

**Revision of CM/Rec 12 (2012) concerning foreign prisoners**

**PC-CP**

**37<sup>th</sup> Working Group Meeting**

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Recommendation 2012 was adopted by the Committee of Ministers on 10 October 2012 at the 1152<sup>nd</sup> meeting of the Ministers' Deputies.

Since this time, there have been significant developments in international and regional penal standards (with the revision of the Nelson Mandela Rules and the European Prison Rules and development of new COM recommendations) and human rights law as well as in penal policy and practice across Europe in relation to foreign national prisoners.

What has not changed is the number of FNPs in detention or the particular situation they find themselves in.

This documents sets out a concept note setting out the proposed focus of this revision process with regard to aligning with contemporary standards, the scope of the recommendation, its basic principles, and key themes and issues that may be revised,

It also sets out a work plan and key actions that the revision process will involve.

The focus of the revision process will ensure that regional penal policy remains in line with and upholds human rights standards on the treatment and management of prisoners.

#### **A. Legal Alignment**

The Recommendation must be reviewed to ensure it aligns with changes in regional and international penal standards and human rights law, and recent COM Recommendations.

Further, it will be necessary to review European Court of Human Rights pronouncements and the European Committee for the Prevention of Tortures recommendations that are relevant to the treatment and management of foreign national prisoners.

## **B. Substantive Revision**

### *1. The scope of the Recommendation*

The experts wish to clarify with the PC-CP Working Group if the scope of the Recommendation should remain as it is (non-national and non-resident) or if it should include non-national and resident?

Also, whether the Recommendation should include a discussion of state responsibilities to nationals detained abroad?

Finally, should the Recommendation include provisions on juvenile FNPs?

### *2. (Re)statement of Fundamental Principles*

Insights from empirical and multi-disciplinary studies indicate that it is important to restate and assert fundamental norms in the Basic Principles in relation to

- Custody as an option of last resort
- Dignity
- Non-discrimination
- Imprisonment must have penological justification and purpose (not sole removal focus)
- Rehabilitation is the goal of custodial sanction enforcement
- The obligation on states to rehabilitate prisoners is NOT dependent on nationality or immigration status
- Quality of regime – access, participation and funding
- Maintaining the professional role of prison staff in relation to work with FNP
- Funding should not be determined by nationality or legal status of prisoners

### *3. Possible thematic areas for addition/expansion/revision*

After reviewing the current Recommendation, we propose to review the following themes for possible inclusion in the revised recommendation:

- Estate/Allocation (mixed, concentration, use of penal capacity overseas)
- Regime: reassert need to ensure access to / participation in all aspects of prison life – quality and breadth – caution against discriminatory practice of permitting reduced, restricted regimes on the basis of potential removal

- Rehabilitation: stress fundamental nature of this objective, the legal obligations states have to ensure this irrespective of the nationality or immigration status of the prisoner (budget) – need for effective sentence plan from day one – not when status decided – clear statement on access to offending behaviour programmes (public safety issues to staying in detaining state, returning to detaining state and irremovable prisoners)
- Release: distinguish between release after sentence completion and conditional release?
- Clearer statement on compassionate release
- Technology and AI: role in communications, translation, contact with outside world, access to media, rehabilitation (training, qualifications), interaction with staff, dynamic security, telemedicine – opportunities and challenges. Evolving quickly – need to ensure relevancy of recommendation in future and to note limitations
- Impact of imprisonment on children of FNPs and defining special measures to maintain relationships (whether in detaining state or other state)
- Consular Representatives: revert to stronger position of 1984 Rec and expand on this
- Women FNPs: review/develop provisions in light of recent research and policy on sentencing and sentence enforcement and impact on children
- Transfers: review/develop provisions on inter-state transfer of measures and sentences – include more procedural safeguards for decision-making process particularly for compulsory transfers (participation, timely receipt of relevant information to make informed view, appeal)
- Self-harm + suicide prevention/mental health support: review in light of increased scholarship on increased pains of imprisonment for this cohort – admission, healthcare and dynamic security...
- Staff professionalisation: evidence of reduction in interaction and support role for staff in FNO only prisons given removal focus – lack of specialised training on how to deal with this population – review provisions and need to ensure more than ‘mere guards’ or static security focus
- Transfers to airport for transfers or removal (dignity, prohibition on inhumane treatment)
- Climate change/natural disasters: provision(s) on preparation and evacuation planning

#### 4. *Wording*

All provisions will be reviewed for clarity.

### C. Work Plan

In preparation for the next PC-CP Working Group meeting in Madrid in May, the experts plan to

- Compile thematic research on ECtHR judgements, CPT recommendations and COM recommendations since the 2012 Recommendation was drafted
- Request an update from national prison services on the EuroPris [good practice guide](#) (policy and practice for each provision of the 2012 Recommendation) and circulate a survey to EuroPris members for completion by end of March
- Review international legal and policy developments since 2012 relevant to FNP (Nelson Mandela Rules, UN Rapporteur reports etc, SPT recommendations).
- Review of relevant scholarship
- Review statistics on FNP in Europe

Plans are also underway to organise an expert closed roundtable at the University of Galway (possibly April 2025) to consult with a wide range of stakeholders, and to have a dedicated drafting day for the experts.

The goal is to have clear thematic areas of focus and draft provisions to discuss at the Madrid Working Group meeting, and a fuller draft recommendation for discussion at the October Strasbourg Working Group meeting, so a draft can go before the 15<sup>th</sup> Plenary PC-CP session in November.

For 2026, the goal will be to finalise the recommendation provisions and develop the Commentary.