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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Co-operation
(PC-CP)

UPDATING THE EUROPEAN PRISON RULES: ANALYTICAL REPORT

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The present report analyses and summarises the reasons for proposing to revise some of the rules contained in the Committee of Ministers Recommendation Rec (2006) 2 on the European Prison Rules.

General comments:

Rule 108 of the 2006 European Prison Rules (EPR) provides: “The European Prison Rules shall be updated regularly.” The current revision exercise, which started in September 2017, was initially limited to updating the Commentary to the EPR only. However, in the course of the process of revising the commentary, it was suggested by various participants – members of the PC-CP Working Group, the representatives of the European Court of Human Rights and of the CPT, as well as the representative of Penal Reform International – that some rules need updating too. The reason for considering this option is that there have been major changes brought in by other standards, principles and recommendations at both European and international level. Prominent amongst these is the case law of the Court and the most recent CPT standards, as well as the changes to the venerable 1955 UN Standard Minimum Rules for the Treatment of Prisoners, which were amended in 2015 (The Nelson Mandela Rules). The scientific experts considered these various developments and recommend to the PC-CP and the CDPC that limited changes be made to the Rules themselves, to reflect current best European practice and to ensure that Europe maintains its lead in standard-setting in this area. The rule changes proposed below were approved by the PC-CP at its meeting on 11-13 April 2018.

The overall stance of the PC-CP is that the EPR should not undergo an overhaul of the kind undertaken in 2006. The basic structure is sound, and only specific changes are required, which can be introduced by a new Committee of Ministers Recommendation amending and complementing the current Recommendation (2006)2 of the EPR. The same method was used in 2000 by the Committee of Ministers when Rule 5 of the European Rules on community sanctions and measures (Rec n° R (92)16) was amended by CM Recommendation (2000)22 and a list of possible sanctions and measures was added to the text.

The same approach of selective amendment was used also in the revision of UN Standard Minimum Rules for the Treatment of Prisoners (now the Nelson Mandela Rules). In that instance, as with the amendments proposed to the EPR, the point of departure was that the amendments would raise rather than lower standards set by the rules.

Proposed rule changes (by order of priority):

1) Solitary confinement

Solitary confinement must be adequately regulated, for it can be abused and “can have an extremely damaging effect on the mental, somatic and social health of those concerned”.¹ The potential dangers posed by solitary confinement have been reflected in the rapid evolution since 2006 of new standards to deal with it. Particularly important in this regard are the systematic standards for all forms of solitary confinement developed by the CPT in its 2011 Annual Report,² as well as in the new Nelson Mandela Rules (Rules 36-46).

The current European Prison Rules (EPR) in respect of solitary confinement as a disciplinary measure are less clear than both the standards of the CPT and the Nelson Mandela Rules. Moreover, the EPR do not deal with administrative segregation as a form of solitary confinement. The CPT standards do deal with this, and in this respect are in advance of the Nelson Mandela Rules. Changes to the commentary on the key provisions related to solitary confinement in the European Prison Rules (Rules 3, 24, 53 and 60.5) cannot in themselves bring about much-needed improvements, as the commentary is constrained by the substance of the Rules. A comprehensive new rule on solitary confinement is proposed. It would follow the structure of the 2011 CPT standards and thus include in the EPR the particularly European perspective on all forms of solitary confinement that CPT has developed since 2006.

¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *21st General Report* (1 August 2010 – 31 July 2011), CPT/Inf (2011) 28, para. 53.

² See *Ibid*, paras. 53-64.

2) Women (Rule 34)

In the past decade, there has been growing recognition of the unique challenges and difficulties that are faced by women prisoners in prison systems that historically were designed primarily for men. The corpus of European rules and recommendations on prisons does not contain a distinct set of recommendations related to women in prison. In contrast, the UN in 2010 adopted the Bangkok Rules,³ which provide comprehensively for the specific challenges faced by women prisoners and go further than Rule 34 of the European Prison Rules. In order to increase the provision for women prisoners, Rule 34 should be expanded. Another option that can be envisaged would be to develop a more detailed separate CM Recommendation on women prisoners.

3) Complaints (Rule 70)

The current Rule 70, which deals with complaints, is not sufficient to establish a right to an effective remedy, as required by Article 13 of the ECHR. Since 2006, the importance of the right to have complaints dealt with effectively by an independent authority has been asserted by the ECtHR in a number of important decisions.⁴ Rule 56 of the Nelson Mandela Rules also stresses that complaints must go to an authority that has effective remedial power. The comprehensive standards on complaint procedures developed by the CPT in its 2017 Annual Report similarly emphasise the importance of ensuring that, where a complaint is lodged, appropriate, effective action is taken both by the prison authority and, if necessary, by an independent body to set matters right.⁵ A relatively simple addition to the current Rule 70 should make this clear beyond doubt.

4) Inspections and monitoring (Rules 92 and 93)

The current European Prison Rules on inspections and monitoring are very brief. The initial draft text of the EPR back in 2006 contained more detailed provisions at the very start but in their final version the EPR contain only two rules on the subject. Meanwhile 41 of the 47 Council of Europe member states became signatories to the Optional Protocol to the UN Convention against Torture (OPCAT) and have undertaken the obligation to set up an independent National Preventive Mechanism (NPM) to undertake regular visits to places of detention and formulate recommendations to the authorities. Currently 37 of these countries have created or designated their NPMs. The Nelson Mandela Rules also provide for inspection and monitoring bodies to make recommendations or to require a response from the authorities within a reasonable time. In addition, they insist on the necessity to provide access of these monitoring bodies to prisons and to the records kept by the authorities. Rules 92 and 93 should be expanded to provide for these aspects of the inspection and monitoring process in line with the latest developments both at national as well as at international level.

5) Foreign nationals (Rule 37)

The current Rule 37 of the European Prison Rules deals primarily with diplomatic and consular questions and not with the substantive treatment of foreign nationals. Since 2006, the Committee of Ministers of the Council of Europe has adopted a recommendation on this topic.⁶ It is not necessary to spell out in detail the provisions of this recommendation. However, there should be a further clause in Rule 37 providing that positive steps shall be taken to avoid discrimination against prisoners who are foreign nationals and to address specific problems that they may face in prison. The commentary

³ Full title: The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ("the Bangkok Rules").

⁴ *Ananyev and Others v. Russia*, Nos. 42525/07 and 60800/08, paragraphs 93-112, judgment of 10/01/2012; *Neshkov and Others v. Bulgaria*, Nos. 36925/10 et al., paragraphs 180-213, judgment of 27/01/2015, and *Atanasov and Apostolov v. Bulgaria*, No. 65540/16 and 22368/17, decision of 27/06/2017; *Varga and Others v. Hungary*, Nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, paragraphs 44, 60-65, judgment of 10/03/2015; *Torreggiani and Others v. Italy*, Nos. 43517/09, 46822/09, 55400/09, paragraphs 47-56, judgment of 08/01/2013, and *Stella and Others v. Italy*, No. 49169/09, decision of 16/09/2014.

⁵ 27th General Report of the CPT [CPT/Inf (2018) 4], paragraphs 76-90.

⁶ Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States concerning foreign prisoners

could then elaborate on this provision by referring to the 2012 Recommendation concerning foreign prisoners and the standards developed by the CPT in this regard.

6) Adequate staffing levels

The rules on management and staff (Rules 71-91) do not provide specifically that prisons should always be staffed adequately to ensure that minimum standards are met. In some countries, strikes by prison officers have led to prisoners being locked up in their cells for extended periods, while in others understaffing is chronic. It is proposed that a brief rule be added to this section to provide that prisons should be adequately staffed at all times. The commentary to such a rule could elaborate on the types of problems that inadequate staffing levels bring with them.

7) Use of restraints (Rule 68)

Rule 68 of the 2006 European Prison Rules governs instruments of restraint and restricts their use, in particular by specifying that they should not be used for any longer than is strictly necessary. The Nelson Mandela Rules (Rule 48) go a step further by incorporating a number of additional restrictions.

These include that:

- a) Instruments of restraint are to be imposed only when no lesser form of control would be effective to address the risks posed by unrestricted movement;
- b) The method of restraint shall be the least intrusive method that is necessary and reasonably available to control the prisoner's movement, based on the level and nature of the risks posed;
- c) Instruments of restraint shall be imposed only for the time period required, and shall be removed as soon as possible after the risks posed by unrestricted movement are no longer present.

In addition, the Nelson Mandela Rules provide that instruments of restraint shall never be used on women during labour, during childbirth and immediately after childbirth. Consideration should be given to including these additional safeguards in Rule 68.

8) Records and file management

The 2006 European Prison Rules provide for various details to be recorded after the admission of prisoners (Rule 15.1). However, they do not contain any rules dealing directly with what should happen to such records following this point and how prisoners' medical and other files should be managed. In this regard, the Nelson Mandela Rules stress that data is confidential and should be 'available only to those whose professional responsibilities require access' (Rule 9 of the Nelson Mandela Rules, see also Rules 7 and 8). Prisoners are entitled to official copies of their files. The Nelson Mandela Rules also require a standardised prisoner file management system and a secure audit trail to prevent unauthorised access to or modification of prisoners' files. In addition, the Mandela Rules require that the prisoner file management system be used to generate data for the general prison administration, to identify changes in the prison population, occupancy rates and trends (Rule 10 of the Nelson Mandela Rules). Consideration should be given to adding similar provisions to the European Prison Rules in order to achieve the same objective.

Finally, technical changes need to be made to the Preamble of the EPR (they already appear in bold in the text), to expand the list the European and international rules of the relevance to prisons that have been adopted since 2006.