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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Co-operation
(PC-CP)

7th Plenary meeting

Strasbourg, 6-8 November 2017

SUMMARY MEETING REPORT

**Document prepared by the Directorate General
Human Rights and Rule of Law**

EXECUTIVE SUMMARY

The PC-CP:

- Took note of the opening address made by Mr Jan Kleijssen, Director, Information Society and Action against Crime Directorate, DG I, Council of Europe and of the report by Mr Vivian Geiran, PC-CP Chair, regarding the work carried out by the PC-CP Working Group since the last PC-CP plenary meeting in November 2016;
- Considered, revised and approved the draft recommendation on restorative justice and its explanatory report;
- Considered, revised and approved the draft recommendation on children with imprisoned parents and its explanatory report;
- Took note of the presentation made by Mrs Mary Rogan, Trinity College, Dublin, Ireland regarding the PRILA Project (Prisons: the rule of law, accountability and rights (PRILA)) and of the related observations regarding the revision of the commentary to the European Prison Rules and decided to inform the CDPC there is a value in revising not only the commentary but also, on a limited basis, some of the rules;
- Considered the follow-up to be given to the 22nd CDPPS (Norway, June 2017) and agreed that it will be useful and important to have Council of Europe guidance in the area of staff selection, quality of training and its contents;
- Took note of the information provided by the Estonian delegate regarding the 23rd CDPPS (Estonia, June 2018) and approved its topic "Working together effectively: Management and co-operation models between prison and probation services";
- Took note of the executive summaries of the two SPACE national correspondents meetings, funded jointly by the EU and the Council of Europe (2017) and of the presentation made by Mr Marcelo Aebi (Deputy Director, School of criminal sciences, University of Lausanne, Switzerland);
- Took note of the presentation made by Ms Tanja Rakusic-Hadzic, Head of the Criminal Law Co-operation Unit regarding the assistance and co-operation projects running in 2017;
- Took note of the proposal to hold a high level Conference on prison overcrowding and agreed that there is a need to work together with judges and prosecutors as well as with legislators in order not only to reduce prison overcrowding but also to reduce recidivism;
- Took note that two vacancies at the PC-CP Working Group need to be filled in by electing two new members at the next CDPC plenary meeting (28 November - 1 December 2017);
- Agreed that the next PC-CP plenary meeting will be held on 6-8 November 2018.

I. OPENING OF THE MEETING

1. Mr Jan Kleijssen, Director, Information Society and Action against Crime Directorate, DG I, Council of Europe opened the meeting. He specifically underlined the importance of the two draft Committee of Ministers recommendations to be finalised by the PC-CP plenary, namely a recommendation regarding children with imprisoned parents and concerning restorative justice and thanked the PC-CP Working Group members and the scientific experts for the work done so far. He also warmly thanked the current Chair and Vice-Chair of the PC-CP Mr Vivian Geiran and Mr Jörg Jesse for their substantive contribution to the work of the Committee and to promoting the Council of Europe standards in the area internationally.

II. ADOPTION OF THE DRAFT AGENDA AND THE DRAFT ORDER OF BUSINESS

2. The delegates adopted the agenda and the order of business as drafted.

III. REPORT OF THE PC-CP CHAIR

3. The participants took note of the PC-CP Working Group meeting reports for 2017 as well as of the report presented by Mr Vivian Geiran, PC-CP Chair, regarding the work carried out by the PC-CP Working Group since the last PC-CP plenary meeting in November 2016.

IV. INFORMATION PROVIDED BY THE SECRETARIAT

4. The PC-CP plenary took note of the information provided by the Secretariat regarding the organisation of their plenary meeting. It took note more specifically of the fact that any amendments to the two draft recommendations and their explanatory memoranda will appear in track changes in the texts which will be sent to the CDPC plenary in order to facilitate the delegations in identifying the changes introduced by the PC-CP plenary. They also took note of the desirability to liaise with their delegations to the CDPC in order to coordinate their positions regarding the draft texts.

IV. DRAFT CM RECOMMENDATION CONCERNING RESTORATIVE JUSTICE IN CRIMINAL MATTERS

5. The PC-CP plenary considered, revised and approved the draft recommendation and its explanatory report and forwarded these to the CDPC.
6. Apart from the editing changes, a definition of “facilitator” was added to the commentary to Rule 3 as a point of clarification. In the commentary to Rule 14 an additional sentence was added to underline that procedural safeguards of both the victim and the offender should be respected in the restorative justice process and that the concern for equal treatment of the parties may not mean that they all will have equal benefit from the process, with due regard to the needs and interests of the victim.
7. In Rule 16 an additional clarification was added in concern to better inform the offender before the start of the process of its potential impact on future criminal proceedings. Additional clarification of the text in Rule 18 was introduced. In Rule 19 legal professionals were added in as promoters of the use of restorative justice and it was clarified that the victim or the offender may request in their own right to initiate this process.
8. In the commentary to Rule 28 was clarified whose responsibility is the initiation of the communication to the parties of the offer to start restorative justice process.
9. The title of part VI was slightly amended in order to indicate that the rules it contains recommend some basic standards for good operation of the restorative justice, leaving it to the national authorities to decide how to make best use of these.
10. With a view to striving to achieve higher standards of training and service delivery, in the commentary to Rule 57 was suggested that some university courses could include restorative justice as a subject.
11. In the commentary to Rule 60 was added the importance of restorative justice for dynamic security in prisons. In Rule 67 was stressed the need for regular assessment of the Recommendation and its implementation.

V. DRAFT CM RECOMMENDATION CONCERNING CHILDREN OF IMPRISONED PARENTS

12. The PC CP plenary considered, revised and approved the draft recommendation and its explanatory report and forwarded these to the CDPC.
13. The majority of the amendments were of editing nature. In addition a definition of “caregiver” was added to the list of definitions. The term “child-friendly” (a Council of Europe terminology) was preferred to child-sensitive”. In Rule 23 was added a sentence underlining the absolute prohibition of intimate bodily search on children visiting a parent in prison. In Rule 34 was added a sentence identical to the one in Rule 24 of the UN Bangkok Rules prohibiting instruments of restraint on women during labour, birth and immediately after birth. In Rule 46 an addition was made in order to underline the importance of staff being trained and sensibilised to providing guidance and information to children and in particular to those who are confronted with prison environment for the first time. In Rule 50 an addition was made in order to underline that apart from monitoring and reporting measures should be taken as necessary in order to better protect the rights and best interests of children with imprisoned parents. A new Rule 52 was added to underline the need and importance of gathering and sharing statistical data and information regarding children with imprisoned parents as well as of collecting good practices in dealing with such children.

VI. UPDATE ON THE WORK ON THE DRAFT REVISED COMMENTARY TO THE EUROPEAN PRISON RULES

14. The PC-CP plenary took note of the presentation made by Mary Rogan, Trinity College, Dublin, Ireland regarding the PRILA Project (Prisons: the rule of law, accountability and rights (PRILA), a research project funded by the European Research Council), as well as the related observations regarding the revision of the commentary to the European Prison Rules and more specifically the need to strengthen and further clarify the rules on inspection and monitoring.
15. The PC-CP plenary afterwards turned its attention to the work done so far by the PC-CP WG related to the revision and updating of the commentary to the EPR. It had no specific comments and suggestions to make regarding Doc. PC-CP (2017) 14 at this point of time, apart from the proposal made to put all references to the judgements of the ECtHR in footnotes or endnotes in order to facilitate the reading of the rest of the commentary.
16. The PC-CP plenary discussed the proposal made by Professor Dirk van Zyl Smit (scientific expert) to amend some specific Rules (like the rules related to women, to solitary confinement and to inspection and monitoring). The CDPC had entrusted the PC-CP with the task to revise and update the commentary but in the ensuring work were identified some gaps of the EPR themselves as compared to the recently adopted UN Nelson Mandela Rules (2015) as well as compared to the ever evolving case law of the ECtHR and the latest CPT standards.
17. The representative of the CPT Secretariat informed that they are updating their own standards regarding solitary confinement following the adoption of the Mandela Rules and have revised so far the ones related to juveniles in detention.
18. While the CDPC has not expressed its own opinion on this matter it was considered useful to have a round table discussion at the PC-CP plenary itself and express some preliminary thoughts in this respect which could be brought to the attention of the CDPC. The Chair explained that there are three options (to revise only the commentary; to open for revision only few Rules or to open for revision all EPR).
19. In relation to this some delegates were of the opinion that only the commentary should be revised and updated and warned that opening the Rules themselves for revision risks agreeing on lower and not on higher standards during the current period of terrorist acts; others were more inclined to open for revision some rules (where the UN Mandela Rules are more advanced, arguing that the European Prison Rules cannot provide less protection than the UN Rules agreed globally and also arguing that the ECtHR and the CPT have set higher standards in some areas). Others were of the opinion that the EPR should be open for revision in general as there are other rules which need improvement like re-defining the role of prisons as places for rehabilitation and preparation for release, dedicating more rules to staffing issues and others.
20. It was decided to propose to the CDPC (at its 2017 plenary) that in the view of the participants there is a value in revising, on a limited basis, of some of the rules. This would involve asking the CDPC for a

mandate to do an initial assessment of what these rules might be, with a view to reverting to the CDPC with a specific proposal, and seeking then a change to our current mandate, on which to proceed with the proposed exercise to review a limited number of the rules. The work on the commentary itself should be finalised by the end of 2018, which means that the PC-CP plenary will debate this issue once again at its next plenary meeting.

VII. FOLLOW-UP TO THE 22ND COUNCIL OF EUROPE CONFERENCE OF DIRECTORS OF PRISON AND PROBATION SERVICES (2017, NORWAY)

21. The delegates considered the conclusions of the 22nd CDPPS. They noted that the same will be considered by the CDPC itself at the end of November and will be then brought to the attention of the Committee of Ministers.
22. One delegate underlined that the conclusions were very timely as their prison administration and probation service underwent a reform and it was important to bring to the attention of their national authorities the importance of staff, its role and its status.
23. One delegate stressed that a proper staff training school is needed for any penal reform to be successful. The Ministry of Finance should be among the competent ministries to be addressed in this respect as without proper resources no proper training and recruitment is possible.
24. The representative of the CEP informed that they are involved at EU level in drawing a road map on education and training of probation professionals.
25. It was underlined as well that while the training of prison staff needs improvement in terms of quality and contents but their status and the status of their service is better than the status of probation staff and of probation service. On the other hand the starting educational level of probation staff is much higher and quality of their service is better in many countries. These discrepancies need to be addressed and a more uniformed policy needs to be agreed at European level.
26. All delegations were of the opinion that it will be useful and important to have Council of Europe guidance in this area because working with offenders for their successful social reintegration requires more and more professional and personal qualities and adequate training. No penitentiary reform is possible if the human factor is not in the centre of it.
27. Some countries like the Netherlands and Belgium offered their tools and manuals as examples of different staff profiles, recruitment techniques, requirements, exams and other criteria. The delegations were invited to send similar tools and manuals to the Secretariat in order to help the PC-CP in their future work.

VIII. 23RD COUNCIL OF EUROPE CONFERENCE OF DIRECTORS OF PRISON AND PROBATION SERVICES (19-20 JUNE 2018, JÕHVI, ESTONIA)

28. The delegates took note of the information provided by the Estonian delegation regarding the venue of the Conference, the facilities, the possible prison visits and accommodation). The topic of the 23rd CDPPS, namely "Working together effectively: Management and co-operation models between prison and probation services" was approved.
29. Several sub-topics were suggested, namely: leadership v. management; centralisation v. decentralisation of services; joint or separate management of prison and probation services; joint or separate management of juvenile justice and probation services; privatisation of services; scientific basis for any penal reform; EU justice strategies; winning local authorities, the private sector and the NGOs in any penal reform; promoting the latest Council of Europe standards (restorative justice and children with imprisoned parents).
30. Several suggestions regarding possible speakers were made. The issue will be further discussed at the next meeting of the PC-CP Working Group.

IX. SPACE STATISTICS AND THE WORK WITH THE NATIONAL CORRESPONDENTS

31. The delegates took of the executive summaries of the two SPACE national correspondents meetings, funded jointly by the EU and the Council of Europe (2017) as well as of the presentation made by Mr Marcelo Aebi (Deputy Director, School of criminal sciences, University of Lausanne, Switzerland).

Professor Aebi explained the aim of the EU funded project, namely to produce two longitudinal reports (in the case of SPACE I covering the period 2005-2015 and in the case of SPACE II covering the period 2009-2015) as well as the annual collection of PACE statistics and its media coverage.

X. CO-OPERATION ACTIVITIES IN THE PRISON AND PROBATION FIELD

32. The delegates took note of the presentation made by Ms Tanja Rakusic-Hadzic, Head of the Criminal Law Co-operation Unit regarding the assistance and co-operation projects running in a number of Council of Europe member States which are funded by outside sources as well as of the two multilateral meetings held in 2017 (on foreign prisoners and on healthcare).

XI. PRISON OVERCROWDING

33. The delegates took note of the executive summaries of the meetings of the CDPC sub-group on prison overcrowding and of the information provided by the PC-CP Chair and the Secretariat regarding the suggested follow-up to be given to the White Paper on prison overcrowding, namely to hold a high-level Conference of judges, prosecutors, legislators, prison and probation staff (2018 or 2019) in order to discuss the need for a national strategy/action plan for reform of the penal policies in order to reduce overcrowding and recidivism and promote the use of alternatives to custody.
34. One delegate informed that he, in his recent capacity of Director General of prison administration started meeting the representatives of the Supreme Court and the General Prosecutor and intends to continue meeting magistrates at all levels (down to the local courts) in order to discuss with them the use of imprisonment and the need for inducing changes in sentencing policies and practices. He also underlined the need to work with syndicates of magistrates and with civil society organisations in order to agree at national level on a long-term penal reform strategy.
35. Another delegate shared his country's experience in opening several probation and reintegration offices at the local courts in areas with overcrowded prisons and the ensuing reduction of the number of prisoners.
36. Another delegate informed that following the adoption of their new Penal Procedure Code the prison population was reduced by 50 %.
37. Another delegate informed that in an effort to reduce prison overcrowding their Supreme Court defined the acceptable cell space for prisoners in old prisons (3 m² without the beds and the sanitary part) and 9m² in new prisons in single occupancy (without the beds and the sanitary parts. To these m² are added 5m² for each additional prisoner in shared occupancy).
38. All participants were in agreement of the need to work together with judges and prosecutors as well as with legislators in order not only to reduce prison overcrowding but also to reduce recidivism by making more efficient use of the criminal justice system.

XII. ELECTIONS

39. The delegates took note that two vacancies at the PC-CP Working Group need to be filled in by electing two new members at the next CDPC plenary meeting (28 November - 1 December 2017). The nominations by the CDPC national delegations of possible candidates should reach the Secretariat not later than 20 November 2017. The delegates were reminded of the required professional and linguistic competences of the possible candidates, of the need for balanced geographical and gender distribution and of the history of creation of the PC-CP.

XIII. ANY OTHER BUSINESS

40. The delegations were invited to contact the Secretariat in case they would wish a particular topic to be discussed at their next plenary session or a particular speaker should be invited to attend.

XIV. DATES OF THE NEXT PLENARY MEETING

41. The delegates agreed that the dates of the next PC-CP plenary meeting will be 6-8 November 2018.

APPENDIX I

AGENDA / ORDRE DU JOUR

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| | 1. Opening of the meeting |
| | 2. Adoption of the draft agenda and the draft order of business |
| <u>PC-CP (2017) 4</u> <u>PC-CP (2017) 9</u> <u>PC-CP (2017) 15</u> <u>CDPC (2016) 21</u> | 3. Report of the PC-CP Chair |
| <u>CDPC (2017) 8</u> <u>CDPC-BU (2017) 2</u> | 4. Information provided by the Secretariat |
| <u>PC-CP (2017) 6 rev 5</u> <u>PC-CP (2017) 12 rev 2</u> <u>PC-CP (2017) Misc</u> | 5. Draft CM Recommendation concerning restorative justice in criminal matters |
| <u>PC-CP (2017) 7 rev 5</u> <u>PC-CP (2017) 13 rev 4</u> | 6. Draft CM Recommendation concerning children of imprisoned parents |
| <u>PC-CP (2017) 14</u> <u>Revision of the Commentary to the EPR by Mary Rogan</u> <u>Powerpoint Presentation by Mary Rogan</u> | 7. Update on the work on the draft revised commentary to the European Prison Rules |
| <u>Conclusions</u> | 8. Follow-up to the 22nd Council of Europe Conference of Directors of Prison and Probation Services (2017, Norway) |
| | 9. 23rd Council of Europe Conference of Directors of Prison and Probation Services (June 2018, Estonia) |
| <u>PC-CP (2017) 5</u> | 10. SPACE statistics and the work with the national correspondents |
| <u>Presentation by Tanja Rakusic-Hadzic</u> | 11. Co-operation activities in the prison and probation field |
| <u>CDPC (2016) 22</u> <u>CDPC (2017) 10</u> | 12. Prison overcrowding |
| <u>PC-CP (2017) 16</u> <u>Draft TOR 2018-2019</u> <u>PC-CP (2011) 14 bil rev 2</u> | 13. Elections |
| | 14. Any other business |
| | 15. Dates of the next plenary meeting |

APPENDIX II

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

MEMBER STATES / ETATS MEMBRES

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