0385&format=XML&language=EN>

<sup>14</sup> 11<sup>th</sup> European Forum on the Rights of the Child "Children deprived of their liberty and alternatives to detention" (Brussels, 7-8 November 2017).

In more recent times, things appear to be moving in the right direction in some COE member States. One such example is the Memorandum of Understanding on the rights of children with a parent in prison, which was signed in Italy in March 2014 between the Ministry of Justice, the National Ombudsperson for Childhood and Adolescence and the nongovernmental organisation Bambinisenzasbarre.<sup>15</sup> This agreement was extended in September 2016 and sets out clear responsibilities for the prison administration and the Italian Ministry of Justice. It lists measures to be taken in order to protect and respond to the rights and needs of these children. The Memorandum is based on the 2013 findings of the Coping project research and on the recommendations drafted in 2011 as part of the EU funded study “Children of Imprisoned Parents,” piloted by the Danish Institute of Human Rights.<sup>16</sup> Other countries such as Croatia are also seeking to implement a similar multi-agency agreement for children with imprisoned parents.

In Ireland, a recent project on the rights of children with a parent in prison (funded by the Irish Research Council) which involved a collaboration between two prominent Irish NGOs and two legal academics working in the area prompted a broad public discussion, which was well reflected by the Irish media (on 6 September 2017) and led to the development of a set of Principles of Action for children with a parent in prison.<sup>17</sup> The goal of this project is to promote the actions principles with a view to their endorsement by the state agencies, the development of a National Advocacy Strategy for this group of children in Ireland and the effective implementation of the rights of these children by relevant public and private organisations working in close partnership.

Two Council of Europe Conferences of Directors of Prison and Probation Services (in 2015 and in 2016) discussed issues related to children with a parent in prison presented to them by Children of Prisoners Europe (COPE) (formerly European Action Research Committee for Children of Imprisoned Parents (Eurochips)): a pan-European network, founded by Alain Bouregba, acting to bring children with imprisoned parents to the forefront of social, political and judicial policy, to protect the rights of these children and help safeguard their psychological, emotional and social development. This topic met with great interest from the participants and, as a result, the European Committee on Crime Problems (CDPC) entrusted its subordinate body, the Council for Penological Co-operation (PC-CP), to draft a Committee of Ministers recommendation setting standards for all 47 member States regarding how to address the challenges experienced by these children and their parents in order to preserve and further develop a positive child-parent relationship. A further aim is to support the child and their family in constructing a life without crime.

As a first step, in order to assess the current state provision for children with imprisoned parents and after preliminary discussion, a questionnaire was sent out to all prison authorities in the Council of Europe member States [see Appendix 2]. This work was carried out between February and December 2017. The elected members of the PC-CP Working Group who took part in this work were: Martina Barić (Croatia), Nathalie Boissou (France), Annie Devos (Belgium), Vivian Geiran, Chair (Ireland), Jörg Jesse, Vice-Chair (Germany), Attila Juhász (Hungary), Dominik Lehner (Switzerland), Nikolaos Koulouris (Greece) and Nadya Radkovska (Bulgaria). The scientific experts working on the text were: Kate Philbrick (COPE, United Kingdom) and Ria Wolleswinkel (Maastricht University, The Netherlands). Children of Prisoners Europe (COPE), through its Director Liz Ayre and the Children’s Rights Division of the Council of Europe through their consultant Aisling Parkes (Cork University, Ireland) contributed actively to the work on the text.

This recommendation forms an important addition to developing a systematic and holistic approach to working with, and providing for, children with imprisoned parents. It also strengthens current moves towards implementing policies and interventions for children and their parents in prison that safeguards a child’s healthy development, promotes the child-parent bond, while also benefitting the prison system and society in general. Further, this recommendation provides a logical extension and continuation of the Council of Europe’s work on child-friendly justice to guarantee respect for and the effective implementation of all children’s rights.<sup>18</sup>

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<sup>15</sup> <http://childrenofprisoners.eu/wp-content/uploads/2014/06/MEMORANDUM-OF-UNDERSTANDING-ENGLISH-VERSION.pdf>

<sup>16</sup> Jones, op. cit. EU funded research project (2009 2011) piloted by the Danish Institute of Human Rights and funded by the Fundamental Rights & Citizenship programme. Partners included Eurochips (now COPE), the University of Ulster and Bambinisenzasbarre.

<sup>17</sup> This project was led by Dr. Fiona Donson and Dr. Aisling Parkes from the Law School, University College Cork and was funded by the Irish Research Council. It was a collaboration between the Children’s Rights Alliance, the Irish Penal Reform Trust and the two academics.

<sup>18</sup> Council of Europe (2011). Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. Online: <https://rm.CouncilofEurope.int/16804b2cf3>

The purpose of the recommendation is to draw attention, raise concern, promote appropriate action by State and other bodies and foster shifts in the way children with imprisoned parents are seen and treated by individuals and systems (directly or indirectly). This can affect how they see themselves and whether they are able to reach their full potential in relation to self, others and their environment.<sup>19</sup> In practical terms, such changes in attitudes will positively impact the child, their imprisoned parent, and society generally, helping children to thrive better by promoting greater social inclusion and reduced offending with its consequent social, emotional and physical costs.

COPE plans to develop comprehensive illustrated user-friendly guidance for the implementation of this recommendation, providing examples and options for implementation in different settings in light of the good practice existing across Europe. Below, more detailed guidance on specific rules refers to recently collated European good practice examples.<sup>20</sup> The Council of Europe intends to repeat the benchmarking questionnaire exercise in due course in order to see whether and to what extent the recommendation has helped to bring about positive changes to existing practices.<sup>21</sup>

## **B. The recommendation**

At the CDPC plenary meeting (28 November - 1 December 2017), which approved the draft recommendation and forwarded it to the Committee of Ministers for adoption, some national delegations expressed concerns regarding the use of "shall" in its text rather than "should". These delegations considered that in case "shall" is used, certain rules would be mandatory requirements which would be unrealistic on many occasions. They were of the opinion that these rules should encourage rather than impose standards of best practice as this would be more reasonable and practical in view of the differing practices which exist in Europe. It should be noted in this respect that a number of other Committee of Ministers recommendations in the field<sup>22</sup> use "shall" instead of "should". The practice of defining a set of rules in an appendix to a recommendation, which is the case in these recommendations, does in no way modify their legal nature. It is meant to send a strong political message to the national authorities as regards their policy and practice in the field.

It was therefore agreed to follow this established practice also in the case of the present recommendation.

### *Principles and considerations in drafting the recommendation*

The issue of children with a parent in prison is highlighted here alongside the need to protect their rights on an equal basis with other children and to provide them and their imprisoned parents with opportunities comparable to those of other children and parents. These recommendations break new ground: previously, children with imprisoned parents have often fallen between the responsibility of prisons, whose focus traditionally is on the prisoner where the children are only considered peripherally, and the more mainstream child protection, welfare and rights organisations, which have until relatively recently not focussed on this group of vulnerable children.

<sup>19</sup> In line with the philosophical framework of the Learning for Well-Being Foundation, Brussels.

<sup>20</sup> EuroPris (2017) *Good Practice Collection Family Relations: Report of the EuroPris Family Relations Expert Group*. EuroPris.

<sup>21</sup> Kleijssen, J. (2017). Children with imprisoned parents: It's time to act! *European Journal of Parental Imprisonment*, 5.

<sup>22</sup> Recommendation Rec(2006)2 on the European Prison Rules, Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, Recommendation Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures, Recommendation CM/Rec(2012)12 concerning foreign prisoners, CM/Rec(2014)4 on electronic monitoring and Recommendation CM/Rec(2017)3 on the European Rules on community sanctions and measures.

## Duty bearers<sup>23</sup>

To be most effective, the recommendation considers the rights and needs of children from the point of their parent's arrest, through the criminal justice process, detention and after their parent's release from prison. Their rights and needs must be considered and protected at each stage of the criminal justice process. Thus, this recommendation also involves police, the judiciary and other criminal justice agents as well as imprisoned parents themselves. There is currently an international movement towards alternatives to custody in order to avoid the potential adverse effects of parental imprisonment on children and their families.<sup>24</sup>

## Importance of the child-parent relationship

It is important to note here that in most cases where parents are in prison, except where it is not in the child's best interests, support for children's rights and needs must be bolstered by support for the child-parent relationship.<sup>25</sup> For that relationship to thrive, in many cases the imprisoned parent may need training or guidance in assuming as much of their parental role and responsibilities as is possible within the prison context and after release. In order to be enabled to do this, the parent needs first to be informed of the rights of their children to maintaining contact and relations with them while in prison. The prison has a role in protecting these rights by guaranteeing the child's entitlement to child-friendly visits and to maintaining direct contact and relations with their parent. Whereas the recommendation applies to all children with imprisoned parents, it is acknowledged that the impact of the imprisonment of the parent on the child increases the longer the sentence to be served by their parent. Prison administrations managing prisoners serving short term sentences (a few months) may take this into account when arranging to follow the different aspects of the recommendation.

### *Appendix to Recommendation CM/Rec(2018)5*

## I. Definitions, underlying values and scope

### *Definitions*

The definition of **the child** is taken directly from the UNCRC 1989 to which all Council of Europe members are signatories. "Child-friendly" practices may seem more appropriate for younger children. However, the definition of child is taken to include all those under the age of 18 years since all children are entitled to enjoy their right to contact and visits in their own right. In this context, older children and young people may need particular provisions made for them, particularly if individual visiting permissions are granted only to adults over 18 years.

Where the imprisoned parents are also children (under the age of 18 years), due regard shall be given to their rights as children, including their best interests. In such cases, the State must support the child (an imprisoned parent under 18 years) and his or her children, as well as the child-parent relationship. It is not a question of competing rights between children: the imprisoned parent (child) and their child are entitled to have their respective rights and best interests considered on an individual basis. Where the imprisoned parent (a child) is in turn affected by parental incarceration, this child and their relationship with their parent must also be supported as defined throughout the recommendation.

**Prison** includes (in addition to institutions for sentenced prisoners) remand centres where prisoners are held prior to conviction and sentencing, as well as detention centres under the responsibility of criminal justice agencies other than the prison administration. This definition does not refer to house arrest, despite the fact that some jurisdictions consider this also to be a deprivation of liberty. The impact of parental imprisonment on their children can be even more pronounced at the early stages, when there is so much uncertainty about the prisoners and the child's future. For this reason, contact at this stage is crucial. While police detention facilities are not defined and included in the term 'prison', arrest by the police is specifically mentioned in the recommendation as a potentially traumatising experience for children.

<sup>23</sup> *Duty-bearers* are those actors who have a particular obligation or responsibility to respect, promote and realise human rights and to abstain from human rights violations. The term is most commonly used to refer to State actors, but non-State actors can also be considered *duty-bearers*.

<sup>24</sup> See: [https://www.unodc.org/documents/justice-and-prison-reform/cjat\\_eng/3\\_Alternatives\\_Incarceration.pdf](https://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/3_Alternatives_Incarceration.pdf)

<sup>25</sup> See: Jones, *op. cit.*, p.356 for instances of where children had experienced fraught relationships with their imprisoned parent: "In these cases the absence of or minimal levels of contact tended to be in the best interests of the child, and attempts to encourage contact caused undue distress".

**Infant in prison** is used to describe those very young children living inside the prison. While some older children (see replies to the questionnaire in Appendix 2<sup>26</sup>) do live in prison, the recommendation is clear that the decision that a child stays in prison with any parent needs to be considered in the child's best interest and on a case-by-case basis, and in general this applies only to infants.

**Caregiver** is a broad term used to describe those who provide day-to-day care and are responsible for the child. This term may include the other parent, a grandparent, a sibling, a member of the extended family, or any other person who on a daily basis takes care of the child.

### *Underlying values*

The recommendation (reinforcing the UNCRC within the Council of Europe) is based on the vision that the primary consideration must be the child's best interests. Children's rights are compatible with the State's right to imprison the parent for being in conflict with the law. It is important to ensure that children who have committed no offence are not themselves treated as in conflict with the law.

To ensure children's rights and needs are met and not compromised any more than necessary by their parents' imprisonment:

- Police arrest should be carried out in a child-sensitive manner in cases where it cannot be done in the absence of a child.
- Visits between a child and their imprisoned parent should be allowed in appropriate conditions starting from the first week following incarceration, and on a regular basis from then on, always taking into consideration the best interests of the child.
- Appropriate training shall be provided to all staff across the criminal justice system and other agencies who are in frontline contact with children and their parents, particularly to those involved in searches, visits and other activities.
- The creation of support networks, the fostering of close cooperation between the prison service, civil society organisations and agencies inside and outside prison, like education, social and family agencies, should be encouraged.

Children with imprisoned parents are not a homogenous group and the need to offer support on a case-by-case basis is crucial. This is particularly relevant when different children have different cultural needs and differing abilities. Even within families there may be differences: one child may wish to talk to their teachers about their parent's imprisonment and another may find this subject too difficult and embarrassing.

The UNCRC provides comprehensive protection for children's rights, freedoms and opportunities.

The particular rights highlighted here include:

Article 3: Best interests of the child

Article 6: Survival and development

Article 12: Respect for the views of the child

Article 9: Separation from parents (Particularly sub-clauses 3 and 4).

Some other important UNCRC rights which are alluded to elsewhere in the recommendation are:

Article 2: Non-discrimination

Article 7: Birth registration, name, nationality, care

Article 8: Protection and preservation of identity

Article 10: Family reunification

Article 16: Privacy, including protecting children from unlawful attacks that harm their reputation

Article 18: Parental responsibilities and State assistance

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<sup>26</sup> Refer to question 24.

## Article 31: Leisure, play and culture.

Given the particular challenges facing children with imprisoned parents, not least that they are separated from their parent with whom they have the right to maintain contact, particular emphasis needs to be given to maintaining and developing both contact and the child-parent relationship. This involves support being provided both to the child and to the parent. Imprisoned parents have a duty as well as a right to play their parental role, and they may need support with this as well as in understanding the particular needs of their children arising from their imprisonment. In addition, they should be made aware of their children's rights in these circumstances. Support and training for imprisoned parents should be offered in order to support them to be good parents and positive role models for their children, thus contributing to healthy child development.

The relationship between the child and their imprisoned parent should be fostered by ensuring there are appropriate child-friendly visiting facilities. Visiting hours should accommodate the child's day-to-day life, like school attendance, and opportunities should be provided for accumulating visiting rights and allowing extended visits for children who live at great distances from the prison.

It is worth remembering that even when the children's best interests are not served by maintaining contact, perhaps because of child protection issues arising from the parent's previous behaviour for example, the children have specific needs as a result of their parent's imprisonment. States must ensure that such needs are met.

Children with imprisoned parents suffer from stigma and discrimination.<sup>27</sup> In such a culture, drawing attention to these children as a group risks further stigmatising and harming them and has to be undertaken with great care and sensitivity; it is only by such awareness raising that improvements in policy and practice will follow. Cultural change is being addressed by civil society organisations across Europe and there are now many positive images of children with imprisoned parents, such as those portrayed by Families Outside in their "Reversible Thinking" video.<sup>28</sup>

## II. Basic principles

The basic principles derive from the underlying values and from the scope of the recommendation and apply to and underpin all subsequent rules.

1. Children with imprisoned parents have a particular set of needs and it is important that these are met. In addition, the rights of these children, including their best interests, must be considered and respected. Throughout the recommendation in accordance with Article 12 of the UNCRC, children must have an opportunity to have their views heard, particularly when decisions are made which affect them.

2. A child suffers separation from their parent if a custodial sentence is imposed on the parent. This state action inevitably compromises the child's right to live with their family (UNCRC Article 9). It is therefore important that, wherever and whenever possible during the trial phase, noncustodial remand measures be the preferred option and detention be a measure of last resort, allowing for preserving some form of contact with the child based on the child's best interests but without interfering with the justice process.<sup>29</sup>

When sentencing a parent, the child's best interests and rights should also be considered and, in appropriate cases wherever feasible, particularly when the person is a child's primary carer, alternatives to custody should be the preferred solution. When this is not feasible, temporary home leave for carers should be granted whenever possible.

<sup>27</sup> See, for example: Jones, *op. cit.*

<sup>28</sup> Families Outside (2012) *Reversible Thinking*. Online: <https://www.familiesoutside.org.uk/reversible-thinking-video/>

<sup>29</sup> See: Epstein, R. (2011) Mothers in prison: The sentencing of mothers and the rights of the child. *Coventry University Howard League What is Justice? Working Papers 3/2014*, The Howard League for Penal Reform.; and *S v M* (CCT 53/06) [2007] ZACC 18. M\* Applicant versus the State Respondent. Centre for Child Law Amicus Curiae. Heard on: 22 February 2007. Decided on: 26 September 2007. Online <http://www.saflii.org/za/cases/ZACC/2007/18.html>

*S v M* 2007 2 SACR 539 (CC). In this unprecedented South African case the Court's reasoning, based on the CRC, was that the child's best interest shall be of primary importance in all procedures which concern a child, and that it is in the child's best interest for minor children to receive primary care from their mothers. The Court has recognised that, if a mother is sent to prison, her children will suffer from loss of material and emotional support, from loss of shelter and a community, will be perturbed in their school and transport routines, will suffer from a possible separation from their brothers and sisters and all that will have a negative impact on the process of their development.

3. If a parent is to be detained, contact becomes more important and this is less challenging when the journey to the prison is shorter. This principle is further developed in rule 16.
4. The rights and needs of children whose parents are imprisoned in a different State, should be considered alongside the rights of their parents under the Convention on the Transfer of Sentenced Persons (ETS 112, 1983) and its 1997 additional protocol.
5. Data collection is crucial to obtain a more precise number of children with a parent in prison, to identify more accurately the population of children with imprisoned parents needing support and demonstrate the importance for policy and practice change. As mentioned above, currently the exact numbers of children impacted are based on extrapolations. The Memorandum of Understanding<sup>30</sup> and the Irish Principles of Action for children with a parent in prison both place importance on data collection. (Please see also rule 13 and 52 below.)
6. Given the need to respect children's status as children as well as their needs and rights, resources should be provided to allow these principles to be implemented. Such resources may involve time for staff training as well as equipping child-friendly spaces and resourcing NGOs that support children and their imprisoned parents. Such resources are relevant across the multi-agency and multi-disciplinary groups of State and other agencies that come into direct contact with children with imprisoned parents.<sup>31</sup>
7. Further, for children to be treated with respect, including having their views considered in matters affecting them, it is likely that police, prison staff and the judiciary may need additional training to ensure that they can appropriately address and provide support and protection to these children.

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

8. When police arrest a parent, it can be a highly traumatising experience for any child. Police officers should be made aware of the possible negative short-term and long-term impact of such situations on children and must be offered appropriate training to counter, as far as possible, such an effect. Here, "child-friendly" is used as it is in the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, particularly: "it is age-sensitive, tailored to children's needs and guarantees an individualised approach without stigmatising or labelling children".<sup>32</sup> Extensive work has been undertaken in some countries, for example in Hungary, to help the police in carrying out child-sensitive arrest procedures (a very useful set of guiding principles contained in a leaflet which has been translated into English), and in some jurisdictions, there is a requirement that social workers are present or informed of an arrest when children are likely to be present.<sup>33</sup>
9. Respecting child's rights can be compatible with security and other considerations. All children have a right to maintain contact with a separated parent, even when that parent is in prison. Only in exceptional cases, such as collusion, will this right be restricted where such contact is not in the child's best interests. In many countries, maintaining contact with a parent in prison is not problematic, since most prisons confer rights on untried prisoners to regular visits from the onset of imprisonment on the basis that until convicted they are presumed innocent. However, in other jurisdictions, there are currently restrictions imposed on visits which negatively impact on the rights of children to contact with their imprisoned parents. In principle, arrest can generally last between 24 and 72 hours (and even longer in certain serious cases) and therefore, it is acknowledged that it may be challenging to guarantee contact in such cases. Where the arrest is prolonged for some reason, the right to contact should be respected.

<sup>30</sup> See footnote 15.

<sup>31</sup> The terminology in the recommendation is "Civil society organisations" which covers a broader cross section of organisations than the NGOs (non-governmental organisations) referred to here; in many States other sections of civil society such as churches or political parties would not be eligible to receive the resources envisaged by this rule, and yet it is vital that NGOs are properly resourced to support children with imprisoned parents both directly and indirectly.

<sup>32</sup> Council of Europe, 2011, op cit. p.9.

<sup>33</sup> For the English version of the Hungarian leaflet, see:

[http://childrenofprisoners.eu/wp-content/uploads/2017/07/PCMC-unicef\\_aldozat\\_rgb\\_brandkit\\_en.pdf](http://childrenofprisoners.eu/wp-content/uploads/2017/07/PCMC-unicef_aldozat_rgb_brandkit_en.pdf)

10. Where a decision to imprison a parent is being made, it is important that consideration be given to how this decision will impact on the children. Furthermore, there is currently an international emphasis on the need to make more use of alternatives to custody. In this respect, see CM/Rec(2017)3 on the European Rules on community sanctions and measures and CM/Rec(2014)4 on electronic monitoring set standards that have been agreed at European level<sup>34</sup>. Please see also rule 43 for similar decisions.

11. Some jurisdictions provide for granting special prison leave for important events in a prisoner's life as well as significant events in the child's life. Events such as birthdays, the first day at school and hospitalisation should be part of such considerations when granting prison leave. The examples above are not intended to be an exhaustive list of significant events in a child's life; they are intended as examples only. The possibility of prison leave being granted usually increases before release from prison in preparation for social reintegration. However, consideration should be given, whenever possible, to making use of such leave at an earlier stage of imprisonment. Please see also rules 32, and 42 for similar decisions made by prison authorities.

#### **IV. Conditions of imprisonment**

##### *Admission*

12. It is important that if a parent must be detained, the process causes as little disruption as possible to the life of their child/children. If parents are allowed to and can make provision for the care of their children before being detained, this is likely to cause less trauma to the children and will support their well-being. In countries such as Norway where the prison sentence is sometimes not served immediately, but the person is allowed to prepare his/her personal affairs prior to detention, such consideration is allowed for parents to arrange for appropriate caregiving for their children. There are less positive examples of cases, where children have been left with neighbours, for example, while the primary caregiver attends a court hearing and fails to return due to being put in prison instead.

13. Currently there is no accurate systematic record of the number of children with parents in prison worldwide. As a result, it is impossible to evaluate the number of children affected and in turn, put resources in place to support their needs. In addition, collecting data is important for the prison administration for security, safety and child protection reasons. It is also important for the children and prisoners, and for effectively guaranteeing their rights to contact and visits. It is key to stress that due regard should be given to the right to respect for privacy and data protection in storing and sharing this information. Many countries currently collect at least some of this information but a consistent and universal system whereby accurate records are kept across the Council of Europe is required to ensure that the rights of these children are protected and supported.

14. According to the UNCRC, children have a right to information about issues which affect them; this must always be subject to their best interests. Children may be harmed if they learn about a parent's imprisonment from someone other than their parent or caregiver. The parent also has a right to decide what information is disclosed to their child. It is therefore crucial that in order for children to have accurate and appropriate information concerning their parents in cases where they are imprisoned, that prisoners are supported in receiving information regarding their rights and the rights of their children during their detention and in how to talk to their children about their imprisonment. To reassure children that while their parent is not living with them, he or she is safe, prisoners shall be encouraged to provide information of their whereabouts to their children and caregivers as soon as possible after imprisonment.

15. Children can be reassured about maintaining contact with their imprisoned parent by being provided with accurate information about the various methods of contact available, its frequency and duration. In particular, the experience of visiting prisons is less of a challenging experience, when children receive accessible information about the visit and conditions surrounding it. The Italian 'map' of the prison for children, 'Trovopapa', which has been replicated in Germany, is a good example of such child-specific information.<sup>35</sup> In some countries, posters illustrate the search process adopted for children, including that search dogs will be used, to inform and reassure children.<sup>36</sup>

<sup>34</sup> See: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680700a5a](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680700a5a) and [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c64a7](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c64a7)

<sup>35</sup> See: <http://www.bambinisenzasbarre.org/spazio-giallo-nel-carcere>

<sup>36</sup> Kids VIP (2011). Children visiting prisons: Sharing good practice. Kids VIP, p.14. Available online: [http://greatermanchesterscb.proceduresonline.com/pdfs/ch\\_visit\\_prisons\\_guide.pdf](http://greatermanchesterscb.proceduresonline.com/pdfs/ch_visit_prisons_guide.pdf)

*Allocation, communication, contact and visits*

16. In determining the allocation of prisoners to particular prisons, the responses to the questionnaire indicated that most States do consider placing prisoners near to their homes where possible. Travelling to visit imprisoned parents can be emotionally stressful even without the added burden of long and difficult journeys often on public transport, which is seldom coordinated with the times of the visits. The financial burden on families visiting can be prohibitive especially when the parent is detained abroad. Funding possibilities should be provided in such cases, from public or private funds as envisaged under general principle 6 of this recommendation.

17-18. Referring back to rule 9, some jurisdictions require making visits available from the start of pre-trial detention. This recommendation, coupled with rules 18 and 22 below, should mean that children are able to effectuate the number of visits which suits them and their family best. In Russia for example, prison visits may last several days in a row and the family stays in the prison, or in its immediate vicinity, during this period because of the long-distance travel involved. To ensure that children with imprisoned parents genuinely have the same opportunities as their peers, it is important that there is some flexibility in relation to visiting arrangements so that they do not miss out on schooling or other significant educational or social activities and still enjoy the same visiting entitlements. Some States have found that offering a system for booking visits by phone in advance has been helpful in allowing children and their families to plan visits that do not conflict with the rest of the everyday planning of their lives.

The European Prison Rules (Rule 24.2) allows restrictions to communications and visits, *inter alia* in the interest of investigation or for the maintenance of good order, safety and security; however an acceptable minimum level of contact should be preserved.

19. When a child caregiver is unable or unwilling to visit the imprisoned parent (due to circumstances of illness, divorce, family breakdown, etc.), as children are entitled to contact in their own right, it should be possible in such cases to facilitate this right to contact, where the child wishes this. In Francophone countries in Europe, for example, NGOs like the Relais Enfants Parents, accompany children when visiting their parents in prison<sup>37</sup>.

20-21. It is of fundamental importance that a space in which children feel safe and welcome is created and maintained: how this is achieved may be country specific but minimum standards need to be respected including hygiene, ventilation, light, a child-friendly atmosphere, utilities for taking care of infant children (changing diapers; heating meals, toys, etc.) and furniture which is adapted to the use by children of different ages.<sup>38</sup> Costs for providing such spaces are not very high: more important is the need to give thought to including child-friendly staff and to maintaining the space as welcoming and as clean as possible. A one-off purchase of a box of toys which, left unattended, becomes dirty and broken, is insufficient. Across Europe, there are many examples of welcoming child spaces, for example, in Italy, France and the United Kingdom. In countries where visits are private, such as in Scandinavian countries, having a separate room offers a degree of normality to support the child-parent relationship; the room too needs to be equipped and accessible for use by children of all ages including children with disabilities. In the United Kingdom (and most likely elsewhere), visits have, in exceptional cases, been made available in private rooms for children with autism and other specific needs. In some cases, the prison regime allows for visits in the vicinity of the prison, which, if the environment is suitable, may offer a more relaxed atmosphere because children avoid some of the more intrusive prison security regulations.

22. See rules 16 and 17 above. In cases where a parent is imprisoned a long distance from the child's home, it is required that the visiting regime be flexible and, where frequent visits are not possible, prisoners should have the option of combining visit entitlements. Being offered financial support (as is the case in some countries, like the Scandinavian countries and the United Kingdom) can make a big difference for a child in helping to organise visits and maintain contact with their imprisoned parent. Some NGOs provide subsidised transport (e.g., under a pilot scheme in Croatia, and in Scotland). Resources for transport, where appropriate, are envisaged under general principle 6 of this recommendation.

<sup>37</sup> Le Relais Enfants Parents is part of the Francophone network Fédération des Relais Enfants Parents (FREP).

<sup>38</sup> For examples, see: EuroPris, *op. cit.*, 'Visiting facilities and physical structures': 4-8.

23. In the vast majority of cases, prison staff screen all visitors, including children, for drugs, weapons and other non-authorised objects on entry. However, it is important to remember that all security checks need to be carried out in a manner that is respectful of children's needs and rights, in particular, the child's rights to protection from harm, and to privacy and dignity.<sup>39</sup> Children can be psychologically harmed if they are searched insensitively. Staff should be appropriately trained to enable them to carry out searches in a child-sensitive manner, as this may be a highly stressful experience for children (taking away their favourite toys, checking diapers and clothes, checking their caregiver accompanying them, etc.). Officers, who are sensitive to children, often develop their own ways of searching children in a playful manner, preserving their integrity in as unobtrusive a manner as possible; pretending to look for treasure, for example, or using their electronic search baton as a fairy wand. Analogies with searches for air travel can be useful in normalising the process and destigmatising the need for such checks and offering them with dignity.

24. It is important that pre-visitation searches for the prisoner be as uncontentious as possible, ensuring respect for the prisoner's dignity. This is in order to promote as positive a visit as possible between parent and child. For example, there have been instances where searches of prisoners prior to visits have been conducted in such a manner as to cause humiliation on the part of the prisoner, resulting in them feeling unable to assume any aspect of their parental role during the ensuing visit with their children. Similarly, if parents obliged to wear clothing which undermines their human dignity, this can interfere with the parent and the child being able to benefit from normal positive contact. The end of the visit may be particularly difficult for children and parents and seeing their parent leave in response to prison officers' orders can exacerbate this. For this reason, it is recommended that the visitors should be invited to leave the visiting area first.

25-26. The child's right to maintain contact between visits via alternative means such as telephone calls or more modern forms of instant communication is as important as face-to-face visits. The responses to the questionnaire (see appendices below) indicate that many countries are experimenting with Skype-type communication as well as with the use of restricted access mobile phones for prisoners (although neither are currently authorised in many countries). In some countries, telephone calls may be unduly expensive and are therefore effectively inaccessible to many prisoners. For many children, being able to phone their parents when something significant happens in their daily lives, e.g., after a hard time at school, or when they have scored a great goal at football, can be important in terms of affirming their relationship with their parent.

27. It is in the best interests of the child that both parents are actively involved in decisions concerning their lives, even where one of those parents is in prison. In cases where the imprisoned parent indicates that he/she would like to contribute to important decisions in their child's life, they should not only be facilitated in doing so, but should be actively encouraged to do so. In Scotland, for example, parents have been able to attend meetings with the school and to speak to teachers on the telephone and prisoners regularly attend the children's panel which makes well-being decisions about children and in Italy prisoners can sometimes communicate with staff at their children's school via Skype.

28. Ensuring effective contact for a child is important to ensure that they maintain a meaningful relationship with their parent in prison. This includes experiencing important and momentous occasions or events which the child can recall in the future. Positive examples of visits for children and parents on special occasions (Christmas, Easter, Mother's Day and Father's Day) occur in many countries, including Scandinavian countries, France, Switzerland and Italy. On such occasions, staff may dress up differently, distribute presents, sing songs, etc., to create as normal an atmosphere as possible so that the child is reassured that the parent is treated well. This also allows staff and the prisoners themselves to see each other in another setting and break the ice which may exist between them, thus improving good order and prisoner-staff relations. Ideally, staff at these (and possibly all visits) would not wear uniforms which intimidate children. Changes to be implemented for special children's visits may be wearing the uniform less formally – a sweatshirt or no hat and tie, for example, or wearing civilian clothing.

29. Without reassurance or explanations, when picturing their parents' living conditions in prison, children tend to imagine situations worse than the reality. Information provided to them in a sensitive manner can dispel their fears and worries. Many responses to the questionnaire indicated that this type of information is being made available in some countries and there have also been instances of individual children being shown their parent's room or prison cell. This rule is worded so as to include arrangements for children with special needs to access this information, including those with sensory and other disabilities. There are

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<sup>39</sup> See in particular rule 60(2), the UN Nelson Mandela Rules.

examples of accessible information being provided for deaf and visually challenged visitors, for example in Austria, Catalonia, Scotland, Sweden and Belgium.<sup>40</sup> NGOs concerned with children with imprisoned parents are often able to work in partnership with the prison service in providing suitable information for children.

30. Contact between children and their parents is of fundamental importance for the child. Thus, this right of the child should only be restricted in limited circumstances and the child should not be punished and suffer because of restrictions imposed on the parent while in prison.

31. Where non-contact visits are imposed (which should be the exception and not the norm), consideration needs to be given to how children can retain contact. Whilst it may be possible to offer a child-friendly space for children during a non-contact visit, the fact of seeing their parent behind glass may be traumatising for a child. In such cases, the use of Skype-type communication or letters may be preferable for short periods.

#### *Prison leave*

32. In order to ensure as positive a return to the family environment as possible, it is important that prison leave be granted, where feasible, for prisoners. Please see also rules 11 and 42 for similar decisions, made by judicial and prison authorities respectively.

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

33. When visiting parents in prison, it is essential that children be protected from harmful behaviour both physically and psychologically and, as far as possible, children only witness positive and respectful interactions between adults in prison. Staff often acknowledges that children humanise the prison environment and thus contribute to more mutual respect within the prison community. Some prison authorities take the view that optimising visits and developing relationships with the families contributes to dynamic security, good order, improved safety, and prisoner engagement in positive activities. It is important that the prison environment protects children with robust child protection policies and procedures.

#### *Infants in prison*

There are provisions in the European Prison Rules (EPR) as well as in the UN Bangkok Rules relating to pregnant mothers and mothers with infants in prison; the current rules follow the EPR and the Bangkok guidance, and have direct relevance to all Council of Europe countries.

34. Infants born to imprisoned mothers need the same standards of healthcare as other children which may mean visits by health professionals in prison or the infants being taken out to community services.

35. Following UNCRC Articles 7 and 8, and provisions in the Nelson Mandela Rules, children have a right to an official name and an identity, which does not indicate their mother's imprisonment.<sup>41</sup> This ensures that children born to mothers in prison are not stigmatised from the start by a birth certificate which indicates their mother's imprisonment.

36. For many, there is a general presumption that it is in an infant's best interests to remain with their mothers unless there are compelling reasons for separating them. The child's emotional and physical well-being and developing a strong early attachment to their mother as well as possibilities for breast feeding are fundamentally important considerations in assessing the best interests of each child. There is considerable variation with respect to provision for infants living with parents both in terms of the age to which they can stay in prison and the facilities offered. Norway allows no infants to live in prison on the basis that it is not in their best interests. Within the Council of Europe, the recommendation is that only infants should be living in closed prisons with their parents, although some older children do live in prisons. There are excellent examples of halfway houses in Denmark and Germany for mothers with children.

<sup>40</sup> EuroPris, *op. cit.*: 20, 22-3.

<sup>41</sup> *Op. cit.* UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), 2015: Rule 28. Online: : [https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf)

37. Infants living in prison with their parents need to feel safe and welcome. How the space is arranged may be country-specific but minimum standards need to be respected and maintained including hygiene, ventilation, light, a child friendly atmosphere, utilities for taking care of infant children (changing diapers; heating meals, toys, etc.) and appropriate furniture:

- Infants have the same rights as other children although their physical needs are different. Even within the prison setting, encouraging children's development and opportunities for play need to be considered. The particular provision that even very young children be heard is in accordance with the UNCRC and efforts must be made to ascertain the children's views and this must be considered alongside other considerations in determining what is in each child's best interests.<sup>42</sup>
- It is important that infants who live with their parents in prison receive the same standard of healthcare and other attention from child professionals as if they were living in the community.
- Infants living in prison still need to access the outdoors, the community beyond prison, and attend nursery school. There are some excellent examples of mother-baby units, where children stay in the prison and go out to a community nursery (for example in Croatia and Greece). Often where there are very small numbers of infants living with their imprisoned parent, it is harder to give them appropriate accommodation which also offers sufficient peer support for both child and parent and time for the child to adjust to the outside world. In one prison, community volunteers took "prison babies" out for walks in their pushchairs so that they could get used to the noise and busyness of the environment outside the prison. In another mixed male and female prison, staff were introduced so that children became used to adults of both sexes.
- Particular emphasis is placed in this recommendation on the attachment between children and parents and enabling parents to exercise appropriate parental responsibility, as this is crucial for the child's healthy development. It is important for the child and is in their best interests that the parent develops the skills and understanding required to take care of the child as well as possible.
- Parents need support to be able to offer their children appropriate parenting which involves emotional and practical support in developing attachment with, and responsibility for, the infant living with them, as well as opportunities to care for them in ways similar to the ways they would care for them were they not in prison.
- Likewise, infants need to be offered an environment as close as possible to infants living at home in the community and a similar level of services and support as is offered to infants living in the community.
- Infants also need to develop contact with their siblings and wider family and such contact should be made possible, except where it would not be in the child's best interests.

38-40. Decisions concerning the time at which a child living with their imprisoned parent is to be removed from prison life should be made with flexibility so that children are not separated from their parents unnecessarily even if it means that the child stays in prison for a few months longer than the statutory suggested limit. The focus on the individual child is particularly important here. It is vital that infants transitioning to life outside the prison are supported to the greatest extent possible by the State or other agencies, including the provision of appropriate alternative care for the child.

Once the infant is placed to live outside the prison, their rights and best interests must be served by ensuring that they can access visits and other contact (rules 16-33) so that they can maintain the bond with their imprisoned parent.

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<sup>42</sup> "Research shows that the child is able to form views from the youngest age, even when she or he may be unable to express them verbally. Consequently, full implementation of article 12 requires recognition of, and respect for, non-verbal forms of communication including play, body language, facial expressions, and drawing and painting, through which very young children demonstrate understanding, choices and preferences." United Nations Committee on the Rights of the Child, General Comment no. 12 on the Right of the Child to be Heard, 2009.

### *Sentence planning and preparation for release*

41-42. The child's best interests are served when their parent exercises their parental role to the best of their ability. This can be enhanced by support for imprisoned parents in innumerable ways: through programmes, support groups, positive role models from staff and special visits with their children. The particular challenges of parenting from prison where the prisoner is, by being imprisoned, relieved of many of his or her responsibilities of being a citizen or a parent need to be addressed. Similarly, the imprisoned parent may need to hear from others the challenges their children and their caregivers face in the community as a result of their imprisonment. Often prisoners' families (including children) do not want to burden the prisoner with what they are experiencing outside, and prisoners who may already be feeling guilt around their imprisonment often protect their children and families from the difficulties arising out of imprisonment, including bullying and other humiliating experiences. Prisoners and families can often "wear masks" during visits to appear able to cope. There is therefore particular need for imprisoned parents to be given support to enable them to interact positively with their children during visits and to develop as supportive a role as parents as is possible within the confines of their imprisonment. Please see also rules 11, and 32 for similar decisions, made by judicial and prison authorities respectively.

Following the parent's release from prison, children - who are used to living without the imprisoned parent, often for long periods - and their families need to adjust to living together again. Such an adjustment is often needed even after short sentences.

There are many examples of effective support for the child-parent bond offered by prisons.<sup>43</sup> This is important particularly in helping imprisoned parents to gain insight into the issues affecting their child and their parenting: children need parents to exercise their parental role in the community as soon as they reasonably can and it is often helpful if they can redevelop familiarity with this role prior to being released.

43. This rule (comparable to rule 10) requires decision-taking authorities to take into consideration any parental responsibilities they have as well as the overall family situation of prisoners in early release cases.

### *Through-care*

44. Similarly to rule 41, both child and parent need support, not only upon imprisonment, but also for a certain period after release. This is to enable them to adjust to their new life together after prison as relationships and circumstances might have been impacted as a result of the prison sentence. This rule, like the Guidelines on child-friendly justice, was "drafted to protect children and youth from secondary victimisation by the justice system, notably by fostering a holistic approach to the child, based on concerted multidisciplinary working methods" and relies on partnership and cooperation between agencies to ensure that children directly, or indirectly through support to their parents, receive appropriate support.<sup>44</sup>

### *Policy Development*

45. It is imperative that when designing new policies, protocols or procedures for implementation in the prison, that where it is envisaged that these may affect child visits, these be analysed for the potential impact they may have and revised to be compliant with children's rights and needs.

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

46. Staff who come into contact with children and their imprisoned parents need to have sensitivity towards children and to understand their rights and needs. Prison authorities need to consider this in terms of both the recruitment and training of staff who will act as visits or visitor reception or searching staff.

<sup>43</sup> For examples, see: EuroPris, *op. cit.* 'Intervention programmes': 24-32.

<sup>44</sup> *Op cit* p8.

In addition, prisons must appoint designated children and family staff members who already have professional experience and will be provided with additional specialised training, where necessary, to be able to support positive child-parent relations by organising contact including visits, other on-going communication as well as specific child-appropriate activities. In many countries, NGOs provide much of this kind of support to children and families. Through working together with prison staff in this field, they can better contribute to the well-being of children, families and imprisoned parents. In Norway, there are designated child-responsible persons in each prison to see to that the child perspective is adequately ensured (similar to rule 45 on a local prison level).

47. Training is needed to ensure that prison and other staff who come into contact with children understand their needs and rights. In addition, training can be a particularly useful way of breaking down stereotypes, building confidence and giving prison staff accurate information about the needs of children with imprisoned parents. Interactive learning, where prison staff experience through role play or otherwise what a child with a parent in prison experiences, can change their perspective. Understanding the provisions of the UNCRC and, for example, this recommendation, ensures that all prison staff members understand that positive treatment of children is mandatory and not a “soft option”. Staff need to learn: child-sensitive methods of searching; making visits child-friendly; the importance to the child’s well-being and development of supporting parents to exercise their parental role while in prison and in preparation for release. Many States (e.g. England and Wales, Italy, Norway, Sweden, among others) offer training on the impact of imprisonment on children and the needs of imprisoned parents as part of their initial training for prison officers.<sup>45</sup>

48. The content of any training programmes needs to keep pace with changes nationally, regionally and internationally. In many countries, NGOs have assisted the prison administration in developing relevant training programmes in the light of research-based findings.

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

49. Children with imprisoned parents need to lead ordinary lives in the same way as other children, but they often face particular challenges. Similar to other children, they go to nursery school, take part in extra-curricular activities and are in contact with mainstream agencies involved with children’s lives, as well as with NGOs offering specific support to children with imprisoned parents. In order for each child to receive the most appropriate support, all agencies need to be aware of the potential challenges faced by them. Given the number of actors who affect the child in the criminal justice system through police, courts, and prisons; and the child welfare, health and education services and relevant NGOs, a holistic, multi-agency and multidisciplinary approach is required.<sup>46</sup>

In Scotland, for example, a wide variety of agencies deciding on child protection and offending issues, as well as teachers and social workers, can attend training sessions in the prison to understand both the issues and the reality of visiting for children. These sessions are organised by a national NGO. As discussed earlier, in Italy, the Memorandum of Understanding involves both the children’s ombudsperson and the relevant NGO in benchmarking and requiring consideration for services to children and their imprisoned parents.<sup>47</sup>

The benefits in investing in support services and care should be weighed against the cost to society of providing for children with imprisoned parents. As mentioned above, research indicates that appropriate support, including that offered by their imprisoned parent through regular quality contact, can help promote healthy development as well as resilience to destructive behaviour and crime in children.<sup>48</sup> While many of the support initiatives for children with imprisoned parents do not cost very much, the relevant agencies and NGOs need to be resourced adequately to do their work, to train their staff and to be able to effectively help children and their families efficiently.

<sup>45</sup> For examples, see: EuroPris, *op. cit.* ‘Staff training’: 33-43.

<sup>46</sup> For examples of community involvement, see: EuroPris, *op. cit.*: 9-15.

<sup>47</sup> See footnote 15.

<sup>48</sup> Jones, *op. cit.*; Poehlmann, *op. cit.*; Murray, *op. cit.*: 442-492.

## VI. Monitoring

50. To ensure that the needs and rights of children with imprisoned parents are properly taken into consideration, there is a need to monitor how the rights of children are respected, including notably how the best interests of children are protected by the respective agencies. For this purpose, all relevant national human rights institutions with a mandate for protecting children's rights, including ombudspersons for children, shall regularly review and report on the extent to which the rights of children with a parent in prison (and all other children acknowledged in this recommendation) are protected. This rule further requires relevant ministries and other bodies to take appropriate measures to ensure that the best interests of children with imprisoned parents are protected; where necessary, this could include a right to review the degree to which their best interests are being served.

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

51. Research regarding children with imprisoned parents is rapidly developing and is carried out in different cultural contexts. Children in different countries may experience things differently; it is therefore important that the voices of these children are heard (collected through sensitive, child-friendly NGOs or through children's ombudspersons' expert groups, among others) and input is sought from professionals working with these children to ensure that policy and practice meet their needs and rights.

Multidisciplinary and multi-agency expert groups, involving children with imprisoned parents, should be established in order to assess how children experience parental imprisonment, including the nature and scope of contact they have with their imprisoned parent. Such groups would be best placed to suggest improvements to current policies and practices.

52. The lack of available data, in particular statistical data, has been a source of difficulty in raising awareness of the needs of this group of children, and it is therefore key that both data collected by the prisons under rule 13 above and that collected by child welfare and other agencies be made public. There are significant issues concerning the manner in which data are collected, and it is important that this does not add to further stigmatisation.<sup>49</sup>

53. Specific areas of research in all disciplines (including psychology, law, sociology, early childhood studies etc.) which are identified as important require adequate State funding.

54. The implementation of child-friendly practices and policies, including international standards relating to children with imprisoned parents, must be regularly reviewed and evaluated.<sup>50</sup> Without regular review and evaluation reflecting societal, legislative or practical change, it is difficult to ensure effective implementation of the rights of children with a parent in prison. Regular evaluation ensures that existing methods of protecting the rights and needs of these children are adapted to meet changing societal needs.

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

55. Information on prisoners provided to the media needs to be carefully filtered in order to protect the child's rights to privacy and protection in line with the UNCRC and the European Convention on Human Rights. There are instances where children have had to move home because of the abuse and harassment they receive when their parents' home address and offence are revealed in the mass media. For example, in one country, even without the exact address, identifiable features in a house resulted in the children involved being identified and subsequently stigmatised.

<sup>49</sup> Ayre, E. (2017). Children with imprisoned parents: It's time to act! *European Journal of Parental Imprisonment*, 5. e.g. "Efforts to normalise requests for data are key at all stages, from a parent's arrest to resettlement and in all social systems of which the child is a part, whether community, institutional or cultural. Standardising entry checklists in schools for all parents, for example with three basic questions: does your child have any health difficulties? do they have any disabilities? do they have any adverse childhood experiences?"

<sup>50</sup> For examples of how child and adult visitors contribute to evaluation of visits, see: EuroPris, *op. cit.*: 21.

56. A recent Scottish project called KIN (a partnership between Vox Luminis and Families Outside)<sup>51</sup> working with older children who have experienced the imprisonment of a parent or sibling found that negative stereotyping of prisoners in the press and in the community rebounds on their children: by association, their children feel stigmatised and excluded. The perception of an imprisoned parent by society, the neighbourhood or the mass media can be devastating for a child, even if the child is well treated in his/her immediate environment. Research, such as the Coping project, which gathered both the data and examples referred to above, are important in providing both quantitative and qualitative evidence about children with imprisoned parents, their specific issues, and how they wish and need to be treated.<sup>52</sup> It is important that children and young people are involved not only in the research directly, but also subsequently in the process of drawing up recommendations (as 54 above).

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<sup>51</sup> See: <http://www.voxluminis.co.uk/kin/> (accessed 28 September 2017).

<sup>52</sup> Jones, *op. cit.*

**Appendix 1:****Numbers of children separated from an imprisoned parent (extrapolation) in a sampling of Council of Europe member States**

<b>Country</b>	<b>Prison population</b>	<b>Prison population rate per 100,000</b>	<b>Number of children separated from an imprisoned father (extrapolation)</b>	<b>Number of children separated from an imprisoned mother (extrapolation)</b>
Belgium	12,126	108	15,763	545
Croatia	4,741	108	6,163	307
Czech Republic	16,257	154	21,134	1,999
Denmark	4,091	73	5,318	232
Finland	3,134	58	4,074	296
France	62,443	98	81,175	3,134
Germany	64,379	79	83,692	5,029
Greece	12,479	111	16,222	720
Ireland	4,068	88	5,288	204
Italy	64,835	106	84,285	3,650
Luxembourg	656	122	787	46
Netherlands	13,749	82	17,873	950
Norway	3,649	72	4,743	271
Romania	33,015	155	42,920	1,656
Slovenia	1,357	66	1,764	65
Spain	68,220	147	88,686	6,988
Sweden	6,364	67	8,273	507
Switzerland	6,599	82	8,578	421

Country	Prison population	Prison population rate per 100,000	Number of children separated from an imprisoned father (extrapolation)	Number of children separated from an imprisoned mother (extrapolation)
United Kingdom				
England/Wales	84,430	148	109,759	5,278
Northern Ireland	1,851	101	2,406	57
Scotland	7,855	147	10,211	583
Russian Federation	681,600	475	886,080	76,960

**Source: Children of Prisoners Europe, based on International Centre for Prison Studies data: World prison population list (10<sup>th</sup> edition 2013).**

*Note: This extrapolation uses a demographic “parenting rate” of 1.3 offspring per offender, based on the results of a 1999 study conducted by France’s national statistics institute INSEE as part of a national census, which included seventeen hundred male offenders. The figures for the prison populations vary with the rate of imprisonment in each nation, and do not therefore correlate with the size of the population at large. Based on figures for the countries in the table representing data for 2013.*

<http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/worldprisonpopulationlist2005.pdf>

## Appendix 2:

### Synopsis of the results of the baseline benchmarking questionnaire

To assess the current state provision for children with imprisoned parents after preliminary discussion, a questionnaire was sent out to all prison authorities in the Council of Europe and answers received between February and September 2017. The questionnaire was produced with acknowledgement to Children of Imprisoned Parents [report by The Danish Institute for Human Rights, European Network for Children of Imprisoned Parents, University of Ulster, Bambinisenzasbarre, 2011] and the Italian Memorandum of Understanding, between The Ministry of Justice, The National Ombudsman for Childhood and Adolescence, Bambinisenzasbarre ONLUS, March 2014.

A series of questions were asked and for each question, columns for responses to the following questions were offered.

**This is implemented in your prisons, wholly in all prisons, partially or not at all (Y-wholly, P-partially, N-not at all**

**You do not implement, but would like to**

**You would like support from an NGO in implementing this, and prison contact information for NGO to use if relevant**

**Comments particularly about examples of good practice, challenges, etc.**

Alongside the questions included in the questionnaire, we have included a summary of responses to the question about implementation from the twenty-eight countries which responded (including thirteen German *Länder* and two responses from Hungary, one from the prison department and one from the police). It must be borne in mind that only eighteen countries went beyond “yes”/“no” answers and made comments, and they did not all make comments on all questions. Therefore the comments here are very general and those wishing more detailed information are referred to the full text of the responses.

Questionnaire Council of Europe/Children of Prisoners Europe POLICY / PRACTICE: Children visiting prison					
	Questions	Y	P	N	General synopsis of comments
1	Are children authorised to visit an imprisoned parent within a week following the arrest and, on a regular and frequent basis, from then on?	33	7	0	The pre-trial visit is often not within the jurisdiction of the prison but of the judge.
2	Are restrictions that are imposed on contact between prisoners and the outside world implemented in a way that respects the child's right to contact with their separated parent under the UNCRC?	34	5	1	In some jurisdictions where prisoners are deemed dangerous, visits are noncontact. In Norway the UNCRC is incorporated in the national law.
3	Are visits organised so as not to interfere with school attendance (i.e., six days a week, including afternoons, Sundays, public holidays)?	26	13	2	Varied answers, some specifying that it is up to parents to choose visits which suit the children.
4	Are security checks carried out in a child sensitive manner that respects children's dignity and privacy?	36	2		The issue of children being used to smuggle drugs was raised. In one <i>Land</i> in Germany, there is a short video offering a protocol on how to search children with dignity.
5	Are children granted visits with their parents that offer privacy, when necessary and in specific circumstances? (e.g., when child needs extra reassurance, death in the family, etc.)?	14	25	2	In France, separate <i>parloirs</i> (rooms) for child-parent visits are gradually being created. Georgia offers home leave for family events.
6	Is a designated children's space provided in all prison waiting rooms (e.g., bottle warmer, changing table, toys, crayons, games)?	14	18	8	As answers indicate, this varies greatly.
7	Do prison visits facilities provide child friendly space that allows for personal contact, and an environment conducive to play and interaction between children and their imprisoned parents?	17	19	2	This varies mostly with a wish to offer this, bearing in mind security issues.
8	Is age appropriate information about visiting procedures and rules (e.g., what can be taken to visits, security procedures) in relevant languages readily available to visitors?	8	24	7	In Hungary, a draft publication has been created for children. In general, more information in different languages is available rather than child-specific material.

9	Is it possible for children to learn more about their parent's life in prison and, when feasible and in the child's best interest, visit or see photographs of areas in which their imprisoned parent spends time (e.g., cafeteria, recreation rooms, workshops, places of worship, parent's sleeping accommodation)?	5	12	22	No respondent offers actual visits within the prison but many offer either photos directly or via a website.
10	Are arrangements for child parent activities made on a regular basis, not attributed as "rewards" for prisoner's good behaviour?	19	13	7	A variety of special child/parent visits are offered. Only one country mentioned the support of an NGO working with children with imprisoned parents. Several respondents mentioned the importance of evaluating prisoner behaviour, whilst most do not use visits as rewards.
11	Do prisons have designated "children's and/or family officer", specifically trained to support children during visits?	9	6	26	No reply indicated that prisons employed a dedicated child worker. Social and psychological services as well as pastors can become involved. In some <i>Länder</i> there is extensive training in working with children for all prison staff.
12	Is systematic use of telephone technology and IT (e.g., videoconferencing, mobile telephone systems, Internet, including webcam and chat functions) allowed when face to face meetings between the imprisoned parent and children prove difficult to arrange?	7	22	11	Most countries offer telephone communication; for many, video conferencing and Skype are being piloted, although in some cases there is a complete ban on any Internet usage. Some allow limited use of mobile phones and cell phones for more open prisons.
13	Do prison rules/practice allow for special leaves of absence for imprisoned parents for significant events in the lives of children (e.g., birthday, first day of school, hospitalisation)?	23	10	5	On a case by case basis in some countries. In Cyprus only for hospitalisation of the child and in others for death of a relative only. In some cases, the magistrate makes this decision on the advice of the prison administration. In more open prisons, such leave can be arranged in some countries.

14	Is there support available for visitors' journeys to prison (e.g., financial support, placement in prison geographically accessible to children and families)?	7	14	16	Some visitors can receive support from either non state actors or social welfare, others have no such possibility. Many respondents stressed how they attempt to site prisoners close to home, particularly for prisoners in more open prisons.
15	Is proximity to /accessibility for visiting by the prisoner's family a consideration in placement in particular prisons?	17	15	7	Proximity to home appears to be one of the factors in determining the prisoner's sentence plan, though in some cases, they may also be transferred closer to home to assist return to family life.
16	Are parenting programmes that encourage the development of constructive parent-child relationships offered in prisons?	17	15	8	Many countries offer some sort of parenting support, either directly from prison staff or from NGOs. In some cases, the support is part of a range of resocialisation programmes.
17	Do family advisory groups provide feedback, evaluation and guidance on how to improve facilities, procedures and children's experience of prison visits?	12	4	24	No respondent directly discussed inputs from family advisory groups but had other methods of evaluating their service, including with the children's ombudsperson.
	<b>Prison staff and staff training</b>				
18	Is training provided for all relevant prison personnel on how a parent's imprisonment and the prison setting can impact on dependent children and on how to make visits child friendly?	9	13	16	In some cases there is training provided, sometimes relating to prisoners' relatives rather than to children specifically.
19	Are specialised and trained staff present in child-friendly facilities during visits?	6	12	21	In France, the <i>parloir</i> staff do receive special training.
20	Is training available for relevant staff on how to support the child-imprisoned parent relationship?	11	12	15	In some cases from the prison establishment or psychologist or other professional, and in some from an NGO.

Data collection					
21	Is information collected about the number and age of children whose parents have been imprisoned?	14	8	18	Sometimes this is collected in relation to the prisoner and kept on their file rather than being statistically evaluated. In Cyprus, this information is used to buy presents for children at Christmas and Easter.
22	Are enquiries made to ascertain who is caring for children in lieu of the parent in custody?	19	8	13	Such enquiries are usually made by police or social workers at the time of arrest/detention.
23	Are statistics on children of prisoners made available for public use?	1	5	34	Very few offer this, except statistics of children living with parents in prison.
Children living with parents in prison					
24	How many children are currently living with parents in prison and up to what age?				In Norway it is not possible for children to live with their parent in prison.
	Up to what age in years?				Most frequently the upper limit is 3 years, although it varies from no children being allowed, to 1 year and up to 4 and even 6 in Turkey, where there are also 21 older juveniles living in prison. See <i>FRA Report</i> . <sup>53</sup>
25	Are imprisoned mothers/fathers and their children separate from the rest of the prison population?	24	5	8	In general, this seems to be the case, either in a separate mother-child house or specially designed cell. No mention was made of fathers.
26	Are all of your facilities for children living with mothers /fathers designed specifically to accommodate for children?	26	4	2	The provision varies from specially designed units to "an ordinary cell equipped with a crib and baby furniture".

<sup>53</sup> FRA (2016) Criminal detention and alternatives: fundamental rights aspects in EU cross-border transfers, Luxembourg: Publications Office of the European Union.

	Review				
27	Is the implementation of child-friendly practices as described above reviewed at least every two years?	11	13	15	In some cases they are inspected by the child's rights inspection, in some the corrections service or on agreement with youth welfare.
28	Is there a standing committee meeting at least twice each year involving children's ombudsperson, prison authorities and NGOs, if relevant, to consider matters relating to children of prisoners and prisons?	3	5	32	In general no such standing committee exists.

A considerable number of countries asked for support with specific items. Children of Prisoners Europe will attempt to signpost appropriate national /European agencies to offer such support.

## List of countries /Lander which responded to questionnaire

	Country	Land or Criminal Justice Department	Made comments
1	Bulgaria		y
2	Croatia		y
3	Czech		y
4	Cyprus		y
5	Denmark		
6	Estonia		y
7	Finland		y
8	France		y
9	Georgia*		y
10	Germany		
	1	Baden Württemberg	y
	2	Bavaria	
	3	Brandenburg	y
	4	Hamburg	y
	5	Hessen	y
	6	Lower-Saxony	y
	7	Mecklenburg	y
	8	North Rhine Westphalia	y
	9	Rhineland Palatinate	y
	10	Saxony	y
	11	Saxony Anhalt	y
	12	Schleswig-Holstein	y
	13	Thuringia	y
11	Greece		y
12	Hungary	<i>prisons</i>	y
	Hungary	<i>police</i>	y
13	Ireland		
14	Italy		y

15	Latvia		y
16	Lithuania		
17	Luxemburg		y
18	Malta		y
19	Macedonia		
20	Montenegro		
21	Norway		y
22	Poland		y
23	Romania		
24	Slovakia		y
25	Slovenia		
26	Sweden		y
27	Switzerland		y
28	Turkey		y

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