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COVID-19 RELATED STATEMENT BY THE MEMBERS OF THE COUNCIL FOR PENOLOGICAL CO-OPERATION WORKING GROUP (PC-CP WG)

The Council for Penological Co-operation Working Group, in co-operation with the European Organisation of Prison and Correctional Services (EuroPris) and the Confederation of European Probation (CEP) wishes to draw the attention to some important texts issued by the Council of Europe in recent days as well as to standards and practices which may assist the prison and probation services and other criminal justice agencies of the Council of Europe member States in dealing with the COVID-19 pandemic, respecting the principles of the rule of law and of human rights.

I. The Council for Penological Co-operation Working Group (PC-CP WG) members welcome, fully support and draw the attention of the Directors of the prison and probation services of the Council of Europe member States to:

a. The Council of Europe Secretary General's Toolkit for member States "Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis" (Doc. SG/Inf(2020)11 of 7 April 2020);

b. The Statement of the Council of Europe Commissioner for Human Rights made on 6 April 2020: "COVID-19 pandemic: urgent steps are needed to protect the rights of prisoners in Europe";

c. The CPT "Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic" (Doc. CPT/Inf(2020)13 of 20 March 2020).

II. The PC-CP WG would also like to remind the Directors of the prison services of the Council of Europe member States of some key principles and recommendations contained in the European Prison Rules (2006) as well as in the Committee of Ministers' Recommendations n° R(93)6 concerning prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison and n° R (98) 7 concerning the ethical and organisational aspects of health care in prison (see the Compendium of all relevant texts) which could be summarised in a few points and should provide guidance when facing the COVID-19 pandemic by the prison services in full respect of the fundamental rights and freedoms as safeguarded by the European Convention on Human Rights[1]:

- There should be medical examination on entry into prison of each inmate, subject to the requirements of medical confidentiality, in order to detect *inter alia* intercurrent diseases, including treatable infectious diseases;

- Each inmate should have access to a doctor or a fully qualified nurse without undue delay and without discrimination on the grounds of their legal situation;

[1] See also the Guide on the case-law of the European Convention on Human Rights - Prisoners' rights.

- Healthcare policy in prison should be integrated into, and compatible with, national health policy. Doctors in prison should provide the same standards of health care as in the community;

- The prison health care service should have a sufficient number of qualified medical, nursing and technical staff, as well as appropriate premises, installations and equipment of a quality comparable, if not identical, to those which exist in the outside environment. Prison doctors should be able to call upon specialists in case such specialists do not work in prison;

- The isolation of a patient with an infectious condition is only justified if such a measure would also be taken outside the prison environment for the same medical reasons. Patients, who need to be protected from the infectious illnesses transmitted by other patients, should be isolated only if such a measure is necessary for their own sake to prevent them acquiring intercurrent infections, particularly in those cases where their immune system is seriously impaired;

- The possibility of a pardon for medical reasons or early release should be examined for persons who are unsuited for continued detention due to serious physical handicap, advanced age or short-term fatal prognosis;

- Particular attention shall be paid to the health of inmates held under conditions of solitary confinement, including daily visits and provision with prompt medical assistance and treatment at the request of such inmates or the prison staff;

- The medical practitioner shall report to the director whenever it is considered that an inmate'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;

- The medical practitioner shall regularly inspect, collect information by other means if appropriate, and advise the director upon the quantity, quality, preparation and serving of food and water; the hygiene and cleanliness of the institution and inmates; the sanitation, heating, lighting and ventilation of the institution; and the suitability and cleanliness of the inmates' clothing and bedding;

- Sick inmates who require specialist treatment shall be transferred to specialised institutions or to civil hospitals, when such treatment is not available in prison;

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

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

- In case of death or serious illness of, or serious injury to an inmate, or the transfer of an inmate to a hospital, the authorities shall, unless the inmate has requested them not to do so, immediately inform the spouse or partner of the inmate, or, if the inmate is single, the nearest relative and any other person previously designated by the inmate;

- When release is pre-arranged, the inmate shall be offered a medical examination as close as possible to the time of release. During such an examination particular attention shall be paid to:

diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment; isolating inmates suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment; making arrangements with community agencies for the continuation of any necessary medical treatment after release;

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

III. The PC-CP WG would like also to draw the attention of the prison services of the Council of Europe member States to the paper: "COVID19 - IPS Basic Guide for Decision-Makers working in the criminal justice sector on Worldwide Practices and Recommendations" which contains a number of practical advice tips which, depending on the national law and practice could be adapted to the situation in different countries in full respect of the relevant international standards and principles. The PC-CP WG further draws the attention to some practices introduced by prison services in Europe (based on the information collected by the European Organisation of Prison and Correctional Services (EuroPris) in relation to the handling of COVID-19 pandemic by its members):

- Clear information is provided orally and, if possible, also in writing to all inmates and staff and all efforts are made to provide all necessary explanations in relation to this in order to avoid tensions and ensure understanding and co-operation from all sides. Publication of FAQs on prison service websites and /or establishing a helpline to answer questions of families of inmates is organised;

- At admission and before release inmates are accommodated in single cells even where normally in the rest of the prison wings, they may share cells or be in a multiple cell accommodation. Additional efforts are made to accommodate as few inmates as possible in a shared accommodation;

- Where probation staff works inside prison, during COVID-19 they identify vulnerable inmates and work in priority with them - otherwise as a general rule, it was reported that due to sanitary concerns, visits in many countries by probation staff to prisons are cancelled;

- In some countries inmates are escorted to outside medical units for COVID-19 tests in case of requests or indication of contamination, in other countries a mobile health unit comes to the prison to take test samples in case of need;

- Disinfectants and other sanitary equipment are provided and staff wears masks, gloves and sometimes other protective equipment (glasses, aprons, suits, mostly in case of tested positive inmates or in case this relates to medical staff) when in contact with inmates to avoid contamination going both directions (including cell and bodily searches, escorting and transportation of inmates);

- In some countries body temperature of inmates, visitors and staff is being taken daily;

- Staff is divided in shifts/teams in a manner that the different teams/shifts do not come in contact with each other and the duration of the shifts is shortened in the units where staff is in direct contact with inmates in order to relieve the pressure on staff;

- Additional support by staff psychologists and counselling are offered to all staff in need;

- Where family visits are cancelled due to the pandemic (in most countries this is the case), the prison services provide free-of-charge additional possibilities for phone or video calls or other means of contact and correspondence (in some countries checked and cleared mobile phones are distributed);

- Where visits of lawyers, probation services or other visits are allowed (mostly reported cases of other visits relate to allowing family visits to juveniles), the required distance and other protective measures are respected (wearing of masks, visits behind screens, etc.);

- In some countries where workshops are closed and inmates can no longer work and earn money, they are paid a compensation for the loss of income;

- Where collective recreational or sports activities are cancelled, they are replaced by additional TV and other electronic entertainment options and additional out-of-cell activities while respecting social distancing;

- Remote educational courses are offered through online media or video conferences, especially where (final) exams are scheduled and especially in the case of juveniles;

- In several countries, inmates produced reusable masks and other equipment (like protective aprons, suits) to help find solutions to shortages of protection equipment;

- In countries where food parcels are allowed in prison, their quantity/frequency is increased, or more financial means are provided to buy food from the prison shop;

- Transfer of inmates between prisons is only executed if required for carefully estimated security reasons.

IV. The PC-CP WG also draws the attention to some practices introduced by the probation services in Europe (based on the information collected by the Confederation of European Probation (CEP) in relation to the handling of COVID-19 pandemic by its members):

- Probation services across Europe follow and comply with the advice and guidance provided by national authorities to keep not only probation personnel and persons subject to supervision safe but also the wider community;

- Face-to-face meetings between probation staff and offenders are replaced by remote contacts via mail, phone or video conferencing. In some countries in relation to this practice detailed guidelines have been issued on how to interact with offenders by telephone or other remote means of communication, including the sets of questions to be asked and information to be gathered, which also include COVID-19 related questions;

- Supervision of fulfilment of obligations set by a court (installation of electronic monitoring (EM) devices, alcohol and drug testing) is carried out during home visits instead of at the office and probation staff wear personal protections;

- Home visits are decided by the managers only when risk assessment deems it absolutely necessary to prevent significant harm. Risks of infection to staff and persons visited need to be mitigated before doing so. In some countries detailed guidance is communicated to staff on how to seek relevant information from offenders before the visit regarding COVID-19 risks, how to protect oneself before, during and after the visit and how to teach the person visited to do the same;

- Visits to detention centres or prison establishments by probation staff are also postponed and replaced as much as possible with remote means of communication in many countries;

- When multi-agency or multi-disciplinary teams are involved, guidance is provided in some countries on how to share tasks and how to conduct remote and home visits where more than one agency is involved;

- When Probation offices are closed local authorities and other stakeholders are informed and a sign is placed on the door providing a duty telephone number for emergency contact;

- Sentence plans are adapted so that activities which can be done from home are included. Treatment programmes which require attending group sessions are suspended and individual programmes which can be carried out via electronic means from home are maintained. Phone and video calls are used for all types of contacts, supervision or consultations;

- Higher risk offenders are identified and prioritised for supervision and intervention/treatment purposes, especially those with history of domestic violence;

- In most countries community service has been stopped or postponed. When community service work is not maintained, the enforcement of the sentence is suspended until further notice or is considered as expired with a limited content of interventions for low risk offenders;

- In countries/jurisdictions where community service is maintained health safety measures are implemented:

    - Follow the social distancing guidelines of keeping a distance of 1.5 meters from each other;

    - Staff wears masks and gloves when in contact with clients to avoid contamination going both directions;

    - Follow the key principles and recommendations contained in the European Probation Rules (2010), Article 50. Health and safety precautions shall adequately protect offenders assigned to community service and shall be no less rigorous than those applied to other workers;

- Regarding programmes related to dealing with low risk substance abuse, including driving related offences, some probation services were given guidance to end the execution of the sentence instead of its interruption;

- Probation service website news and social media are being maintained and updated regularly to provide information and guidance;

- Communication among probation staff as well as with other stakeholders and partners (like courts, police, prosecution, prison service, healthcare service, municipalities) is done remotely by phone, mail or videoconferencing;

- In some countries the probation staff is separated into two teams each of which works for 14 consecutive days followed by a mandatory confinement of 14 days at home in order to counter as much as possible the spread of the virus. In other countries staff works from home and once a week goes to the office to avoid contacting colleagues as much as possible;

- Where possible the courts postpone hearings and, in such cases, pre-sentence reports are not drafted and sent to the courts;

- In urgent cases, when pre-sentence reports need to be prepared, the interviews with the accused person are carried out as much as possible by telephone or videoconferencing;

- In some countries control visits of the supervision patrol are performed briefly in front of the home address of the offenders;

- In some countries due to COVID-19, although staff do not usually work on weekends, they have been on call to deal with incidents of self-harm and domestic violence;

- Electronic monitoring (EM) continues as usual, face-to-face meetings are replaced by phone calls or other online tools. In some countries in order to cope with early releases from prison, the maximum term for execution of sentence with EM has been increased from 4 to 6 months, in others EM is used as an aid to help prevent domestic violence;

- Concern is expressed by many probation services that putting more people under probation may lead to probation overcrowding and pressure on the probation staff work and caseload. Therefore, it is recommended to use effectively meaningful community sanctions and measures and to avoid mass supervision.

V. The PC-CP WG also wishes to draw the attention of all relevant national stakeholders to the fact that a number of countries have introduced emergency measures aimed at decreasing prison numbers and reducing prison overcrowding like: reducing as much as possible the number of accused or sentenced persons sent to detention centres and prisons; releasing certain categories of inmates (vulnerable inmates due to their age or health status), juveniles, pregnant women or women with infant children, inmates planned to be released in the near future anyway or low risk offenders. In relation to this the PC-CP WG wishes to remind that Council of Europe has persistently recommended to the national authorities of its member States[2] (and in the first place Ministries of Justice, judges and prosecutors) to make more efficient and frequent use of community sanctions and measures, as measures of 'first resort' where possible, in order to effectively reduce crime by using interventions which are more likely to promote desistance, and do not break the social ties of offenders but rather build on and reinforce these ties in order to combat further offending. Such interventions can be coupled, where appropriate, with new surveillance technologies like electronic monitoring (EM), in full respect of human rights and fundamental freedoms and also based on the understanding that new technologies cannot and should not replace the meaningful human contact with offenders. Community sanctions and measures can be used in their own right, they can replace a prison sentence or accelerate release as an integral part of early release schemes of inmates and can thus effectively reduce the overuse of imprisonment as a sanction.

[2] For more information regarding recommended measures to be taken for reducing the use of imprisonment (White Paper on Prison Overcrowding and High-Level Conference).