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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Co-operation
(PC-CP)

REVISED RULES AND COMMENTARY TO RECOMMENDATION CM/REC(2006)2 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE EUROPEAN PRISON RULES[1]

[1] This document is the revision of the European Prison Rules adopted in 2006 and revisions to the Commentary adopted in 2018. **Any newly added text to these versions has been marked in bold.**

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec(2006)2
of the Committee of Ministers to member States
on the European Prison Rules[2]

(Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies,

- ***with amendments adopted by the Committee of Ministers on … 2019)***

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

Having regard to the European Convention on Human Rights and the case law of the European Court of Human Rights;

Having regard also to the work carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and in particular the standards it has developed in its general reports;

Reiterating that no one shall be deprived of liberty save as a measure of last resort and in accordance with a procedure prescribed by law;

Stressing that the enforcement of custodial sentences and the treatment of prisoners necessitate taking account of the requirements of safety, security and discipline while also ensuring prison conditions which do not infringe human dignity and which offer meaningful occupational activities and treatment programmes to inmates, thus preparing them for their reintegration into society;

Considering it important that Council of Europe member states continue to update and observe common principles regarding their prison policy;

Considering, moreover, that the observance of such common principles will enhance international co-operation in this field;

Noting the significant social changes which have influenced important developments in the penal field in Europe in the course of the last two decades;

Endorsing the standards contained in the recommendations of the Committee of Ministers of the Council of Europe, which relate to specific aspects of penitentiary policy and practice and in particular No. R (89) 12 on education in prison, No. R (93) 6 concerning prison and criminological aspects of the control of transmissible diseases including AIDS and related health problems in prison, No. R (97) 12 on staff concerned with the implementation of sanctions and measures, No. R (98) 7 concerning the ethical and organisational aspects of health care in prison, No. R (99) 22 concerning prison overcrowding and prison population inflation, *Rec(2003)22* on conditional release (parole), and *Rec(2003)23* on the management by prison administrations of life sentence and other long-term prisoners;

Further endorsing the recommendations of the Committee of Ministers to member States, Rec (2006) 13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, Rec (2008) 11 on the European Rules for juvenile offenders subject to sanctions or measures, CM/Rec (2010) 1 on the Council of Europe Probation Rules, CM/Rec (2012) 5 on the European Code of Ethics for Prison Staff; CM/Rec (2012) 12 concerning foreign prisoners, CM/Rec (2014) 3 concerning dangerous offenders, CM/Rec (2014) 4 on electronic monitoring, CM/Rec (2017) 3 on the European Rules on community sanctions and measures, the 2016 CM Guidelines for prison and probation services regarding radicalisation and violent extremism, and CM/Rec (2018) 5 concerning children with imprisoned parents;

[2] When this recommendation was adopted in 2006, and in application of Article 10.2c of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representative of Denmark reserved the right of his government to comply or not with Rule 43, paragraph 2, of the appendix to the recommendation because it is of the opinion that the requirement that prisoners held under solitary confinement be visited by medical staff on a daily basis raises serious ethical concerns regarding the possible role of such staff in effectively pronouncing prisoners fit for further solitary confinement.

Bearing in mind the United Nations Standard Minimum Rules for the Treatment of Prisoners as amended in 2015 (the Nelson Mandela Rules); and the 2010 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

Recommends that governments of member states:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation and the commentary thereto, which replaces Recommendation No. R (87) 3 of the Committee of Ministers on the European Prison Rules;

- ensure that this recommendation and the accompanying commentary to its text are translated and disseminated as widely as possible and more specifically among judicial authorities, prison staff and individual prisoners.

Introduction to the Commentary:

Prison standards reflect the commitment to treat prisoners justly and fairly. They need to be spelt out clearly, for the reality is that public pressure may easily lead to the violation of the fundamental human rights of this vulnerable group.

The first attempt to set such standards in Europe was made in 1973 with the introduction of the European Standard Minimum Rules for the Treatment of Prisoners by Resolution No.R(73)5 of the Committee of Ministers. They sought to adapt the United Nations Standard Minimum Rules for the Treatment of Prisoners, which were initially formulated as far back as 1955, to European conditions.

In 1987 the European Prison Rules were thoroughly revised to allow them, in the words of the Explanatory Memorandum "to embrace the needs and aspirations of prison administrations, prisoners and prison personnel in a coherent approach to management and treatment that is positive, realistic and contemporary".

The 2006 revision had the same overall objective. Like its predecessors, it was informed both by earlier prison standards and by the values of the European Convention on Human Rights (ECHR). Since 2006, however, there have been many developments in prison law and practice in Europe. Evolutionary changes in society, crime policy, sentencing practice and research have significantly altered the context for prison management and the treatment of prisoners.

Key factors in this evolution have been the ever-growing body of decisions of the European Court of Human Rights (ECtHR) that have applied the ECHR to the protection of fundamental rights of prisoners as well as the standards for the treatment of prisoners that are being set by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). These developments led the European Committee on Crime Problems (CDPC) in 2003 to entrust the Council for Penological Co-operation (PC-CP) with the task of bringing the rules into line with best current practice. The result was the 2006 European Prison Rules.

The recommendation that contains the new version of the European Prison Rules similarly recognises the contribution of the ECtHR and the CPT. In addition, the Recommendation emphasises that sight must never be lost of the principle that imprisonment should only be used as a last resort, the so-called ultima ratio principle. It seeks to reduce the prison population to the lowest possible level. The desirability of doing this is recognised in Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation and was noted by the Committee of Ministers in the 2016 White Paper on Prison Overcrowding. This recommendation and the White Paper stress the importance of using deprivation of liberty only for the most serious offences. The *ultima ratio* principle should be applied to restrict the detention of both untried and sentenced prisoners. In the case of convicted prisoners, serious consideration should be given to alternative sentences that do not entail imprisonment. States should also consider the possibility of decriminalising certain offences or classifying them so that they do not carry penalties of imprisonment.

The 2006 rules address questions the rules of 1987 did not consider. They seek to be comprehensive without burdening member states with unrealistic demands. It is recognised that the implementation of these rules will require considerable efforts by some Council of Europe member states. The rules offer guidance to member states that are modernising their prison law and will assist prison administrations in deciding how to exercise their authority even where the rules have not yet been fully implemented in national law. The rules refer to measures that should be implemented in "national law" rather than to "national legislation", as they recognise that law making may take different forms in the member states of the Council of Europe. The term "national law" is designed to include not only primary legislation passed by a national parliament but also other binding regulations and orders, as well as the law that is made by courts and tribunals in as far as these forms of creating law are recognised by national legal systems.

Since 1987 the European Prison Rules have grown in status. In particular, the 2006 version of the European Prison Rules has received significant judicial recognition in the case law of the ECtHR. The Grand Chamber of the ECtHR regularly refers to the European Prison Rules, as do other chambers of the Court. Moreover, the ECtHR has been guided by the European Prison Rules in its pilot judgments that address the structural problems of inadequate conditions of imprisonment in various Council of Europe States, by setting deadlines for the implementation of systemic changes.

Similarly, since 2006, the CPT has regularly referred to the European Prison Rules. Both in its general and in its country reports, it has used the European Prison Rules as justifications for setting standards or recommending that member states make changes to their practices in order to prevent the inhuman or

degrading treatment of prisoners. Other Council of Europe texts, such as the Guidelines and Handbook for prison and probation services regarding radicalisation and violent extremism, are intended to be read and used consistently with the European Prison Rules.

The final rule of the 2006 European Prison Rules, Rule 108, provides that the rules should be updated regularly. The many developments that have taken place since 2006 made it necessary to consider whether the rules and the commentary on them should be revised. The current version of the commentary is the product of such a revision exercise.

The current Commentary includes changes made in 2018 and the further revisions following changes to the rules made in 2019.

Appendix to Recommendation Rec (2006) 2

Part I

Basic principles

A feature of the new European Prison Rules is that the first nine rules set out the fundamental principles that are to guide the interpretation and implementation of the rules as a whole. The principles are an integral part of the rules rather than being part of the preamble or of specific rules. Prison administrations should seek to apply all rules in the spirit of the principles.

1. All persons deprived of their liberty shall be treated with respect for their human rights.

When deprivation of liberty is used questions of human rights inevitably arise. Rule 1 underlines this truth in the context of requiring respect for prisoners. Such respect in turn demands the recognition of their essential humanity. The ECtHR has emphasised that respect for human dignity underpins the very essence of the European human rights system and that it should be extended to all prisoners.[3]

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

This rule complements Rule 1 by emphasising that the undoubted loss of the right to liberty that prisoners suffer should not lead to the assumption that prisoners automatically lose their political, civil, social, economic and cultural rights as well. Inevitably, rights of prisoners are restricted by their loss of liberty, but such further restrictions should be as few as possible. These rules as a whole spell out some steps that can be taken to reduce the negative consequences of loss of liberty. Any further restrictions should be specified in law and should be instituted only when they are essential for the good order, safety and security in prison. Restrictions of their rights that may be imposed should not derogate from the rules. The ECtHR has held that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the ECHR save for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5 of the ECHR. There is no question that prisoners forfeit their ECHR rights because of their status as persons detained following conviction.[4]

3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

This rule emphasises the limits to the restrictions that may be placed on prisoners. It highlights the overall principle of proportionality that governs all such restrictions. The ECtHR has also consistently held that under Article 3 of the ECHR the suffering involved must not go beyond that inevitable element of humiliation connected with detention. The State must ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the sanction or measure do not subject them to distress or hardship of an intensity exceeding the unavoidable suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured.[5] ***In accordance with Rule 53, special high security and safety measures should only be used as a last resort. The same applies to solitary confinement: Rules 53A-53D and 60.6.***

4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.

Rule 4 is designed to make it clear that the lack of resources cannot justify a member state allowing prison conditions to develop that infringe the human rights of prisoners. Nor are policies and practices that routinely allow such infringements acceptable. The ECtHR has also held that it is incumbent on States to organise their penitentiary systems in a way that ensure respect for the dignity of prisoners, regardless of financial or logistic difficulties.[6]

5. Life in prison shall approximate as closely as possible the positive aspects of life in the community.

[3] *Vinter and Others v. the United Kingdom* [GC], Nos. 66069/09 et al., paragraph 113, judgment of 09/07/2013.
[4] *Hirst v. the United Kingdom (no. 2)* [GC], No. 74025/01, paragraphs 69-70, judgment of 06/10/2005.
[5] *Kudła v. Poland* [GC], No. 30210/96, paragraphs 92-94, judgment of 26/10/2000.
[6] *Muršić v. Croatia* [GC], No. 7334/13, paragraph 100, judgment of 20/10/2016.

Rule 5 emphasises the positive aspects of normalisation. Life in prison can, of course, never be the same as life in a free society. However, active steps should be taken to make conditions in prison as close to normal life as possible and to ensure that this normalisation does not lead to reproducing undesirable aspects of community life inside the prison.

6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.

Rule 6 recognises that prisoners, both untried and sentenced, will eventually return to the community and that prison life has to be organised with this in mind. Therefore, proactive preparation for their release should be undertaken from the start of their detention. Reintegration requires that the negative effects that imprisonment may have should be combatted. Prisoners have a right to be kept physically and mentally healthy and the prison regime should provide them with opportunities to develop positively, to work and to educate themselves. Where it is known that prisoners are going to serve long terms, these have to be carefully planned to minimise damaging effects and make the best possible use of their time.

7. Co-operation with outside social services and as far as possible the involvement of civil society in prison life shall be encouraged.

Rule 7 emphasises the importance of involving outside social services. The rules should encourage an inclusive rather than an exclusive policy. This necessitates promoting close co-operation between the prison system and outside social services and in involving civil society through voluntary work or as prison visitors, for example.

8. Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners.

Rule 8 places prison staff at the centre of the whole process of implementing the rules and achieving the humane treatment of prisoners generally. High standards of care are maintained by focusing sufficient attention on staff selection, recruitment, training and development, especially from front-line staff. Further, the Recommendation CM/Rec(2012)5 of the Committee of Ministers to member States on the European Code of Ethics for Prison Staff states that the main objectives of prison staff include ensuring that all prisoners are held in conditions in compliance with the European Prison Rules.

9. All prisons shall be subject to regular government inspection and independent monitoring.

Rule 9 raises the need for inspection and monitoring to the status of a general principle. Independent monitoring of prisons, complemented by governmental inspection, are crucial mechanisms to ensure that the provisions of these rules are respected. The objective of both inspection and monitoring is to ensure that prisons are managed in accordance with national law, with a view to bringing about the objectives of penal and corrections services, and to protect the rights of prisoners (Nelson Mandela Rule 83.2). The importance of such inspection and monitoring is spelled out further in part VI of the rules.

Scope and application

10.1 The European Prison Rules apply to persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction.

10.2 In principle, persons who have been remanded in custody by a judicial authority and persons who are deprived of their liberty following conviction should only be detained in prisons, that is, in institutions reserved for detainees of these two categories.

10.3 The Rules also apply to persons:

a. who may be detained for any other reason in a prison; or

b. who have been remanded in custody by a judicial authority or deprived of their liberty following conviction and who may, for any reason, be detained elsewhere.

10.4 All persons who are detained in a prison or who are detained in the manner referred to in paragraph 10.3.b are regarded as prisoners for the purpose of these rules.

Rule 10 defines which persons are to be considered as prisoners in terms of these rules. This rule stresses that a prison, and no other site, is the place where persons who have been remanded in custody by a judicial authority and persons who are deprived of their liberty following conviction are to be detained. The terminology varies from country to country. Custodial institutions of various kinds such as penitentiaries and work colonies may also hold prisoners and therefore be regarded as prisons for the purpose of these rules.

This rule acknowledges that, in addition to untried or sentenced prisoners, other categories of persons are sometimes held in prisons by virtue of provisions in national law. These persons, as long as they are detained in prisons, are also to benefit from these rules where appropriate. A prison is by definition not a suitable place to detain someone who is neither suspected nor convicted of a criminal offence. Consequently, persons who are not untried or sentenced prisoners should only be held in prison in exceptional cases, and for as short periods as possible. For example, immigration detainees may be imprisoned pending their transfer to an immigration detention centre. Others may be held because of known potential for violence or when in-patient treatment is required and no other secure hospital facility is available.

The rules apply not only to every person "detained in a prison" within the meaning of the rules, but also to persons who, while not actually staying within the perimeter of the prison, nevertheless administratively belong to the population of that prison. That implies that persons enjoying furloughs or participating in activities outside the physical boundaries of the prison facilities, for whom the prison administration is still formally responsible, must be treated in terms of the rules.

This rule covers situations where (for instance, owing to overcrowding of prisons) persons, who in terms of this rule should be placed in a prison (temporarily) are held in other establishments such as police stations or other premises that they cannot leave at will. Imprisonment in facilities other than prisons should be a measure of last resort, lasting as short a time as possible and that the authorities in charge of these premises should do their utmost to live up to the standards set by these rules and offer sufficient compensation for deficient treatment.

11.1 Children under the age of 18 years should not be detained in a prison for adults, but in an establishment specially designed for the purpose.

11.2 If children are nevertheless exceptionally held in such a prison there shall be special regulations that take account of their status and needs.

Rule 11 complies with Article 37.c of the United Nations Convention on the Rights of the Child, which requires special detention facilities for young persons who are children within the meaning of this convention and forbids detention of children together with adults. Only when the best interests of the child indicate it, does this Convention allow a departure from the general rule. Rule 36 contains some special provisions for infants, that is, very young children who are in prison because one of their parents is detained there. More detail on the treatment of such children is provided by the Recommendation CM/Rec (2018) 5 of the Committee of Ministers to the member States concerning children with imprisoned parents.

It cannot be ruled out totally that in exceptional circumstances children may be detained in prisons for adults. For example, if there are very few children in a prison system, detaining them separately may mean that they are totally isolated. If children are held in a prison for adults, they should be treated with special concern for their status and needs. If held in such a prison, children, like other prisoners, benefit from the protection of the European Prison Rules, but further regulations are required to ensure that they are treated appropriately. Rule 35 and the commentary to it spell out how children detained in prison should be treated.

12.1 Persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose.

12.2 If such persons are nevertheless exceptionally held in prison there shall be special regulations that take account of their status and needs.

Rule 12 is the mirror image of Rule 11 but applies to persons suffering from mental illness. They too should ideally not be held in prisons but rather in mental institutions, which have their own standards. However, the rules recognise that in reality persons suffering from mental illness are sometimes held in prisons. In those circumstances there should be additional regulations that take account of their status and special needs. Such regulations should offer protection that goes beyond the European Prison Rules, which automatically applies to such persons as they are detained in a prison. In developing such regulations, prison

administrations should bear in mind that Rule 5.2 of the Nelson Mandela Rules requires them to "make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full access to prison life on an equitable basis". This requirement reflects the Convention on the Rights of Persons with Disabilities. The ECtHR has held that Article 3 may, in some circumstances, impose an obligation on the State to transfer prisoners who are mentally ill to special facilities in which they can receive adequate treatment.[7] The CPT has repeatedly stated that prisoners suffering from severe mental illnesses should be transferred to hospital immediately. It has also said that prison staff should be trained to recognise the major symptoms of mental ill-health and understand where to refer those prisoners requiring help.[8]

13. These rules shall be applied impartially, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Rule 13 outlaws discrimination on unjustified grounds. In this respect it follows closely the wording of Protocol No. 12 to the ECHR. However, it does not mean that formal equality should triumph where the result would be substantive inequality. Protection for vulnerable groups is not discrimination, nor is treatment that is tailored to the special needs of individual prisoners unacceptable. In Khamtokhu and Aksenchik v. Russia[9] the ECtHR did not consider that a sentencing policy which exempted female offenders, juvenile offenders and offenders aged 65 or over from life imprisonment amounted to a prohibited discrimination against the male adult offenders, on whom life imprisonment may be imposed. Rule 2 of the Nelson Mandela Rules clarifies that measures to protect and promote the rights of prisoners with special needs shall not be regarded as discriminatory.

Part II

Conditions of imprisonment

Admission ***and record-keeping***

14. No person shall be admitted to or held in a prison as a prisoner without a valid commitment order, in accordance with national law.

Adequate admission and detention procedures for prisoners are vital for the protection of liberty. This rule translates the right to liberty and security in Article 5 of the ECHR into the prison context by seeking to ensure that only persons whose detention is legally justified are admitted. Persons who are detained contrary to Rule 14 should be entitled to take proceedings by which the lawfulness of their detention shall be decided by a court. The ECtHR has made it clear that holding an individual in prison without a valid court order is incompatible with the requirements of Article 5 of the ECHR and indeed the rule of law generally.[10] Paragraph 19 of the Guidelines for prison and probation services regarding radicalisation and violent extremism adopted by the Committee of Ministers on 2 March 2016 emphasises that carrying out admission procedures well allows "feelings of trust and safety to be established". This in turn enables "proper assessment of prisoners' health conditions at entry and contributes to good risk and needs assessment, sentence planning, classification, allocation and accommodation".

15.1 At admission the following details shall be recorded immediately concerning each prisoner:

a. information concerning identity;

b. the reasons for commitment and the authority for it;

c. the day and hour of admission;
d. an inventory of personal property that is to be held in safekeeping in accordance with Rule 31;

e. any visible injuries and complaints about prior ill-treatment;

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[7] *Murray v. the Netherlands* [GC], No. 10511/10, paragraph 105, judgment of 26/04/2016
[8] Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 March to 12 April 2016 [CPT/Inf (2017) 9], paragraph 67.
[9] *Khamtokhu and Aksenchik v. Russia* [GC], Nos. 60367/08 and 961/11, judgment of 24/01/2017.
[10] *Svershov v. Ukraine*, No. 35231/02, paragraph 54, judgment of 27/11/2008; *Kharchenko v. Ukraine*, No. 40107/02, paragraph 98, judgment of 10/02/2011.

f. subject to the requirements of medical confidentiality, any information about health that is relevant to the physical and mental well-being of the prisoner or others;

g. name and contact details of the spouse or partner, or nearest relative, or any other person designated by the prisoner to be contacted in case of death, serious injury or illness; and

h. the number of children, their ages, and their current primary caregiver.

15.2 At admission all prisoners shall be given information in accordance with Rule 30.

15.3 Immediately after admission notification of the detention of the prisoner shall be given in accordance with Rule 24.9.

The most important information required about prisoners should be recorded immediately when they are admitted, at which point an individual file for each prisoner should be established. *Good record keeping is important to guarantee that persons are not deprived of their liberty arbitrarily.* ***Rule 6 of the Nelson Mandela Rules envisages that the individual file for prisoners can be part of an electronic database or a record in a registration book with numbered and signed pages.***

Rule 15.1 spells out the particulars in this regard. Note that, for Rule 15.1.a to fulfil its purpose sufficient information should be collected to establish the unique identity of the prisoner, including his or her self-perceived gender (see Rule 7.a of the Mandela Rules). The general approach to this issue is spelt out in Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.

Where someone is admitted as a result of a transfer, this should be recorded alongside the admission details required by Rule 15.1.c. The recording of injuries and complaints in terms of Rule 15.1.e should include information about sexual abuse or other forms of gender-based violence inflicted prior to entry to prison (see Rule 6 of the Bangkok Rules). Rule 15.1.g is designed to provide the information needed to enable the prison authorities to meet the requirements of Rules 15.3 and 24.9. Rule 15.1.h reiterates the principle established by *paragraph 13 of the Recommendation CM/Rec (2018) 5 of the Committee of Ministers to the member States concerning children with imprisoned parents.* ***The term "child" designates a person under the age of 18 as defined by Recommendation (2018)5. All information relating to the children's identities shall be kept confidential, and the use of such information shall always comply with the requirement to take into account the best interests of the children, consistent with case law of the ECtHR.[11]***

Good records of a prisoner's state of health on admission are also a vital protective measure. Such records should ideally be made following a medical examination. In addition, prison officials generally should be encouraged to record anything that shows ill health immediately, including injuries that could disappear by the time the medical practitioner examines the prisoner.

According to the ECtHR's well-established case-law, unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the ECHR.[12]

16. As soon as possible after admission:

a. information about the health of the prisoner on admission shall be supplemented by a medical examination in accordance with Rule 42;

b. the appropriate level of security for the prisoner shall be determined in accordance with Rule 51;

c. the threat to safety that the prisoner poses shall be determined in accordance with Rule 52;

d. **the information collected under 15.1. g and h as well as** any **other** available information about the social situation of the prisoner shall be evaluated in order to deal with the immediate personal and welfare needs of the prisoner; and

[11] See, for example, *Hadzhieva v. Bulgaria*, No. 45285/12, paragraph 59, judgment of 01/02/2018.
[12] *Fedotov v. Russia*, No. 5140/02, paragraph 78, judgment of 25/10/2005

e. in the case of sentenced prisoners, the necessary steps shall be taken to implement programmes in accordance with Part VIII of these rules.

Rule 16 lists a number of steps that should be taken as soon as possible after admission. While not everything can be done at the same time as admission, issues that have to be dealt with as soon as possible are flagged here, so that prison officials at the admission stage are referred to more substantive provisions. Medical examinations in particular should be done promptly. On this point, the CPT has repeatedly stated that all prisoners should be examined by a doctor or a nurse reporting to a doctor as soon as possible and no later than 24 hours after admission.[13] ***Where appropriate, this should include reference to ante-natal or post-natal care that women being admitted to prison may require.*** *Further, the CPT has set out in its 23rd General Report the important contribution which health-care services can make to combat ill-treatment through the methodical recording of injuries and the provision of information to the relevant authorities.*[14]

The CPT has repeatedly emphasised the importance of medical screening upon admission, which should also include screening for transmissible diseases (tuberculosis, hepatitis and HIV/AIDS).[15] *Such examinations should be conducted routinely also when a prisoner is readmitted to prison. The ECtHR has shown particular concern about the spread of transmissible diseases in prisons. It has considered that it would be desirable if, with their consent, prisoners could be screened for hepatitis or HIV/AIDS within a reasonable time after being committed to prison.*[16]

The early risk and security classifications required by Rule 16 also cannot be postponed. Attention also needs to be paid at an early stage to the personal and welfare needs of prisoners. This may require making contact promptly with social welfare services outside prison too. Similarly, a prompt start must be made with treatment and training programmes for sentenced prisoners. Information about these various aspects of imprisonment should be entered into prisoners' records.

16A.1. Information recorded at admission and as soon as possible after admission shall be updated and supplemented where appropriate.

16A.2. Information shall be collected for each prisoner relating in particular to:

a. the judicial process;
b. individual sentence plans, the strategy for preparation for their release and release date;
c. behaviour and conduct;
d. requests and complaints, unless they are of a confidential nature;
e. the imposition of disciplinary punishments;
f. the use of instruments of restraint;
g. intrusive searches, in particular internal physical searches, and searches of cells;
h. any transfers; and
i. their personal property.

16A.3 All information collected at admission and thereafter shall be kept confidential and made available only to those whose professional responsibilities require access to it.

16A.4 Prisoners shall be granted access to their medical and other records, except those restricted under national law for purposes of safety and security, and be entitled to receive a copy of such records upon request.

16A.5 National law shall specify what information shall be collected and processed and shall contain detailed rules to ensure that data protection standards are met with regard to such information.

Meticulous record keeping for each prisoner should continue throughout the time that the prisoner is kept in prison. ***Up-to-date, comprehensive records prevent errors that might lead to violations of prisoners' rights. Rule 16A.2 lists the information that should be recorded for each prisoner. In this regard, 'personal property' shall not include consumable items located in the prison cell. Note that information about the judicial process should include dates of court hearings.***

[13] Report to the Armenian Government on the visit to Armenia carried out by the CPT from 4 to 10 April 2013 (CPT/Inf (2015) 8), paragraph 25.
[14] 23rd General Report of the CPT [CPT/Inf (2013) 29], paragraphs 71 to 84.
[15] Report to the Latvian Government on the visit to Latvia carried out by the CPT from 12 to 22 April 2016 [CPT/Inf (2017) 16], paragraph 82.
[16] *Cătălin Eugen Micu v. Romania*, No. 55104/13, paragraph 56, judgment of 05/01/2016.

The Nelson Mandela Rules emphasise the importance of record-keeping and file management, not only at admission (Rule 7), but also throughout the duration of a prison term (Rule 8). The Nelson Mandela Rules also point out that good records can be used, amongst others, to generate reliable data about imprisonment trends and the characteristics of the prison population in order to create a basis for evidence-based decision-making (Rule 10).

Rule 16A.3 and Rule 16A.4 place restrictions on the use of information, whilst specifying when prisoners may have access to data about themselves. Rule 16A.5 requires that these sections should be interpreted in the light of wider data protection requirements. When seeking guidance for the development of national law as required in Rule 16A.5 reference should be made to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108 of 1981 as amended)

Allocation and accommodation

17.1 Prisoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation.

17.2 Allocation shall also take into account the requirements of continuing criminal investigations, safety and security and the need to provide appropriate regimes for all prisoners.

17.3 As far as possible, prisoners shall be consulted about their initial allocation and any subsequent transfer from one prison to another.

Rule 17 stresses the importance of allocating prisoners appropriately. Allocation decisions should generally be taken in a way that does not create unnecessary hardship for prisoners or their families, including the children of prisoners, who need access to them. Apart from considerations regarding requirements of safety and security, the allocation of an imprisoned parent to a particular prison shall take into account the best interests of their child in order to facilitate maintaining child-parent contact, relations and visits. (Recommendation CM/Rec (2018) 5 of the Committee of Ministers to the member States concerning children with imprisoned parents, paragraph 16). The allocation of women prisoners should be considered particularly carefully, as in many systems there are fewer prisons for them and the risk is that they will be allocated to prison far from their homes.

Where security categories are used to allocate prisoners, the least restrictive categories should be used, as high security imprisonment often brings with it, in practice, additional hardships for prisoners and restricted prospects for rehabilitation. Paragraph 20 of the Guidelines for prison and probation services regarding radicalisation and violent extremism adopted by the Committee of Ministers on 2 March 2016 provides that where decisions about the allocation of prisoners sentenced for terrorist-related crimes shall be made on the basis of prior individual evaluations and reviewed at regular intervals. Similarly, all prisoners should be held as near to their homes as possible or the place where they would best be reintegrated into society, in order to facilitate communication with the outside world as required by Rule 24. It is also important to consider only relevant categories when making allocation decisions. Thus, for example, the fact that someone is serving a life sentence does not necessarily mean they should be placed in a particular prison or under a particularly restrictive regime (Cf. paragraph 7 of Recommendation Rec(2003)23 of the Committee of Ministers on the management of life-sentenced and other long-term prisoners. See also: CPT's visit to Ukraine in September 2000 [CPT/Inf (2002)23]). The ECtHR has noted the general evolution in European penal policy towards the increasing relative importance of the rehabilitative aim of imprisonment, particularly towards the end of a long prison sentence. It also insisted that the emphasis on rehabilitation and reintegration has become a factor that member States must take into account in designing their penal policies.[17]

It should be recognised that prisoners have a direct interest in decisions about their allocation. They should therefore be consulted as far as possible and reasonable requests acceded to, although the final decision is necessarily that of the authorities. Such consultation should take place before they are allocated or transferred, although this may not always be possible with initial allocations that are routinely to the local prison or are made to meet the needs of continuing criminal investigations. If, in exceptional cases, requirements of safety and security make it necessary for prisoners to be allocated or transferred before they can be consulted, the consultation should take place subsequently. In such cases there must be a real possibility of reversing the decision if the prisoners had good reason for being allocated to a different prison. In accordance with Rule 70 prisoners may request the proper authorities to allocate or transfer them to a

[17] *Khoroshenko v. Russia* [GC], No. 41418/04, paragraph 121, judgment of 30/06/2015.

certain prison. They may also use the same procedures to seek to have a decision relating to allocation or transfer reversed.

The treatment of prisoners may be severely disrupted by transferring them. While it is recognised that transfers may be unavoidable, and may in some instances be in the best interests of a prisoner, unnecessary successive transfers should be avoided. The advantages and disadvantages of a transfer should be weighed carefully before it is undertaken.

The ECtHR has held that the ECHR does not grant prisoners the right to choose their place of detention. The fact that prisoners are separated from their families, and detained at some distance from them, may be an inevitable consequence of their imprisonment. Nevertheless, detaining prisoners so far away from their families that visits are made very difficult or even impossible may in some circumstances amount to an unjustified interference with family life. The opportunity for family members to visit prisoners is vital to maintain family relationships. It is therefore essential that the prison authorities assist prisoners in maintaining contact with their close family. Any interference with such a right will have to be in accordance with the relevant law, it must pursue a legitimate aim provided for in Article 8.2 ECHR and must be proportionate. Moreover, Article 13 ECHR requires that a prisoner has an effective remedy in this respect.[18] *Prison authorities should also avoid continuous transfer of prisoners, as these can be very disruptive. The CPT has warned that "the overall effect on the prisoner of successive transfers could under certain circumstances amount to inhuman and degrading treatment".*[19] *As far as possible, prisoners should be consulted before their transfer. They should also be given an opportunity to challenge their transfer.*

The ECtHR has held that consultation and procedural guarantees in the matters of allocation and transfer of prisoners are relevant factors for the protection from abuse and arbitrariness.[20] *The ECtHR has accepted that the transfer of prisoners may be warranted by the security reasons and in order to prevent escape. However, unwarranted transfers may give rise to an issue under Article 3 of the ECHR.*[21]

18.1 The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

18.2 In all buildings where prisoners are required to live, work or congregate:

a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

b. artificial light shall satisfy recognised technical standards; and

c. there shall be an alarm system that enables prisoners to contact the staff without delay.

18.3 Specific minimum requirements in respect of the matters referred to in paragraphs 1 and 2 shall be set in national law.

18.4 National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.

18.5 Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

18.6 Accommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each other.

18.7 As far as possible, prisoners shall be given a choice before being required to share sleeping accommodation.

[18] *Vintman v. Ukraine*, No. 28403/05, judgment of 23/10/2014.
[19] 2nd General Report of the CPT [CPT/Inf (92) 3], paragraph 57.
[20] *Polyakova and Others v. Russia*, Nos. 35090/09 et al., paragraphs 91-118, judgment of 07/03/2017.
[21] *Bamouhammad v. Belgium*, No. 47687/13, paragraphs 125-132, judgment of 17/11/2015.

18.8 In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain:

a. untried prisoners separately from sentenced prisoners;

b. male prisoners separately from females; and

c. young adult prisoners separately from older prisoners.

18.9 Exceptions can be made to the requirements for separate detention in terms of paragraph 8 in order to allow prisoners to participate jointly in organised activities, but these groups shall always be separated at night unless they consent to be detained together and the prison authorities judge that it would be in the best interest of all the prisoners concerned.

18.10 Accommodation of all prisoners shall be in conditions with the least restrictive security arrangements compatible with the risk of their escaping or harming themselves or others.

Developments in European human rights law have meant that rules about accommodation have to be strengthened. Conditions of accommodation collectively, and overcrowding in particular, can constitute inhuman or degrading treatment or punishment and thus contravene Article 3 of the ECHR. This has now been fully recognised by the ECtHR in a number of decisions, including by the Grand Chamber.[22] Moreover, the authorities have to consider the special needs of prisoners: to accommodate a severely disabled person in prison without providing additional facilities may amount to inhuman or degrading treatment.[23]

Physical accommodation includes both space in cells and issues such as access to light and air. The importance of access to natural light and fresh air is reflected in the separate Rule 18.2 and underlined by the CPT in its 11th General Report.[24] Windows should not be covered or have opaque glass. It is recognised that in Northern Europe it may not always be possible to read or work by natural light in winter.

Rule 18.3 instructs governments to declare by way of national law specific standards which can be enforced. Such standards would have to meet wider considerations of human dignity as well as practical ones of health and hygiene. These standards must include, in the first instance the living space that should be available to each prisoner. In 2015, the CPT issued a clear statement of its position this regard.[25] It is recommended that national law be drafted in the light of these standards, which should be considered in detail and amended when necessary.

In summary, the CPT regards as desirable that a single cell should provide eight to nine square metres of living space, a cell for two prisoners at least 10 square metres, a cell for three prisoners 14 square metres and a cell for four prisoners at least 18 square metres. In each instance these figures exclude the sanitary annex.

The minimum amount of living space that the CPT supports, again excluding the sanitary annex, is six square metres for a single occupancy cell and four square metres per prisoner for those in multi-occupancy cells. The CPT recognises that living space requirements may depend on the prisons regime. Although it would not view a "minor deviation" from its minimum standards as necessarily amounting to inhuman and degrading treatment, it still recommends that the minimum standards be adhered to.

For its part, the Grand Chamber of the ECtHR has stressed, in the leading case of Muršić v. Croatia,[26] that it could not determine, once and for all, a specific number of square metres that should be allocated to a prisoner in order to comply with the ECHR. A number of other relevant factors, such as the duration of detention, the possibilities for outdoor exercise and the physical and mental condition of the prisoner, played important parts in deciding whether the detention conditions satisfied the guarantees of Article 3 of the ECHR. Nevertheless, extreme lack of space in prison cells weighed heavily in establishing whether the

[22] *Muršić v. Croatia* [GC], No. 7334/13, judgment of 20/10/2016.
[23] *Price v. the United Kingdom*, No. 33394/96, judgment of 10/07/2001; *Farbtuhs v. Latvia*, No. 4672/02, 02/12/2004; *D.G. v. Poland*, No. 45705/07, judgment of 12/02/2013; *Kaprykowski v. Poland*, No. 23052/05, judgment of 03/02/2009; and *Mircea Dumitrescu v. Romania*, No. 14609/10, judgment of 30/07/2013.
[24] 11th General Report of the CPT [CPT/Inf (2001)16], paragraph 30.
[25] CPT, *Living space per prisoner in prison establishments: CPT standards*, 15 December 2015 [CPT/Inf (2015) 44].
[26] *Muršić v. Croatia* [GC], No. 7334/13, judgment of 20/10/2016, paragraphs 103-104.

impugned detention conditions were degrading within the meaning of Article 3 of the ECHR. The Grand Chamber was aware of the nature of its responsibility for the judicial application in individual cases of an absolute prohibition against torture and inhuman or degrading treatment under Article 3, which differed from the pre-emptive function of the CPT.[27] *It therefore set the following principles for its assessment of the conditions of accommodation under Article 3 of the ECHR.*

- *First, the ECtHR applied the standard derived from its own case law of three square metres of floor surface per prisoner in multi-occupancy accommodation as the relevant minimum standard under Article 3 of the ECHR. When the personal space available to a prisoner fell below three square metres in multi-occupancy cells, the lack of personal space was considered so severe that a strong presumption of a violation of Article 3 of the ECHR arose. The burden of proof was then on the respondent State to demonstrate that there were factors capable of adequately compensating for the scarce allocation of personal space. The strong presumption of a violation of Article 3 could normally be rebutted only if: (1) the reductions in the required minimum personal space of three square metres were short, occasional and minor; (2) such reductions were accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities, and (3) the prisoner was confined in what was, when viewed generally, an appropriate detention facility. In addition, there must be no other factors that worsen the conditions detention.*[28]

- *Secondly, where a prison cell measuring in the range of three to four square metres of personal space per prion was at issue, the space factor remained a weighty consideration in the ECtHR's assessment of the adequacy of conditions of detention. In such instances a violation of Article 3 of the ECHR would be found if the space factor was coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements.*[29]

- *Thirdly, in cases where a prisoner had more than four square metres of personal space in multi-occupancy accommodation and therefore no issue with regard to the question of personal space arose, other aspects of physical conditions of detention, set out, inter alia, in the European Prison Rules, remained relevant for the ECtHR's assessment of adequacy of a prisoner's conditions of detention under Article 3 of the ECHR.*[30]

In setting these principles, the ECtHR underlined the importance of the CPT's preventive role in monitoring conditions of detention and of the standards which it has developed. It also stressed that, when deciding cases concerning conditions of detention, it remained attentive to those standards and to the Contracting States' observance of them.[31] *Member States would be well advised to implement the CPT standards on accommodation. The requirements of human dignity in this area continue to evolve.*

Rule 18.4 requires national strategies enshrined in law to deal with overcrowding. Prison populations are as much a product of the operation of criminal justice systems as they are of crime rates. This needs to be recognised both in general criminal justice strategies and in specific rules relating to what happens when prisons are threatened with a level of overcrowding that would result in a failure to meet the minimum norms that governments are required to set by Rule 18.3.

Rule 18.4 does not stipulate how overcrowding should be reduced. In some countries for instance, new admissions are restricted or even stopped when maximum capacity has been reached. Prisoners whose continued liberty does not constitute a serious danger to the public are put on a waiting list. A strategy to deal with overcrowding requires at least the establishment of clear maximum capacity levels for all prisons. Recommendation No. R (99) 22 of the Committee of Ministers on prison overcrowding and prison population inflation and the 2016 White Paper on Prison Overcrowding emphasise the importance of using deprivation of liberty as a measure of last resort. Decriminalisation and alternatives to criminal proceedings are other potential strategies for reducing overcrowding. Prisons which successfully prepare prisoners for life in a free society allow for early release, which can also assist in reducing overcrowding. Where national strategies for

[27] Ibid., paragraph 113.
[28] Ibid., paragraphs 136-138.
[29] Ibid., paragraph 139.
[30] Ibid., paragraph 140.
[31] Ibid., paragraph 141.

dealing with systemic overcrowding are inadequate, the ECtHR can request a State by means of a pilot judgment to produce an improved strategy to combat overcrowding.[32]

Rule 18.5 retains the principle of single cells, which, especially for long term and life prisoners, constitute their homes, although it is not always followed. (Rule 96 emphasises that the principle applies in a similar way to untried prisoners.) Some departures from this principle are merely ways of dealing with overcrowding and are unacceptable as long-term solutions. Existing prison architecture along with other factors may also make it difficult to accommodate prisoners in single cells. However, when new prisons are built the requirement of accommodation in single cells should be taken into account.

The rule recognises that the interests of prisoners may require an exception to the principle of housing them in single cells. It is important to note that this exception is limited to instances where prisoners would benefit positively from joint accommodation. This requirement is underlined by Rule 18.6, which stipulates that only prisoners who are suitable to associate shall be accommodated together. Non-smokers should not be compelled to share accommodation with smokers, for example. Where accommodation is shared, the occurrence of any form of bullying, threat or violence between prisoners should be avoided by ensuring adequate staff supervision. The CPT has reiterated that large-capacity dormitories are inherently undesirable and has long advocated a move towards smaller living units.[33] *They hold no benefits for prisoners that are not outweighed by single cells for sleeping purposes. Single cells at night do not imply a limit on association during the day. The benefit of privacy during sleeping hours needs to be balanced with the benefit of human contact at other times (see Rule 50.1).*

The importance of ensuring appropriate accommodation is further strengthened in the new version of the rules by treating it in combination with issues of allocation. The allocation rules have been reinforced by stating clearly and simply the various categories of prisoners that must be separated from each other. The requirement in Rule 18.8c for separating older prisoners from younger prisoners should be read in combination with Rule 11, which requires that persons under the age of 18 years should be kept out of adult prisons entirely. The separation of young prisoners from adults includes the peremptory international requirement, set by Article 37.3.c of the United Nations Convention on the Rights of the Child, for the separation of children and adults: children in that context are defined as any person under the age of 18 years. Rule 18.8.c is intended also to provide for the additional separation of younger prisoners, sometimes referred to as young adults, who may be older than 18 years of age, but who are not yet ready to be integrated with other adult prisoners: this is in line with the more flexible definition of a juvenile in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

As the composition of the prison population changes, attention needs to be paid to the accommodation needs of other categories of prisoners too. In particular, older prisoners may require modifications to the standard prison accommodation and possibly being grouped together away from younger prisoners. In addition, prisoners who self-identify with a gender different from their biological sex and transgender prisoners may not fit the binary male and female accommodation categories and therefore require different arrangements.

It is recognised that the separation between various categories of prisoners referred to in Rule 18.8 needs not always be rigid. Rule 18.9 provides for relaxation of the strict separation requirements but limits it to cases where prisoners consent to it. In addition, such relaxation must form part of a deliberate policy on the part of the authorities that is designed to benefit prisoners. However, the forms of separation referred to in Rule 18.8 were introduced to protect potentially weaker prisoners, whose vulnerability to abuse has not ceased. Departure from them should not be undertaken as a solution to practical problems, such as overcrowding.

It may not always be appropriate to rely strictly on the separation of prisoners by category when it comes to daily activities. For instance, it may be appropriate to separate more physically developed under-18s from younger, less physically developed children.

Rule 18.10, which requires that the least restrictive security arrangements compatible with the risk of prisoners escaping or harming themselves or others should be used, also allows for the protection of society to be taken into consideration when deciding on appropriate accommodation. In this regard,

[32] See the pilot judgments in *Torreggiani and Others v. Italy*, Nos. 43517/09, 46822/09, 55400/09, judgment of 08/01/2013; and the judgment in *Rezmiveș and Others v. Romania*, Nos. 61467/12, 39516/13, 48231/13 et al., judgment of 25/04/2017, where the countries concerned were ordered to produce such a plan within set periods.

[33] CPT, *Living space per prisoner in prison establishments: CPT standards*, 15 December 2015 [CPT/Inf (2015) 44], paragraph 7.

particular attention should be paid to providing appropriate accommodation for older prisoners and physically disabled prisoners who, on the one hand, may have special needs but, on the other hand, may not pose security risks.

Hygiene

19.1 All parts of every prison shall be properly maintained and kept clean at all times.

19.2 When prisoners are admitted to prison the cells or other accommodation to which they are allocated shall be clean.

19.3 Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

19.4 Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

19.5 Prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.

19.6 The prison authorities shall provide them with the means for doing so including toiletries and general cleaning implements and materials.

19.7 Special provision shall be made for the sanitary needs of women.

Rule 19 emphasises both cleanliness of institutions and the personal hygiene of prisoners. The significance of institutional hygiene has been underlined by ECtHR which has held that unhygienic, unsanitary conditions, which are often found in combination with overcrowding, contribute to an overall judgment of degrading treatment: In this connection, it has relied on the standards developed, inter alia, in the European Prison Rules.[34] The CPT has also noted that "ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment".[35] The ECtHR has often deplored the lack of an appropriate separation of toilets from the living area. The absence of appropriate access to sanitary facilities may also give rise to an issue under Article 8 of the ECHR.[36]

There is a link between institutional and personal hygiene as the prison authorities must enable prisoners to keep themselves and their quarters clean by providing them, as required by Rule 19, with the means to do so. It is important that the authorities take overall responsibility for hygiene, also in the cells where prisoners sleep, and that they ensure that these cells are clean when prisoners are admitted. Conversely, all prisoners can, if able to do so, be expected at least to keep themselves and their immediate environment clean and tidy. Although the rules do not deal directly with beards, personal cleanliness and tidiness include proper care of hair, including the trimming or shaving of beards, for which provision must be made by the authorities. An absolute prohibition on growing a beard in prison could breach Article 8 of the ECHR.[37] However, heads should never be shaved as matter of routine or for disciplinary reasons, as this is inherently humiliating.[38]

The ECtHR has stressed that access to properly equipped and hygienic sanitary facilities is of paramount importance for maintaining prisoners' sense of personal dignity. Not only are hygiene and cleanliness integral to the respect that individuals owe to their bodies and to their neighbours with whom they share premises for long periods of time, they are also necessary for the conservation of health. According to the ECtHR, a truly humane environment is not possible without ready access to toilet facilities or the possibility of keeping one's body clean.[39] Sanitary precautions should include measures against infestation with rodents, fleas, lice, bedbugs and other vermin. There should be sufficient and adequate disinfection facilities, provision of detergent products, and regular fumigation of the cells. These are indispensable for the prevention of skin diseases.[40]

[34] *Muršić v. Croatia* [GC], No. 7334/13, paragraph 134, judgment of 20/10/2016.
[35] 2nd General Report of the CPT [CPT/Inf (92)3], paragraph 49.
[36] *Szafrański v. Poland*, No. 17249/12, judgment of 15/12/2015.
[37] *Biržietis v. Lithuania*, No. 49304/09, judgment of 14/06/2016.
[38] *See Yankov v. Bulgaria*, No. 39084/97, judgment of 11/12/2003.
[39] *Ananyev and Others v. Russia*, Nos. 42525/07 and 60800/08, paragraph 156, judgment of 10/01/2012.
[40] Ibid., paragraph 159.

Provision for the sanitary needs of women referred to in Rule 19.7 includes ensuring that women have access to sanitary protection as well as means of disposal. Rule 5 of the Bangkok Rules spells out in more detail what is required in this regard. See also CPT 10th General Report.[41] Provision also needs to be made for pregnant or breastfeeding women to bath or shower more often than twice a week,

In the context of hygiene, access to various facilities is of particular importance. These include sanitary facilities and baths and showers. Such access requires the close attention of the prison authorities to ensure both that the facilities are available and that access to them is not denied.

Clothing and bedding

20.1 Prisoners who do not have adequate clothing of their own shall be provided with clothing suitable for the climate.

20.2 Such clothing shall not be degrading or humiliating.

20.3 All clothing shall be maintained in good condition and replaced when necessary.

20.4 Prisoners who obtain permission to go outside prison shall not be required to wear clothing that identifies them as prisoners.

The issues of clothing and bedding are closely related to those of hygiene: inadequate clothing and unsanitary bedding can all contribute to a situation which may be held to contravene Article 3 of the ECHR.[42] The specific provisions of Rules 20 and 21 indicate to the prison authorities what active steps must be taken to avoid such a situation. Cleanliness extends to a requirement that underclothes, for example, are changed and washed as often as hygiene may require.

Note that Rule 20 must be read with Rule 97 which explicitly gives untried prisoners the choice of wearing their own clothes. The rules do not stipulate whether or not sentenced prisoners should be compelled to wear uniforms. They do no not outlaw or encourage such a practice. However, if sentenced prisoners are compelled to wear uniforms of any kind, they must meet the requirements of Rule 20.2. The ECtHR has held that although the requirement for prisoners to wear prison clothes may be seen as an interference with their personal integrity, it is based on the legitimate aim of protecting the interests of public safety and preventing public disorder and crime.[43]

This rule places a new emphasis on prisoners' dignity in respect of the clothing that must be provided. As it applies to all prisoners, it means that any uniforms that may be provided to sentenced prisoners should not be degrading and humiliating: uniforms that tend towards the caricature of the "convict" are therefore prohibited. Protection of prisoners' dignity also underlies the requirement that prisoners who go outside the prison should not wear clothes that identify them as prisoners. It is particularly important that when they appear in court they are provided with clothing appropriate for the occasion.

Implicit in the requirement in Rule 20.3 that clothing should be maintained in good condition, is that prisoners should have facilities for washing and drying their clothes.

21. Every prisoner shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness.

Rule 21 is largely self-explanatory. Beds and bedding are very important to prisoners in practice. "Bedding" in this rule includes a bed frame, mattress and bed linen for each prisoner. The issue of bedding is often closely related to the issue of overcrowding. The ECtHR has stressed that each prisoner must have an individual sleeping place in the cell.[44]

Nutrition

22.1 Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.

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[41] 10th General Report of the CPT [CPT/Inf (2000)13], paragraph 31.
[42] *Ananyev and Others v. Russia*, Nos. 42525/07 and 60800/08, paragraph 159, judgment of 10/01/2012.
[43] *Nazarenko v. Ukraine*, No. 39483/98, paragraph 139, 29/04/2003.
[44] *Ananyev and Others v. Russia*, Nos. 42525/07 and 60800/08, paragraph 148, judgment of 10/01/2012.

22.2 The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law.

22.3 Food shall be prepared and served hygienically.

22.4 There shall be three meals a day with reasonable intervals between them.

22.5 Clean drinking water shall be available to prisoners at all times.

22.6 The medical practitioner or a qualified nurse shall order a change in diet for a particular prisoner when it is needed on medical grounds.

Ensuring that prisoners receive nutritious meals is an essential function of prison authorities. The ECtHR has considered the provision of adequate nutrition to be an implicit aspect of the authorities' duty to ensure the health and well-being of prisoners.[45] *The change of the heading to "nutrition" from "food" reflects this change of emphasis. There is no prohibition of self-catering arrangements in the rule, but where there are such arrangements they must be implemented in a way that enables prisoners to have three meals daily. In some countries, prison authorities allow prisoners to cook their own meals, as this enables them to approximate a positive aspect of life in the community. In such cases they provide prisoners with adequate cooking facilities and enough food to be able to meet their nutritional needs.*

Attention should be paid to cultural and religious differences. Indeed, the refusal to provide an individual with a diet in prison in accordance with his religious precepts can give raise to an issue under Article 9 of the ECHR.[46] *Paragraph 20 of the Recommendation of the Committee of Ministers concerning foreign prisoners makes recommendations on how nutrition can be provided to foreigner in a culturally appropriate way.*

Rule 48 of the Bangkok Rules emphasises the importance of "adequate and timely food" for pregnant and breastfeeding women, while the CPT emphasises that "every effort should be made to meet the specific dietary needs of pregnant women prisoners, who should be offered a high-protein diet rich in fresh fruit and vegetables".[47]

Rule 22.2 now specifically obliges national authorities to embody the requirements for a nutritious diet in national law. These requirements would have to reflect the nutritional needs of different groups of prisoners. Once such specific standards are in place, internal inspection systems as well as national and international oversight bodies have a basis for determining whether the nutritional needs of prisoners are being met in the way that the law demands.

Legal advice

23.1 All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.

23.2 Prisoners may consult on any legal matter with a legal adviser of their own choice and at their own expense.

23.3 Where there is a recognised scheme of free legal aid the authorities shall bring it to the attention of all prisoners.

23.4 Consultations and other communications including correspondence about legal matters between prisoners and their legal advisers shall be confidential.

23.5 A judicial authority may in exceptional circumstances authorise restrictions on such confidentiality to prevent serious crime or major breaches of prison safety and security.

23.6 Prisoners shall have access to, or be allowed to keep in their possession, documents relating to their legal proceedings.

[45] *Kadiķis v. Latvia (no. 2)*, No. 62393/00, paragraph 55, judgment of 04/05/2006.
[46] *Jakóbski v. Poland*, No. 18429/06, judgment of 07/12/2012.
[47] 10th General Report of the CPT [CPT/Inf (2000)13], paragraph 26.

This rule deals with the right to legal advice that all prisoners have. Such advice, as Rule 61 of the Nelson Mandela Rules emphasises, depends on prisoners being granted adequate opportunity, time and facilities to be visited by, and to communicate and consult with, a legal adviser. Such advice may cover both criminal and civil litigation, as well as other matters such as the drafting of a will. Precisely what is regarded as legal advice and who may be regarded as a legal adviser may vary slightly from state to state and is best regulated by national law.

Rule 23 is designed to give practical substance to prisoners' entitlement to legal advice. Rule 23.3 directs the prison authorities to assist by drawing legal aid to the attention of prisoners. They should also seek to facilitate access to legal advice in other ways, for example, by providing prisoners with writing materials to make notes and with postage for letters to lawyers when they are unable to afford it themselves.[48] *The particular needs of untried prisoners for legal advice and facilities to make use of it are emphasised in Rule 98.*

Rule 23.4 requires prison authorities to facilitate the giving of legal advice by ensuring its confidentiality. The right of access of prisoners to confidential legal advice and to confidential correspondence with lawyers is well established and has been recognised by the European Court of Human Rights and European Commission of Human Rights in a long line of decisions.[49] *The CPT considers that visits by prisoners' lawyers should not be subject to an authorisation requirement, nor to limitations as regards their duration and frequency.*[50] *There are different ways in which this can be achieved in practice. For example, prison standards have long specified that meetings between prisoners and their lawyers should take place within the sight of but not within the hearing of prison officials (see Rule 61 of the Nelson Mandela Rules. This may still be the best solution to ensuring access to confidential legal advice but other ways of achieving the same outcome may be sought. Specific methods of ensuring the confidentiality of legal correspondence should also be developed. Where such correspondence takes place electronically, confidentiality is equally important.*

Any restrictions on such confidentiality must be made, as Rule 23.5 requires, by a judicial authority. They are only justified in order to prevent serious crime, or major breaches of prison safety and security.[51] *When, exceptionally, a judicial authority does place restrictions on the confidentiality of communications with legal advisers in an individual case, the specific reasons for the restrictions should be stated and the prisoner should be provided with these in writing. Judicial decisions to restrict confidentiality must be subject to review. Moreover, from the perspective of the right to a fair trial under Article 6 of the ECHR, surveillance of the contacts of prisoners with their defence counsel interferes with defence rights, and can only be justified with very good reasons.*[52]

Rule 23.6 is designed to assist prisoners by giving them access to legal documents which concern them. Where for reasons of security and good order it is not acceptable to allow them to keep these documents in their cells, steps should be taken to ensure that they are able to access them during normal working hours.

Contact with the outside world

24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

24.3 National law shall specify national and international bodies and officials with whom communication by prisoners shall not be restricted.

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[48] *See Cotlet v. Romania*, No. 38565/97, judgment of 03/06/2003.
[49] *See* in particular *Golder v. the United Kingdom*, No. 4451/70, judgment of 21/02/1975; and *Silver and Others v. the United Kingdom*, Application Nos. 5947/72 et al., judgment of 25/03/1983.
[50] Report to the Government of Serbia on the visit to Serbia carried out by the CPT from 1 to 11 February 2011 [CPT/Inf (2012) 18], paragraph 93.
[51] *See Peers v. Greece*, No. 28524/95, judgment of 19/04/2001, paragraph 84; and *A.B. v. the Netherlands*, No. 37328/97, judgment of 29/01/2002, paragraph 83.
[52] *Lanz v. Austria*, No. 24430/94, paragraph 52, judgment of 31/01/2002.

24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

24.5 Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.

24.6 Any information received of the death or serious illness of any near relative shall be promptly communicated to the prisoner.

24.7 Whenever circumstances allow, the prisoner should be authorised to leave prison either under escort or alone in order to visit a sick relative, attend a funeral or for other humanitarian reasons.

24.8 Prisoners shall be allowed to inform their families immediately of their imprisonment or transfer to another institution and of any serious illness or injury they may suffer.

24.9 Upon the admission of a prisoner to prison, the death or serious illness of, or serious injury to a prisoner, or the transfer of a prisoner to a hospital, the authorities shall, unless the prisoner has requested them not to do so, immediately inform the spouse or partner of the prisoner, or, if the prisoner is single, the nearest relative and any other person previously designated by the prisoner.

24.10 Prisoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to and reading newspapers, periodicals and other publications and by listening to radio or television transmissions unless there is a specific prohibition for a specified period by a judicial authority in an individual case.

24.11 Prison authorities shall ensure that prisoners are able to participate in elections, referenda and in other aspects of public life, in so far as their right to do so is not restricted by national law.

24.12 Prisoners shall be allowed to communicate with the media unless there are compelling reasons to forbid this for the maintenance of safety and security, in the public interest or in order to protect the integrity of victims, other prisoners or staff.

Loss of liberty should not entail loss of contact with the outside world. On the contrary, all prisoners are entitled to some such contact and prison authorities should strive to create the circumstances to allow them to maintain it as best as possible. Traditionally, such contact has been by way of letters, telephone calls and visits, but prison authorities should be alert to the fact that modern technology offers new ways of communicating electronically. As these develop, new techniques of controlling them are emerging too and it may be possible to use them in ways that do not threaten safety or security. Contact with the outside world is vital for counteracting the potentially damaging effects of imprisonment (see further paragraphs 22 and 23 of Recommendation Rec(2003)23 of the Committee of Ministers on the management by prison administrations of life-sentence and other long-term prisoners). Rule 99 makes it clear that untried prisoners should also be allowed to keep in contact with the outside world and that restrictions, if any, on such contact should be particularly carefully limited.

The reference to families should be interpreted liberally to include contact with a person with whom the prisoner has established a relationship comparable to that of a family member even if the relationship has not been formalised. Under the ECtHR's case-law, the existence or non-existence of "family life" is essentially a question of fact depending upon the existence of close personal ties.[53]

Article 8 of the ECHR recognises that everyone has a right to respect for their private and family life and correspondence and Rule 24 can be read as setting out the duties that the prison authorities have to ensure that these rights are respected in the inherently restrictive conditions of the prison. This also includes visits, as they are a particularly important form of communication. In this connection the ECtHR has stressed that it is an essential part of prisoners' right to respect for family life that the authorities enable them or, if need be, assist them in maintaining contact with their close family.[54] *Any restriction in this respect must be in accordance with the law, must pursue legitimate aim and be proportionate as required under Article 8.2 of the ECHR.*

[53] *Paradiso and Campanelli v. Italy* [GC], No. 25358/12, paragraphs 140-141, judgment of 24/01/2017.
[54] *Khoroshenko v. Russia* [GC], No. 41418/04, paragraph 106, judgment of 30/06/2015.

To adhere to the limits set by Article 8.2 of the ECHR on interference with the exercise of this right by a public authority, restrictions on communication should be kept to the minimum. Care should be taken to minimise particular difficulties and delays encountered by prisoners who need to communicate in a foreign language. At the same time, Rule 24.2 recognises that communication can be restricted and monitored for purposes of internal good order, safety and security of the prison (see the general discussion of these concepts in Part IV). It may also be necessary to limit communication in order to meet the needs of continuing criminal investigations, to prevent the commission of further crime and to protect victims of crime. Restrictions on these grounds should be imposed with particular caution, as they require decisions about matters often outside the knowledge of the normal operations of the prison authorities. It may be good policy to require court orders before making restrictions on these grounds. Monitoring too should be proportionate to the threat posed by a particular form of communication and should not be used as an indirect way of restricting communication. These principles are reflected in paragraph 3 of the Guidelines for prison and probation services regarding radicalisation and violent extremism adopted by the Committee of Ministers on 2 March 2016. They provide that "[a]ny supervision or restriction of contacts should be proportionate to the assessed risk and carried out in full respect of international human rights standards and national law, and in accordance with Rule 24 of the European Prison Rules".

The rules according to which restrictions are also imposed are also important: they must be spelt out clearly, "in accordance with law" as required by Article 8.2 of the ECHR and not be left to the discretion of the prison administration.[55] Indeed, the relevant law must indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on the authorities in this respect.[56] The restriction must be the least intrusive justified by the threat. Thus, for example, correspondence can be checked to see that it does not contain illegal articles but needs only to be read if there is a specific indication that that its contents are illegal. Visits, for example, should not be forbidden if they pose a threat to security but a proportionate increase in their supervision should be applied. Moreover, in order to justify a restriction, the threat must be demonstrable; an indefinite period of censorship, for example, is not acceptable. In practical terms, the restrictions will vary depending on the type of communication involved. Letters, and with modern technology, telephone calls, are easily checked. Electronic communications such as e-mails still pose a higher security risk and may be limited to a small category of prisoners. The security risks may change and therefore the rules do not lay down specific guidelines on this.

The ECtHR has explained in its case law that some measure of control over prisoners' correspondence is not of itself incompatible with the ECHR. However, in assessing the permissible extent of such control, the fact that the opportunity to write and to receive letters is sometimes prisoners' only link with the outside world should not be overlooked. The assessment of the proportionality of the interference takes into account the nature of the correspondence concerned. For instance, the ECtHR has considered that the need for confidentiality is essential in respect of a prisoner's correspondence with a lawyer concerning contemplated or pending proceedings, particularly where such correspondence relates to claims and complaints against the prison authorities. For such correspondence to be susceptible to routine scrutiny, particularly by authorities who may have a direct interest in their subject matter, is not in keeping with the principles of confidentiality and professional privilege attaching to relations between a lawyer and his client. The ECtHR also pays attention to the precise nature of the interference in a given case.[57]

An additional specific limit on restrictions is contained in Rule 24.2, which is intended to ensure that even prisoners who are subjected to restrictions are still allowed some contact with the outside world. It may be good policy for national law to lay down a minimum number of visits, letters and telephone calls that must always be allowed. The CPT has stated that all prisoners should benefit from a visiting entitlement of at least one hour every week and have access to a telephone at the very least once a week (in addition to the contacts with their lawyer(s)). Moreover, the use of modern technology (such as free-of-charge Voice over Internet Protocol (VoIP) services) may help prisoners to maintain contact with their families and other persons.[58] Further, "open" visiting arrangements should be the rule and "closed" ones the exception, for all legal categories of prisoners. Any decision to impose closed visits must always be well-founded and reasoned, and based on an individual assessment of the potential risk posed by the prisoner.[59] Restrictions on visits, or on the manner in which they are conducted, for example contact visits, should not be imposed on grounds other than those specified in Rule 24.2. Such restrictions should be as limited as possible and for the shortest period necessary to achieve their objective.

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[55] *See Labita v. Italy*, No. 26772/95, judgment of 06/04/2000.
[56] *Enea v. Italy* [GC], No. 74912/01, paragraph 143, judgment of 17/09/2009.
[57] *Yefimenko v. Russia*, no. 152/04, paragraphs 143-145, judgment of 12/02/2013.
[58] *See* 26th General Report of the CPT [CPT/Inf (2017) 5], paragraph 59.
[59] *inter alia* Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the CPT from 5 to 11 December 2012 [CPT/Inf (2013) 25], paragraph 53.

Some types of communication may not be prohibited at all. Not surprisingly, the ECtHR has paid particular attention to attempts to limit correspondence with it, which may give rise to an issue under Articles 8 and 34 of the ECHR.[60] Rule 24.3 specifies that national law should lay down that such communication will be allowed as well as communication with, for example, a national ombudsman and the national courts, as well as the CPT and the ECtHR.

The particular significance of visits, not only for prisoners but also for their families, is emphasised in Rule 24.4. Paragraph 17 of the Recommendation CM/Rec (2018) 5 of the Committee of Ministers to the member States concerning children with imprisoned parents provides that children should normally be allowed to visit an imprisoned parent within a week following their detention, and regularly and frequently thereafter. It provides that, in principle, "child-friendly visits should be authorised once a week, with shorter, more frequent visits allowed for very young children, as appropriate". Where possible intimate family visits should extend over a long period, for example, 72 hours, as is the case in many eastern and northern European countries. Such long visits allow prisoners to have intimate relations with their partners.[61]

Rule 24.5 places a positive duty on the prison authorities to facilitate links with the outside world. One way in which this can be done is to consider allowing all prisoners leave from prison in terms of Rule 24.7 for humanitarian purposes. The ECtHR has held that this must be done for the funeral of a close relative, where there is no risk of the prisoner absconding.[62] Humanitarian reasons for leave may include family matters such as the birth of a child.

Specific attention is paid in Rule 24.6, Rule 24.8 and Rule 24.9 to ensuring that prisoners receive basic information about their close family and that basic information about prisoners reaches those on the outside to whom it will be of particular interest. Prisoners should be assisted, where necessary, in communicating this information, particularly but not exclusively to their children and their caregivers: see paragraph 14 of the Recommendation CM/Rec (2018) 5 of the Committee of Ministers to the member States concerning children with imprisoned parents. The rule seeks to strike the difficult balance that must be maintained between giving prisoners a right to notify certain circumstances to significant others in the outside world; placing a duty on the authorities to do so in some circumstances; and recognising the right of prisoners not to have information about themselves made available when they do not want it to be disclosed. Where prisoners present themselves at prison at their own volition rather than following arrest it is not necessary for the authorities to inform their families of their admission.

Rule 24.10 deals with an aspect of contact with the outside world which is related to the ability to receive information, which is part of the right to freedom of expression guaranteed by Article 10 of the ECHR. This may also concern access to modern technologies (IT).[63]

Rule 24.11 is an innovation in the European Prison Rules designed to ensure that prison authorities respect the increased recognition that the ECtHR has now given to prisoners' right to vote.[64] Here too, the prison authorities can and should play a facilitative role and not make it difficult for prisoners to vote.[65] This rule builds on the early Resolution (62) 2 on the electoral, civil and social rights of prisoners stipulated in Chapter B, paragraphs 5 and 6:

> *"If the law allows electors to vote without personally visiting the polling-booth, a detainee shall be allowed this prerogative unless he has been deprived of the right to vote by law or by court order.*
>
> *A prisoner permitted to vote shall be afforded opportunities to inform himself of the situation in order to exercise his right."*

Rule 24.12 seeks to maintain a balance in this highly controversial area of communication by prisoners. Freedom of expression is the norm but public authorities are allowed to restrict freedom of expression in terms of Article 10.2 of the ECHR.[66] The use of the term "public interest" allows prohibition of such communication on grounds other than those relating to internal concerns with safety and security. These

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[60] *Yefimenko v. Russia*, No. 152/04, judgment of 12/02/2013; and *Cano Moya v. Spain*, No. 3142/11, judgment of 11/10/2016.
[61] *See* further *Dickson v. the United Kingdom* [GC], No. 44362/04, judgment of 04/12/2007; and *Khoroshenko v. Russia* [GC], No. 41418/04, paragraph 106, judgment of 30/06/2015.
[62] *Płoski v. Poland*, No. 26761/95, judgment of 12/11/2002.
[63] *Jankovskis v. Lithuania*, No. 21575/08, 17/01/2017.
[64] *See Hirst v. the United Kingdom (No. 2)*, No. 74025/01, judgment of 30/03/2004); see also *Scoppola v. Italy (no. 3)* [GC], No. 126/05, judgment of 22/05/2012; and *Anchugov and Gladkov v. Russia*, Nos. 11157/04 and 15162/05, judgment of 04/07/2013.
[65] *Iwanczuk v. Poland*, No. 25196/94, judgment of 15/11/2001.
[66] *Nilsen v. the United Kingdom* (dec.), No. 36882/05, judgment of 09/03/2010.

would include restrictions in order to protect the integrity of victims, other prisoners or staff. However, the term "public interest" will need to be interpreted relatively narrowly so as not to undermine what prisoners are being allowed by this rule.

Prison regime

25.1 The regime provided for all prisoners shall offer a balanced programme of activities.

25.2 This regime shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.

25.3 This regime shall also provide for the welfare needs of prisoners.

25.4 Particular attention shall be paid to the needs of prisoners who have experienced physical, mental or sexual abuse.

Rule 25 underlines that the prison authorities should not concentrate only on specific rules, such as those relating to work, education and exercise, but should review the overall prison regime of all prisoners to see that it meets basic requirements of human dignity. Such activities should cover the period of a normal working day. It is unacceptable to keep prisoners in their cells for 23 hours out of 24, for example. The CPT has emphasised that the aim should be to ensure that all prisoners (untried as well as sentenced prisoners) are able to spend a reasonable part of the day (i.e. eight hours or more) outside their cells, engaged in purposeful activity of a varied nature (work, preferably with vocational value, education, sport, recreation and association).[67]

Particular attention should be paid to ensure that prisoners that are not in work, such as prisoners who have passed the retirement age, are kept active in other ways.

This rule also makes specific reference to the welfare needs of prisoners and thereby provides the impulse for the prison authorities to see that the multiple welfare needs of prisoners are catered for, either by the prison service or welfare agencies within other parts of the state system. Specific reference is made to the need to provide support to prisoners, both male and female, who may have been physically, mentally or sexually abused.

Note also that Rule 101 allows untried prisoners to request access to the regimes for sentenced prisoners.

Work

26.1 Prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment.

26.2 Prison authorities shall strive to provide sufficient work of a useful nature.

26.3 As far as possible, the work provided shall be such as will maintain or increase prisoners' ability to earn a living after release.

26.4 In conformity with Rule 13 there shall be no discrimination on the basis of gender in the type of work provided.

26.5 Work that encompasses vocational training shall be provided for prisoners able to benefit from it and especially for young prisoners.

26.6 Prisoners may choose the type of employment in which they wish to participate, within the limits of what is available, proper vocational selection and the requirements of good order and discipline.

26.7 The organisation and methods of work in the institutions shall resemble as closely as possible those of similar work in the community in order to prepare prisoners for the conditions of normal occupational life.

[67] *See* 25th General Report of the CPT [CPT/Inf (2016) 10], paragraph 58.

26.8 Although the pursuit of financial profit from industries in the institutions can be valuable in raising standards and improving the quality and relevance of training, the interests of the prisoners should not be subordinated to that purpose.

26.9 Work for prisoners shall be provided by the prison authorities, either on their own or in co-operation with private contractors, inside or outside prison.

26.10 In all instances there shall be equitable remuneration of the work of prisoners.

26.11 Prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to allocate a part of their earnings to their families.

26.12 Prisoners may be encouraged to save part of their earnings, which shall be handed over to them on release or be used for other approved purposes.

26.13 Health and safety precautions for prisoners shall protect them adequately and shall not be less rigorous than those that apply to workers outside.

26.14 Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by national law to workers outside.

26.15 The maximum daily and weekly working hours of the prisoners shall be fixed in conformity with local rules or custom regulating the employment of free workers.

26.16 Prisoners shall have at least one rest day a week and sufficient time for education and other activities.

26.17 As far as possible, prisoners who work shall be included in national social security systems.

Note that work by untried prisoners is dealt with in Rule 100 and work by convicted prisoners in Rule 105. The positioning of Rule 26 in the general section represents a major departure from previous practice, for work has historically been conceived as something that is available to (and compulsory for) sentenced prisoners only. There is now widespread recognition that untried prisoners are entitled to work, too. The provisions in Rule 26 apply to all types of work performed by prisoners, whether they are untried prisoners who elect to do so or sentenced prisoners who may be compelled to work.

Rule 26.1 emphasises anew that no work performed by a prisoner should be punishment. This is designed to combat an obvious potential abuse. Instead, the positive aspect should be emphasised. Work opportunities offered to prisoners should be relevant to contemporary working standards and techniques and organised to function within modern management systems and production processes. The necessary safety precautions should also be taken.[68] It is important, as Rule 26.4 indicates in general terms, that women have access to employment of all kinds and are not limited to forms of work traditionally regarded as the province of women. Work should have a broadly developmental function for all prisoners: the requirement that it should if possible enable them to increase their earning capacity serves the same function.

The principle of normalisation, inherent in Rule 5, underpins much of the detail on work in Rule 26. Thus, for example, provisions for health and safety, working hours and even involvement in national social security systems should mirror that for workers on the outside. This approach builds on that adopted by Resolution No. R (75) 25 of the Committee of Ministers on Prison Labour. The same approach should inform the level of remuneration for prisoners. All prisoners should ideally be paid wages which are related to those in society as a whole.

Rule 26 also contains provisions designed to prevent the exploitation of prison labour. Thus Rule 26.8 is designed to ensure that the profit motive does not lead to the positive contribution that work is supposed to make toward the training of prisoners and the normalisation of their lives in prison being ignored.

Rules 26.11 and 26.12 regulate the issues of allocation and saving of earnings of prisoners. The ECtHR has held that an arrangement in which prisoners had been specifically allowed to use half of their money, but where they had no access to the other half, which was placed in a special fund during their incarceration, was not a disproportionate interference with their property rights under Article 1 of Protocol No. 1. The ECtHR thereby emphasised that States have a wide margin of appreciation in such matters and that they

[68] *Gorgiev v. "The former Yugoslav Republic of Macedonia*", No. 26984/05, judgment of 19/04/2012.

have the right to put in place appropriate schemes securing the reintegration of prisoners into society upon their release.[69] By contrast, a form of compulsory saving that could be detrimental for the property interests of prisoners, would be contrary to Article 1 of Protocol No. 1.[70]

Rule 26.16 recognises that while work may form a key part of the daily routine of prisoners, it should not be required to the exclusion of other activities. Of these, education is specifically mentioned but contact with others, such as welfare agencies for example, may be an essential part of the regime of a particular prisoner.

Exercise and recreation

27.1 Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.

27.2 When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise.

27.3 Properly organised activities to promote physical fitness and provide for adequate exercise and recreational opportunities shall form an integral part of prison regimes.

27.4 Prison authorities shall facilitate such activities by providing appropriate installations and equipment.

27.5 Prison authorities shall make arrangements to organise special activities for those prisoners who need them.

27.6 Recreational opportunities, which include sport, games, cultural activities, hobbies and other leisure pursuits, shall be provided and, as far as possible, prisoners shall be allowed to organise them.

27.7 Prisoners shall be allowed to associate with each other during exercise and in order to take part in recreational activities.

It is important to emphasise, as the placement of Rule 27 does, that all prisoners, including those subject to disciplinary punishment, need exercise and recreation, although these activities should not be compulsory. Opportunities for exercise and recreation must be made available to all prisoners rather than only as part of a treatment and training programme for sentenced prisoners. This is in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners, which deal with exercise and sport. The importance of exercise for all prisoners is underlined by the CPT in its 2nd General Report [CPT/Inf (92)3], paragraph 47. The one-hour a day period of physical exercise is a minimum that should be applied to all prisoners who do not get sufficient exercise through their work. Facilities for outdoor exercise should be sufficient to permit prisoners to exert themselves physically.[71] The CPT also recommends that exercise yards be equipped with a shelter against poor weather and protection from the sun, and a place of rest.[72]

The ECtHR has also held that prisoners must be allowed at least one hour of exercise in the open air every day, preferably as part of a broader programme of out-of-cell activities, while bearing in mind that outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter from inclement weather. This is in line with other international standards according to which prisoners should be able to spend a reasonable part of the day outside their cells, engaged in purposeful activity of a varied nature, namely work, recreation, education.[73]

Provision for physical exercise should be complemented by recreational opportunities to make prison life as normal as possible. The organisation of sport and recreation provide an ideal opportunity for involving prisoners in an important aspect of prison life and for developing their social and interpersonal skills. It is also an occasion on which prisoners can exercise their right of association. This right is protected by Article 11 of the ECHR and, while it is severely limited in the prison context by the requirements of good order, it is not entirely forbidden (see also the comment on Rule 52.3 in Part IV).

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[69] *Michał Korgul v. Poland*, No. 36140/11, paragraphs 51-56, judgment of 21/03/2017.
[70] *Siemaszko and Olszyński v. Poland*, Nos. 60975/08 and 35410/09, judgment of 13/09/2016.
[71] Report to the Swedish Government on the visit to Sweden carried out by the CPT from 9 to 18 June 2009 [CPT/Inf (2009) 34], paragraph 48.
[72] Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the CPT from 17 to 28 December 2012 [CPT/Inf (2014) 11] paragraph 39; Report to the Albanian Government on the visit to Albania carried out by the CPT from 10 to 21 May 2010 [CPT/Inf (2012) 11], paragraph 53.
[73] *Muršić v. Croatia* [GC], No. 7334/13, paragraph 133, judgment of 20/10/2016.

Rule 27.5 provides for prisoners who have a need for physical exercise of a specialised nature, for example, a prisoner who has been injured may require additional exercises to build up wasted muscles.

Education

28.1 Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.

28.2 Priority shall be given to prisoners with literacy and numeracy needs and those who lack basic or vocational education.

28.3 Particular attention shall be paid to the education of young prisoners and those with special needs.

28.4 Education shall have no less a status than work within the prison regime and prisoners shall not be disadvantaged financially or otherwise by taking part in education.

28.5 Every institution shall have a library for the use of all prisoners, adequately stocked with a wide range of both recreational and educational resources, books and other media.

28.6 Wherever possible, the prison library should be organised in co-operation with community library services.

28.7 As far as practicable, the education of prisoners shall:

a. be integrated with the educational and vocational training system of the country so that after their release they may continue their education and vocational training without difficulty; and

b. take place under the auspices of external educational institutions.

This rule makes general provision for the education of all prisoners. Additional aspects of education for sentenced prisoners are considered in Rule 106. Prison authorities should pay special attention to the education of young prisoners and those with special educational needs such as prisoners of foreign origin, disabled prisoners and others. This is in line with Recommendation No. R (89) 12 of the Committee of Ministers on education in prison, which refers specifically to the education needs of all prisoners. The rule emphasises the importance of the prison authorities providing for prisoners who have particular educational needs and of integrating the provision of education into the educational system in the community. It is also important that where prisoners obtain formal qualifications while in prison the certificates recording these qualifications should not indicate where they were obtained.

The library should be seen as a facility for all prisoners and as an important recreational resource. It also has a key place in the provision of education in prison. The adequately stocked library should contain books in the various languages that prisoners read. It should also comprise legal materials, including copies of the European Prison Rules and similar instruments, as well as the regulations applicable to the prison for prisoners to consult. Other materials that may be held in the library include electronically stored information.

Freedom of thought, conscience and religion

29.1 Prisoners' freedom of thought, conscience and religion shall be respected.

29.2 The prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs.

29.3 Prisoners may not be compelled to practise a religion or belief, to attend religious services or meetings, to take part in religious practices or to accept a visit from a representative of any religion or belief.

Prison rules have hitherto regarded the place of religion in prison as unproblematic and limited themselves to positive provision on how best to organise religious life in prison. However, the increase in some countries of prisoners with strong religious views requires a more principled approach as well as a positive requirement.

Rule 29.1 seeks to recognise religious freedom as well as freedom of thought and conscience as required by Article 9 of the ECHR.

Rule 29.2 adds a positive requirement on prison authorities to assist in respect of religious observance as well as the observance of beliefs. There are various steps that should be taken in this regard. Rule 22 already requires that religious preferences be taken into account when prisoners' diets are determined. So far as is practicable, places of worship and assembly shall be provided at every prison for prisoners of all religious denominations and persuasions. If a prison contains a sufficient number of prisoners of the same religion, an approved representative of that religion should be appointed. If the number of prisoners justifies it and conditions permit, such appointment should be on a full-time basis. Such approved representatives should be allowed to hold regular services and activities and to pay pastoral visits in private to prisoners of their religion. Access to an approved representative of a religion should not be refused to any prisoner. If this is not done, Article 9 of the ECHR may be infringed.[74] The principle of protecting the freedom of religion of prisoners has also been outlined in paragraph 2 of the Guidelines for prison and probation services regarding radicalisation and violent extremism, adopted by the Committee of Ministers on 2 March 2016. Paragraph 23 of these Guidelines adds that, where possible, prisoners should be able to take meals at times that meet their religious requirements. Paragraphs 24 and 25 of these Guidelines provide further guidance on appropriate religious representatives and the provision of adequate space and resources for them to meet prisoners in private and hold collective services.

Rule 29.3 provides safeguards to ensure that prisoners are not subject to pressure in the religious sphere. Proselytisation should be avoided. The fact that these matters are dealt with in the general section underlines the requirement that religious observance should not be seen primarily as part of a prison programme but as a matter of general concern to all prisoners.

Information

30.1 At admission, and as often as necessary afterwards all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison.

30.2 Prisoners shall be allowed to keep in their possession a written version of the information they are given.

30.3 Prisoners shall be informed about any legal proceedings in which they are involved and, if they are sentenced, the time to be served and the possibilities of early release.

This rule underlines the importance of informing prisoners of all their rights and duties, including those contained in so-called 'house rules'. This should be done in a language, and explained in a manner, which they can understand. Technological aids, including an introductory video, may be useful in this regard as may prisoner peer support.

Steps also need to be taken to ensure that prisoners remain properly informed. They will not only be interested in the material and formal conditions of their detention but also in the progress of their case and, in so far as they are sentenced, in how much time has still to be served and their eligibility for early release. For this reason, it is important that the prison administration keep a file on these matters for prisoners to consult. For a better understanding of the treatment of prisoners, their families should have access to the rules and regulations that determine the treatment of their next of kin.

Prisoners' property

31.1 All property that prisoners are not allowed to retain under the rules governing the prison shall be placed in safe custody on admission to the institution.

31.2 A prisoner whose property is taken into safe custody shall sign an inventory of the property.

31.3 Steps shall be taken to keep such property in good condition.

31.4 If it has been found necessary to destroy any such property, this shall be recorded and the prisoner informed.

[74] *Mozer v. the Republic of Moldova and Russia* [GC], No. 11138/10, paragraphs 197-198, judgment of 23/02/2016.

31.5 Prisoners shall, subject to the requirements of hygiene, good order and security, be entitled to purchase or otherwise obtain goods, including food and drink for their personal use at prices that are not abnormally higher than those in free society.

31.6 If a prisoner brings in any medicines, the medical practitioner shall decide what use shall be made of them.

31.7 Where prisoners are allowed to keep possession of their property the prison authorities shall take steps to assist in its safekeeping.

The protection of the property of prisoners, including money, objects of value and other effects is something that may cause difficulties in practice, as prisoners are vulnerable to theft of their property. Rule 31 contains detailed procedures to be followed from admission onwards to prevent this. These procedures also serve to safeguard staff from allegations that they may have misappropriated property belonging to prisoners. The rule also provides, subject to restrictions, for prisoners to purchase or otherwise obtain goods that they may need in prison. In the case of food or drink, see also the obligation of the authorities to provide prisoners with adequate nutrition in terms of Rule 22.

Transfer of prisoners

32.1 While prisoners are being moved to or from a prison, or to other places such as court or hospital, they shall be exposed to public view as little as possible and proper safeguards shall be adopted to ensure their anonymity.

32.2 The transport of prisoners in conveyances with inadequate ventilation or light, or which would subject them in any way to unnecessary physical hardship or indignity, shall be prohibited.

32.3 The transport of prisoners shall be carried out at the expense and under the direction of the public authorities.

Prisoners are particularly vulnerable when being transported outside prison. Accordingly, Rule 32 provides safeguards. to protect prisoners who are being transferred. ***The importance of this rule was reinforced by the Parliamentary Assembly of the Council of Europe in Resolution 2266 (2019) "Protecting human rights during transfer of prisoners" of 1 March 2019.***

Transfer should be understood to include prisoners who are being transferred to another country, as such prisoners are particularly vulnerable.

Rule 32.1 focuses on the rights of privacy that prisoners have in terms of Article 8 of the ECHR, as their privacy may be easily infringed during transfer. Authorities are therefore required to pay particular attention to ensuring that prisoners are exposed to public view as little as possible.

Rule 32.2 sets out the principles governing the conditions to which prisoners should be subject while being transported in much the same way as Rule 18 deals with the conditions of accommodation. In 2018, the CPT issued a Factsheet that draws together the concrete standards that it has developed in this regard: Transport of Detainees (CPT/Inf(2018) 24).These standards specify that individual cubicles used to transport prisoners should never be less 0.6 square meters for short journeys and should be "much larger" for longer journeys. When prisoners are transported communally they should have at least 0.4 square metres of personal space for short journeys and at least 0.6 square metres for longer journeys. The CPT standards specify further practical measures, such as that vehicles must have seating on which prisoners can rest, and that overnight trains must have adequate beds and bedding. The importance of sanitary facilities and regular stops when travelling by road is also stressed. The overall message in the CPT's Factsheet is that the dignity of prisoners being transported should be respected at all times. Inadequate conditions during transport may be inhuman and degrading and therefore infringe Article 3 of the ECHR. [75]

Rule 32.3 is specifically designed to ensure that prisoners are not exploited by making transfers dependent on their ability to pay for them. It also provides that the public authorities remain responsible for prisoners'

[75] *Khudoyorov v. Russia*, No. 6847/02, paragraphs 112-120, judgment of 08/11/2005.

safety when they are being transported. Exceptions may be made where prisoners elect to be involved in civil actions.

Release of prisoners

33.1 All prisoners shall be released without delay when their commitment orders expire, or when a court or other authority orders their release.

33.2 The date and time of the release shall be recorded.

33.3 All prisoners shall have the benefit of arrangements designed to assist them in returning to free society after release.

33.4 On the release of a prisoner all articles and money belonging to the prisoner that were taken into safe custody shall be returned except in so far as there have been authorised withdrawals of money or the authorised sending of any such property out of the institution, or it has been found necessary to destroy any article on hygienic grounds.

33.5 The prisoner shall sign a receipt for the property returned.

33.6 When release is pre-arranged, the prisoner shall be offered a medical examination in accordance with Rule 42 as close as possible to the time of release.

33.7 Steps must be taken to ensure that on release prisoners are provided, as necessary, with appropriate documents and identification papers, and assisted in finding suitable accommodation and work.

33.8 Released prisoners shall also be provided with immediate means of subsistence, be suitably and adequately clothed with regard to the climate and season, and have sufficient means to reach their destination.

This rule recognises that the question of release of prisoners does not concern only sentenced prisoners. It is important that prisoners who may not be legally detained further are released without delay.[76] *The various steps that have to be taken in terms of Rule 33 are designed to ensure that all prisoners, including those who are untried, are assisted in the transition from prison to life in the community.*

Women

34.1 Specific gender-sensitive policies shall be developed and positive measures shall be taken to meet the distinctive needs of women prisoners in the application of these rules.

34.2 In addition to the specific provisions in these rules dealing with women prisoners, the authorities shall pay particular attention to the requirements of women**,** such as their physical, vocational, social and psychological needs**, as well as caregiving responsibilities,** when making decisions that affect any aspect of their detention.

34.3 Particular efforts shall be made to **protect women prisoners from physical, mental or sexual abuse and** give access to special**ised** services for women prisoners who have needs as referred to in Rule 25.4, **including being informed of their right to seek recourse from judicial authorities, legal assistance, psychological support, or counselling and appropriate medical advice.**

34.4 **Arrangements shall always be made for p**risoners to give birth outside prison. Where **nevertheless** a child is born in prison, the authorities shall provide all necessary support and facilities, **including special accommodation.**

*This rule was added to the European Prison Rules in 2006, in order to deal with the reality that **women** prisoners are a minority in the prison system and can easily be discriminated against. It is designed to go beyond the outlawing of negative discrimination and to alert the authorities to the reality that they need to take positive steps in this regard.*

[76] *Quinn v. France*, No. 18580/91, judgment of 22/03/1995.

In order to bring the approach to the treatment of women in prison in line with international developments, this rule was amended in 2019 by the addition of Rule 34.1. This addition reflects the approach of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), which were *adopted by the United Nations in* ***2010****. The Bangkok Rules include comprehensive guidance on the treatment of women prisoners. There is no direct European equivalent to them. The Bangkok Rules should be borne in mind when issues arise relating specifically to the treatment of women which are not covered by the European Prison Rules.*

Gender sensitive policies include designing prison facilities to meet the specific needs of women. The CPT Factsheet, Women in Prison, January 2018,[77] sets out a number of other issues that should be addressed when developing gender sensitive policies.

The key message of Rule 34 is that achieving substantive equality of treatment in prison for women may require the authorities to take positive steps to assist them that they would not necessarily undertake for all prisoners. These steps are taken in order for the principle of non-discrimination embodied in Rule 13 to be put into practice and do not contradict it. *Women may suffer disadvantages* ***because they are a minority in the prison system and*** *relatively isolated.* ***Positive steps may therefore include devising*** *strategies* ***to combat*** *this isolation. Similarly, the provision in Rule 26.4, that there must be no discrimination on the basis of gender in the type of work provided, needs to be complemented by positive initiatives to ensure that women are not in practice still discriminated against in this respect by being housed in small units where less, or less interesting, work is on offer.*

The requirement of ***adapting the prison regime*** *for women prisoners is stated in general terms in order to allow for the imaginative development of a range of positive measures. However, one area stands out and this is recognised in Rule 34.2. Women prisoners are particularly likely to have suffered physical, mental or sexual abuse prior to imprisonment. Their distinctive needs in this respect are highlighted in addition to the general attention to be paid to all such prisoners in Rule 25.4. Similar emphasis on the needs of women in this regard is also found in Rule 30.b of Recommendation Rec(2003)23 of the Committee of Ministers on the management by prison administrations of life sentence and other long-term prisoners.* ***In addition, Rule 34.2 recognises that, in practice, women often bear the primary burden of caring for children and other family members.***

It is important to recognise that women's distinctive needs cover a wide range of issues and should not be seen primarily as a medical matter. Within the European Prison Rules and its Commentary, women's sanitary, pregnancy and motherhood, and health care needs are all referenced, but these should not be seen as exhaustive. Securing the rights contained in the European Prison Rules for women prisoners requires additional positive steps in all areas, in recognition of the wide distinctive needs of women experienced in all aspects of prison life. Rule 50 of the Bangkok Rules provides that women whose infants are in prison with them should be given the maximum opportunities to spend time with them.

Where women are taken to outside facilities they should be treated with dignity there too. It is not acceptable, for example, for them to give birth shackled to a bed or piece of furniture. Further restrictions on the use of restraints, which apply to women too, can be found in Rule 68 of the European Prison Rules.

Detained children

35.1 Where exceptionally children under the age of 18 years are detained in a prison for adults the authorities shall ensure that, in addition to the services available to all prisoners, prisoners who are children have access to the social, psychological and educational services, religious care and recreational programmes or equivalents to them that are available to children in the community.

35.2 Every prisoner who is a child and is subject to compulsory education shall have access to such education.

35.3 Additional assistance shall be provided to children who are released from prison.

35.4 Where children are detained in a prison they shall be kept in a part of the prison that is separate from that used by adults unless it is considered that this is against the best interests of the child.

[77] CPT Factsheet: 'Women in prison' [CPT/Inf(2018) 5].

This rule is designed in the first instance to keep children out of prisons, which are seen as institutions for the detention of adults. Children are defined following Article 1 of the United Nations Convention on the Rights of the Child as all persons below the age of 18 years.

The European Prison Rules as a whole are designed to deal primarily with the manner of detention of adults in prison. Nevertheless, the rules incorporate within their scope children who are detained on remand or following a sentence in any institution. The rules therefore apply to protect such children in prison. This is important, for children continue to be detained in "ordinary" prisons, although this practice is widely recognised to be undesirable. In addition, these rules, although geared to adults, may offer useful general indications of the minimum standards that should apply to children in other institutions as well.

Since children constitute an exceptionally vulnerable group, prison authorities should ensure that the regimes provided for detained children follow the relevant principles set out in the United Nations Convention on the Rights of the Child and the further protections spelled out in the Recommendation CM/Rec (2008) 11 of the Committee of Ministers to member States on the European Rules for juvenile offenders subject to sanctions or measures. The CPT, in its 24th General Report, sets out how detained juveniles who are suspected or convicted of a criminal offence should be treated. In addition to detention centres being specifically designed for juveniles, they should offer a non-prison-like environment and regimes tailored to their needs. Special emphasis is placed on the careful recruitment and training of staff, which should also include specialised educators, psychologists and social workers.[78] Both the Recommendation and the CPT guidance should be applied to all children in prison.

Additional guidance may be sought in specialist international standards, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the so-called Havana Rules, adopted by General Assembly Resolution 45/113 of 14 December 1990). The ECtHR places special emphasis on the health care and treatment provided to children deprived of their liberty.[79]

Rule 35.4 states the general principle that children should be detained separately from adults. It allows an exception for the best interests of a child. In practice, however, it will normally be in the best interests of children to be held separately. In the rare instances where this is not the case, such as where there are very few children in the prison system at all, careful steps should be taken to ensure that children are not at risk of abuse from adult prisoners. The CPT considers that when, exceptionally, juveniles are held in prisons for adults, they should always be accommodated separately from adults, in a distinct unit. Further, adult prisoners should not have access to this unit. That said, the Committee acknowledges that there can be arguments in favour of juveniles participating in out-of-cell activities with adult prisoners, on the strict condition that there is appropriate supervision by staff. Such situations occur, for example, when there are very few or only one juvenile offender in an establishment; steps need to be taken to avoid juveniles being placed de facto in solitary confinement.[80]

Infants

36.1 Infants may stay in prison with a parent only when it is in the best interest of the infants concerned. They shall not be treated as prisoners.

36.2 Where such infants are allowed to stay in prison with a parent special provision shall be made for a nursery, staffed by qualified persons, where the infants shall be placed when the parent is involved in activities where the infant cannot be present.

36.3 Special accommodation shall be set aside to protect the welfare of such infants.

Whether infants should be allowed to stay in prison with one of their parents and, if so, for how long, is a vexed question. Ideally, parents of infants should not be imprisoned but that is not always possible. The solution adopted here is to emphasise that the best interests of the infant should be the determining factor. This principle has been repeated in Rule 49 of the Bangkok Rules and stems from Article 3 of the Convention on the Rights of the Child. However, the parental authority of the mother, if it has not been removed, should be recognised, as should that of the father. It should be emphasised that where infants stay in a prison they are not to be regarded as prisoners. They retain all the rights of infants in free society. The

[78] *See* 24th General Report of the CPT [CPT/Inf (2015) 1], paragraphs 101 to 132.
[79] *Blokhin v. Russia* [GC], No. 47152/06, paragraph 138, judgment of 23/03/2016.
[80] *See* 24th General Report of the CPT [CPT/Inf (2015) 1], paragraph 102.

environment provided for the upbringing of infants in prison shall be as close as possible to that of infants of a similar age on the outside (Rule 51.2 of the Bangkok Rules).

No upper limit is set in the rule for the age that infants may reach before they have to leave their parent behind in prison. There are considerable cultural variations on what such a limit should be. Moreover, the needs of individual infants vary enormously and it may be in the interests of a particular infant to be kept beyond the norm with the parent in prison. With regard to infants in prison, the ECtHR has emphasised, relying on international standards and on its own case law, that the governing principle in all cases must be an infant's best interests. The ECtHR has stressed that the authorities have an obligation to create adequate conditions for these interests to be recognised in practice, including also in prison.[81]

Paragraphs 34-40 of the Recommendation CM/Rec (2018) 5 of the Committee of Ministers to the member States concerning children with imprisoned parents contain further detailed guidance on the treatment of infants detained in prison with a parent. These include support for prisoners who are pregnant and provisions for them to give birth outside of prison wherever possible. Children of such mothers should have their births registered promptly and their birth certificates should not reflect that they were born in prison (see also Rule 28 of the Nelson Mandela Rules). The attachment between such children and their prisoner-parent should be promoted and the children should have access to a similar level of services and support to that available in the community.

Foreign nationals

37.1 Positive steps shall be taken to meet the distinctive needs of prisoners who are foreign nationals.

37.2 Special attention shall be paid to the maintenance and development of the relationships of prisoners who are foreign nationals with the outside world, including regular contacts with family and friends, probation and community agencies and volunteers, and, subject to the prisoners' consent, diplomatic or consular representatives.

37.3 Prisoners who are foreign nationals shall be informed, without delay **and in a language they understand**, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their state.

37.4 Prisoners who are nationals of states without diplomatic or consular representation in the country, and refugees or stateless persons, shall be allowed similar facilities to communicate with the diplomatic representative of the state which takes charge of their interests or the national or international authority whose task it is to serve the interests of such persons.

37.5 In the interests of foreign nationals in prison who may have special needs, prison authorities shall co-operate fully with diplomatic or consular officials representing prisoners.

37.6 Specific information about legal assistance shall be provided to prisoners who are foreign nationals **in a language they understand**.

37.7 Prisoners who are foreign nationals shall be informed **in a language they understand** of the possibility of requesting that the execution of their sentence be transferred to another country.

37.8 Sentenced foreign prisoners shall be entitled, as with all other prisoners, to full consideration for early release as soon as they are eligible.

Rule 37 reflects the growing importance of issues surrounding foreigners in European prisons by incorporating them in a separate rule. It applies to both untried and sentenced prisoners.

Prison authorities should be alert to the general problems faced by prisoners who are foreign nationals as they may have specific needs that differ from those of the national prison population that require additional measures to assist them. If their primary social connections are to their countries of origin they should be assisted in maintaining them. However, if they have family and other links in the countries in which they are detained, these should be preserved too. In all, there should be no discrimination against foreign prisoners.

[81] *Korneykova and Korneykov v. Ukraine*, No. 56660/12, paragraphs 129-132, judgment of 24/03/2016.

Rule 37.1 requires positive steps to be taken by prison authorities to ensure that foreign prisoners are not in practice treated worse than other prisoners. *The needs* ***of foreign prisoners*** *must be met* ***and their cultural identity respected*** *to ensure substantive equality of treatment of all prisoners. More details on how to deal with the needs of such prisoners are contained in CM/Rec (2012) 12 of the Committee of Ministers to member States concerning foreign prisoners* ***and in Rule 62 of the Nelson Mandela Rules. Rule 37.2 focuses on the distinctive needs of foreign prisoners to maintain and develop relationships with the outside world. This principle is contained in Rule 24, which is of general application, but it is of particular importance for foreign prisoners, as they may be detained in a country separate from their close friends and relatives. For further guidance, see paragraph 22 of CM/Rec (2012) 12 of the Committee of Ministers to member States concerning foreign prisoners.***

Rules 37.2-5 are in line with the Vienna Convention on Consular Relations. *The underlying principle is that foreign nationals may be in particular need of assistance when a state other than their own is exercising the power of imprisoning them. This assistance is to be provided by representatives of their countries. Prison officials should also note that foreign prisoners may qualify for transfer under the European Convention of the Transfer of Sentenced Prisoners or in terms of bilateral arrangements and should inform such prisoners of the possibility (see paragraph 25 of Recommendation Rec(2003)23 of the Committee of Ministers on the management by prison administrations of life-sentence and other long-term prisoners).*

The ECtHR has stressed that Article 8 of the ECHR requires that foreign prisoners have some contact with their families, at least through telephone conversations and occasional visits, where regular visits are impossible or very difficult to organise.[82] *Where possible, technological solutions should be considered as an additional means of enabling foreign prisoners to make contact with their families abroad. The CPT has invited national authorities to facilitate foreign prisoners' access to a telephone and to verify the situation as regards the costs of international phone communications and the possibility of cheaper audio-communications.*[83] *Further, foreign national prisoners should be provided with clear information on immigration procedures.*[84] *Distinction should be made between resident foreign nationals and non-resident regarding their treatment and needs.*

Rule 37.8 requires that foreign prisoners should be considered for early release as soon as they are eligible, a principle which is emphasised in paragraph 6 of Recommendation CM/Rec (2012) 12 of the Committee of Ministers to member States concerning foreign prisoners. Steps shall be taken to ensure that detention is not unduly prolonged by delays relating to the finalisation of the immigration status of the foreign prisoner. In order to assist foreign prisoners to return to society after release, practical measures shall be taken to provide appropriate documents and identification papers as assistance with travel (Recommendation CM/Rec (2012) 12 of the Committee of Ministers to member States concerning foreign prisoners, paragraphs 6, 36.1 and 36.2).

Ethnic or linguistic minorities

38.1 Special arrangements shall be made to meet the needs of prisoners who belong to ethnic or linguistic minorities.

38.2 As far as practicable the cultural practices of different groups shall be allowed to continue in prison.

38.3 Linguistic needs shall be met by using competent interpreters and by providing written material in the range of languages used in a particular prison.

Rule 38, which is a new rule introduced in 2006, deals with the increasingly diverse prison population of Europe. Particular attention needs to be paid to the requirements of ethnic and linguistic minorities in the same way that the cultural and linguistic needs of foreign prisoners are considered (Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States concerning foreign prisoners). A failure to provide effective treatment for prisoners who are unable to communicate with the treatment staff because of a language barrier may cause the detention to be found to be degrading, thus contravening Article 3 of the ECHR.[85]

[82] *Labaca Larrea and Others v. France*, No. 56710/13, **decision** of 07/02/2017.
[83] Report to the Croatian Government on the visit to Croatia carried out by the CPT from 4 to 14 May 2007 [CPT/Inf (2008) 29], paragraph 97.
[84] Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the CPT from 17 to 28 December 2012 [CPT/Inf (2014) 11], paragraph 86.
[85] *Rooman v. Belgium* [GC] No. 18052/11, judgment of 31/01/ 2019.

Prison staff need to be sensitised to the cultural practices of various minorities in order to avoid misunderstandings. Staff training in cultural sensitivity is important in this regard.

Part III

Health

Health care

39. Prison authorities shall safeguard the health of all prisoners in their care.

Rule 39 was introduced to the European Prison Rules in 2006 for the first time. It is rooted in Article 12 of the International Covenant on Economic, Social and Cultural Rights, which establishes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Alongside this fundamental right, which applies to all persons, prisoners have additional safeguards as a result of their status. When a state deprives people of their liberty it takes on a responsibility to look after their health in terms both of the conditions under which it detains them and of the individual treatment that may be necessary. Prison administrations have a responsibility not simply to ensure effective access for prisoners to medical care but also to establish conditions that promote the well-being of both prisoners and prison staff. Prisoners should not leave prison in a worse condition than when they entered. This applies to all aspects of prison life, but especially to health care.

This principle is reinforced by Recommendation No. R (98) 7 of the Committee of Ministers to member States concerning the ethical and organisational aspects of health care in prison and also by the CPT, particularly in its 3rd General Report.[86] Paragraph 31 of CM/Rec (2012)12 of the Committee of Ministers concerning foreign prisoners gives further guidance on the approach to be adopted to the health care of foreign prisoners. Rules 10 to 18 of the Bangkok Rules emphasise aspects of health care that are of particular relevance to women.

The ECtHR has held that Article 3 of the ECHR imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical care. Thus, lack of appropriate medical care may amount to inhuman or degrading treatment, contrary to Article 3 of the ECHR.[87] Moreover, factors that impact negatively on prisoners' health, such as passive smoking, may be seen as aggravating inadequate conditions of detention.[88]

Organisation of prison health care

40.1 Medical services in prison shall be organised in close relation with the general health administration of the community or nation.

40.2 Health policy in prisons shall be integrated into, and compatible with, national health policy.

40.3 Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

40.4 Medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer.

40.5 All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose.

If a country has an effective national health service for people who have no other access to health care, the most effective way of implementing Rule 40 is that this service should also be responsible for providing health care in prison. If this is not the case, then there should be the closest possible links between the prison health care providers and health service providers outside the prison. This will not only allow for a continuity of treatment but will also enable prisoners and staff to benefit from wider developments in treatments, in professional standards and in training. Recommendation No. R (98) 7 of the Committee of Ministers requires that "health policy in custody should be integrated into, and compatible with, national

[86] 3rd General Report of the CPT [CPT/Inf (93) 12].
[87] *Blokhin v. Russia* [GC], No. 47152/06, paragraph 138, judgment of 23/03/2016.
[88] *Florea v. Romania*, No. 37186/03, judgment of 14/09/2009.

health policy". As well as being in the interest of prisoners, this is in the interest of the health of the population at large, especially in respect of policies relating to infectious diseases that can spread from prisons to the wider community.

The right of prisoners to have full access to the health services available in the country at large is confirmed by Principle 9 of the UN Basic Principles for the Treatment of Prisoners. The CPT's 3rd General Report also lays great emphasis on the right of prisoners to equivalence of health care.[89] It is also an important principle that prisoners should have access to health care free of charge (Rule 24 of the Nelson Mandela Rules). A number of countries experience great difficulty in providing health care of a high standard to the population at large. Even in these circumstances prisoners are entitled to the best possible health care arrangements and without charge. The CPT has stated that even in times of grave economic difficulty nothing can relieve the state of its responsibility to provide the necessities of life to those whom it has deprived of their liberty. It has made clear that the necessities of life include sufficient and appropriate medical supplies.[90]

The ECtHR has held that, in order to determine the adequacy of medical assistance, the mere fact that prisoners are seen by a medical practitioner and prescribed a certain form of treatment does not automatically lead to the conclusion that the medical assistance was adequate. The authorities must also ensure that; (1) a comprehensive record is kept concerning the prisoners' state of health and their treatment while in detention; (2) diagnosis and care are prompt and accurate, and (3) if necessitated by the nature of a medical condition supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the prisoners' health problems or preventing their aggravation, rather than addressing them on a symptomatic basis. The authorities must also show that the necessary conditions were created for the prescribed treatment to be followed through in practice.[91]
Nothing in these rules prevents a state from allowing prisoners to consult their own doctor at their own expense. Rule 118 of the Nelson Mandela Rules provides that untried prisoners who apply to be treated by their own doctors or dentists must be allowed to do so if they have reasonable grounds for the application.

Medical and health care personnel

41.1 Every prison shall have the services of at least one qualified general medical practitioner.

41.2 Arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency.

41.3 Where prisons do not have a full-time medical practitioner, a part-time medical practitioner shall visit regularly.

41.4 Every prison shall have personnel suitably trained in health care.

41.5 The services of qualified dentists and opticians shall be available to every prisoner.

A basic requirement to ensure that prisoners do have access to health care whenever required is that there should be a medical practitioner appointed to every prison. The medical practitioner referred to should be a fully qualified medical doctor. In large prisons a sufficient number of doctors should be appointed on a full-time basis. In any event, a doctor should always be available to deal with urgent health matters. This requirement is confirmed in Recommendation No. R (98) 7 of the Committee of Ministers concerning the ethical and organisational aspects of health care in prison.

In addition to doctors, there should be other suitably qualified health care personnel. In some eastern European countries, paramedics (sometimes called feldshers) reporting to a doctor also deliver medical assistance and care. Another important group will be properly trained nurses. In 1998, the International Council of Nurses published a statement which said, among other things, that national nursing associations should provide access to confidential advice, counselling and support for prison nurses.[92]

In dealing with prisoners, doctors should apply the same professional principles and standards that they would apply in working outside prisons. This principle was confirmed by the International Council of Prison Medical Services when it agreed the Oath of Athens, which provides that health professionals who are

[89] 3rd General Report of the CPT [CPT/Inf (93) 12], paragraphs 30-77.
[90] *See*, for example, Report to the Government of Moldova on the visit to Moldova carried out by the CPT from 10 to 22 June 2001 [CPT/Inf (2002) 11].
[91] *Blokhin v. Russia* [GC], No. 47152/06, paragraph 137, judgment of 23/03/2016.
[92] The Nurse's Role in the Care of Prisoners and Detainees, International Council of Nurses, 1998.

working in prisons should "endeavour to provide the best possible health care for those who are incarcerated in prisons for whatever reasons, without prejudice and within our respective professional ethics". This is also required by the first of the UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Rule 32 of the Nelson Mandela Rules provides that the relationship between all health care personnel and prisoners should "be governed by the same ethical and professional standards as those applicable to patients in the community".

Duties of the medical practitioner

42.1 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission, and shall examine them unless this is obviously unnecessary.

42.2 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall examine the prisoner if requested at release, and shall otherwise examine prisoners whenever necessary.

42.3 When examining a prisoner, the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:

a. observing the normal rules of medical confidentiality;

b. diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment;

c. recording and reporting to the relevant authorities any sign or indication that prisoners may have been treated violently;
d. dealing with withdrawal symptoms resulting from use of drugs, medication or alcohol;

e. identifying any psychological or other stress brought on by the fact of deprivation of liberty;

f. isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment;

g. ensuring that prisoners carrying the HIV virus are not isolated for that reason alone;

h. noting physical or mental defects that might impede resettlement after release;

i. determining the fitness of each prisoner to work and to exercise; and

j. making arrangements with community agencies for the continuation of any necessary medical and psychiatric treatment after release, if prisoners give their consent to such arrangements.

In line with Recommendation No. R (98) 7 of the Committee of Ministers concerning the ethical and organisational aspects of health care in prison, the idea underlying the duties of prison doctors is that they should give appropriate medical care and advice to all the prisoners for whom they are clinically responsible. In addition, their clinical assessments of the health of prisoners shall be governed solely by medical criteria (See also Rule 32.1(a) of the Nelson Mandela Rules).

Rule 42 makes it clear that the task of the medical practitioner begins as soon as any person is admitted to a prison. There are several important reasons why prisoners should be medically examined when they first arrive in prison. Such an examination will:

- *enable medical staff to identify any pre-existing medical conditions and ensure that appropriate treatment is provided;*

- *allow appropriate support to be provided to those who may be suffering the effects of the withdrawal of drugs;*

- *help to identify any traces of violence which may have been sustained before their admission to prison; and*

- *allow trained staff to assess the mental state of the prisoner and provide appropriate support to those who may be vulnerable to self-harm.*

An examination will only be obviously unnecessary if it is required neither by the prisoner's state of health nor by public health needs. Details of any injuries noted should be forwarded to the relevant authorities.

Following on from this initial examination the medical practitioner should see all prisoners as often as their health requires it. This is particularly important in respect of prisoners who may be suffering from mental illness or have a mental disability, who are experiencing drug or alcohol withdrawal symptoms or who are under particular stress because of the fact of their imprisonment. Recommendation No. R (98) 7 of the Committee of Ministers makes extensive reference to the care of prisoners with alcohol and drug-related problems and draws attention to the recommendations of the Council of Europe Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (the Pompidou Group). According to the ECtHR, appropriate treatment should be provided for the withdrawal symptoms that result from substance abuse.[93]

In several European countries there is a real concern about the spread of infectious diseases, such as tuberculosis (TB). This is a threat to the health of both prisoners and prison staff and also to the community at large. Medical practitioners working in prisons need to be particularly alert when examining persons who have been newly admitted to prison to identify any who have a communicable disease. The CPT considers that all newly-arrived prisoners should be subject to a systematic TB screening and voluntary testing for HIV and hepatitis B and C within 24 hours of admission.[94] *The prevention of transmissible diseases could be improved further by the provision of information to prisoners concerning methods of transmission, and the supply of appropriate means of protection analogous to those used in the community at large.*[95]

When prisons are overcrowded or there is poor hygiene, there also needs to be a programme of regular screening. There should be a programme for the treatment of prisoners suffering from such illnesses. Arrangements also need to be made when necessary for clinical reasons to isolate prisoners for their own benefit and for the safety of other persons. Recommendation No. R (98) 7 of the Committee of Ministers proposes that vaccination against hepatitis B should be offered to prisoners and staff.

In recent years an increasing number of prisoners have been found to be carrying the HIV virus. There is no clinical justification for automatically segregating such prisoners: see Recommendation No. R (93) 6 of the Committee of Ministers to member States on prison and criminological aspects of the control of transmissible diseases including aids and related health problems in prison. Recommendation No. R (98) 7 of the Committee of Ministers reinforces this point and also stresses that an HIV test should be performed only with the consent of the prisoner concerned and on an anonymous basis. World Health Organisation guidelines (WHO Guidelines on HIV infection and Aids in prisons, Geneva, 1993) make it absolutely clear that testing for HIV should not be compulsory and HIV infected prisoners should not be segregated from others unless they are ill and need specialised medical care.

Rule 42.2 provides that if a prisoner is released before the completion of his treatment, it is important that the medical practitioner establish links with medical services in the community in order to enable the prisoner to continue his treatment following release. This is particularly important where the released prisoner suffers from an infectious disease such as tuberculosis and HIV, or where a mental or physical disease or defect might impede the prisoner's successful resettlement in society.

Rule 42.3.a provides that medical practitioners examining prisoners should observe the normal rules of medical confidentiality. Rule 42.3.c also provides that medical practitioners should record and report to the relevant authorities any indications that prisoners may have been treated violently. There may be a tension between these two duties. The CPT has emphasised that the principle of confidentiality must not become an obstacle to the reporting of medical evidence indicative of ill treatment. The CPT favours an automatic reporting obligation for health care professionals working in prisons that applies "regardless of the wishes of the person concerned"[96] *(see also Rule 32.1.c of the Nelson Mandela Rules). As far as possible, prisoners should be protected against reprisals that may follow from such reporting. Rule 34 of the Nelson Mandela*

[93] *McGlinchey and Others v. the United Kingdom*, No. 50390/99, judgment of 29/04/2003; *Wenner v. Germany*, No. 62303/13, judgment of 01/09/2016.
[94] See for example the Report to the Government of "The former Yugoslav Republic of Macedonia" on the visit carried out by the CPT to "The former Yugoslav Republic of Macedonia" from 6 to 12 December 2016, CPT/Inf (2017) 30 | Section: 7/11 as well as the 26th General Report of the CPT, CPT/Inf(2017)5-part | Section: 5/5
[95] Report to the Latvian Government on the visit to Latvia carried out by the CPT from 12 to 22 April 2016 [CPT/Inf (2017) 16], paragraph 87.
[96] 23rd General Report of the CPT [CPT/Inf (2013) 29], paragraph 77.

Rules suggests "proper procedural safeguards" that should be followed to avoid exposing prisoners to "foreseeable risk of harm". See also "The phenomena of intimidation and reprisals: a major challenge for the CPT's work" in the CPT's 24th General Report.[97]

43.1 The medical practitioner shall have the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent with health care standards in the community, all sick prisoners, all who report illness or injury and any prisoner to whom attention is specially directed.

43.2 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.

43.3 The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.

Rule 43.1 places the duty to care for the physical and mental health of prisoners squarely on the medical practitioner. This means that the clinical decisions of the medical practitioner should not be overruled or ignored by non-medical prison staff (see also Rule 27.2 of the Nelson Mandela Rules).

Rule 43 as a whole implies that individual prisoners are entitled to regular, confidential access to appropriate levels of medical consultation, which is at least the equivalent to that available in civil society. The conditions under which prisoners are interviewed about their health should be the equivalent of those that apply in civil medical practice. Wherever possible they should take place in appropriately equipped consulting rooms. It is unacceptable for consultation to take place with groups of prisoners or in the presence of other prisoners or non-medical staff. During medical examinations prisoners shall not be handcuffed or physically separated from the medical practitioner.

Under no circumstances should they be required to disclose to other staff their reasons for seeking a consultation if they have to submit their request for access to a doctor to them. The arrangements for seeking a medical consultation should be made clear to prisoners on admission to the prison.

The medical records of individual prisoners should remain under the control of the medical practitioner and should not be disclosed without the prior written authorisation of the prisoner. In some countries, prison health care services come under the jurisdiction of civilian health care provision. In addition to the benefits discussed above, such arrangements also help to establish clearly that medical records are not part of general prison records. Rule 26.1 of the Nelson Mandela Rules places a duty on the "healthcare service" to "prepare and maintain accurate, up-to-date and confidential individual medical files on all prisoners". All prisoners should be able to access their medical records, if they request to do so. Rule 26.2 emphasises that medical files should be transferred when a prisoner is moved to a new prison.

The treatment provided as a result of consultation and diagnosis should be that which is in the best interests of the individual prisoner. Medical judgments and treatments should be based on the needs of the individual prisoner and not on the needs of the prison administration. Recommendation No. R (98) 7 of the Committee of Ministers concerning the ethical and organisational aspects of health care in prison emphasises that prisoners should give informed consent before any physical examination or treatment, as does the CPT's 3rd General Report.[98]

Recommendation No. R (98) 7 of the Committee of Ministers notes the need to pay special attention to the needs of prisoners with physical handicaps and to provide facilities to assist them along lines similar to those in the outside environment. In a judgment in July 2001, the ECtHR found a violation of Article 3 of the ECHR in respect of the treatment of a severely handicapped person in prison despite the fact that it found no evidence of any positive intention on the part of the prison authorities to humiliate or debase the applicant.[99]

One consequence of the increase in the length of sentences in some jurisdictions is that the prison administration has to respond to the needs of growing numbers of elderly prisoners. In some countries, the recent trend towards mandatory life or long sentences has led to a significant increase in prisoners who will

[97] 24th General Report of the CPT [CPT/Inf (2015) 1], paragraphs 41 to 46.
[98] 3rd General Report of the CPT [CPT/Inf (93) 12], paragraphs 46-49.
[99] *Price v. the United Kingdom*, No. 33394/96, judgment of 10/07/2001.

become old in prison. Prison administrations will need to give particular consideration to the different problems, both social and medical, of this group of prisoners. This may require the provision of a range of specialist facilities to deal with the problems arising from a loss of mobility or the onset of mental deterioration.

Special considerations will apply to prisoners who become terminally ill and a decision may have to be made as to whether such prisoners should be released early from their sentences. Any diagnosis made or advice offered by prison medical staff should be based on professional judgment and in the best interests of the prisoner. Recommendation No. R (98) 7 of the Committee of Ministers indicates that the decision as to when such patients should be transferred to outside hospital units should be taken on medical grounds. In a judgment in November 2002, the ECtHR found a violation of Article 3 of the ECHR in respect of the medical treatment of a terminally ill prisoner.[100] It noted a positive obligation on the state to offer adequate medical treatment and criticised the fact that the prisoner had been handcuffed to a hospital bed. In another case in October 2003, the Court found a violation of Article 3 of the ECHR in the treatment of a sick prisoner who had been chained to a hospital bed.[101]

Recommendation No. R (98) 7 of the Committee of Ministers makes reference to the treatment of prisoners who are on hunger strike. It stresses that clinical assessment of a hunger striker should only take place with the express permission of the patient unless there is a severe mental disorder, which requires transfer to a psychiatric service. Such patients should be given a full explanation of the possible harmful effects of their action on their long-term well-being. Any action that the medical practitioner (doctor) takes must be in accordance with national law and professional standards.

Medical practitioners or qualified nurses should not be obliged to pronounce prisoners fit for punishment but may advise prison authorities of the risks that certain measures may pose to the health of prisoners. They have a particular duty to prisoners who are held in conditions of solitary confinement for whatever reason: for disciplinary purposes; as a result of their "dangerousness" or their "troublesome" behaviour; in the interests of a criminal investigation; at their own request. Following established practice, (see for example Rule 46 of the Nelson Mandela Rules) such prisoners should be visited daily. Such visits can in no way be considered as condoning or legitimising a decision to put or to keep a prisoner in solitary confinement. Moreover, medical practitioners or qualified nurses should respond promptly to request for treatment by prisoners held in such conditions or by prison staff as required by paragraph 66 of Recommendation No. R (98) 7 of the Committee of Ministers concerning the ethical and organisational aspects of health care in prison.

44. The medical practitioner or other competent authority shall regularly inspect, collect information by other means if appropriate, and advise the director upon:

a. the quantity, quality, preparation and serving of food and water;

b. the hygiene and cleanliness of the institution and prisoners;

c. the sanitation, heating, lighting and ventilation of the institution; and

d. the suitability and cleanliness of the prisoners' clothing and bedding.

45.1 The director shall consider the reports and advice that the medical practitioner or other competent authority submits according to Rules 43 and 44 and, when in agreement with the recommendations made, shall take immediate steps to implement them.

45.2 If the recommendations of the medical practitioner are not within the director's competence or if the director does not agree with them, the director shall immediately submit the advice of the medical practitioner and a personal report to higher authority.

These two rules address the medical practitioner's duties to inspect and to advise upon the conditions of detention. The conditions under which prisoners are detained will have a major impact on their health and well-being. In order to meet their responsibilities, therefore, prison administrations should ensure appropriate standards in all those areas that may affect the health and hygiene of prisoners. In some instances, such inspections may be better conducted by a specialist competent authority. For example, a body that is responsible for inspecting the hygiene of catering establishments may be tasked with inspecting prison

[100] *Mouisel v. France*, No. 67263/01, judgment of 14/11/2002.
[101] *Hénaf v. France*, No. 65436/01, judgment of 27/11/2003.

kitchens. The physical conditions of the accommodation, the food and the arrangements for hygiene and sanitation should all be designed in such a way as to help those who are unwell to recover and to prevent the spread of infection to the healthy. The medical practitioner has an important role to play in checking that the prison administration is meeting its obligations in these respects. When this is not the case, the medical practitioner should draw this to the attention of the prison authorities. Recommendation No. R (98) 7 of the Committee of Ministers concerning the ethical and organisational aspects of health care in prison notes that the ministry responsible for health has a role to play in assessing hygiene in the prison setting.

Health care provision

46.1 Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals, when such treatment is not available in prison.

46.2 Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment.

This rule requires the prison administration to ensure that it has, in addition to facilities for general medical, dental and psychiatric care, suitable arrangements in place to provide specialist consultation and in-patient care. This requires a close link between the prison and the medical services in civil society since it is unlikely that prison health care services will themselves be able to make adequate arrangements for the full range of specialisations. In planning for specialist care particular attention should be given to the needs of vulnerable groups, especially women and older prisoners.

Access to specialist facilities may often require the transfer of the prisoner to another location. Prison administrations will need to ensure that arrangements for escorting prisoners are suitable and do not lead to delays in treatment or additional anxiety for the prisoner. The conditions in which prisoners are transported should be appropriate to their medical condition.

Although Article 3 of the ECHR cannot be construed as laying down a general obligation to release sick prisoners or place them in a civil hospital, it nonetheless imposes an obligation on the State to protect prisoners' physical well-being. In particularly serious cases of illness, situations may arise where the proper administration of criminal justice requires remedies to be taken in the form of "humanitarian measures", such as transfer to a civilian hospital or even release. The factors that the ECtHR takes into account in this context are: (1) the prisoner's condition; (2) the quality of care provided, and (3) whether or not the prisoner should continue to be detained in view of his or her state of health.[102]

Mental health

47.1 Specialised prisons or sections under medical control shall be available for the observation and treatment of prisoners suffering from mental disorder or abnormality who do not necessarily fall under the provisions of Rule 12.

47.2 The prison medical service shall provide for the psychiatric treatment of all prisoners who are in need of such treatment and pay special attention to suicide prevention.

The conditions of imprisonment may have a serious impact on the mental well-being of prisoners. Prison administrations should seek to reduce the extent of that impact and should also establish procedures to monitor its effects on individual prisoners. Steps should be taken to identify those prisoners who might be at risk of self-harm or suicide. Staff should be properly trained in recognising the indicators of potential self-harm. Where prisoners are diagnosed as mentally ill they should not be held in prison but should be transferred to a suitably equipped psychiatric facility (see Rule 12). In a judgment in April 2001, the ECtHR found a violation of Article 3 of the ECHR in the case of a prisoner who had committed suicide in respect of a lack of medical notes, a lack of psychiatric monitoring and segregation which was incompatible with the treatment of a mentally ill person.[103]

Recommendation Rec(2004)10 of the Committee of Ministers to member States concerning the protection of the human rights and dignity of persons with mental disorder says in Article 35 that persons with mental disorder should not be subject to discrimination in "penal institutions". In particular, the principle of equivalence of care with that outside prison should be respected with regard to their health care. Such

[102] *Enea v. Italy* [GC], No. 74912/01, paragraphs 58-59, judgment of 17/09/2009.
[103] *Keenan v. the United Kingdom*, No. 27229/95, judgment of 03/04/2001.

persons should be transferred between prison and hospital if their health needs so require. Appropriate therapeutic options should be available for persons with mental disabilities detained in prisons. Involuntary treatment for mental disorder should not take place in prisons except in hospital units or medical units suitable for the treatment of mental disability. An independent system should monitor the treatment and care of persons with mental disabilities in prisons.

In a number of cases concerning the detention of mentally-ill persons in regular prisons the ECtHR has found a violation of Article 3 ECHR in circumstances where the applicants, suffering from serious mental disorders, and had spent years in unfit conditions, sometimes inadequate even for healthy prisoners.[104]

The CPT has emphasised the need for procedures to identify prisoners who may be at risk of suicide or self-harm and a protocol for the management of prisoners identified as presenting a risk. The prevention of suicide, including the identification of those at risk, should not rest with the health-care service alone. All prison staff who come into contact with prisoners should be trained in recognising indications of suicide risk. Upon identification of prisoners potentially at risk, steps should be taken to ensure a proper flow of information within the establishment. All prisoners identified as presenting a suicide risk should as a first step benefit from counselling, appropriate support and association. If required, such persons should be subject to special precautions (placement in a ligature-free room and provision of suicide-proof clothing). Where there is a high risk of suicide, the prisoner should be under constant observation by a member of staff, who should engage in a dialogue with the prisoner.[105]

Other matters

48.1 Prisoners shall not be subjected to any experiments without their consent.

48.2 Experiments involving prisoners that may result in physical injury, mental distress or other damage to health shall be prohibited.

The CPT's 3rd General Report underlines the need for "a very cautious approach" when there is any question of medical research with prisoners, given the difficulty of being sure that issues of consent are not affected by the fact of imprisonment. All applicable international and national ethical standards relating to human experimentation should be respected. Rule 32.1(d) of the Nelson Mandela Rules provides for an "absolute prohibition or engaging, actively or passively, in acts that may constitute torture or other cruel, inhuman or degrading treatment or punishment, including medical or scientific experimentation that may be detrimental to a prisoner's health".

Part IV

Good order

General approach to good order

49. Good order in prison shall be maintained by taking into account the requirements of security, safety and discipline, while also providing prisoners with living conditions which respect human dignity and offering them a full programme of activities in accordance with Rule 25.

Good order depends on a proper balance between considerations of security, safety, discipline and the obligation imposed by Article 10 of the International Covenant on Civil and Political Rights that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". For the avoidance of prison disturbances it is essential to treat prisoners with justice, fairness and equity.

The majority of prisoners accept the reality of their situation. Provided that they are subject to appropriate security measures and fair treatment, they will not try to escape or seriously disrupt normal life in prison. All well-ordered communities, including prisons, need to operate within a set of rules and regulations that are perceived by the members of the community to be fair and just. In prisons these regulations will be designed to ensure the safety of each individual, both staff and prisoner, and each group has a responsibility to observe those rules and regulations. On occasion, some individuals will deviate from these regulations and

[104] *Vasenin v. Russia, No. 48023/06*, paragraph 99, judgment of 21/06/2016, with further references.
[105] *See*, for example, Report to the Government of Cyprus on the visit to Cyprus carried out by the CPT from 23 September to 1 October 2013 [CPT/Inf (2014) 31], paragraph 77.

for that reason there has to be a clearly defined system of hearings, discipline and sanctions which is applied in a just and impartial manner.

Certain prisoners may be tempted to escape. Hence prison authorities should be able to assess the danger posed by each individual prisoner in order to make sure that each one is subject to the appropriate conditions of security, neither too high nor too low. Only in extreme circumstances can use of force be justified as a legitimate method of restoring order. This must be the last resort. In order to avoid abuse there has to be a specific and transparent set of procedures for use of force by staff.

50. Subject to the needs of good order, safety and security, prisoners shall be allowed to discuss matters relating to the general conditions of imprisonment and shall be encouraged to communicate with the prison authorities about these matters.

Rule 50 provides for further guidelines so as to avoid unnecessary restrictions to prisoners' rights to communicate. Good order in all its aspects is likely to be achieved when clear channels of communication exist between all parties. On this basis, provided there are no related security concerns, prisoners should be allowed to discuss issues relating to the general conditions of imprisonment. It is in the interest of prisoners as a whole that prisons should run smoothly and they may well have useful suggestions to make. For this and other reasons, they should be given the opportunity to pass on their opinions to the prison administration. It is up to the national prison administrations to decide what form communications with prisoners will take. Some may allow prisoners to elect representatives and form committees that can express the feelings and interests of their fellow inmates. Other administrations may opt for different forms of communication. Where prisoners are allowed association in some form or another, prison management and staff should prevent representative bodies from wielding power over other prisoners or abusing their position to influence life in prison in a negative way. Prison regulations may stipulate that prisoners' representatives are not entitled to act on behalf of individual prisoners.

Security

51.1 The security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody.

51.2 The security which is provided by physical barriers and other technical means shall be complemented by the dynamic security provided by an alert staff who know the prisoners who are under their control.

51.3 As soon as possible after admission, prisoners shall be assessed to determine:

a. the risk that they would present to the community if they were to escape;

b. the risk that they will try to escape either on their own or with external assistance.

51.4 Each prisoner shall then be held in security conditions appropriate to these levels of risk.

51.5 The level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment.

Security measures are addressed in Rule 51. There are three main reasons for requiring that the security measures to which prisoners are subject shall be the minimum necessary to achieve their secure custody:

- *staff are likely to identify more easily those prisoners who require a high level of security if their numbers are restricted.*
- *the lower the level of security, the more humane the treatment is likely to be.*
- *security is expensive and the higher the level, the greater the cost. It makes financial sense not to have prisoners in a higher security category than is necessary.*

Physical and technical security arrangements are essential features of prison life, but on their own they are not sufficient to ensure good order. Security also depends on an alert staff who interact with prisoners, who have an awareness of what is going on in the prison and who make sure that prisoners are kept active in a positive way. This is often described as dynamic security and is much more qualitative than one which is

entirely dependent on static security measures. Dynamic security is defined by the Guidelines for prison and probation services regarding radicalisation and violent extremism adopted by the Committee of Ministers on 2 March 2016 as "a concept and a working method by which staff prioritise the creation and maintenance of everyday communication and interaction with prisoners based on professional ethics". The strength of dynamic security is that it is likely to be proactive in a way which recognises a threat to security at a very early stage. Where there is regular contact between staff and prisoners, an alert member of staff will be responsive to situations which are different from the norm and which may present a threat to security, and thus will be able to prevent escapes more effectively.

Assessment of risk can help to identify those prisoners who present a threat to themselves, to staff, to other prisoners and to the wider community. Rule 51.3 lists the main objectives of security risk assessment. Criteria for such evaluation have been developed in many countries. They include: the nature of the crime for which the prisoner was convicted; the threat to the public were the prisoner to escape; previous history of attempting to escape and access to external help; the potential for threat to other prisoners and in the case of pre-trial prisoners, the threat to witnesses. Risk assessments in prison should take account of assessments made by other appropriate agencies, such as the police. See Part III - Risk assessment principle during the implementation of a sentence - of Recommendation CM/Rec(2014)3 of the Committee of Ministers to member States concerning dangerous offenders for further guidance on when and how such risk assessment should be undertaken.

In many prison systems there is an assumption that all pre-trial prisoners must be held in high security conditions. This is not always necessary and it should be possible to apply an assessment of security risk to this group of prisoners if they were to escape, as well as to those who have been sentenced.

In some countries, the judge who passes sentence specifies the security of the regime in which the prisoner should be held. In other countries, prisoners who are sentenced to life imprisonment or who are sentenced under a particular law are automatically held in the highest security conditions, regardless of any personal risk assessment.

Rule 51.5 requires that security levels should be reviewed at regular intervals as the sentence is served. It is often the case that a person becomes less of a security risk as his sentence progresses. The prospect of progressing to a lower security category during the sentence can also act as an incentive for good behaviour.

Safety

52.1 As soon as possible after admission, prisoners shall be assessed to determine whether they pose a safety risk to other prisoners, prison staff or other persons working in or visiting prison or whether they are likely to harm themselves.

52.2 Procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety.

52.3 Every possible effort shall be made to allow all prisoners to take a full part in daily activities in safety.

52.4 It shall be possible for prisoners to contact staff at all times, including during the night.

52.5 National health and safety laws shall be observed in prisons.

Prisons should be places where everyone is and feels safe. Rule 52 applies therefore to prisoners, staff and all visitors. If it will never be possible to eliminate completely the risk of violence and other events such as fire, it should be possible to reduce these risks to a minimum by putting in place a proper set of procedures. ***Such procedures are particularly important when prisoners are being transported. The 2018 CPT Factsheet, Transport of Detainees (CPT/Inf(2018) 24), lists a number of practical steps that need to be taken to ensure the safety of prisoners who are being transported. These include not overcrowding vehicles used for transport and ensuring that the prisoners in them can communicate with the escort staff.***

As with security, safety implies a balance of different considerations and the techniques of dynamic security mentioned in Rule 51 can equally contribute to improved safety in prison. Excessive control can be as prejudicial to safety as insufficient control. A safe environment exists when there is consistent application of a clear set of procedures. In all cases, prisons should be equipped with adequate fire fighting equipment and

instruction notices on its use, the reporting of outbreaks of fire, the evacuation of buildings, external assembly points and procedures for checking that all prisoners and staff are accounted for.

The importance of carrying out a proper risk assessment on all prisoners on grounds of safety as well as security has been underlined by a finding of the ECtHR, in which the Court found in the light of the existing circumstances that there had been a violation of the right to life in respect of a pre-trial prisoner who was kicked to death in his cell by his cellmate.[106] Likewise, a proper risk assessment is needed with regard to the risk of suicide of a prisoner.[107]

There has been a growing tendency in some prison systems to separate categories of prisoners or individuals. Instead, prison authorities should strive to create environments in which all prisoners can be safe and free from abuse and should have a set of procedures that enable all prisoners to mix without fear of assault or other violence, namely to ensure that prisoners are able to contact staff at all times, including at night. Where it is necessary to keep some individuals or groups separate because of their particular vulnerability, (for instance, sexual offenders, mentally disturbed prisoners or those from a minority ethnic or religious group) they should have as full a set of daily activities as possible.

Special high security or safety measures

53.1 Special high security or safety measures go beyond those referred to in Rules 51 and Rule 52 and are measures imposed on prisoners who pose a particular threat to security or safety.

53.2 Special high security or safety measures shall only be applied in exceptional circumstances **and only for as long as security or safety cannot be maintained by less restrictive means.**

53.3. Special high security or safety measures may include the separation of a prisoner from other prisoners. Such separation shall be subject to the requirements of this rule and, additionally, of Rule 53A.

53.4 The nature of any such **special** measures, their duration and the grounds on which they may be applied, **as well as the procedures to be followed in imposing and implementing them,** shall be determined by national law.

53.5 The application of a **special** measure shall be approved by the competent authority for a specified period of time **and a copy of the written decision shall be provided to the prisoner along with information on how to challenge the measure.**

53.6 Any decision to extend the approved **duration of a special measure** shall be subject to a new approval by the competent authority **and a copy of the written decision shall be provided to the prisoner along with information on how to challenge the measure.**

53.7 Such **special** measures shall be applied to individuals and not to groups of prisoners.

53.8 Any prisoner subjected to **special** measures shall have a right of complaint in the terms set out in Rule 70.

Rule 53.1 makes it clear that special safety or security measures encompass all measures that go beyond those that are normally sufficient to maintain safety and security in prison. Often such measures are carried out in a particular wing of the prison. They may be required to deal with prisoners who pose special risk, such as those who are members of organised criminal gangs. Other examples of such special measures are additional searches and lockdowns, as well as the separation of prisoners referred to in Rule 53.3. Special measures should be necessary for security or safety and not merely be a form of additional punishment.

*Rule 53.**2** emphasises that special high security or safety measures only be applied in exceptional circumstances. **For some** prisoners, **conditions in maximum-security facilities, where some such***

[106] *Edwards v. the United Kingdom*, No. 46477/99, judgment of 14/03/2002; See also *Česnulevičius v. Lithuania*, No. 13462/06, judgment of 10/01/2012).
[107] *Shumkova v. Russia*, No. 9296/06, judgment of 14/02/2012.

special measures are routinely applied, the regime may be excessively severe *and disproportionate to the potential threat which they pose.* ***Such prisoners should not be held in maximum-security facilities.***

Rule 53.3 reflects the growing attention that is being paid worldwide to the potential abuse of involuntary separation of individual prisoners from the general prison population as a method of maintaining safety and security in prison. This is reflected in Rule 37 of the Nelson Mandela Rules, which provides that such involuntary separation shall always require authorisation. Such authorisation is required, the rule continues, for "solitary confinement, isolation, segregation, special care units or restricted housing, whether as a disciplinary sanction or for the maintenance of order and security, including promulgating policies and procedures governing the use and review of, admission to and release from any form of involuntary separation". A similar approach is adopted by the CPT.[108]

In all instances *prisoners should be subject to special high security or safety measures only where their* ***individual*** *behaviour has shown them to pose such a threat to safety and security that,* ***at that moment,*** *the prison administration has no other choice. Any assignment to such conditions should be for as short a time as possible and should be subject to continuous review of the individual prisoner's behaviour. Paragraph 21 of the Guidelines for prison and probation services regarding radicalisation and violent extremism adopted by the Committee of Ministers on 2 March 2016 stresses that the need to keep prisoners sentenced for terrorist-related crimes in conditions of high security should "be evaluated individually" and such decisions "reviewed at regular intervals".*

Rule 53.4 reflects the importance of ensuring the legality of all special safety and security measures, as they place restrictions on prisoners that go beyond the restrictions that may normally be imposed on prisoners.

Rules 53.5 and 53.6 are designed to ensure that procedures enshrined in law are implemented by a competent authority who is responsible both for procedural regularity and for ensuring that these measures are not abused by being implemented for longer than can be justified according to the requirements of safety and security. The written procedures are designed to add a measure of due process to the review of all special measures including solitary confinement and other forms of separation of prisoner from other prisoners.

The focus on individual prisoners in Rule 53.7 is also designed to ensure that the measures do not become a form of group punishment but are targeted at the individuals who need to be dealt with by such special measures. The link to the complaint procedure in Rule 53.8 is a further safeguard against abuse of special measures of safety and security.

Separation

53A.1. The following provisions apply to the separation of a prisoner from other prisoners:

a. Such separation shall be used for the shortest period necessary to achieve its objectives;

b. Prisoners who are separated from other prisoners shall not be subject to further restrictions beyond those necessary for meeting the stated purpose of such separation;

c. Cells used for separation shall meet the minimum standards applicable in these rules to other accommodation for prisoners;

d. The longer prisoners are separated from other prisoners, the more steps shall be taken to mitigate the negative effects of their separation by maximising their contact with others and by providing them with facilities and activities.

2. In addition, the following provisions apply to any separation that amounts to solitary confinement, that is, the confinement of a prisoner for 22 hours a day or more without meaningful human contact:

[108] 21st General Report of the CPT [CPT/Inf (2011) 28], paragraph 54.

a. Solitary confinement shall not be applied for a period in excess of 14 consecutive days;

b. Solitary confinement shall not be imposed on prisoners with physical, mental or intellectual disabilities where their disabilities render them more vulnerable to its adverse effects;

c. Prisoners detained in solitary confinement shall be provided, as a minimum, with reading materials and the opportunity to exercise for one hour per day as specified for prisoners in Rule 27.1 and 2.;

d. Prisoners detained in solitary confinement shall be visited daily, including by the director of the prison or by a member of staff acting on behalf of the director of the prison;

e. When solitary confinement is adversely affecting the prisoner's physical or mental health, action shall be taken to suspend it or to replace it with ~~by~~ a less restrictive sanction or measure;

f. Any prisoner subjected to solitary confinement shall have a right of complaint in the terms set out in Rule 70.

Rule 53A sets out requirements, in addition to those contained in Rule 53, that should be applied to all forms of separation of a prisoner from other prisoners. It includes further requirements for separation that is regarded as solitary confinement.

The CPT regards all forms of separation of individual prisoners as needing justification. These justifications are encapsulated by the CPT in the simple mnemonic PLANN. This means that all such separation must be "proportionate", "lawful", "accountable", "necessary" and non-discriminatory".[109] While some of these requirements, such as lawfulness are included in Rule 53, other are spelled out more fully in Rule 53A. The concept of necessity, for example, is relevant to separation of individual prisoners in two different ways. Such separation should not be allowed to continue for longer than necessary (Rule 53A.1.a). At the same time Rule 53A.1.b provides that necessary restrictions may vary according to the reason for which a particular prisoner is subject to separation. They should always be the minimum required for the purpose of the separation. Rule 53A.1.d emphasises that the minimum standards with regard to the cells used for separation are the same as those for prison cells generally. The CPT has stressed that special efforts should be made to enhance the regime of those prisoners kept separate from other for a long time, who need particular attention to minimise the damage that this measure can do to them.[110]

The analysis of the CPT is also useful in recognising that prisoners may be separated for different reasons: as a result of a court decision, for the purposes of good order or the protection of the prisoner concerned, or as a disciplinary punishment imposed within the prison system.[111] Rules 53A.1.a and 53A.1.b contain proportionality restrictions that depend on recognising these different purposes. For example, a prisoner who is separated for his or her own protection should not be subject to the same restrictions as the violent prisoner who is separated from others to maintain good order.

Separation of a prisoner from other prisoners may have negative effects on the prisoner in question, depending on the degree of separation entailed. Similarly, Rule 53A.1.d recognises that negative effects on separated prisoners grow increasingly likely the longer the prisoner is separated. As such, more steps are required to mitigate these effects the longer such separation continues. This is especially the case for prisoners with physical, mental or intellectual disabilities, who are particularly vulnerable to these adverse effects.

Rule 53A.2 sets further requirements for solitary confinement, as it is widely recognised that all solitary confinement poses severe mental and physical risks for prisoners subject to it. These requirements apply in addition to those contained in Rule 53A.1 for all separation of a prisoner from other prisoners that amounts to solitary confinement. Rule 53A.2 applies to solitary confinement, no

[109] 21st General Report of the CPT [CPT/Inf (2011) 28], paragraph 61.
[110] 21st General Report of the CPT [CPT/Inf (2011) 28], paragraph 61.
[111] 21st General Report of the CPT [CPT/Inf (2011) 28], paragraph 56.

matter for what purposes it is imposed. Additional requirements for the imposition of solitary confinement as a disciplinary punishment are set in Rule 60.6.

The definition of solitary confinement in Rue 53A.2 as the confinement of a prisoners for 22 hours a day or more without meaningful human contact is the same as that in Rule 44 of the Nelson Mandela Rules. This definition is narrower than that of the CPT which would include all forms of separation of individual persons for the purposes discussed above under the rubric of solitary confinement. There is of course nothing preventing member states from applying the wider CPT definition, if they choose to do so.

Prisoners in solitary confinement should not be isolated from the outside world entirely. Rule 24.2 provides, for example, that all prisoners should maintain an acceptable minimum level of contact with the outside world. This would include being notified of important personal news. They should also be allowed access to legal advice (see Rule 23).

The United Nations Special Rapporteur on Torture has acknowledged that "the weight of accumulated evidence to date points to…serious and adverse health effects" of solitary confinement,[112] while the Istanbul Statement on the Use and Effects of Solitary Confinement states that solitary confinement "harms prisoners who are not previously mentally ill and tends to worsen the mental health of those who are".[113] The CPT has also stated that solitary confinement "can have an extremely damaging effect on the mental, somatic and social health of those concerned".[114] The documented serious negative effects of solitary confinement mean that safeguards must put in place to guard against it and mitigate it where possible - as specified in Rule 53A.2. The higher likelihood of serious negative effects when a prisoner is subject to solitary confinement, and the greater degree of separation in question, are factors that should be directly considered when applying Rule 53A.2.

Where it is not possible to avoid the serious negative effects of solitary confinement, for instance in the case of some prisoners with disabilities, solitary confinement should not be used at all. Where, despite attempts at mitigating these serious negative effects, they are nonetheless felt, solitary confinement should be stopped regardless of whether the prisoner in question has any disabilities.

Meaningful human contact refers to "the amount and quality of social interaction and psychological stimulation which human beings require for their mental health and well-being. Such interaction requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity…. it does not constitute 'meaningful human contact' if prison staff deliver a food tray, mail or medication to the cell door or if prisoners are able to shout at each other through cell walls or vents... contact needs to provide the stimuli necessary for human well-being, which implies an empathetic exchange and sustained, social interaction. Meaningful human contact is direct rather than mediated, continuous rather than abrupt, and must involve genuine dialogue. It could be provided by prison or external staff, individual prisoners, family, friends or others –or by a combination of these."[115]

The ECtHR has held that, although the prohibition of contacts with other prisoners for security, disciplinary or protective reasons can be justified in certain circumstances, solitary confinement, even in cases entailing only relative isolation, cannot be imposed on a prisoner indefinitely. Indeed, solitary confinement, which is a form of "imprisonment within the prison", should be resorted to only exceptionally, and after every alternative has been considered.[116] According to the ECtHR case law, if special security measures against prisoners, including solitary confinement, are enforced with disproportionate severity, this may amount to inhuman or degrading treatment (an infringement of Article 3 of the ECHR) and a denial of privacy and family life (an infringement of Article 8 of the

[112] United Nations General Assembly, Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (A/63/175, Sixty third session, Distr: 28 July 2008), at 82.
[113] Istanbul Statement on the Use and Effects of Solitary Confinement" (International Psychological Trauma Symposium, Istanbul, 9 December 2007), Annexed to Report of the Special Rapporteur on Torture (A/63/175, 28 July 2008), page 24.
[114] 21st General Report of the CPT [CPT/Inf (2011) 28], paragraph 53.
[115] *Essex paper 3: Initial guidance on the interpretation and implementation of the Nelson Mandela Rules*, Penal Reform International and the Essex Human Rights Centre at the University of Essex, 2017, pp.88-89.
[116] *Piechowicz v. Poland*, No. 20071/07, paragraphs 164-165, judgment of 17/04/2012, with further references.

ECHR).[117] Moreover, Article 13 of the ECHR requires that prisoners placed in such a regime must have at their disposal an effective remedy against excessive special security measures including solitary confinement.[118]

The limitation of solitary confinement to maximum of 14 consecutive days in Rule 53A.2.a is derived from the standards set by the CPT for solitary confinement in 2011 as appropriate for Europe.[119] The Nelson Mandela Rules. describe solitary confinement of more than 15 consecutive days as prolonged solitary confinement (Rule 44) and explicitly prohibit it (Rule 43). Rule 53A.2.b follows similar provisions in Rule 45.2 of the Nelson Mandela Rules. Solitary confinement should not be prolonged indirectly by imposing consecutive periods. There should always be an adequate recovery period before further solitary confinement. When 14 days have elapsed, a less restrictive alternative should be sought. If further separation is essential, there should be additional meaningful human contact (See also Rule 60.6c).

The CPT has elaborated on the material conditions of solitary confinement. It places particular emphasis on the necessity for prisoners held in solitary confinement to be able to communicate with prison staff, and on such prisoners having access to suitable toilets and showers.[120] Exercise for prisoners in solitary confinement should meet the standards set in Rule 27.1 and 2. With respect to the right of prisoners in solitary confinement to exercise, as guaranteed in Rule 53A.2.c, the CPT has noted that the exercise area used by such prisoners, "should be sufficiently large to enable them genuinely to exert themselves and should have some means of protection from the elements".[121]

Rule 53A.2.d, on the duty to visit prisoners in solitary confinement, should be read together with Rule 43.2 which places a duty on medical personnel to pay particular attention to the health of prisoners in solitary confinement, including visiting them daily.

Rule 53A.2.e should be read together with Rule 43.3, which places a duty on a medical practitioner to inform the director of the prison when continued solitary confinement would put a prisoner's physical or mental health seriously at risk. When a director of a prison receives such a report, the director should strongly consider taking action in terms of Rule 53A.2.e.

Searching and controls

54.1 There shall be detailed procedures which staff have to follow when searching:

a. all places where prisoners live, work and congregate;

b. prisoners;

c. visitors and their possessions; and

d. staff.

54.2 The situations in which such searches are necessary and their nature shall be defined by national law.

54.3 Staff shall be trained to carry out these searches in such a way as to detect and prevent any attempt to escape or to hide contraband, while at the same time respecting the dignity of those being searched and their personal possessions.

54.4 Persons being searched shall not be humiliated by the searching process.

54.5 Persons shall only be searched by staff of the same gender.

54.6 There shall be no internal physical searches of prisoners' bodies by prison staff.

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[117] *Ramirez Sanchez v. France* [GC], No. 59450/00, judgment of 04/07/2006; and *Piechowicz v. Poland*, No. 20071/07, judgment of 17/04/2012.
[118] *Messina v. Italy (no. 2)*, No. 25498/94, paragraphs 89-97, judgment of 28/09/2000.
[119] 21st General Report of the CPT [CPT/Inf (2011) 28], paragraph 56.
[120] Ibid paragraph 58.
[121] Ibid.

54.7 An intimate examination related to a search may be conducted by a medical practitioner only.

54.8 Prisoners shall be present when their personal property is being searched unless investigating techniques or the potential threat to staff prohibit this.

54.9 The obligation to protect security and safety shall be balanced against the privacy of visitors.

54.10 Procedures for controlling professional visitors, such as legal representatives, social workers and medical practitioners, etc., shall be the subject of consultation with their professional bodies to ensure a balance between security and safety, and the right of confidential professional access.

This rule lays down that in each prison there should be a clearly understood set of procedures which describe in detail the circumstances in which searches should be carried out, the methods to be used and their frequency. These procedures must be designed to prevent escape and also to protect the dignity of prisoners and their visitors.

Procedures for regularly searching living accommodation such as cells and dormitories should be provided to make sure that security features, including doors and locks, windows and grilles, have not been tampered with. Depending on the security category of the prisoner, his personal property should also be subject to searches from time to time. Staff who are to carry out searches need to be specially trained to ensure that the principles of proportionality and necessity are honoured. This requires a balance between ensuring that they can detect and prevent any escape attempt or secretion of contraband goods while at the same time respecting the dignity of prisoners and respect for their personal possessions. When a prisoner's personal living space or possessions are being searched, he should normally be present. Rule 51 of the Nelson Mandela Rules requires, for purposes of accountability, that the prison administration should keep appropriate record of all searches as well of the reason for the searches, the identity of those who conducted them and any results of the searches.

Individual prisoners, particularly those subject to medium or maximum security restrictions, will also have to be personally searched on a regular basis to make sure that they are not carrying items which can be used in escape attempts, or to injure other people or themselves, or which are not allowed, such as illegal drugs. The intensity of such searches will vary according to circumstances. For example, when prisoners are moving in large numbers from their place of work back to their living accommodation it is normal to subject them to "rub-down" searches. Because of the intrusive nature of such searches, special attention should be paid to respecting the dignity of the person when carrying them out. Personal searches should not be conducted unnecessarily and should never be used as a form of punishment.

On other occasions, especially if there is reason to believe that an individual prisoner has something secreted about his person or when he is designated as a high-risk prisoner, it will be necessary to carry out what is known as a "strip search". This involves requiring prisoners to remove all clothing and to show that they have nothing hidden about their person. The rule lists the considerations to be covered by the procedures dealing with personal searches of prisoners. The ECtHR has found a violation of Article 3 of the European Convention on Human Rights in requiring a prisoner to strip naked in the presence of women[122] or in proceeding with certain body searches, because of the frequency and method used.[123] Prisoners should never be required to be completely naked for the purpose of a search.

Prison staff should never carry out internal body searches of prisoners, for example, by inserting a finger or any instrument into a prisoner's body cavities, on any grounds. If there are grounds for suspecting that prisoners may have hidden drugs or any other item that is forbidden in their bodies, arrangements should be made to keep them under close supervision until such time as they expel any item they may have in their bodies. If internal body searches are carried out by a medical practitioner, close attention should be paid to the World Medical Association Statement on Body Searches of Prisoners (October 1993). Rule 54.6 does not preclude the possibility of using modern technology to scan prisoners' bodies.

There should be clearly defined procedures for making sure that visitors to prisoners do not attempt to breach reasonable security requirements, for example, by bringing into the prison articles that are not allowed. These procedures may include the right to search visitors in person while taking into consideration that visitors are not themselves prisoners and that the obligation to protect the security of the prison has to be balanced against the right of visitors to their personal privacy. The procedures for searching women and

[122] *Valasinas v. Lithuania*, No. 44558/98, judgment of 24/07/2001.
[123] *Van der Ven v. the Netherlands*, No. 50901/99, judgment of 04/02/2003.

children need to be sensitive to their needs, for example, by ensuring that a sufficient proportion of staff carrying out searches is female. Personal searches should not be carried out in public view. Intrusive searches of visitors may give rise to an issue under Article 3 and Article 8 of the ECHR.[124] Paragraph 23 of the Recommendation CM/Rec (2018) 5 of the Committee of Ministers to the member States concerning children with imprisoned parents provides that: "Security checks shall be carried out in a child-sensitive manner that respects children's dignity and privacy as well as their right to physical and psychological integrity and safety. Any intrusive searches on children, including body cavity searches, shall be prohibited".

It may be necessary to search professional visitors, such as legal representatives, social workers and doctors, while taking care not to infringe the right of confidential professional access, namely approving a protocol for searching with the appropriate professional bodies.

Criminal acts

55. An alleged criminal act committed in a prison shall be investigated in the same way as it would be in free society and shall be dealt with in accordance with national law.

Rule 55 makes it clear that it is important to recognise that the rule of law does not end at the prison gate. In the interest of victims, when a criminal act has or is thought to have taken place in prison, an investigation procedure similar to that which is used in civil society should operate. In some countries special judges or prosecutors are appointed to carry out this function in prisons. In others the civil prosecutor or police are advised and given the opportunity to investigate as if the offence had taken place outside the prison. It may be that an incident which is serious in the prison context will not be regarded as worthy of investigation by the criminal investigatory authorities. In some countries one way of dealing with these matters is that the prison authorities and the investigatory authorities agree a policy concerning which incidents the prosecutor or police wish to be referred to them.

An obligation to investigate any suspicious death or an arguable claim of ill treatment in prison arises under Articles 2 and 3 of the ECHR. The investigation should be thorough and capable of leading to the identification and effective punishment of those responsible. Such investigations must be independent, impartial and open to public scrutiny. The authorities must take all reasonable steps to secure the evidence concerning the incident, including, inter alia, eyewitness testimony and forensic evidence. Any deficiency in the investigation, which undermines its ability to establish the cause of injuries or the identity of the persons responsible, will risk falling foul of this standard.[125] See further paragraph 27 of the Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations of 30 March 2011. The CPT has also stressed that prisons must not become places of impunity and all incidents resulting in injuries should be communicated to the relevant authorities and investigated.[126] Rule 71 of the Nelson Mandela Rules spells out how investigations should be conducted when a prisoner dies in custody or when there are reasonable grounds to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed in prison. This should happen irrespective of whether a formal complaint has been received.

Discipline and punishment

56.1 Disciplinary procedures shall be mechanisms of last resort.

56.2 Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners.

This rule stresses that disciplinary procedures shall be mechanisms of last resort. Rule 38.1 of the Nelson Mandela Rules encourages the use of conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts. Rule 39 of the Nelson Mandela Rules emphasises that, before imposing disciplinary sanctions, consideration should be given to whether prisoners' mental illness or developmental disability may have contributed to their conduct. Prisoners should not be sanctioned for conduct that is the direct result of their mental illness or intellectual disability.

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[124] *Wainwright v. the United Kingdom*, No. 12350/04, judgment of 26/09/2006.
[125] *Gladović v. Croatia*, No. 28847/08, paragraphs 39-40, judgment of 10/05/2011; and *Volk v. Slovenia*, No. 62120/09, paragraphs 97-98, judgment of 13/12/2012.
[126] Report to the Government of Ireland on the visit to Ireland carried out by the CPT from 16 to 26 September 2014 [CPT/Inf (2015) 38], paragraph 28.

By their nature prisons are closed institutions in which large groups of people, usually of one sex, are held against their will in confined conditions. From time to time it is inevitable that some prisoners will break the rules and regulations of the prison in a variety of ways. Hence, there has to be a clear set of procedures for dealing with such incidents.

57.1 Only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence.

57.2 National law shall determine:

a. the acts or omissions by prisoners that constitute disciplinary offences;

b. the procedures to be followed at disciplinary hearings;

c. the types and duration of punishment that may be imposed;

d. the authority competent to impose such punishment; and

e. access to and the authority of the appellate process.

Rule 57 makes it clear that disciplinary offences should be precisely defined and procedures should respect the principles of justice and fairness. This means that all prisons should have a set of regulations which clearly lists the acts or omissions that constitute a breach of prison discipline and that are liable to lead to formal disciplinary action. Hence, all prisoners should know in advance what are the rules and regulations of the prison. The legal status of these regulations should be clear. In many countries they will require parliamentary approval. Rule 57.2 lists the elements that should be included in the regulations.

58. Any allegation of infringement of the disciplinary rules by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay.

This rule stipulates that if a member of staff decides that a prisoner has breached any of the disciplinary regulations, that fact should be reported to the competent authority as soon as possible. In some countries it is customary to issue informal warnings for minor breaches of discipline before resorting to disciplinary action, which constitutes for the prisoner a first warning. However, care must be taken to ensure that the use of such warnings is fair and consistent and does not give rise to a system of unofficial sanctions.

The charge should be heard by the competent authority without undue delay. In some countries independent magistrates or specialist judges are appointed, which brings judicial independence and a greater likelihood that proper procedures will be observed. In other countries there is a special board for disciplinary hearings. In others these cases are heard by the head of the prison. Where disciplinary hearings are conducted by prison management it is important to ensure that they have received appropriate training and that they have not had any prior knowledge of the case that they are to hear.

59. Prisoners charged with disciplinary offences shall:

a. be informed promptly, in a language which they understand and in detail, of the nature of the accusations against them;

b. have adequate time and facilities for the preparation of their defence;

c. be allowed to defend themselves in person or through legal assistance when the interests of justice so require;

d. be allowed to request the attendance of witnesses and to examine them or to have them examined on their behalf; and

e. have the free assistance of an interpreter if they cannot understand or speak the language used at the hearing.

In terms of Rule 59 any prisoner who is to be charged under a disciplinary proceeding has the right to know the details of the charge in advance and should be given sufficient time to prepare a proper defence. If a prisoner is held in isolation pending the hearing, the procedure should not be delayed unjustifiably as a result

of internal or external investigation. In all cases the accused prisoner should be present at the hearing of the case.

The CPT has noted that it is "in the interests of both prisoners and prison staff that clear disciplinary procedures be both formally established and applied in practice; any grey zones in this area involve the risk of seeing unofficial (and uncontrolled) systems developing."[127] The CPT commented further that "disciplinary procedures should provide prisoners with a right to be heard on the subject of the offences it is alleged they have committed, and to appeal to a higher authority against any sanctions imposed".[128] In addition, the CPT has recommended that prisoners are permitted to remain seated during disciplinary adjudications and to have facilities to take notes. Prisoners should also be provided with a copy of any disciplinary decision concerning them, which should inform them of both the reason for the decision and the modalities for lodging an appeal.[129] The CPT has stated that disciplinary offences should be dealt with rapidly through fair and transparent procedures.[130] Holding a hearing long after the alleged offence does not serve the needs of good order in the prison.

Disciplinary proceedings may also be governed by Article 6 of the ECHR, which deals with the right to a fair trial. The applicability of Article 6 to disciplinary proceedings in prison depends on whether the alleged disciplinary infringement is a "criminal charge". The ECtHR has considered that a forfeiture of remission is a sufficiently serious penalty to make a disciplinary infringement for which such forfeiture is imposed a "criminal charge" for purposes of Article 6 of the ECHR.[131] On the other hand, a sanction restricting prisoners' free movement inside the prison and their contact with the outside world, without extending the prison term or seriously aggravating the terms of prison conditions, was considered to be entirely within the disciplinary sphere and thus out of the scope of Article 6.[132] The applicability of Article 6 requires the disciplinary authorities to comply with the particular institutional and procedural requirements under Article 6 of the ECHR as defined in the ECtHR case law. The right of an accused prisoner to have legal representation when facing a charge that may result in remaining in prison for a longer time has been confirmed by the ECtHR.[133]

60.1 Any punishment imposed after conviction of a disciplinary offence shall be in accordance with national law.

60.2 The severity of any punishment shall be proportionate to the offence.

60.3 Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited.

60.4 Punishment shall not include a total prohibition on family contact.

60.5 Instruments of restraint shall never be applied as a punishment.

60.6.a. Solitary confinement shall never be imposed as a disciplinary punishment on children, pregnant women, breastfeeding mothers, or parents with infants in prison.

60.6.b. Solitary confinement shall not be imposed as a disciplinary punishment, other than in exceptional cases and then for a specified period of time, which shall be as short as possible, and shall not exceed 14 consecutive days.

60.6.c. Where a punishment of solitary confinement is imposed for a new disciplinary offence on a prisoner who has already spent 14 days in solitary confinement, such a punishment shall not be implemented without first allowing the prisoner to recover from the adverse effects of the previous period of solitary confinement.

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[127] 2nd General Report of the CPT [CPT/Inf (92) 3], paragraph 55.
[128] Ibid.
[129] *See* inter alia Report to the Maltese Government on the visit to Malta carried out by the CPT from 26 to 30 September 2011 [CPT/Inf (2013) 12], paragraph 38.
[130] Report to the Government of Cyprus on the visit to Cyprus carried out by the CPT from 23 September to 1 October 2013 [CPT/Inf (2014) 31], paragraph 83.
[131] *Campbell and Fell v. the United Kingdom*, Nos. 7819/77 and 7878/77, paragraph 73, judgment of 28/06/1984; *Ezeh and Connors v. the United Kingdom* [GC], Nos. 39665/98 and 40086/98, paragraphs 128-129, judgment of 09/10/2003.
[132] *Štitić v. Croatia*, No. 29660/03, paragraph 61, judgment of 08/11/2007.
[133] *Ezeh and Connors v. the United Kingdom*, [GC] Nos. 39665/98 and 40086/98, judgments of 09/10/2003.

60.6.d. Consecutive disciplinary punishments of solitary confinement exceeding the period of 14 days may be converted to a form of separation not amounting to solitary confinement as defined by Rule 53A.2 or to another form of disciplinary punishment as prescribed by law.

60.6.e. Where solitary confinement imposed as a disciplinary measure is suspended in terms of Rule 53A.2.e, an alternative punishment may be imposed in its place.

This rule implies that the clearly defined and published list of disciplinary offences should be accompanied by a complete list of punishments which may be imposed on any prisoner who commits one of these offences. These punishments should always be just and proportionate to the offence committed. The list of punishments should be set down in a legal act approved by the appropriate authority. Staff shall not have a separate informal system of punishments that bypasses the official procedures.

Punishments may include a formal recorded warning, exclusion from work, forfeiture of wages (where these are paid for prison work), restriction on involvement in recreational activities, restriction on use of certain personal possessions, restriction on movement in the prison. Restrictions on family contact, but not a total prohibition, may also be used as a punishment. Such punishment should be used only where the offence relates to such family contacts or where staff are assaulted in the context of a visit.

All disciplinary hearings should be conducted on an individual basis. If, for example, there has been a mass refusal to obey a rule or an assault involving a number of prisoners, the case of each person must be heard and punishments imposed on an individual basis. A proper record should be kept of all disciplinary punishments imposed (see Rule 38.1 of the Nelson Mandela Rules).

There are specific prohibitions in Rule 60.3 against all forms of corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment. The latter prohibition should be interpreted to reflect evolving standards of decency. Rule 42 of the Nelson Mandela Rules also provides a list of living conditions that should be maintained for all prisoners and therefore cannot be compromised by punishment. The ECtHR has found that shaving the head of a prisoner as a disciplinary measure is a breach of Article 3 (prohibition of torture) of the ECHR.[134] Rule 43 of the Nelson Mandela Rules also prohibits placement in a constantly lit cell and reduction of diet or drinking water.

Rule 60.5 absolutely prohibits the use of restraints as a form of punishment. It should be read with Rule 68, which describes instruments of restraint in more detail and contains further restrictions on their use.

Rule 60.6 should be read in the light of Rule 53 and Rule 53A, which are also applicable to solitary confinement for disciplinary purposes. In particular, the definition of solitary confinement in Rule 53A.2 applies here too.

Rule 60.6a excludes particular groups from solitary confinement for disciplinary purposes. It follows a similar provision in Rule 22 of the Bangkok Rules.

Rule 60.6b limits the use of solitary confinement as punishment to "exceptional cases". This reflects a wider movement to restrict, if not abolish, the use of solitary confinement as a form of punishment.[135] As amended in 2019, Rule 60.6b sets maximum period of 14 days for solitary confinement for disciplinary purposes. This restates the requirement set in Rule 53.2.a above in relation to solitary confinement as a special high security and safety measure. A relatively low maximum is necessary, as prolonged periods of such solitary confinement can have serious deleterious effects on prisoners.[136] The 14 day maximum applies to punishment imposed after a disciplinary procedure, no matter how many individual charges were considered at the same time.

Rule 60.6.c provides that, once a prisoner has served a period of solitary confinement and the period of recovery has elapsed, solitary confinement can again be used, if the requirements of Rule 60.6.b are met, for the commission of a further offence or offences. This does not mean that a period of solitary confinement cannot be imposed shortly after a previous period has been served, but that it can only be carried out after a recovery period. Similarly, if punishments of solitary confinement are imposed that are cumulatively longer than 14 days, they can only be carried out if interspersed with

[134] *Yankov v. Bulgaria*, No. 39084/97, judgment of 11/03/2004.
[135] Principle 7 of the Basic Principles for the Treatment of Prisoners, UN General Assembly resolution 45/111 of 14 December 1990.
[136] 21 st General Report of the CPT [CPT/Inf (2011) 28], paragraph 53.

recovery periods. It is also possible to impose separation that does not amount to solitary confinement as a disciplinary punishment.

61. A prisoner who is found guilty of a disciplinary offence shall be able to appeal to a competent and independent higher authority.

This rule lays down that if the prisoner is found guilty of the charge, he or she should have the right of appeal to a higher independent authority. The disciplinary regulations should specify what this authority is and how any appeal can be prepared and lodged and should ensure that the appeal process can be speedily concluded.

62. No prisoner shall be employed or given authority in the prison in any disciplinary capacity.

In some countries it has been common practice to appoint prisoners as group leaders, often in a living or working unit and to require them to report to the authorities on the behaviour of other prisoners and to make recommendations which affect the way they are treated. In other situations prisoners have been given authority over prisoners in punishment or segregation units.

Double jeopardy

63. A prisoner shall never be punished twice for the same act or conduct.

Rule 63 applies the general principle of ne bis in idem to the prison context. Not only should the prison authorities avoid charging someone twice with the same disciplinary infringement, but they should avoid punishing someone in terms of the internal disciplinary processes when that prisoner has already been punished for the same conduct following a criminal charge. For example, if a prisoner is convicted of assault before a criminal court and punished by that court, the same prisoner should not be punished for the same assault as a disciplinary infringement.

The ne bis in idem principle is guaranteed under Article 4 of Protocol No. 7 to the ECHR. The ne bis in idem principle under this provision consists of the following elements: (1) the impugned acts or conduct form offences qualifying as "criminal", within the autonomous ECHR meaning (see further commentary to Rule 59); (2) the acts or conducts are the same in that they concern the same facts which constitute a set of concrete factual circumstances involving the same defendant and are inextricably linked together in time and space, the existence of which must be demonstrated in order to secure a conviction or institute the proceedings, and (3) there was a duplication of finally concluded proceedings.[137]

Use of force

64.1 Prison staff shall not use force against prisoners except in self-defence or in cases of attempted escape or active or passive physical resistance to a lawful order and always as a last resort.

64.2 The amount of force used shall be the minimum necessary and shall be imposed for the shortest necessary time.

Rule 64 reinforces the principle that staff may only use force within clearly defined limits and in response to a specific threat to security or good order.

As a general rule, prevention of a violent incident is always better than having to deal with one. Alert staff who know their prisoners will be able to identify the disruptive elements and to prevent violent acts.

Good professional relationships between staff and prisoners are an essential element of dynamic security referred to in Rule 51.2 in de-escalating potential incidents or in restoring good order through a process of dialogue and negotiation. Only when these methods fail or are considered inappropriate should physical methods of restoring order be considered. When force has to be used against prisoners by staff it should be controlled and should be at the minimum level necessary to restore order.

The ECtHR has accepted that the use of force may be necessary on occasion to ensure prison security, and to maintain order or prevent crime in detention facilities. Nevertheless, such force may be used only if

[137] *Sergey Zolotukhin v. Russia* [GC], No. 14939/03, judgment of 10/02/2009; and *A and B v. Norway*, Nos. 24130/11 and 29758/11, judgment of 15/11/2016.

indispensable and must not be excessive.[138] Any recourse to physical force in respect of persons deprived of their liberty, which has not been made strictly necessary by their own conduct, diminishes human dignity and infringes Article 3 of the ECHR.[139] In addition, any arguable complaint of the use of force must be effectively investigated (see further commentary to Rule 55).

The ECtHR has held that using force as part of a measure that is medically necessary cannot in principle be regarded as inhuman and degrading. This is particularly relevant for forced feeding that is aimed at saving the life of a prisoner who consciously refuses to take food. However, the ECtHR stressed that that the medical necessity has been convincingly shown to exist. Furthermore, procedural guarantees for the decision to force-feed must be met. Moreover, the degree of force to which the prisoner is subjected must be the minimum necessary, as spelled out by the ECtHR's case law.[140]

65. There shall be detailed procedures about the use of force including stipulations about:

a. the various types of force that may be used;

b. the circumstances in which each type of force may be used;

c. the members of staff who are entitled to use different types of force;

d. the level of authority required before any force is used; and

e the reports that must be completed once force has been used.

This rule lists the main issues to be dealt with in the procedures which should be in place defining the use of force (when it may be used, who is entitled to use it, who is entitled to authorise its use and the reporting mechanisms to be observed after any use of force). Rule 82 of the Nelson Mandela Rules emphasises that prison staff who use force must report it immediately to the prison director.

66. Staff who deal directly with prisoners shall be trained in techniques that enable the minimal use of force in the restraint of prisoners who are aggressive.

This rule makes it clear that staff should not have to rely on simply overpowering troublesome prisoners by a show of superior physical force. There is a variety of control and restraint techniques in which staff can be trained which will allow them to gain control without injuring either themselves or the prisoners involved. Management should be aware of what these are and should ensure that all staff are competent in the basic skills and that sufficient staff are trained in advanced techniques.

67.1 Staff of other law enforcement agencies shall only be involved in dealing with prisoners inside prisons in exceptional circumstances.

67.2 There shall be a formal agreement between the prison authorities and any such other law enforcement agencies unless the relationship is already regulated by domestic law.

67.3 Such agreement shall stipulate:

a. the circumstances in which members of other law enforcement agencies may enter a prison to deal with any conflict;

b. the extent of the authority which such other law enforcement agencies shall have while they are in the prison and their relationship with the director of the prison;

c. the various types of force that members of such agencies may use;

d. the circumstances in which each type of force may be used;

e. the level of authority required before any force is used; and

f. the reports that must be completed once force has been used.

[138] *Ivan Vasilev v. Bulgaria*, No. 48130/99, paragraph 63, judgment of 12/04/2007.
[139] *Bouyid v. Belgium* [GC], No. 23380/09, paragraph 100, judgment of 28/09/2015.
[140] *Nevmerzhitsky v. Ukraine*, No. 54825/00, paragraph 94, judgment of 05/04/2005.

This rule deals with the intervention of law enforcement agencies in prison. In exceptional circumstances it may be that the level of prisoner violence is so great that prison staff cannot contain it themselves and will need to call on another law enforcement agency, such as the police. Such a course of action needs to be handled with great care. In dealing with violence, prison staff must always be conscious that they will have to deal with prisoners after the incident has been resolved and life has returned to normal. This means that they should usually try to avoid using force and in any event will be reluctant to use inordinate or indiscriminate force.

This may not be a consideration for other law enforcement officials who do not normally work in the prison setting and who come in only to resolve a violent incident. In order to prevent excessive use of force in these circumstances it is recommended that the prison authorities agree a standing protocol with the senior management of any other agency that may be called on to help to resolve a violent incident. All staff likely to be involved should be made aware of the contents of this protocol before entering the prison.

Instruments of restraint

68.1 Instruments of restraint shall only be used when authorised by law and may only be imposed when no lesser form of control would be effective to address the risks posed by a prisoner.

68.2 The method of restraint shall be the least intrusive that is necessary and reasonably available to control the prisoner's movement, based on the level and nature of the risks posed.

68.3 Instruments of restraint shall be used only for the period required, and shall be removed as soon as the risks posed by unrestricted movement are no longer present.

68.4 Handcuffs, restraint jackets and other body restraints shall not be used except:

a. if necessary, as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise; or

b. by order of the director, if other methods of control fail, in order to protect a prisoner from self-injury, **prevent** injury to others or serious damage to property, provided that in such instances the director shall immediately inform the medical practitioner and report to the higher prison authority.

68.5 The manner of use of instruments of restraint shall be specified in national law.

68.6 The use of chains**,** irons **and other instruments of restraint which are inherently degrading** shall be prohibited.

68.7 Instruments of restraint shall never be used on women during labour, during childbirth or immediately after childbirth.

Use of restraints is rightly regarded as a major invasion of the rights of prisoners. Rule 68 is therefore designed to set acceptable limits for the use of restraints, which must be controlled strictly and avoided wherever possible.

*Rule **68.1** reflects the general position that instruments of restraint should **only ever be used as a last** resort. **The same rule, by requiring that the use of instruments of restraint must be authorised by law, applies the principle of legality to these instruments. The principle of legality is re-enforced by Rule 68.5, which requires national law to govern the manner in which instruments of restraint are used.***

*There are inevitably occasions on which physical restraint will need to be applied with the additional help of specially designed equipment or instruments, **for instance,** to prevent physical injury to the prisoners concerned or to staff, escape or unacceptable damage. In this regard, **as in Rule 64.2, which deals with the use of force,** Rule 68.**2 and 68.**3 emphasise th**at the** principle of proportionality must be borne in mind in such circumstances. Routine use of instruments of restraint is not acceptable, for example, to escort prisoners to **court in all instances**. **See also the CPT Factsheet, Transport of Detainees (CPT/Inf(2018) 24), which contains detailed standards limiting the use of restraints as security measures during transport.***

What is proportionate is dependent on the context. *The ECtHR has held that the use of pepper spray in a confined space, where alternative equipment was at the disposal of the prison guards, such as flak jackets, helmets and shields,* ***breached*** *Article 3 of the ECHR.*[141] *The CPT has set out a series of principles and minimum standards concerning the resort to immobilisation of prisoners to a bed including that it should not take place in a non-medical setting.*[142]

Rule ***68.6 not only prohibits specific instruments of restraint, but extends the prohibition to all instruments of restraint which are inherently degrading.***

Rule 68.7 follows Rule 48.2 of the Nelson Mandela Rules and Rule 24 of the Bangkok Rules, in providing that instruments of restraint shall never be used on women during labour, during childbirth or immediately after childbirth.

Weapons

69.1 Except in an operational emergency, prison staff shall not carry lethal weapons within the prison perimeter.

69.2 The open carrying of other weapons, including batons, by persons in contact with prisoners shall be prohibited within the prison perimeter unless they are required for safety and security in order to deal with a particular incident.

69.3 Staff shall not be provided with weapons unless they have been trained in their use.

This rule regulates the use of weapons in and around prisons. Staff who work directly with prisoners may carry weapons, such as sticks or batons, for their own defence. Good practice implies that these weapons should not be carried in an ostentatious or threatening manner. Larger batons should not be carried routinely but should be stored in strategic positions so that they are available to be issued quickly in an emergency. Other than in situations of immediate and major emergency, it is not good practice to allow staff who work directly with prisoners to carry firearms or similar weapons which may either be used inappropriately or may fall into the hands of prisoners. The CPT has also dealt with this matter in its reports on Portugal,[143] *and on Slovenia.*[144]

In some prison systems, staff guarding the external security of the prison carry firearms. These staff should have clear instructions about the circumstances in which these weapons may be used. This must only be when there is immediate threat to life, either of the officer concerned or of someone else. Principle 9 of The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are explicit on this point: "In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life".

Prison administrations should establish clear guidelines and procedures for the use of firearms together with a training programme for staff who may be authorised to use them. The procedures should include formal arrangements for the investigation of any incident in which firearms are used.

Requests and complaints

70.1 Prisoners shall have ample opportunity to make requests or complaints**, without censorship as to the substance,** to the director of the prison **and to a judicial or other independent authority with reviewing and remedial power.**

70.2 If **an informal alternative method of resolving a request or complaint** seems appropriate, this should be tried first.

[141] *Tali v. Estonia*, No. 66393/10, judgment of 13/02/2014.
[142] *See,* for example, Report to the Bulgarian Government on the visit to Bulgaria carried out by the CPT from 18 to 29 October 2010 [CPT/Inf (2012) 9], paragraph 92; Spain 2011, para 128]; Report to the Spanish Government on the visit to Spain carried out by the CPT from 31 May to 13 June 2011 [CPT/Inf (2013) 6], paragraph 87; Report to the Swedish Government on the visit to Sweden carried out by the CPT [CPT/Inf (2016) 1], paragraph 90.
[143] Report to the Portuguese Government on the visit to Portugal carried out by the CPT from 14 to 26 May 1995 [CPT/Inf (96) 31], paragraph 149.
[144] Report to the Slovenian Government on the visit to Slovenia carried out by the CPT from 16 to 27 September 2001 [CPT/Inf (2002) 36], paragraphs 13 and 14.

70.3 When complaints are made regarding ill-treatment or other serious human rights violations, informal methods shall not be considered.

70.4 Practical information about request and complaint procedures shall be communicated effectively to all prisoners.

70.5 Complaints relating to death or ill-treatment in prison shall be dealt with without delay and shall result in an effective investigation in accordance with Rule 55.

70.6 All requests and complaints shall be dealt with as soon as possible and through a process that ensures, to the maximum possible extent, the prisoners' effective participation.

70.7 If a request or a complaint is rejected, reasons shall be provided to the prisoner **without delay** and**, if the decision was made by the director or other authority within the prison system,** the prisoner shall have the right to appeal to **a judicial or other independent authority with reviewing and remedial power.**

70.8 Measures shall be in place to ensure that prisoners can make requests or complaints confidentially, if they choose to do so.

70.9 Prisoners **shall not be exposed to any sanction, retaliation, intimidation, reprisals or other negative consequences as a result of having submitted a request or complaint.**

70.10 Prisoners may make a request or complaint personally or through a legal representative and are entitled to seek legal advice about complaints and appeals procedures and to legal assistance when the interests of justice require.

70.11 No complaint by a legal representative or organisation concerned with the welfare of prisoners may be brought on behalf of a prisoner if the prisoner concerned does not consent to it being brought.

70.12 The competent authority shall take into account any written complaints from relatives of a prisoner or any other person or organisation concerned with the welfare of prisoners.

70.13 The relevant prison authority shall keep a record of requests and complaints made, with due consideration to the principles of confidentiality and safety.

This rule makes a distinction between making requests and lodging complaints. Prisoners must have ample opportunity to make requests and must have avenues of complaint open to them both within and outside the prison system.

*"Requests" of prisoners concern favours or facilities **to which** they are not entitled by right, but which may be granted by the prison management or other competent authorities. For instance, in some prison systems extra visits may be allowed, though prisoners have no right to them. The same applies to requests for permission to leave the prison to attend the funeral of a relative and requests for transfer to a specific prison or prison unit. In most cases the director will be entitled to decide, but in some jurisdictions specific requests can only be granted by judicial authorities or must be decided at ministerial level.*

Complaints are formal objections against decisions, actions or lack of action of the prison administration or other competent authorities. In some jurisdictions the appropriate remedy is called an "objection" or an "appeal". The term "appeal" in this rule, however, is reserved for legal action against a denial of a request or the rejection of a complaint.

In its 2017 Annual Report the CPT spells out general principles that should guide the operation of all complaints systems in prison. In summary they are: Such systems should be easily available and accessible to prisoners. Complexities should be investigated thoroughly and expeditiously. Prisoners should be able to use the complaints procedures confidentially and without risk to their own safety. Where complaints are found to be justifiable, the prison authorities should take specific steps to rectify the conditions that led to the complaint. Finally, a traceable record of all complaints and the action, if any, that is taken in response to them, should be kept. Rule 70 is compatible with these principles, and should be interpreted in light of them.[145]

[145] 27th General Report of the CPT [CPT/Inf (2018) 4], paragraphs 76-90.

Rule 70.1, as amended in 2019, observes the clear distinction made between these internal and external complaints mechanisms in the ECtHR case-law[146] and CPT practice.[147] In accordance with ECtHR case law, the internal complaints mechanism does not in itself satisfy the requirements of an effective remedy under Article 13 of the ECHR. Rule 70.1 therefore makes it clear that national systems may provide for a possibility that a request or complaint be made first before an internal complaints mechanism (director of the prison or the central prison administration) or directly to an external complaints mechanism (judicial or other independent authority). The ECtHR has not been inclined to accept that a complaint to the prosecutor, which does not vest a personal right for the person concerned, or a complaint to the Ombudsman, who cannot issue binding and enforceable decisions, represent effective remedies.[148]

In this connection, it should be noted that different bodies may exercise the function of an external complaints mechanism and that different solutions may exist in national systems as to the manner in which these mechanisms operate. However, the CPT has stressed that such bodies need to have the power to make binding decisions.[149] For its part, the ECtHR has explained that an authority referred to in Article 13 ECHR does not have to be a judicial one and that an administrative authority can satisfy the requirements of this Article concerning prisoners' complaints. However, it has set the following criteria which such other authorities must satisfy:

a) they must be independent of the authorities in charge of the prison system;

b) they must secure the inmates' effective participation in the examination of their grievances ;

c) they must ensure the speedy and diligent handling of the inmates' complaints;
d) they must have at their disposal a wide range of legal tools for eradicating the problems that underlie these complaints; and

e) be capable of rendering binding and enforceable decisions.[150]

Provision may also be made for specialised complaints procedures. Ideally, national law should allow prisoners also to complain against the decisions, conduct or inactivity of medical personnel to existing national medical disciplinary bodies.

This rule does not require that requests or complaints be submitted in writing. ***Prisoners may be illiterate, and*** *should be able to ask to meet the civil servant or the competent agency in order to transmit the request or the complaint orally.[151] The authorities* ***would then*** *have the obligation to put it in a written form.*

Complaints can lead to antagonistic attitudes of the parties involved, which can harm the relations between prisoners and staff. Therefore, it seems sensible to try ***informal alternative methods of resolution such as*** *mediation first. This calls for* ***an appropriate*** *mechanism to be inserted in the* ***prison law****. This task could be entrusted, for example, to a member of a local supervisory committee or a judicial authority. If the conflict cannot be resolved by* ***such methods*** *the prisoner must still have the right to lodge a formal complaint****. In some instances techniques of restorative justice developed in Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters, may also be relevant to resolving complaints made in prison.***

Some complaints cannot be treated with the gravity they require through informal resolution. It is important that complaints concerning ill-treatment and other serious human rights violations are not considered for informal resolution and instead dealt with immediately through the complaint procedures laid out in this rule.[152]

Practical information about request and complaint procedures should be communicated effectively to all prisoners, as required by Rule 70.4. This is important to ensure that prisoners are aware of these opportunities. Effective communication entails paying due regard to prisoners' linguistic and

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[146] See, for instance, *Ananyev and Others v. Russia*, Nos. 42525/07 and 60800/08, paragraphs 93-112, judgment of 10/01/2012.
[147] See 27th General Report of the CPT [CPT/Inf (2018) 4], paragraphs 70-71.
[148] *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, paragraphs 102-106, judgment of 10/012012; *Neshkov and Others v. Bulgaria*, nos. 36925/10 et al., paragraph 212, judgment of 27/01/2015.
[149] 27th General Report of the CPT [CPT/Inf (2018) 4], paragraph 71.
[150] *Neshkov and Others v. Bulgaria*, Nos. 36925/10 et al., paragraphs 182-183, judgment of 27/01/2015.
[151] Report to the Government of Slovenia on the visit to Slovenia carried out by the CPT from 19 to 28 February 1995 [CPT/Inf (96) 18].
[152] 27th General Report of the CPT [CPT/Inf (2018) 4], paragraph 78.

mental capabilities and ensuring that special attention is paid when providing this information to foreign nationals and prisoners with disabilities, including psychological or learning disabilities.

Prisoners must have the opportunity to convey complaints to any authority inspecting or supervising the prison regardless of previous or simultaneous complaints. When this authority is not empowered to handle the complaint itself it should send it on to the competent body.

Complainants shall ***also*** *be allowed to communicate on a confidential basis with the independent authorities entrusted with the handling of complaints and appeals. The decisions of these authorities shall be made accessible to prisoners.*

Rule 70.5 is a new rule added in 2019. The obligation to investigate impartially and effectively suspicious deaths, ill-treatment and other serious allegations of breaches of human rights in prisons is an obligation flowing from well-established ECtHR case law[153] and CPT standards.[154] This provision should be read in conjunction with Rule 55, which refers to the duty to investigate criminal acts in prisons in general. See also the Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, of 30 March 2011.

Rule 70.9 protects prisoners who make complaints in good faith, rather than encouraging malicious complaints.[155]

The competent authorities should deal promptly with requests and complaints. In their reactions to requests and complaints, which should always be accompanied by reasons, the authorities should make clear whether action will be taken and if so, what action. This also follows from the ECtHR case law.[156] This also applies to requests or complaints from prisoners' ***legal representatives or organisations referred to in Rules 70.10-70.11.***

If *an internal appeal has failed, a complaint* ***can still be made to an external complaints mechanism, as envisaged in Rule 70.1. If such a complaint is successful,*** *complainants must have confidence that the decision of that authority will be executed fully and promptly by the prison administration.* ***Equally, the right to complain to an external complaints mechanism in case of an unfavourable or a delayed, and thus ineffective, examination of a request or complaint by the internal complaints mechanism is a requirement flowing from the ECHR.[157] If a legal system should decide not to make provision for a direct complaint to "a judicial or other independent authority vested with reviewing and remedial power", as provided for in Rule 70.1, it should at least ensure that the decisions of the prison director or prison administration, which are not in themselves considered to satisfy the requirements of an effective remedy under Article 13 of the ECHR, are subject to a review by an independent external authority. This also follows from the CPT standards.[158]***

To ensure the effective exercise of the right to lodge complaints, forms, stationery and, if necessary, stamps should be provided to prisoners. The complaint forms should be freely available to prisoners at a specified place (for example, the library), thereby enabling a prisoner to avoid asking for them specifically. A system of transmission should be devised so that prisoners are not obliged to personally hand the confidential access envelope to prison staff.[159]

Confidential communication with national and international bodies authorised to receive complaints is essential. This rule does not attempt to prescribe an exclusive model of a complaints procedure but sets out the basic requirements such procedures should comply with in order to be considered to represent effective remedies in terms of Article 13 of the ECHR. What is important is that the complaint procedure ends with a final binding decision taken by an independent authority. The member States are free to designate the independent authority that has the power to handle complaints. This can be an ombudsman or a judge (enforcement magistrate or executing or supervisory judge), a supervising prosecutor, a court, or a public

[153] See, for instance, *Gladović v. Croatia*, No. 28847/08, paragraphs 39 40, judgment of 10/05/2011, and *Volk v. Slovenia*, No. 62120/09, paragraphs 97 98, judgment of 13/12/2012.
[154] 27th General Report of the CPT [CPT/Inf (2018) 4], paragraph 86.
[155] *Skałka v. Poland*, No. 43425/98, judgment of 27/05/2003; see also *Marinova and Others v. Bulgaria*, Nos. 33502/07, 30599/10, 8241/11 and 61863/11, judgment of 12/07/2016.
[156] *Lonić v. Croatia*, No. 8067/12, paragraphs 53-64, judgment of 04/12/2014.
[157] *Longin v. Croatia*, No. 49268/10, paragraph 41, judgment of 06/11/2012.
[158] 27th General Report of the CPT [CPT/Inf (2018) 4], paragraph 86.
[159] Report to the United Kingdom Government on the visit to the United Kingdom carried out by the CPT from 29 July 1990 to 10 August 1990 [CPT/Inf (91) 15].

defender.[160] *However, the CPT has made it clear that "it is inadvisable for national preventive mechanisms or other similar monitoring bodies also to deal directly with formal complaints". These two "functions should preferably be kept separate and performed by clearly distinct entities, each with its own staff".*[161]

*Requests and complaints should be registered**, and records kept,** for the benefit of the prison administration itself and for inspection by visiting bodies.*[162] *An analysis of the substance of requests and complaints can contribute to a better management of the institution.*

*The right to make requests and complaints is primarily granted to prisoners but national law may allow third parties to act on behalf of a prisoner, for instance when a prisoner's mental or physical condition prevents him from acting himself and he does not have a lawyer to act on his behalf. Relatives of a prisoner are entitled to complain where the prisoner's rights may be infringed, while organisations that have the interests of prisoners at heart may also be allowed by the director to bring such complaints. However, Rule **70.11** allows the prisoner to oppose the complaint being made in this way. **Prisoners may also wish to make a complaint through a legal representative. As spelled out in Rule 23, all prisoners are entitled to legal advice, and the further provisions of this rule should be borne in mind here.***

The ECtHR has considered complaints about inadequate conditions of detention from the perspective of Article 13 of the ECHR, and has held that two types of relief are possible: an improvement in the material conditions of detention (preventive remedy) and compensation for the damage or loss sustained on account of such conditions (compensatory remedy). If prisoners have been held in conditions that are in breach of Article 3 of the ECHR, a domestic remedy capable of putting an end to the ongoing violation of their right not to be subjected to inhuman or degrading treatment, is of the greatest value. Once, however, they have left the prison in which they endured the inadequate conditions, they should have an enforceable right to compensation for the violation that has already occurred. Moreover, the preventive and compensatory remedies have to be complementary in order to be considered effective. The ECtHR places special emphasis on the duty of the States to establish, over and above a compensatory remedy, an effective preventive remedy, namely a mechanism designed to put an end to an inadequate treatment rapidly.[163] *The remedy should not only exist in law, but should also offer a reasonable prospect of success in practice.*[164]

Part V

Management and staff

The efficacy of the European Prison Rules as a whole depends on the ability of the staff to implement them. Rule 8 of the European Prison Rules establishes the general principle of the importance of enabling prison staff to maintain a high standard of care of prisoners. The rules in this part are designed to set standards for management and to indicate how staff should be best selected and trained in order to enable them to fulfil this complex and important function. Member States also have an obligation in terms of Rule 4 of the European Prison Rules to provide the necessary resources for such training and remuneration. Further, this obligation extends to providing necessary resources to ensure that there are sufficient staff to guarantee minimum services in prisons at all times.

The CPT has emphasised that an inadequate number of custodial staff renders prisons insecure for both prisoners and staff. It impedes any efforts to maintain effective control, which often leads to stronger groups of prisoners being able to exercise their powers unchecked over other inmates.[165] *In addition to creating a potentially dangerous situation for vulnerable prisoners, inadequate staff provision also poses a danger to the staff themselves. Where staff complements are inadequate, there is a tendency to resort to significant amounts of overtime, in order to maintain a basic level of security and regime delivery in an establishment. This state of affairs can easily result in high levels of stress in staff and their premature burnout, a situation*

[160] Report to the Georgian Government on the visit to Georgia carried out by the CPT from 6 to 18 May 2001 [CPT/Inf (2002) 14].
[161] 27th General Report of the CPT [CPT/Inf (2018) 4], paragraph 73.
[162] Report to the Bulgarian Government on the visit to Bulgaria carried out by the CPT from 25 April to 7 May 1999 [CPT/Inf (2002) 1]; and Report to the Government of "The former Yugoslav Republic of Macedonia" on the visit to "The former Yugoslav Republic of Macedonia" carried out by the CPT from 17 to 27 May 1998 [CPT/Inf (2001) 20].
[163] *Ananyev and Others v. Russia*, Nos. 42525/07 and 60800/08, paragraphs 97-98, judgment of 10/01/2012.
[164] *Rodić and 3 Others v. Bosnia and Herzegovina*, No. 22893/05, paragraph 58, judgment of 27/05/2008.
[165] Report to the Greek Government on the visit to Greece carried out by the CPT from 4 to 16 April 2013 [CPT/Inf (2014) 26], paragraph 32.

which is likely to exacerbate the tension inherent in any prison environment. In addition, a low staff complement will have a negative influence on the quality and level of the activities programme developed.[166]

More detailed indications of the standards that prison staff should aim at are to be found in Recommendation (2012)5 of the Committee of Ministers to member States on the European Code of Ethics for Prison Staff. These include guidelines for prison staff conduct that emphasise the importance of accountability, integrity, respect for and protection of human dignity, care and assistance, fairness, impartiality and non-discrimination, cooperation, and confidentiality and data protection. Prison staff must be adequately trained and remunerated in order to be able to perform their functions.

Prison work as a public service

71. Prisons shall be the responsibility of public authorities separate from military, police or criminal investigation services.

This rule requires prisons to be under the responsibility of public authorities, separate from military, police or criminal investigation services. Prisons are places that should be placed under the control of the civil power. Imprisonment is part of the criminal justice process and in democratic societies people are sent to prison by independent judges. The administration of prisons should not be directly in the hands of any police or military power. Working in prison should be respected as a specialism in its own right.

In some countries the head of the prison administration is a serving member of the armed forces who has been seconded or sent for a limited time to the prison administration to carry out that role. Where this is the case, this person shall be acting in a civilian capacity as head of the prison administration.

It is important that there should be a clear organisational separation between the police and the prison administrations. In most European countries the administration of the police comes under the ministry of the interior while the administration of prisons comes under the ministry of justice. The Committee of Ministers of the Council of Europe has recommended that "there shall be a clear distinction between the role of the police and the prosecution, the judiciary and the correctional system." (Recommendation Rec(2001)10 of the Committee of Ministers, the European Code of Police Ethics).

72.1 Prisons shall be managed within an ethical context which recognises the obligation to treat all prisoners with humanity and with respect for the inherent dignity of the human person.

72.2 Staff shall manifest a clear sense of purpose of the prison system. Management shall provide leadership on how the purpose shall best be achieved.

72.3 The duties of staff go beyond those required of mere guards and shall take account of the need to facilitate the reintegration of prisoners into society after their sentence has been completed through a programme of positive care and assistance.

72.4 Staff shall operate to high professional and personal standards.

This rule underlines the ethical context of prison management. Without a strong ethical context the situation where one group of people is given considerable power over another can easily become an abuse of power. This ethical context is not just a matter of the behaviour of individual members of staff towards prisoners: see Recommendation 2012(5) of the Committee of Ministers to member States on the European Code of Ethics for Prison Staff.

Those with responsibility for prisons and prison systems need to be persons who have a clear vision and a determination to maintain the highest standards in prison management.

Working in prison therefore requires a unique combination of personal qualities and technical skills. Prison staff need personal qualities which enable them to deal with all prisoners in an even-handed, humane and just manner.

73. Prison authorities shall give high priority to observance of the rules concerning staff.

[166] Report to the Georgian Government on the visit to Georgia carried out by the CPT from 21 March to 2 April 2007 [CPT/Inf (2007) 42], paragraph 85; Report to the Portuguese Government on the visit to Portugal carried out by the CPT from 7 to 16 February 2012 [CPT/Inf (2013) 4], paragraph 58.

This rule places a positive obligation on prison authorities to ensure the observance of the rules concerning staff. This is important to ensure that prisons are operated in terms of the rule of law.

74. Particular attention shall be paid to the management of the relationship between first line prison staff and the prisoners under their care.

This rule concerns the relationship between first line prison staff and the prisoners under their care. Special attention has to be paid to these staff members because of the human dimension of their contacts with prisoners. Dynamic security, as required by Rule 51.2, is the principle underlying this relationship.

75. Staff shall at all times conduct themselves and perform their duties in such a manner as to influence the prisoners by good example and to command their respect.

This rule deals with the conduct of staff in performing their duties. The staff are to treat prisoners in a manner which is decent, humane and just; to ensure that all prisoners are safe; to make sure that prisoners do not escape; to make sure that there is good order and control in prisons; to provide prisoners with the opportunity to use their time in prison positively so that they will be able to resettle when they are released. This work requires great skill and personal integrity. Those who undertake this work need to gain the personal respect of the prisoners. High personal and professional standards should be expected of all prison staff but especially of those who are going to work directly with prisoners.

Selection of prison staff

76. Staff shall be carefully selected, properly trained, both at the outset and on a continuing basis, paid as professional workers and have a status that civil society can respect.

This rule relates to the selection, training and conditions of recruitment of prison staff. Recruitment is very important. The prison administration should have a clear policy to encourage suitable individuals to apply to work in prisons and to inform them of the required ethical rules. In particular, paragraph 38 of the Recommendation 2012(12) of the Committee of Ministers to member States concerning foreign prisoners states that persons who work with foreign prisoners shall be selected on criteria that include cultural sensitivity, interaction skills and linguistic abilities. This requirement applies generally to all relationships with prisoners.

Many prison authorities have great difficulty in recruiting staff of a high quality. This can be for a variety of reasons. It may be due to low salary levels. It may be because the standing of prison work in the local community is very low. It may be because of competition from other law enforcement agencies, such as the police. Therefore, prison administrations should pursue an active recruitment policy and take steps to overcome these potential barriers to recruiting high-quality staff.

77. When selecting new staff the prison authorities shall place great emphasis on the need for integrity, humanity, professional capacity and personal suitability for the complex work that they will be required to do.

This rule deals with the staff selection criteria. The prison administration should introduce a clear set of procedures to test the integrity and humanity of the applicants and how they are likely to respond to difficult situations which they may face so as to ensure that only those applicants who are suitable are in fact selected to join the prison system.

78. Professional prison staff shall normally be appointed on a permanent basis and have public service status with security of employment, subject only to good conduct, efficiency, good physical and mental health and an adequate standard of education.

This rule is a consequence of Rule 71. If staff are to be committed to their work on a long-term basis, they need to be secure in their employment. In jurisdictions where there are prisons that are managed by private contractors, individual members of staff employed by these contractors should be approved by the prison authority before working with prisoners. They should also be employed on a permanent basis. Attention should also be paid to ensuring that staff have a level of education which is adequate for them to be able to benefit from specialist training and enables them to deal humanely with prisoners.

79.1 Salaries shall be adequate to attract and retain suitable staff.

79.2 Benefits and conditions of employment shall reflect the exacting nature of the work as part of a law enforcement agency.

This rule underlines the need to ensure attractive salaries and working conditions. The standing of a profession is measured in large part by the level of salary which it attracts. Governments should recognise that prison staff are entitled to a proper remuneration corresponding to the public service character of prison work as well as to their difficult and sometimes dangerous work, while also taking into consideration that if staff are not paid at an appropriate level this may lead to corruption.

In many countries prisons are in very isolated locations, thus depriving not only staff but also their families of access to schools, to medical facilities, to shops and to other social activities. In addition, many prison staff are expected to transfer regularly from one prison to another, to uproot their families and to move them to places that are sometimes far away. In some countries prison staff were keen to continue to be part of the ministry of the interior in order to benefit from a higher status (access to free health care, to free education, to free housing and to free or subsidised transport and holidays). In such circumstances, other conditions of employment are as important as levels of pay and should be carefully examined.

80. Whenever it is necessary to employ part-time staff, these criteria shall apply to them as far as that is appropriate.

This rule refers to part-time staff. In smaller prisons it may be necessary to recruit some staff, especially for specialist tasks, on a part-time basis. They should have the same conditions of employment pro rata as full-time staff.

Training of prison staff

81.1 Before entering into duty, staff shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

81.2 Management shall ensure that, throughout their career, all staff maintain and improve their knowledge and professional capacity by attending courses of in-service training and development to be organised at suitable intervals.
81.3 Staff who are to work with specific groups of prisoners, such as foreign nationals, women, juveniles or mentally ill prisoners, etc., shall be given specific training for their specialised work.

81.4 The training of all staff shall include instruction in the international and regional human rights instruments and standards, especially the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as in the application of the European Prison Rules.

Rule 81.1 addresses the requirements for initial training of newly selected staff. This training should be adequate and should emphasise the ethical context of their work. Best practice requires that prison staff receive sufficient training to enable them to operate as professionals in the same way as other professional groups that work in the criminal justice system.

Following this, Rule 81.2 requires that staff should be given the necessary technical training. They need to be made aware of security requirements and to learn how to keep proper records and what sort of reports need to be written. Paragraph 29 of the Guidelines for prison and probation services regarding radicalisation and violent extremism adopted by the Committee of Ministers on 2 March 2016 further emphasises that frontline staff "shall be trained to act in line with principles of dynamic security in order to maintain safety, security and good order in prison and to contribute to the prisoner's rehabilitation". It further emphasises that staff should be trained "in particular to use intercultural mediation and different techniques of intervention in case of crisis management".

The proper training of staff is a requirement that continues from the moment of recruitment to that of final retirement. There should be a regular series of opportunities for continuing development for staff of all ages and ranks.

Prison management

82. Personnel shall be selected and appointed on an equal basis, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

This rule recalls that there should be no discrimination in the selection of staff. Women should have the same opportunities as men to work in prisons and should be paid the same salaries, given the same training and have the same opportunities for promotion and for assignment to posts requiring specific abilities. These principles shall be applied to staff belonging to racial, cultural, religious or sexual minorities. In some prisons a substantial number of prisoners come from these minority groups. Where this is the case, prison authorities should seek to recruit sufficient proportions of staff from similar backgrounds.

83. The prison authorities shall introduce systems of organisation and management that:

a. ensure that prisons **operate at** consistently high standards**, and are adequately staffed at all times in order to maintain a safe and secure environment in prison and to meet the requirements of national and international law including the provisions of these rules;** and

b. facilitate good communication between prisons and between the different categories of staff in individual prisons and proper co-ordination of all the departments, both inside and outside the prison, that provide services for prisoners, in particular with respect to the care and reintegration of prisoners.

Rule 83.a *requires* ***careful management of all prisons in the national system by*** *member States. One way of achieving this is by having a system of internal auditing and inspection to ensure that relevant law is being implemented.* ***It is not possible to ensure consistently high standards in a prison unless it is adequately staffed at all times. It is therefore particularly important that strategies are in place to deal with strikes by prison staff or staff shortages caused by other reasons, which could disrupt the proper functioning of individual prisons or even the system as a whole.***

Rule 83.b refers to the need for good communication between prisons and within each prison. Given the increasing sophistication of operational routines and regimes there is a need for management to encourage and facilitate a style of working in which staff can learn from each other, share experiences and work together for the benefit of the prisoners in their care.

84.1 Every prison shall have a director, who shall be adequately qualified for that post by character, administrative ability, suitable professional training and experience.

84.2 Directors shall be appointed on a full-time basis and shall devote their whole time to their official duties.

84.3 The prison authorities shall ensure that every prison is at all times in the full charge of the director, the deputy director or other authorised official.

84.4 If a director is responsible for more than one prison there shall always be in addition an official in charge of each of them.

This rule contains provisions related to the prison director. Given what has been said in previous rules about the need for a sense of purpose, leadership and vision, it is essential that there should be in each prison a professional, sufficiently qualified, non-political director who has been carefully selected for their suitability and integrity to carry out what is one of the most complex tasks in public service. The CPT has commented on the necessity to introduce a professional management career path within the prison system and to ensure that prison directors and senior managers are recruited and given security of employment subject to satisfactory performance and are provided with relevant management training to enable them to fulfil their tasks competently.[167]

85. Men and women shall be represented in a balanced manner on the prison staff.

[167] Report to the Government of "The former Yugoslav Republic of Macedonia" on the visit to "The former Yugoslav Republic of Macedonia" carried out by the CPT from 6 to 9 December 2016 [CPT/Inf (2017) 30], paragraph 22.

The mix of men and women on the prison staff is designed to contribute to the normalisation of prison life and have a positive effect on good order and discipline in the prison. It should also serve to minimise the risk of sexual harassment or mistreatment of prisoners.

Special arrangements about the gender balance of staff need to be made for prisons housing women. Rule 81 of the Nelson Mandela Rules stresses that women prisoners should be supervised only by women staff members, while the part of the prison set aside for women shall be under the authority of a responsible woman staff member. Further, no male staff member should enter this part of the prison, unless accompanied by a woman staff member. It is important that the re-traumatisation of women prisoners, who may have suffered sexual abuse, is avoided.

86. There shall be arrangements for management to consult with staff as a body on general matters and, especially, on matters to do with their conditions of employment.

This rule concerns the requirement to arrange appropriate consultations on the conditions of employment between the management and the staff. Prison systems are hierarchical organisations, but this does not mean that staff should be treated unreasonably or without respect for their position. In most countries staff are entitled to belong to trade unions. If there is no formal trade union, staff should at least have a recognised negotiation machinery. Trade union and other staff representatives should not be penalised for the work which they do in representing their fellow members of staff.

87.1 Arrangements shall be in place to encourage the best possible communication among management, other staff, outside agencies and prisoners.

87.2 The director, management and the majority of the other staff of the prison shall be able to speak the language of the greatest number of prisoners, or a language understood by the majority of them.

Prisons are institutions in which people have priority and in which human relationships are important. Rule 87 stresses that the proper functioning of these relationships depends on good communication.

In most European prison systems, a significant proportion of prisoners are foreign nationals, many of whom do not speak the native language of the country. The director and majority of personnel should be able to speak the language of the majority of prisoners. However, the needs of other prisoners also have to be recognised and, if possible, some staff should be able to speak the language of any significant minorities. See Rule 39.3 of Recommendation 2012(12) of the Committee of Ministers to member States concerning foreign prisoners. Where necessary an interpreter should be available as stipulated in Rule 37.4 of the European Prison Rules.

88. Where privately managed prisons exist, all the European Prison Rules shall apply.
In a small number of member States some prisons are now managed by private contractors. Rule 88 stresses that all European Prison Rules without exception apply also to them.

Specialist staff

89.1 As far as possible, the staff shall include a sufficient number of specialists such as psychiatrists, psychologists, social and welfare workers, teachers and vocational, physical education and sports instructors.

89.2 Wherever possible, suitable part-time and voluntary workers shall be encouraged to contribute to activities with prisoners.

Rule 89.1 deals with the need for prison services to have a sufficient number of appropriate specialists to work with prisoners to promote their physical and mental health, to prevent any deterioration and to assist their development in order to facilitate their reintegration into society. These specialists should work alongside and complement the custodial staff.

Given that almost all prisoners will one day return to their communities, it is important that associations and volunteers from the community be encouraged to come into prisons to contribute to many of the activities which take place there. Their presence also contributes to the normalisation of prison life and may give prisoners a better perspective of life on the outside.

Public awareness

90.1 The prison authorities shall continually inform the public about the purpose of the prison system and the work carried out by prison staff in order to encourage better public understanding of the role of the prison in society.

90.2 The prison authorities should encourage members of the public to volunteer to provide services in prison where appropriate.

This rule reflects that it is important that the public and the media be aware of the values within which its prisons operate. The prison administration should develop good relations with their local public and media, and inform them about the daily realities of prison life. Prison administrations should encourage prison directors to meet regularly with groups in civil society, including non-governmental organisations, and where appropriate to invite them into the prison. The media and representatives of local communities should be encouraged to visit prisons, provided care is taken to safeguard the privacy of prisoners.

Research and evaluation

91. The prison authorities shall support a programme of research and evaluation about the purpose of the prison, its role in a democratic society and the extent to which it is fulfilling its purpose.

This is the third set of what are now known as the European Prison Rules since 1973. The rules are likely to require further updating as time passes because of developments in civil society, the expanding jurisprudence from the ECtHR and the reports of the CPT. Rule 91 recognises that fact in encouraging a programme of research and evaluation about the purpose of the prison, its role in a democratic society and the extent to which it is fulfilling its purpose.

Part VI

Inspection and monitoring

*The rules in this part intend to make a clear distinction between the inspection of prisons by governmental agencies**, which** are responsible for the effective operation of the prison system, and monitoring of conditions of detention and treatment of prisoners by an independent body. While both internal inspection and external monitoring have to ensure that the treatment of prisoners meets the requirements international law and the provisions of these rules, they operate at different levels.*
Reports by national and international NGOs, the findings of the CPT and various decisions of the ECtHR show that, even in countries with well-developed and relatively transparent prison systems, independent monitoring of conditions of detention and treatment of prisoners is essential to prevent inhuman and unjust treatment of prisoners and to enhance the quality of detention and of prison management. The establishment of independent national monitoring bodies in addition to an internal government-run inspectorate should not be seen as an expression of distrust of the quality of governmental control but as an essential additional guarantee for the prevention of maltreatment of prisoners.

Governmental inspection

92. Prisons shall be inspected regularly by a governmental agency in order to assess whether they are administered in accordance with the requirements of national and international law, **including** the provisions of these rules.

This rule uses the neutral term "governmental agency". This agency can be part of one ministry, or under the control of more than one ministry. The essential point is that such an agency or inspectorate is established by, and reports to, the highest authorities. ***The existence of such an agency or inspectorate is also a recognition of the fact that prison administration has a special duty of care towards prisoners and the authorities have an obligation to take positive measures to protect and promote the dignity of all prisoners.***

The ways in which governmental inspection is organised will vary from checking of the bookkeeping of prisons to in-depth and on-the-spot audits, which take into account all aspects of prison administration to whether what is being done in prison is in conformity with national law. ***It is important that inspectors have sufficient authority to carry out their work effectively - see Rule 84 of the Nelson Mandela Rules.***

Governmental inspection should not focus narrowly on technical administrative matters. While ensuring that budgeted moneys are well spent is important, its wider obligation is to take into account international law and these rules, as they impact on prison administration. This means that governmental inspection also has to concern itself with ensuring that administrative processes result in prisoners being treated with respect for their human rights. The results of these inspections should be reported to the competent authorities and made accessible to other interested parties without undue delay. These rules do not specify how planning and control systems and audits should be organised, as this is for the governmental authorities to decide.

Independent Monitoring

93.1 **To ensure that** the conditions of detention and the treatment of prisoners **meet the requirements of national and international law, including the provisions of these rules, and that the rights and dignity of prisoners are upheld at all times, prisons** shall be monitored by a **designated** independent body or bodies, whose findings shall be made public.

93.2 **Such independent monitoring bodies shall be guaranteed:**

a. access to all prisons and parts of prisons, and to prison records, including those relating to requests and complaints, that they require to carry out their monitoring activities;

b. choice of which prisons to visit, including by making unannounced visits at their own initiative, and which prisoners to interview; and

c. permission to conduct private and fully confidential interviews with prisoners and prison staff.

93.3 Independent monitoring bodies shall be encouraged to co-operate with those international agencies that are legally entitled to visit prisons.

93.4 Independent monitoring bodies shall have the authority to make recommendations to the prison administration and other competent bodies.

93.5 The national authorities or prison administration shall inform these bodies, within a reasonable time, on the action being taken in respect of such recommendations.

93.6 Monitoring reports and the responses thereto shall be made public.

Member States of the Council of Europe have different models of independent monitoring of conditions of imprisonment. This rule does not intend to prescribe one single form of monitoring but underlines the need for the high quality of such independent supervision. Some countries ***may designate a*** *prison ombudsman* ***as the appropriate independent body to monitor prisons****;* ***others may deploy inspecting penal judges whose judicial functions include independent monitoring as well; yet*** *others* ***may opt*** *for a national supervising committee. Other formats are not precluded by this rule, as long as the authorities involved are independent and well equipped to perform their duties.* ***Rule 93 also presupposes that these monitoring bodies are composed of qualified and experienced experts. Monitoring bodies shall also be authorised to seek support from independent external specialists where they do not have the necessary expertise from amongst their own members.***

In many member States, monitoring bodies have been reorganised to act as national preventive mechanisms ***(NPMs)*** *as required by OPCAT.*[168] ***OPCAT is not prescriptive with regards of the type of institution to be designated, or newly created as an NPM (OPCAT Article 17). What OPCAT requires is that the institution has functional independence as well as the independence of its personnel (OPCAT Article 18.1), has necessary resources for performing its mandate (OPCAT Article 18.3) and has broad mandate, including visiting powers (OPCAT Articles 19, 20 and 21). NPMs may be newly created institutions or be established within existing institutions, including the office of the ombudsman and national human rights institutions.***

In addition to official monitoring bodies, a government may choose to designate certain NGOs as independent bodies which could fulfil some of these functions or conduct additional monitoring.

[168] Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: G.A. res. A/RES/57/199, adopted Dec. 18, 2002.

In order to ensure that monitoring is truly independent, as required by Rule 93.1, members ***of monitoring bodies*** *shall be appointed in a way that ensures their impartiality****. The members should be experts on prison matters*** *with a range of skills, including medical expertise. Due regard should also be paid to gender representation (see Rule 84.2 of the Nelson Mandela Rules and Rule 25.3 of the Bangkok Rules).* ***The functional independence of the monitoring body is important as well: See Article 18.1 of OPCAT. A*** *monitoring body should* ***also*** *be able to propose its own budget directly to the government, so that it is not constrained in this regard by the prison authorities.*

*It is important that the findings of these bodies, together with any observations that may have been submitted by the management of the prison concerned, are open to the public****, while ensuring that no personal data shall be published without the explicit consent of the person concerned****.*

In order to be effective, independent monitoring bodies must have certain powers. Rule 93.2 specifies that m*onitoring bodies should have wide authority to access information, choose freely which prisons to visit* ***and*** *conduct private and fully confidential interviews with prisoners and prison staff.* ***When inside prisons, these bodies should have access to all parts of the prison.*** *Rule 84.1 of the Nelson Mandela Rules* ***further*** *spells out what the scope of such authority should be.* ***The Parliamentary Assembly of the Council of Europe in Resolution 2266 (2019) "Protecting human rights during transfer of prisoners" of 1 March 2019 has emphasised that monitoring should extend also to the conditions of prisoners when they are transported.***

Independent monitoring bodies should be encouraged to forward copies of their reports and the responses of the governments concerned to international bodies authorised to monitor or inspect the prisons, such as the European Committee for the Prevention of Torture. This would assist these international bodies to plan their visits, ***ensure coherence in the recommendations made to the authorities*** *and allow them to keep their finger on the pulse of the national* ***prison*** *systems. Because of their limited financial resources and the increase the number of states to be visited, international bodies must rely increasingly on communication with independent national monitoring bodies.*

Monitoring *by civil society should be encouraged by prison administrations and should include, where possible, non-governmental organisations working on prison issues.* ***Such monitors*** *should liaise with the national independent monitoring* ***bodies****.* ***Persons in contact with monitoring bodies, and in particular prisoners, should be protected against any forms of sanctions and reprisals (OPCAT, Article 21.1).***

Rule 93.5 provides that independent monitoring bodies have the power to *make recommendations on what needs to be done to meet standards set by national and international law.* ***In addition to such recommendations and*** *reports****,*** *monitoring bodies may* ***submit*** *proposals and observations concerning existing or draft legislation. As Rule 85 of the Nelson Mandela Rules specifies, it is reasonable to require that the authorities respond within a reasonable time to such reports and indicate how they intend to implement proposals contained in them.* ***Without this requirement, recommendations could simply be ignored.***

Rule 93.6 ensures that monitoring activities are given the necessary publicity.

Part VII

Untried prisoners

Status as untried prisoners

94.1 For the purposes of these rules, untried prisoners are prisoners who have been remanded in custody by a judicial authority prior to trial, conviction or sentence.

94.2 A state may elect to regard prisoners who have been convicted and sentenced as untried prisoners if their appeals have not been disposed of finally.

This rule is primarily intended to establish a definition. It implies that a prisoner who has been convicted and sentenced in a final judgment to imprisonment for one sentence, but who is awaiting a decision on conviction for another offence, should be considered to be a sentenced prisoner.

Approach regarding untried prisoners

95.1 The regime for untried prisoners may not be influenced by the possibility that they may be convicted of a criminal offence in the future.

95.2 The rules in this part provide additional safeguards for untried prisoners.

95.3 In dealing with untried prisoners prison authorities shall be guided by the rules that apply to all prisoners and allow untried prisoners to participate in various activities for which these rules provide.

This rule describes the basic approach regarding untried prisoners in positive terms. It emphasises that they should be treated well because their rights have not been restricted by a criminal sentence. The ECtHR has stressed that this presumption applies also to the legal regime governing the rights of such persons and the manner in which they should be treated by prison guards.[169] They deserve the special protection of the state.

All untried prisoners must be presumed innocent of a crime. Rule 95.2 therefore provides additional safeguards for them.

In some instances, courts place additional restrictions on untried prisoners. However, the CPT has stated that: "Prisoners placed in solitary confinement as part of remand conditions ordered by a court should be treated as far as possible like other remand prisoners, with extra restrictions applied only as strictly required for the administration of justice."[170] This approach should be applied to all untried prisoners.

Rule 95.3 emphasises that the prisoners can enjoy all the safeguards of Part II and also take part in activities such as work, education, exercise and recreation as described in that part. Part VII as a whole is designed to assist untried prisoners by spelling out more fully to what their status entitles them additionally.

Accommodation

96. As far as possible untried prisoners shall be given the option of accommodation in single cells, unless they may benefit from sharing accommodation with other untried prisoners or unless a court has made a specific order on how a specific untried prisoner should be accommodated.

This rule restates the principle about the desirability of single cells (cf. Rule 18.5) in the context of untried prisoners. As such if prisoners are often held only for relatively short periods, single cells may be more desirable. As untried prisoners spend often more time in their cells than other prisoners, these should be of adequate size.

Care should be taken to allow even prisoners held for a short time to have exercise, recreation and association as required by the rules in Part II, in order to avoid detention in single cells becoming a form of solitary confinement.

Clothing

97.1 Untried prisoners shall be allowed to wear their own clothing if it is suitable for wearing in prison.

97.2 Untried prisoners who do not have suitable clothing of their own shall be provided with clothing that shall not be the same as any uniforms that may be worn by sentenced prisoners.

This rule should be read in conjunction with Rule 20. It emphasises that untried prisoners are entitled to wear their own clothes. Where they do not have suitable clothes of their own, the clothes that are provided to them by the prison authorities should not make them look like sentenced prisoners.

Legal advice

98.1 Untried prisoners shall be informed explicitly of their right to legal advice.

98.2 All necessary facilities shall be provided to assist untried prisoners to prepare their defence and to meet with their legal representatives.

[169] *Iwanzcuk v. Poland*, No. 25196/94, paragraph 53, judgment of 15/11/2001.
[170] 21st General Report of the CPT [CPT/Inf (2011) 28], paragraph 61.

This rule emphasises that positive efforts must be made by the prison authorities to assist prisoners who are facing criminal charges. It should be read together with Rule 23.

Paragraph 31 of Recommendation Rec (2006) 13 of the Committee of Ministers on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse contains detailed rules relating to access to lawyer when remand detention is continued.

Rule 119 of the Nelson Mandela Rules emphasises that untried prisoners have the right to be informed about the reasons for their detention and about any charges against them.

Contact with the outside world

99. Unless there is a specific prohibition for a specified period by a judicial authority in an individual case, untried prisoners:

a shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners;

b. may receive additional visits and have additional access to other forms of communication; and

c. shall have access to books, newspapers and other news media.

This rule emphasises that restrictions on contact with the outside world should be kept to a minimum in the case of untried prisoners. It should be read together with Rule 24. The CPT has stated that applying restrictions indiscriminately to all untried prisoners, for instance, visits only under closed conditions (i.e. through a glass partition), or a total ban on visits or telephone calls, is not acceptable. Any restrictions must be based on a thorough individual assessment of the risk which prisoners may present.[171]

Work

100.1 Untried prisoners shall be offered the opportunity to work but shall not be required to work.

100.2 If untried prisoners elect to work, all the provisions of Rule 26 shall apply to them, including those relating to remuneration.

It is often forgotten that untried prisoners are allowed to work in prison, even if they cannot be compelled to do so. The only exception is that all prisoners may be required in the interests of hygiene by Rule 19.5 to keep their persons, clothing and sleeping accommodation clean and tidy. Rule 100 underlines the importance of providing work also for untried prisoners and of ensuring that they are treated properly and rewarded adequately for such work.

Access to the regime for sentenced prisoners

101. If an untried prisoner requests to be allowed to follow the regime for sentenced prisoners, the prison authorities shall as far as possible accede to this request.

This rule recognises that there might be an interest in untried prisoners beginning the regime offered to sentenced prisoners even before they have been sentenced, for example when this concerns drug or alcohol misuse or sex offences. Information on the regime they could possibly be offered should therefore be given during this period of detention, so as to allow them to formulate a request to participate.

Part VIII

Sentenced prisoners

Objective of the regime for sentenced prisoners

102.1 In addition to the rules that apply to all prisoners, the regime for sentenced prisoners shall be designed to enable them to lead a responsible and crime-free life.

[171] *See* 26th General Report of the CPT [CPT/Inf (2017], paragraph 60.

102.2 Imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering inherent in imprisonment.

This rule states the objectives of the regime for sentenced prisoners in simple, positive terms. It is an enabling provision for what follows. The emphasis is on measures and programmes for sentenced prisoners that will encourage and develop individual responsibility rather than focusing narrowly on the prevention of recidivism.

The rule is in line with the requirements of key international instruments including Article 10.3 of the International Covenant on Civil and Political Rights (ICCPR), which specifies that, "The penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation." However, unlike the ICCPR, the formulation here deliberately avoids the use of the term "rehabilitation", which carries with it the connotation of forced treatment. Instead, it highlights the importance of providing sentenced prisoners, who often come from socially deprived backgrounds, the opportunity to develop in a way that will enable them to choose to lead law-abiding lives. Preparing sentenced prisoners for reintegration into society has been recognised and over time gained increasing importance in the ECtHR case-law under various provisions of the ECHR, including Article 3[172] and Article 8. The overall aim must be reintegration into society, whether it is framed as resocialisation, social rehabilitation, or desistance. Reintegration should be construed broadly, not only to refer to a lack of recidivism, but also to a better quality of life for prisoners and an increase in their ability to function effectively in free society. As Rule 89 indicates, staff with different specialist backgrounds should be available to enable prisoners to improve their skills and change their attitudes and behaviour.

Rule 102 follows the same broad approach as Rule 4 of the Nelson Mandela Rules, which emphasises that "prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature". The Nelson Mandela Rules further note that "all such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners".

Implementation of the regime for sentenced prisoners

103.1 The regime for sentenced prisoners shall commence as soon as someone has been admitted to prison with the status of a sentenced prisoner, unless it has commenced before.

103.2 As soon as possible after such admission, reports shall be drawn up for sentenced prisoners about their personal situations, the proposed sentence plans for each of them and the strategy for preparation for their release.

103.3 Sentenced prisoners shall be encouraged to participate in drawing up their individual sentence plans.

103.4 Such plans shall as far as is practicable include:

a. work;

b. education;

c. other activities; and

d. preparation for release.

103.5 Social work, medical and psychological care may also be included in the regimes for sentenced prisoners.

103.6 There shall be a system of prison leave as an integral part of the overall regime for sentenced prisoners.

103.7 Prisoners who consent to do so may be involved in a programme of restorative justice and in making reparation for their offences.

[172] *Murray v. the Netherlands* [GC], No. 10511/10, paragraph 102, judgment of 26/04/2016.

103.8 Particular attention shall be paid to providing appropriate sentence plans and regimes for life sentenced and other long-term prisoners.

This rule provides a point of departure for a regime designed to meet the objective for sentenced prisoners. It emphasises the need to act without delay in order to involve prisoners in the planning of their careers in prison, in a way that makes the best use of the programmes and facilities that are on offer. Sentence planning is a vital part of this but it is recognised that such plans need not be drawn up for prisoners serving a very short term. It is important that such planning be based on adequate information that should be drawn from as wide a range of reliable sources as possible. It should draw on the assessments of probation and other agencies if these are available.

Rule 103 also gives an overview of the various strategies that can be adopted in such a regime. In Rule 103.4, work and education are mentioned specifically as they are considered in separate rules in this part, but these are not the only strategies which may be envisaged.

Rule 103.5 points out the importance of complementing them with medical, psychological and social work intervention, where appropriate. Proactive psychosocial interventions by specialists may go beyond responsive care for the physical and mental health of prisoners and form part of individual sentencing plans.

Rule 103.6 points out that a systematic plan to use regular leave should be part of the overall regime for sentenced prisoners. Its potential use should be considered when the manner in which the sentence is to be served is planned after a prisoner is admitted to sentenced status. This rule builds on the more detailed Recommendation No. R (82) 16 of Committee of Ministers on prison leave and in particular the recognition in that recommendation of the importance of prison leave as a means of facilitating social reintegration and making prison life more humane. There should be a procedure for assessing which prisoners can be granted prison leave. Prisoners may be refused leave because they pose a high risk of reoffending, or failing to return after a period of leave. For the requirement of an appropriate risk assessment related to the potential threat posed by a prisoner being considered for prison leave.[173] Foreign prisoners should also be considered for leave if they meet the criteria applied to other prisoners (see paragraph 35.2.b of the 2012 Recommendation of the Committee of Ministers concerning foreign prisoners.

Rule 103.7 acknowledges the increasing recognition that the techniques of restorative justice may be used with sentenced prisoners who wish directly or indirectly to make reparation for their offences. It is important that such participation is voluntary and does not amount to an indirect form of further punishment. Reference is made to the norms contained in Recommendation No. R (87) 21 of the Committee of Ministers to member States on assistance to victims and the prevention of victimisation and Recommendation No. R (99) 19 of the Committee of Ministers to member States on mediation in penal matters.

Rule 103.8 underscores the importance of appropriate sentencing plans for life sentenced prisoners and other long-term prisoners, even though their release may be many years off: see the Recommendation Rec(2003)23 of the Committee of Ministers on the management by prison administrations of life sentence and other long-term prisoners, and also the 25th General Report of the CPT on the situation of life-sentenced prisoners.[174]

Organisational aspects of imprisoning sentenced prisoners

104.1 As far as possible, and subject to the requirements of Rule 17, separate prisons or separate sections of a prison shall be used to facilitate the management of different regimes for specific categories of prisoners.

104.2 There shall be procedures for establishing and regularly reviewing individual sentence plans for prisoners after the consideration of appropriate reports, full consultations among the relevant staff and with the prisoners concerned who shall be involved as far as is practicable.

104.3 Such reports shall always include reports by the staff in direct charge of the prisoner concerned.

This rule ensures that imprisonment of sentenced prisoners is organised in a way that facilitates their regime: they should be accommodated and grouped in a way that best allows this. The rule sets out how the plans

[173] *See Mastromatteo v. Italy* [GC], No. 37703/97, judgment of 24/10/2002.
[174] 25th General Report of the CPT [CPT/Inf (2016)10], paragraphs 67 to 82.

that have been drawn up are to be implemented. Practical steps also need to be taken to review regularly initial decisions on how individual prisoners should be dealt with.

When prisoners are transferred, the impact of such transfers on their individual sentencing plans should be borne in mind. When prisoners arrive in the prisons to which they are transferred, their sentencing plans should be reviewed in order to make any changes required.

Work by sentenced prisoners

105.1 A systematic programme of work shall seek to contribute to meeting the objective of the regime for sentenced prisoners.

105.2 Sentenced prisoners who have not reached the normal retirement age may be required to work, subject to their physical and mental fitness as determined by the medical practitioner.

105.3 If sentenced prisoners are required to work, the conditions of such work shall conform to the standards and controls which apply in the outside community.

105.4 When sentenced prisoners take part in education or other programmes during working hours as part of their planned regime they shall be remunerated as if they had been working.

105.5 In the case of sentenced prisoners part of their remuneration or savings from this may be used for reparative purposes if ordered by a court or if the prisoner concerned consents.

This rule relates only to work by sentenced prisoners. It should be read in conjunction with Rule 26 that contains the general rules about work. Rule 105 reflects the important role that work plays in the regime for sentenced prisoners, but at the same time emphasises that it should not be an additional form of punishment. All the safeguards contained in Rule 26 apply to sentenced prisoners as well.

Although the prison authorities may still elect to make work compulsory, this is subject to the limitations that the conditions of such work shall be in conformity with all applicable standards and controls which apply in the outside community. Given the lack of consensus between the Council of Europe member States on the issue of work of prisoners who have reached the retirement age, the ECtHR did not consider that Rule 105.2 could be interpreted as an absolute prohibition of work of prisoners who have reached the retirement age, which would breach Article 4 of the ECHR.[175]

Rule 105.4 requires the authorities to remunerate all sentenced prisoners who are willing to work. The recognition of this principle will contribute to ensuring that the opportunity to work does not allow favour to be shown in distributing work places. It will also encourage sentenced prisoners to volunteer both for work and for educational and other programmes.

The provision in Rule 105.5 for deduction from prisoners' work-related income for reparative purposes provides further scope for integrating the techniques of restorative justice to which reference is made in Rule 103.7 into the prison regime for sentenced prisoners.

Education of sentenced prisoners

106.1 A systematic programme of education, including skills training, with the objective of improving prisoners' overall level of education as well as their prospects of leading a responsible and crime-free life, shall be a key part of regimes for sentenced prisoners.

106.2 All sentenced prisoners shall be encouraged to take part in educational and training programmes.

106.3 Educational programmes for sentenced prisoners shall be tailored to the projected length of their stay in prison.

This rule deals with the education of sentenced prisoners only and should be read in conjunction with Rule 26, which contains the general provisions about education of prisoners. Rule 106 emphasises the central role that education and skills training play in the regimes for sentenced prisoners and the duty of the

[175] *Meier v. Switzerland,* No. 10109/14, paragraphs 78-79, judgment of 09/02/2016.

authorities to encourage the educational endeavours of sentenced prisoners and to provide appropriate educational programmes for them.

Release of sentenced prisoners

107.1 Sentenced prisoners shall be assisted in good time prior to release by procedures and special programmes enabling them to make the transition from life in prison to a law-abiding life in the community.

107.2 In the case of those prisoners with longer sentences in particular, steps shall be taken to ensure a gradual return to life in free society.

107.3 This aim may be achieved by a pre-release programme in prison or by partial or conditional release under supervision combined with effective social support.

107.4 Prison authorities shall work closely with services and agencies that supervise and assist released prisoners to enable all sentenced prisoners to re-establish themselves in the community, in particular with regard to family life and employment.

107.5 Representatives of such social services or agencies shall be afforded all necessary access to the prison and to prisoners to allow them to assist with preparations for release and the planning of after-care programmes.

The provisions in Rule 107.1 supplement for sentenced prisoners the stipulations in Rule 33 in respect of release in general. Rule 107 should be read together with Recommendation Rec(2003)22 of the Committee of Ministers on conditional release (parole). As this recommendation requires, special attention should be paid to enabling sentenced prisoners to lead law-abiding lives in the community. Pre-release regimes should be focused on this end and links made with the community in the manner set out in Rule 107 and further elaborated in the recommendation.

The reference to agencies in Rule 107.4 must be understood to include probation services, for where prisoners are to be released conditionally, co-operation with the agency responsible for supervising the conditional release is particularly important.

Part IX

Updating the Rules

108. The European Prison Rules shall be updated regularly.

As knowledge of best prison practice is constantly evolving, it is essential that the European Prison Rules reflect this evolution. A mechanism should be created to ensure that updates are undertaken regularly. Such updates should be based on scientific research into prison practice and other developments stemming from the case law of the ECtHR and the work of the CPT. It should also consider carefully the relationship between the rules and other instruments, standards and recommendations in the penal sphere. The need for the rules to be regularly updated was stressed in Resolution No. 4 of the 26th Conference of European Ministers of Justice (MJU-26 (2005) Resolution 4 Final, paragraph 11).