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Draft Explanatory Memorandum to the Recommendation regarding the Promotion of Mental Health and the Management of Mental Disorders of Prisoners and Probationers

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Introduction

The promotion and protection of the mental health of prisoners and probationers is important, both to ensure their human dignity while they are subject to criminal sanctions and measures, and to facilitate their reintegration into society. The mental health needs of prisoners and probationers in Europe were described in the Council of Europe White Paper regarding the management of persons with mental health disorders by the prisons and probation services (CM(2023)3-add). This Recommendation seeks to address the problems identified in that White Paper.

This Recommendation is designed to indicate to prison and probation services, as well as to other authorities to which these functions may be allocated in national law, what they should do to promote the mental health of prisoners and probationers, and the additional steps they should take to manage the mental disorders from which they may suffer. The Recommendation is not a comprehensive handbook for the mental health treatment of prisoners and probationers.

This Recommendation consists of five parts. Part I sets out its scope and the general principles that govern how all aspects of the mental health of prisoners and probationers should be approached. Part II deals with the promotion and protection of the mental health of all prisoners and probationers, as it is recognised that the mere fact of being in prison or on probation may place strain on their mental health. Good practice therefore requires that basic steps need to be taken to counter these pressures. Part III focuses on the management of mental disorders, which may require more intensive intervention, and it spells out what form such intervention should take. Part IV contains guidance on how to support the mental health of all staff that work with prisoners and probationers and how staff training should be done. Finally, Part V deals with the requirements for information and research on the mental health of prisoners and probationers.

As this Recommendation focuses on mental health, it cannot consider all aspects of imprisonment and probation. It should be read together with other rules and recommendations of the Council of Europe dealing with prisoners and probationers more generally. In this regard this Explanatory Memorandum refers particularly to the European Prison Rules (CM/Rec(2006)2-Rev, the Recommendation Concerning the Ethical and Organisational Aspects of Healthcare in Prison (no. R(98)7), the European Probation Rules (CM/Rec(2010)1) and the European Rules on Community Sanctions and Measures (CM/Rec(2017)3).

This Recommendation uses the grammatical form “should”, rather than “shall”, which is used in the European Prison Rules and some other key rules and recommendations on criminal sanctions and measures adopted by the Committee of Ministers of the Council of Europe in previous years. This approach follows the New Guidelines for Drafting Committee of Ministers’ Recommendations, elaborated by the Council of Europe Legal Advice and Litigation Department (DLAPIL) in October 2023. The use of “should” in this Recommendation must not be understood as indicating that its provisions are of a lesser status than those that used “shall” in previous years. All the provisions of this Recommendation must be treated in the same way as the rules and recommendations that use “shall”.

Part I

Scope and General Principles

Scope

Rule 1

The authorities that have the responsibility referred to in Rule 1 may vary from country to country. Prison and probation services will inevitably be involved but in some instances the primary authority will be the national health service. In other instances, there may be a specialist mental health service, whose responsibilities extend to (aspects of) the mental health of prisoners or probationers. This Recommendation is designed to encompass all these possible permutations.

Rule 2

Rule 2.1 makes it clear that, subject to the limited exception in Rule 2.2 this Recommendation is designed to deal with the mental health of adult prisoners and probationers only.

Rule 2.2 follows Rule 11.1 of the European Prison Rules (EPR) (CM/ Rec(2006)2-rev), which provides that children under the age of 18 years should not be held in a prison for adults. If nevertheless, exceptionally, they are held in a prison, Rule 11.2 of the EPR provides that "there shall be special regulations that take into account their status and needs". See further the European Rules on juvenile offenders subject to sanctions and measures (CM/Rec(2008)11), Rules 69 to 75 of which deal with the health of juveniles deprived of their liberty. [1]

Rule 3

Rule 3 is designed to link this recommendation to the scope of the EPR. Rule 10 of the EPR sets out in detail to which incarcerated persons those Rules refer. It provides:

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.

In interpreting the scope of the current Recommendation reference should also be made to the commentary on Rule 10 of the EPR. Note that the EPR 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 regarded as prisoners.

Rule 4

Rule 4 is designed to link this Recommendation to the scope of the European Probation Rules (CM/Rec(2010)1). The definition section of the European Probation Rules explains that probation:

relates to the implementation in the community of sanctions and measures, defined by law and imposed on an offender. It includes a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety.

The definition section of the European Probation Rules notes further that community sanctions and measures mean:

> *sanctions and measures which maintain offenders in the community and involve some restrictions on their liberty through the imposition of conditions and/or obligations. The term designates any sanction imposed by a judicial or administrative authority, and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment.*

Rule 5

In applying the definition of mental disorder in Rule 5, it should be understood that mental disorder is usually associated with distress or impairment in important areas of human functioning: See WHO Fact Sheet. Mental Disorders 7 June 2022 https://www.who.int/news-room/fact-sheets/detail/mental-disorders. The World Health Organization (WHO) underlines that mental disorders occur at disproportionately high rates in prisons due to several factors: the widespread misconception that all people with mental disorders are a danger to the public; the general intolerance of many societies to difficult or disturbing behaviour; the failure to promote treatment, care and rehabilitation, and, above all, the lack of, or poor access to, mental health services in many countries. The WHO notes that many of these disorders may be present before admission to prison. They may be exacerbated further by the stress of imprisonment but may also develop during imprisonment itself: WHO/ICRC Information Sheet "Mental Health and Prisons", 2005. For these reasons mental healthcare is particularly important for prisoners and probationers.

General principles

Rule 6

Rule 6 stresses the fundamental link between good mental health care and human dignity. See in this regard Article 1 of the Recommendation (2004)10 of the CM to member States concerning the protection of the human rights and dignity of persons with mental disorders and the Council of Europe White Paper regarding the management of persons with mental health disorders by the prisons and probation services (CM(2023)3-add) page 16.

Ensuring that the support and care necessary for the mental health of prisoners are provided "promptly" should begin with the medical examination which Rule 16 of the EPR requires that prisoners should have "as soon as possible after admission". In the case of probationers, the requirement of providing support and care "promptly" may be met in different ways, for example, by referring probationers to mental health services in the community.

The general principle in Rule 6 should not be understood narrowly as referring to the screening of prisoners and probationers for mental disorders, as required by Rule 18 of this Recommendation. It reflects a broader approach to the mental health of prisoners and probationers that should be adopted by all authorities that have responsibilities for their care.

Rule 7

Gender and cultural backgrounds influence individuals' different life experiences, including trauma, stigma, and the coping mechanisms they adopt. Understanding these differences helps mental health professionals provide more effective care tailored to individual needs. Certain gender and cultural groups may face unique stresses to their mental health, such as discrimination, societal pressures, or specific traumas related to their identity. Addressing these factors can assist in managing their mental health effectively.

Gender and cultural factors often play a role in combination with other factors like age, and may, for instance, affect access to mental health services. Individuals from certain cultures may have different attitudes towards seeking help or face language barriers. Understanding these factors allows mental health providers to make services more accessible and culturally competent.

Gender and culture can influence how individuals respond to different treatment approaches. For example, certain therapies or interventions may be more effective or acceptable within specific cultural or gender contexts. Tailoring treatment plans accordingly can improve outcomes.

Addressing gender and cultural factors in mental health care for prisoners and probationers is crucial for successful reintegration into society. Cultural identity and gender play significant roles in an individual's sense of self and community, so supporting these aspects can facilitate rehabilitation and reduce recidivism.

Taking gender and cultural factors into account in all aspects of mental health care aligns with human rights principles, including the right to health and the right to be free from discrimination. It promotes equity and ensures that all individuals receive care that respects their dignity and autonomy.

Rule 8

There should be political and a managerial commitment to securing equivalent outcomes of mental healthcare for persons under the responsibility of prison and probation services, with the necessary resources, infrastructure and support for implementation. (Council of Europe White Paper regarding the management of persons with mental disorders by the prisons and probation services (CM (2023)3-add) (White Paper 7.1.a). Emphasis should be on achieving the same quality of health care for prisoners and probationers as for other members of the public, even if the means of delivering it may vary. Member States should ensure that policy governing mental healthcare for prisoners and probationers, is an intrinsic part of national mental health policy, with high priority placed on the steps necessary to secure equivalence of care. The meaning of equivalence of health care of all kinds is spelled out in Article 10 of the Committee of Ministers Recommendation No. R(98)7 to member States concerning the ethical and organisational aspects of health care in prison.

Where the national healthcare system gives users a voice in shaping mental health care interventions, steps should be taken to ensure that prisoners and probationers can exercise this right.

Rule 9

It is important that information be provided in a language, manner and form that takes into account the cognitive and linguistic abilities of prisoners and probationers.

Rule 10

Alternative provisions may take different forms. In line with Rule 12 of the EPR, national lawpolicy should stipulate the procedure in accordance with which that people whose state of mental health is incompatible with detention in a prison should be sent to an establishment specially designed for the purpose. In the case of probationers, the alternative provisions may simply amount to an adjustment of the probation conditions. The European Court of Human Rights (ECtHR) has held that Article 3 of the European Convention on Human Rights (ECHR) imposes an obligation on the State to transfer prisoners with mental disorders to special facilities, if a failure to do so would result in inhuman or degrading treatment in the prison in which they are held (*Murray v. the Netherlands* [GC], No 10511/10, judgment of 26/04/2016, paragraph 105).

Rule 11

Underlying both parts of Rule 11 is the distinction drawn between separation and solitary confinement in the EPR. All prisoners who are separated from other prisoners must be offered at least two hours of meaningful human contact a day (EPR Rule 53A). Solitary confinement is a harsher form of separation, where such contact need not be provided (Rule 60.6.a of the EPR).

Rule 11.1 should be read together with Rule 53A of the EPR, which contains a list of the restrictions that apply also to the use of separation of prisoners from other prisoners for mental health related reasons. This list should be studied and applied in full. Particular attention is drawn to Rule 53A.c, which provides that "separation shall be used for the shortest period necessary to achieve its objectives and shall be regularly reviewed in line with these objectives". Rule 53A.d provides that "prisoners who are separated shall not be subject to further restrictions beyond those necessary stated purposes of such separation". In the case of separation for mental health reasons, it may be possible for separated prisoners to continue with other activities such as family contacts and education, for example.

Rule 11.2 refers to important is Rule 60.6.b of the EPR, which that provides, inter alia, that: "solitary confinement shall not be imposed on prisoners with mental or physical disabilities when their condition would be exacerbated by it. Where solitary confinement has been imposed, its execution shall be terminated or suspended if the prisoner's mental or physical condition has deteriorated." Also important where mental health is concernedOf particular importance to mental health in respect of solitary confinement as a disciplinary punishment, is that Rule 60.6.a provides that solitary confinement "shall never be imposed on children, pregnant women, breastfeeding mothers or parents with infants in prison".

In terms of Rule 60.6 of the EPR, solitary confinement may only be used as a disciplinary punishment, and then in the very restricted circumstances. Therefore,, as Rule 11.23 makes clear that, solitary confinement it cannot be imposed only for any mental health related reasons, as mental health reasons are not grounds for disciplinary punishment. purpose .

Rule 12

The co-operation referred to in Rule 12 may take various forms. Prison and probation services may refer prisoners and probationers to other authorities for the promotion of their mental health and the management of their mental disorders. Co-operation should be encouraged

where a prison or probation service does not have the capacity or legal authority to offer the services in-house. Other authorities should be able to refer prisoners and probationers back to the prison and probation services, if this would be in the best interests of the prisoners and probationers concerned.

Rule 13 of the Recommendation concerning the ethical and organisational aspects of health care in prison (CM/Rec no. R(98)7) requires that "medical confidentiality should be guaranteed and respected for prisoners with the same rigour as in the population as a whole", while Rule 18 provides that when prisoners are transferred, their medical records should be transferred too, "under conditions ensuring their confidentiality". More generally, Rule 16A.5 of the EPR provides, in respect of prisons, that: "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". The same general confidentiality principle and data protection standards that apply in prisons should be applied *mutatis mutandis* to probationers.

Rule 13

Attention should be paid to ensuring the continuity of mental healthcare of prisoners and probationers and, subject to data protection requirements, the flow of information about them, as they pass between different parts of the criminal justice and health systems. This continuity includes: between mainstream mental health services and prison on admission; when transferring between prisons, or between prison and healthcare facilities, including forensic mental health facilities; and when leaving prison, whether or not under the supervision of probation services. Such an approach should be in place both at national level, between health and justice departments, and at local level between all relevant facilities, to support the effective planning, commissioning and delivery of services. See also Rule 12 above.

Joint working groups may be created, for example, at local level, bringing together prison and probation staff (prison officers, psychologists, case managers, social workers), health professionals (physicians, nurses, psychiatrists) and volunteers (where appropriate) working in all sectors: prison, probation, and mental health. Such groups should work together on a regular basis.

Co-operation may also take other forms. For example, a probation service may be asked by a judicial authority to provide a pre-sentence report. If such a report were to recommend a community sentence that includes treatment for a mental health disorder, it is important that the probation service cooperates with providers of such mental health treatment, both in formulating the treatment recommendation and in implementing the treatment, if it becomes part of a sentence or measure imposed by the sentencing court.

Referral of prisoners and probationers with mental disorders to external mental healthcare services that can provide treatment after release, whether or not this is under the supervision of the probation service, should follow written protocols and partnership agreements in order to establish shared responsibility and to ensure that appropriate personal data safeguards are applied throughout (On data protection see also Rule 12 above.)

Rule 14

Treatment or therapy of convicted prisoners and probationers aimed at reducing recidivism may include a mental health element. Steps should be taken to ensure that it complements the promotion of the overall mental health of the prisoners and probationers concerned.

Part II

The promotion and protection of mental health

Promoting mental health

Rule 15

Rule 15.1 sets of the general importance of involving prisoners and probationers, as well as the staff that deal with them, in the promotion of good mental health.

Rule 15.2 lists specific steps that should be taken to promote the mental health of prisoners and probationers.

a. Creating a supportive and caring environment encourages positive social relationships, stress reduction, and opportunities for personal growth and development. It can also make a contribution to maintaining the mental health of all prisoners and probationers, particularly those who may be neurodivergent or have special educational needs. Prison and probation staff can create a supportive environment by treating all individuals in their care with respect and dignity, providing opportunities for social interaction and support. Such an environment can have a positive impact on their mental health.

b. Providing information and education to prisoners and probationers on maintaining good mental health, avoiding mental disorder and the importance of seeking help, can reduce stigma and promote early intervention. For example, prisoners and probationers can be provided with easy-to-follow documents on mental health issues that are likely to arise while they are serving their sentences or focused educational courses dealing with these issues may be offered. Prison and probation staff need education and training on mental health, as provided in Part IV below, to enable them to inform and educate prisoners and probationers in this regard.

c. Providing access to mental health services, can assist in identifying and addressing the mental health needs of prisoners and probationers at an early stage.

d. Addressing social determinants of mental health, such as poverty, inequality, and discrimination, may help to prevent the mental health of prisoners and probationers being jeopardised. For example, where the mental health of indigent prisoners and probationers is burdened by concerns about their debts, they may be assisted to manage them more effectively.

e. Providing access to activities and programmes that promote well-being can help prevent damage to mental health. Prisoners and probationers should be supported to benefit from such activities and programmes. Regular physical activity can have a positive impact on mental health, reducing stress and anxiety and promoting a sense of well-being. Prisons can encourage physical activity by providing access to exercise facilities, sports programmes, and other physical activity opportunities: Rule 27 of the EPR. For probationers, too, daily access to physical exercise is beneficial. Probation services should encourage probationers to join community-based exercise programmes, where possible. There are a wide range of programmes that may be offered to prisoners in order to alleviate boredom and thus safeguard their mental health. Creative arts, which are mentioned specifically in Rule 15.2e, may include, for example, music, theatre or painting. 25.1 of the EPR specifies that the prison regime “shall offer a balanced programme of activities” to all prisoners. Opportunities for work, education and religious observance (Rules 26, 28 and 29 of the EPR

respectively) are particularly useful for maintaining the mental health of prisoners. Targeted programmes, for example to learn anger management, may play an important role too.

Ideally, probationers should have access to a similar range of activities to that offered to prisoners in order to maintain and improve their mental health. Where probation includes a community service requirement its potential positive impact on the mental health of the probationers concerned, should be borne in mind. In many instances, probation services have to rely on other agencies and community groups to provide access to appropriate activities and programmes that underpin good mental health. Probation services should seek to facilitate access to such activities and programmes for all probationers.

f. Maintaining prosocial contacts of various kinds with family, peers and community can be an important factor in promoting positive mental health for prisoners and probationers. Prisons can facilitate these connections by providing opportunities for visits, allowing phone calls, letters, videocalls, and prison leave, and supporting re-entry programmes that promote family and community connections. Special importance is attached to promoting the relationship between incarcerated parents and their children, because this is where the greatest deficits exist. See the Recommendation concerning children with imprisoned parents (Rec (2018) 5). Probation services should also facilitate the contact between probationers and their families wherever possible.

   Providing support for re-entry into the community, such as support through case management and community-based mental health services, can help individuals manage their symptoms and reduce the risk of recidivism.

Protecting mental health

Rule 16

Being sensitive to mental health needs as set out by Rule 16.1 does not require full screening for a possible mental disorder. On screening, see Rule 18 below. However, prison and probation officers should be constantly alert to the possibility that prisoners and probationers may need protective measures.

Rule 16.2 recognises that in some instances it may be necessary to take further steps to protect the mental health of prisoners and probationers. The steps specified in Rule 16.2 may be integrated into other programmes if better results would be achieved in this way.

a. Addressing co-occurring use of both legal and illicit substances that may have an effect on mental health, can help prisoners and probationers manage their symptoms and reduce the risk of relapse.

   Substance use can have a negative impact on mental health, exacerbating existing mental health conditions and increasing the risk of developing new ones. Prisons and probation can address substance use through the provision of education and treatment programmes for individuals with substance use disorders. Substance abuse may coexist with neurodiversity and special educational needs. In such instances the individual concerned should be supported holistically.

b. Crisis intervention services can prevent individuals from suffering from an ongoing mental disorder. On crisis intervention in a context of an existing mental health disorder, see Rule 20 below.

c. The protection of the mental health of prisoners and probationers does not depend solely on how they are dealt with by prison and probation services. Their mental health may also suffer if they are not treated appropriately by other parts of the criminal justice system. Steps should be taken to avoid any discrimination. Adequate funding should be allocated to criminal justice and health systems for mental health services for all prisoners and probationers who come into contact with these systems.

Self-harm and suicide prevention

Rule 17

Authorities may be found to violate the right to life, which is guaranteed by art 2 of the ECHR, if they do not take adequate steps to prevent suicide: *Coselav v. Turkey*, No. 1413/07, judgment of 09/10/2012. Prison services may also be held liable if a prisoner actually commits suicide and the authorities knew of the risk but did not take adequate steps to prevent it or did not investigate the cause of death appropriately afterwards: *Keenan v. United Kingdom*, No. 27229/95, judgment of 03/04/2001.

a. In order to meet their obligations, it is important that authorities have a clear set of policies in place to deal with self-harm and suicide.

b. In order to identify risk of self-harm or suicide, the authorities should ensure that they have appropriate tools in place to enable them to do so. These may differ between what is necessary in prison and for probationers.

c. Timely and effective interventions, such as therapy and medication, and family and social support, can help individuals manage their mental health and prevent problems from becoming more severe.

d. As noted also in Rule 21.1 below, where crisis intervention is considered for persons with mental disorders, suicide attempts should be dealt with by adopting a therapeutic and not a punitive approach which should follow clear protocols. This applies to all suicide attempts, whether the person concerned has a mental disorder or not.

   Acute crises can lead to unpredictable and potentially dangerous behaviour, posing risks to the affected individual, other inmates, and prison staff. Specialized units are equipped to handle such situations more safely and effectively, reducing the risk of harm and maintaining overall prison safety.

e. Prisoners retain their human rights despite being incarcerated. Providing appropriate care for those in mental health crises is an ethical responsibility. Ensuring that they have access to specialized units respects their dignity and rights, and aligns with international human rights standards.

   Prisoners in acute crisis, such as those experiencing severe mental health episodes, are at heightened risk of self-harm or suicide. Specialized units or safe rooms are designed to provide a secure and supportive environment where these individuals can receive immediate care and supervision. This helps in stabilizing their condition and preventing tragic outcomes.

f. Emerging research can provide new insights into the most effective strategies for preventing self-harm and suicide. By integrating these insights into policies, prisons and other institutions can improve the effectiveness of their interventions, ensuring they are using the best available methods to protect individuals at risk.

Patterns of self-harm and suicide can change over time, influenced by social, cultural, and environmental factors. Regular policy reviews help institutions stay updated on these trends and adapt their approaches accordingly, ensuring they remain relevant and effective.

Advances in technology can offer new tools and methods for monitoring, preventing, and responding to self-harm and suicide. Updating policies to incorporate these technological innovations can enhance the ability of institutions to detect and intervene in crises more promptly and accurately.

Part III

The management of mental disorders

Screening

Rule 18

Depending on the circumstances and national law, the responsible authorities referred to in Rule 18.1 may be prison or probation staff or the staff of medical or other services to which national law ascribes screening responsibilities. Screening may use tools such as questionnaires or interviews, depending on what is appropriate in the prison or probation context.

The medical history assessment referred to in Rule 18.2 should also identify any signs of substance dependence and the use of substitution treatment. The aim is to identify people with substance abuse disorders and to establish the care and treatment measures they need. Screening should be interdisciplinary and may involve various specialists, such as mental health experts and social workers. Social problems, relating to family and interpersonal relationships, for example, may affect mental health negatively.

Rule 18.3 spells out when screening should take place:

a. Rules 15.1.f, 16.a and 42 of the EPR provide that prison services shall screen new prisoners at admission and, subject to the requirements of medical confidentiality, register any relevant information regarding their physical and mental wellbeing. This information should be supplemented promptly by a medical examination.

b. In the case of probationers in particular, screening may be less intensive, as they may have access to mental health services outside the criminal justice system. The intensity of the screening required should be adapted to the needs of the individual case.

c. It is important that all responsible authorities co-operate to ensure that additional screening is conducted when a suspicion arises that a prisoner or probationer may be suffering from a mental disorder.

Assessment

Rule 19

Assessment should go further than the initial screening, particularly in the assessment of the risk that the prisoner or probationer may pose to themselves or to others because of their potential mental disorder.

Treating mental disorders

Rule 20

The treatment options referred to in Rule 20.1 should all be evidence based and should involve, where appropriate, medical care and also a wide range of therapeutic, rehabilitative and meaningful recreational activities.
In applying Rule 20.2 a multidisciplinary approach should be adopted, no matter by whom the treatment is provided.

The requirement of consent to treatment and the limited exceptions where such consent is essential as set out in Rule 20.3 should be applied carefully. Article 5 of the Oviedo Convention on Human Rights and Freedoms requires that any intervention in the health field be carried out only after the person concerned has given free and informed consent to it. This general principle applies also to prisoners and probationers who may be subject to treatment for mental disorders.

In so far as national law specifies that treatment may exceptionally be applied without a person's consent, the law should provide for protective conditions, including supervisory control and appeal procedures (Articles 7 and 26 of the Oviedo Convention). The treatment in question should also not run counter to the principles established in the ECtHR case law, according to which the application of coercive and non-consensual measures against persons with psychological or intellectual disabilities requires that such measures be employed as a matter of last resort and when their application is the only means available to prevent immediate or imminent harm to the patient or others. Furthermore, the ECtHR has stressed that the use of such measures must be commensurate with adequate safeguards from any abuse, providing sufficient procedural protection, and capable of demonstrating sufficient justification that the requirements of ultimate necessity and proportionality have been complied with and that all other reasonable options failed to satisfactorily contain the risk of harm to the patient or others. It must also be shown that the coercive measure at issue was not prolonged beyond the period which was strictly necessary for that purpose (*M.S. v. Croatia* (No. 2), No. 75450/12, judgment of 19/02/2015, paras 104-105). The procedural safeguards with respect to complaints Rule 70 of the EPR are also of particular importance in this context.

Rule 20.4 reflects the reality that prisoners and probationers often use illegal substances. Any substitution treatment already started for opioid addiction (opioid agonist treatment) or any other drug treatment for substance dependence should be continued. Further steps for general harm reduction that could be taken, for example, include provision of sterile injection equipment, vaccination against hepatitis A and B, and condom distribution. Co-operation with external addiction treatment centres should be established in order to ensure continuity of treatment.

Crisis intervention

Rule 21

The approach adopted to mental health should never be punitive. As Rule 21.1 requires, a supportive approach should be adopted by healthcare staff who should supervise all crisis interventions. If healthcare staff are not available immediately, other staff should intervene only to stabilise the situation until the healthcare staff can take over.

Rule 21.2 deals with how interventions should be undertaken when a prisoner faces a mental health crisis. The ECtHR has made it clear that the failure to intervene when a prisoner is facing a mental health crisis will be regarded as a violation of art 3 of the ECHR: *Rivière v. France,* No. 33834/03, judgment of 11/07/2006. The Court looks critically at the mental health services that are being offered in such cases: *Slawomir Musiał v. Poland*, No. 28300/06, judgment of 20/01/2009; *Dybeku v. Albania*, No. 41153/06, judgment of 18/12/2007; *Murray v. the Netherlands [*GC], No 10511/10, judgment of 26/04/2016. See also Rule 47.2. of the EPR.

~~In countries where prisoners who are outside prison are still regarded in law as 'prisoners', for example because they are on prison leave or because the implementation of their sentence has been interrupted, special procedures should be put in place to deal with the possibility that such prisoners may face a mental health crisis outside prison.~~

a. When a mental health crisis is serious or of a long duration, consideration should be given to moving a prisoner to a therapeutic institution. See in this regard Rule 10 above, which provides that alternative provisions should be made for prisoners whose mental health is incompatible with continued detention in a prison.

b. Crisis intervention can serve as a gateway to more comprehensive mental health care, identifying individuals in need of ongoing treatment and ensuring they receive appropriate care, including therapy and medication. It helps stabilize inmates experiencing severe mental health episodes, allowing for a calmer and safer environment for both inmates and staff. This stabilization is crucial for the effective management of the prison population.

   Implementing crisis intervention programs often involves training prison staff to recognize and respond to mental health crises. This training increases staff awareness and understanding of mental health issues, leading to more humane and effective management of inmates.

c. & d. Further information on the use of restraints can be found in Rules 53a and 64 to 68 of the EPR and also the CPT Standards on means of restraint in psychiatric establishments for adults (CPT/Inf(2017)6).

Part IV

Staff

Mental Health

Rule 22

Dealing with prisoners and probationers in difficult situations on a daily basis can increase stress levels among prison and probation staff. The impact of such stress on staff health may sometimes lead to health-related long absences from work. Careful management of staff,

including work schedules planning, staff support and assistance, regular debriefing, psychological support, rotation of staff and improving staff prisoners/probationers ratio should assist in reducing work-related stress.

Training

Rule 23

The specialist mental health related training for staff should be seen in the context of the general "Guidelines regarding recruitment, selection, education, training and professional development of prison and probation staff" (CM (2019)111-add). See Rule 7.2.a) in particular. All prison and probation staff should have a programme of training and refresher courses on mental health, psychology, and suicide prevention. They should be trained in how to interact with and offer support to prisoners and probationers with mental disorders. This may help to reduce stigma and promote understanding of the importance of treatment adherence. See report on the CPT's visit to Romania in 2021, CPT/Inf(2022)06, paragraph 67.

Prison and probation staff should be trained with different aspects of knowledge and techniques of intervention, possibly including restorative approaches, dynamic security, interpersonal communication and de-escalation skills. Particular attention should be paid to the prevention of suicide and self-harm, as these behaviours are often linked to mental health issues.

Employers have a responsibility to assist staff in combating the mental stress experienced by staff dealing with prisoners and probationers. This should be done as part of occupational health management. In this way institutional resilience can be increased.

Part V

Information and research

Information

Rule 24

Member States should ensure the systematic collection of anonymised and aggregated data on the prevalence of mental disorders in the penal system. Such data should inform the effective planning of services. It should also be used to facilitate research designed to improve the care provided for prisoners and probationers. (White Paper 7.1.c) and to ensure that gender and cultural biases are avoided (See Rule 7 and the commentary on it above). To support this process, methods should be developed for collecting data on mental disorders in a consistent manner, in line with the relevant data protection rules in Europe. The use of structured assessment tools would facilitate this process.

Member States should require standardised and anonymised data on suicide, attempted suicide and self-harm to be routinely collected and monitored at both national and local level. These data should be used to identify trends over time, both at national level and at the level of individual institutions, examine possible preventive actions, and share good practice.

Research

Rule 25

In light of the current inadequate evidence base on the effectiveness of interventions for those with mental disorders in prison or under supervision by the probation service, member states

should, as a matter of priority, increase levels of research funding, and work with practitioners and the academic sector to improve the available evidence base.

Given the particular lack of evidence with respect to mental health in probation, a dedicated programme of mental health research with experts working in probation settings should be established. Sufficient research funding should also be made available to evaluate the implementation of mental health policies and practices, and their impact on health and on re-offending outcomes.