COMMENTARY TO RECOMMENDATION REC(2006) 2

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

ON THE EUROPEAN PRISON RULES

Introduction

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 (73) 5 of the Council of Europe. They sought to adapt to European conditions the United Nations Standard Minimum Rules for the Treatment of Prisoners, which were initially formulated as far back as 1955.

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 current revision has the same overall objective. Like its predecessors, it is informed both by earlier prison standards and by the values of the European Convention on Human Rights. Since 1987, however, there have been many developments in prison law and practice in Europe. Evolutionary changes in society, crime policy, sentencing practice and research, together with the accession of new member states to the Council of Europe, 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 European Convention for the Protection of Human Rights and Fundamental Freedoms 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) to entrust the Council for Penological Co-operation (PC-CP) with the task of bringing the Rules into line with best current practice.

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 R (99) 22 Concerning Prison Overcrowding and Prison Population Inflation. This recommendation stresses 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.

Since 1987 the European Prison Rules have grown in status. They are now regularly referred to by the ECtHR and the CPT. The new version of the Rules should be of even more assistance to these bodies as they reflect the latest development in best prison practice. National courts and inspecting bodies are encouraged to do the same, not least because the growing transfer of prisoners amongst members states requires that transferring states must have confidence that prisoners will be well treated in the countries to which they are sent.

The present 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.

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 letter and the spirit of the principles.

Rule 1

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.

Rule 2

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.

Rule 3

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.

Rule 4

It sometimes happens that governments are accused of treating their prisoners better than other members of society. Although this accusation is rarely true in practice, 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.

Rule 5

Rule 5 emphasises the positive aspects of normalization. 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 inhumane prison conditions.

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Rule 6

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. Prisoners have to be kept physically and mentally healthy and provided with opportunities 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.

Rule 7

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.

Rule 8

Rule 8 places prison staff at the centre of the whole process of implementing the Rules and achieving the humane treatment of prisoners generally.

Rule 9

Rule 9 raises the need for inspection and monitoring to the status of a general principle. The importance of such inspection and monitoring is spelled out in part VI of the Rules.

Scope and application

Rule 10

Rule 10 defines which persons are to be considered a*s prisoners* in terms of these Rules. This Rule stresses that a *prison* and not any 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 next to remand prisoners or sentenced offenders other categories can be held in prisons by virtue of provisions in national law, such as immigration detainees. These persons, as long as they are detained in prisons also are to be treated as prisoners in terms of these Rules. A prison is by definition not a suitable place to detain someone who is neither suspected nor convicted of a criminal offence. Consequently, immigration detainees should only be held in prison in exceptional cases e.g. 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 still is 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 (temporally) are held in other establishments such as police stations or other premises that they cannot leave at will. It goes without saying that 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.

Rule 11

Rule 11 complies with the exigencies of Article 37c of the International Convention of the Rights of the Child, which requires special detention facilities for young persons who are children in terms of this Convention and forbids detention of children together with adults. Only when the best interests of the child indicate it, does the Convention allow a departure from the general rule. It cannot be ruled out totally that in exceptional situations children *are* 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, are subject to the protections of European Prison Rules but further regulations are required to ensure that they are treated appropriately. Rule 36 contains some special provisions for children who are in prison because one of their parents is detained there.

Rule 12

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 to which such persons are automatically subject by being detained in a prison.

Rule 13

Rule 13 outlaws discrimination on unjustified grounds. In this respect it follows closely the wording of the 12th Protocol to the European Convention on Human Rights and Fundamental Freedoms, 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.

Part II

Conditions of Imprisonment

Admission

Rule 14

Adequate admission and detention procedures to 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 enabled to approach the courts and request them to order their release.

Rule 15

The emphasis on record keeping in this Rule bears the same reason as in Rule 14. Meticulous record keeping for each prisoner should continue throughout the time that the prisoner is kept in prison. Access to such records should be regulated by national law to ensure that privacy of prisoners is respected, while balancing that against legitimate state interests. Good records of the prisoner's state of health on admission are also a vital protective measure. Such records should ideally be made following a medical examination, but prison officials generally should be encouraged immediately to record anything that shows ill health, including injuries that could disappear by the time the medical practitioner examines the prisoner.

Rule 16

Rule 16 lists a number of steps that have to 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, ideally on the same day and always within 24 hours after admission. Such examinations should be conducted routinely also when a prisoner is readmitted to prison. Risk and security classification 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.

Allocation and accommodation

Rule 17

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. It is particularly important that 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. 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 life sentence does not necessarily mean they should be placed in a particular prison or under a particularly restrictive regime (Cf. Rule 7 of Recommendation (2003)23 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]).

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 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.

Rule 18

This Rule concerns accommodation. 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 European Court of Human Rights in a number of decisions (See, for example, *Kalashnikov v Russia* (appl. nr. 47095/99 – 15/072002*).* 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 (*Price v United Kingdom* **-** appl. nr. 33394/96 – 10/07/2001).

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 [CPT/Inf (2001)16] at para. 30. Windows should not be covered or have opaque glass. It is recognized that in Northern Europe it may not always be possible to read or work by natural light in winter.

Rule 18 includes some new elements. The first, in Rule 18.3, is intended to compel 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. The CPT, by commenting on conditions and space available in prisons in various countries has begun to indicate some minimum standards. These are considered to be 4m2 for prisoners in shared accommodation and 6m2 for a prison cell. These minima are, related however, to wider analyses of specific prison systems, including studies of how much time prisoners actually spend in their cells. These minima should not be regarded as the norm. Although the CPT has

never laid down such a norm directly, indications are that it would consider 9 to 10m2 as a desirable size for a cell for one prisoner. This is an area in which the CPT could make an ongoing contribution that would build on what has already been laid down in this regard. What is required is a detailed examination of what size of cell is acceptable for the accommodation of various numbers of persons. Attention needs to be paid to the number of hours that prisoners spend locked in the cells, when determining appropriate sizes. Even for prisoners who spend a large amount of time out of their cells, there must be a clear minimum space, which meets standards of human dignity.

Another important innovation is Rule 18.4, which provides for 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 (99)22 of the Committee of Ministers on Prison Overcrowding and Prison Population Inflation should be considered both when overall strategies and when specific national rules to prevent overcrowding are developed.

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 emphasizes 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 pointed out (11th General Report [CPT/Inf (2001)16] at para. 29) that large-capacity dormitories are inherently undesirable. 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 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 18.8.c for separating older prisoners from younger prisoners should be read in combination with the 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.

It is now recognised that the separation between various categories of prisoners referred to in Rule 18.8 needs not always be rigid. However, these forms of separation were introduced to protect potentially weaker prisoners, whose vulnerability to abuse has not ceased. 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. It should not merely be a solution to practical problems, such as overcrowding.

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.

Hygiene

Rule 19

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: *Kalashnikov v Russia (appl. nr. 47095/99 – 15/07/ 2002; Peers v Greece (appl. nr. 28524/95 – 19/04 2001); Dougoz v Greece (appl. nr. 40907/98 – 06/03/2001).* The CPT has also noted "Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment." (2nd General Report [CPT/Inf (92)3] at para. 49).

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, as they did in the past, 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. However, heads should never be saved as matter of routine or for disciplinary reasons, as this is inherently humiliating (see *Yankov v Bulgaria* (appl. nr. 39084/97 -11/12/2003).

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. Provision also needs to be made for pregnant or breast feeding 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

Rule 20

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. 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.

This Rule places a new emphasis on prisoner's 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.

Rule 21

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.

Nutrition

Rule 22

Ensuring that prisoners receive nutritious meals is an essential function of prison authorities. 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.

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 will have a basis for determining whether the nutritional needs of prisoners are being met in the way that the law demands.

Legal Advice

Rule 23

This Rule deals with the right to legal advice that all prisoners have. In this it follows Principle 18 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment rather than older international prison standards which focused on prisoners awaiting trial and failed to recognise explicitly that all prisoners have a right to legal advice. 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. The prison authorities are directed to assist by drawing legal aid to the attention of prisoners. They should also seek to assist 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: See *Cotlet v Romania* 2003 (appl. nr. 38565/97 - 03/06/2003). The particular needs of untried prisoners for legal advice and facilities to make use of it are emphasized in Rule 98.

Prison authorities must also 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: See in particular *Golder v United Kingdom (appl. nr. 4451/70 - 21/02/1975); Silver and others v United Kingdom (appl. nrs. 5947/72, et al. - 25/03/1983).* There are different ways in which this can be achieved in practice. For example, prison standards have long specified meetings between prisoners and their lawyers should take place in the sight but not the hearing of prison officials (See Rule 93 of the United Nations Standard Minimum Rules for the Treatment of Prisoners.). 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 be developed as well.

Restrictions on such confidentiality by prison authorities are only justified if there are compelling reasons for it and must be subject to review (See *Peers v. Greece*, appl. Nr. 28524/95, 19/04/2001, par. 84 and *A.B. v. The Netherlands* appl. Nr. 37328/97, 29/01/2002 par. 83).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.

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

Rule 24

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 §§ 22 and 23 of Rec (2003) 23 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.

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 includes visits too, as they are a particularly important form of communication.

To come within the limits set by Article 8.2 of the ECHR on interference with the exercise this right by a public authority, restrictions on communication should be kept to the minimum. At the same time Rule 24.2 recognises that communication of all kinds 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 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 of communication. Care should be taken to minimise particular difficulties and delays encountered by prisoners who need to communicate in a foreign language.

The rules according to which restrictions are imposed are important too: 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. (See *Labita v Italy* appl. nr. 26772/95 – 06/04/2000). The restriction must 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 would be 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 emails 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.

An additional, a 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 reference to "specific restrictions ordered by a judicial authority" in Rule 24.2 is designed to deal with the cases where additional restrictions that are necessary for the investigation which is being carried out may be imposed on remand prisoners. Even in these instances, however, they may not be totally isolated.

Some types of communication may not be prohibited at all. Not surprisingly, the ECtHR has taken particular exception to attempts to limit correspondence with European Human Rights organs (See, for example, *Campbell v United Kingdom appl. nr. 13590/88 – 25/03/1992.*) and 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.

The particular significance of visits not only for prisoners but also for their families is emphasized in Rule 24.4. It is important that where possible intimate family visits should extend over a long period, 72 hours for example as is the case in many Eastern European countries. Such long visits allow inmates to have intimate relations with their partners. Shorter "conjugal visits" for this purpose can be demeaning to both partners.

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 *(Ploski v Poland- appl. nr. 26761/95 – 12 November 2002*). 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. 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.

Rule 24.11 is an innovation in the EPR designed to ensure that prison authorities respect the increased recognition that the European Court of Human Rights has now given to prisoners' right to vote. Here too the prison authorities can and should play a facilitative role and not make it difficult for prisoners to vote: *(Iwanczuk v Poland – appl. Nr. 25196/94 – 15/11/2001).* This Rule builds on the early Resolution (62) 2 on the electoral, civil and social rights of prisoners stipulated in Chapter B. (§ 5): "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. (§ 6); 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. 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 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

Rule 25

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 shall be that the various activities undertaken by prisoners should take them out of their cells for at least eight hours a day [see CPT's 2nd General Report (CPT/Inf (92) para. 47]..

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

Rule 26

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. 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 the Resolution N° 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.

Rule 26.17 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

Rule 27

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 in Rule 24 of its general part. The importance of exercise for all prisoners is underlined by the CPT in its 2nd General Report [CPT/Inf (92)3] para. 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.

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 article 11 of the ECHR and, while it is severely limited in the prison context by the requirements of good order, it is not abolished entirely: see also the comment on Rule 52.3 in part IV.

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

Rule 28

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 N° 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.

Thought, conscience and religion

Rule 29

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.

Rule 29.3 provides safeguards to ensure that prisoners are not subject to pressure in the religious sphere. 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

Rule 30

This Rule underlines the importance of informing prisoners in a language which they can understand of their rights and duties. Steps also need to be taken to ensure that they remain properly informed. Prisoners will not only be interested in the material and formal conditions of their detention but also in the progress of their case and, insofar as they are sentenced, in how much time has still to be served and in their eligibility for early release. For this reason it is important that the prison administration keeps 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

Rule 31

The protection of the property of prisoners, including money, valuable 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

Rule 32

Prisoners are particularly vulnerable when being transported outside prison. Accordingly Rule 32 provides safeguards. 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 when they are being transported. Exceptions may be made where prisoners elect to be involved in civil actions.

Release of prisoners

Rule 33

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: *Quinn v France* (appl. nr. 18580/91 – 22/03/1995). 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

Rule 34

This Rule is a new provision to deal with the reality that prisoners who are women are a minority in the prison system, which 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. Such positive steps need to recognise, for example, that precisely because of their small numbers women may suffer disadvantages by being relatively isolated and that strategies therefore need to be devised to deal with 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 giving access to special services 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 special 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 Rec(2003)23 on the management by prison administrations of life-sentence and other long-term prisoners.

It is important to recognise that women's special needs cover a wide range of issues and should not be seen primarily as a medical matter. For this reason too, the provisions dealing with pregnancy and childbirth and facilities for parents with children in prison are removed from the medical context and placed in this and the following rule. Where women are taken to outside facilities they should be treated with dignity. It is not acceptable, for example, for them to give birth shackled to a bed or piece of furniture.

Detained children

Rule 35

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 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 Recommendation N° R (87) 20 on social reactions to juvenile delinquency. Particular attention should be given to:

- protecting them from any form of threat, violence or sexual abuse;
- providing adequate education and schooling;
- helping them to maintain contact with their families;
- providing support and guidance in their emotional development; and
- providing appropriate sport and leisure activities.

These requirements are set by §32 in Rec(2003)23 on the management by prison administrations of life-sentence and other long-term prisoners and should be applied to all children.

Further protection of such children must be sought in specialist 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). Indirect reference is made to them in Rule 35.3.

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 by the adult prisoners (all these are spelt out further in the UN Standard Minimum Rules for the Administration of Juvenile Justice (Rule 26.3); the UN Rules for the Protection of Juveniles Deprived of their Liberty (Rule 29) and in the CPT 12th General Report (CPT/Inf (99)12, para.25).

Infants

Rule 36

The question of whether infants should be allowed to stay in prison with one of their parents and, if so, for how long, is vexed. 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 determining factor. 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. 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.

Foreign nationals

Rule 37

This Rule 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. It closely follows Rule 38 of the United Nations Standard Minimum Rules on the Treatment of Prisoners and is 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 § 25 of Rec (2003)23 on the management by prison administrations of life-sentence and other long-term prisoners.

Rule 37.3 recognises that foreign prisoners may have other special needs. In some countries these prisoners may also receive visits by representatives of organisations concerned with the welfare of foreign prisoners. More details on how to deal with the needs of such prisoners are contained in Rec. N° R (84) 12 concerning foreign prisoners.

Ethnic and linguistic minorities

Rule 38

The increasingly diverse prison population of Europe means that a new Rule is required to ensure that particular attention is paid to the needs of ethnic and linguistic minorities. Rule 38 states this proposition in general terms. Prison staff need to be sensitised to the cultural practices of various groups in order to avoid misunderstandings.

Part III

Health

Health care

Rule 39

This Rule is a new one and has its basis 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 healthcare.

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 (CPT/Inf (93) 12). There is also an increasing body of case law coming from the European Court of Human Rights, which confirms the obligation of states to safeguard the health of prisoners in their care.

Organisation of prison health care

Rule 40

The most effective way of implementing Rule 40 is that the national health authority should also be responsible for providing health care in prison, as is the case in a number of European countries. 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 N° R (98) 7 of the Committee of Ministers requires that "Health policy in custody should be integrated into, and compatible with, national 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. It is also an important principle that prisoners should have access to health care free of charge (Principle 24 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment). A number of countries experience great difficulty in providing healthcare of a high standard to the population at large. Even in these circumstances prisoners are entitled to the best possible healthcare 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 liberty. It has made clear that the necessities of life include sufficient and appropriate medical supplies. (See for example, Report on Moldova [CPT/Inf (2002) 11]).

Nothing in these Rules prevents a state from allowing prisoners to consult their own doctor at their own expense.

Medical and health care personnel

Rule 41

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 N° R (98) 7 of the Committee of Ministers.

In addition to doctors, there should be other suitably qualified health care personnel. In some Eastern European countries para-medicals (sometimes called "feldshers") reporting to a doctor also deliver medical assistance and care. Other important group will be properly trained nurses. In 1998 the International Council of Nurses published a statement which says, among other things, that national nursing associations should provide access to confidential advice, counsel and support for prison nurses. [The Nurse's Role in the Care of Prisoners and Detainees, International Council of Nurses, 1998].

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:

"We, the health professionals who are working in prison settings, meeting in Athens on September 10, 1979, hereby pledge, in keeping with the spirit of the Oath of Hippocrates, that we shall 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.

Duties of the medical practitioner

Rule 42

In line with Recommendation N° R (98) 7 on ethical and organisational aspects of health care in prison, the underlying idea to 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. 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 are mentally disordered, who are experiencing drug or alcohol withdrawal symptoms or who are under particular stress because of the fact of their imprisonment. Recommendation N° 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). In a judgment in April 2003 [McGlinchey a.o. vs. United Kingdom, appl. nr. 50390/99, 29/04/2003] the European Court of Human Rights found a violation of Article 3 of the ECHR in respect of the medical treatment of a heroine addict who died during detention.

In several European countries there is a real concern about the spread of infectious diseases, such as tuberculosis. This is a threat to the health of prisoners and of prison staff and also to the community at large. This fact has been recognised by the heads of government of the Baltic Sea States, who issued a joint statement in June 2002, noting that "Overcrowded prisons with infected inmates and with poor hygiene and sanitation are a dominant threat in the field of communicable diseases in the region." 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. When conditions are overcrowded or there is poor hygiene, there also needs to be a programme of regular screening. In such situations there should be a programme for the treatment of prisoners suffering from such illnesses. In one of its country reports the CPT noted the inadequate supply of anti-TB drugs, important since a sporadic supply of these drugs can lead to the onset of multi-drug resistant TB, and invoked the principle that the prison authorities had a clear obligation to provide a consistent supply of drugs (Report to the Latvian Government CPT/Inf (2001) 27). Arrangements also need to be made when necessary for clinical reasons to isolate prisoners for their own benefit and the safety of other persons. Recommendation N° 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. In some countries the practice has been automatically to segregate such prisoners. There is no clinical justification for doing this and this practice should be discouraged. Reference is made to the norms contained in Recommendation N° 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 establishes links with medical services in the community so as 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, or where a mental or physical disease or defect might impede the prisoner's successful resettlement in the society.

Rule 43

This Rule 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 their reasons for seeking a consultation to other staff 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 in 'The right to healthcare' above such arrangements also help to establish clearly that medical records are not part of general prison records.

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 N° R (98) 7 of the Committee of Ministers emphasises that prisoners should give informed consent before any physical examination or treatment, as does the CPT's 3rd General Report.

Recommendation N° 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 on lines similar to those in the outside environment. In a judgment in July 2001 [Price v. United Kingdom (33394/96)] the European Court of Human Rights 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.

One consequence of the increase in the length of sentences in some jurisdictions is that 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 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 N° 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 [Mouisel v. France (appl. nr. 67263/01 – 14/11/2002] the European Court of Human Rights found a violation of Article 3 of the ECHR in respect of the medical treatment of a terminally ill prisoner. 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 [Hénaf v. France (55524/00)] 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.

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 would 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 32.3 of the UN Standard Minimum Rules for the Treatment of Prisoners) 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 para. 66 of Recommendation N° R (98) 7 on ethical and organisational aspects of health care in prison.

Rules 44 and 45

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. 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 N° R (98) 7 of the Committee of Ministers notes that the ministry responsible for health has a role to play in assessing hygiene in the prison setting.

Health care provision

Rule 46

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 will require 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 specialisms. 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.

Mental health

Rule 47

This Rule addresses mental health issues. 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. In a judgment in April 2001 [Keenan v. United Kingdom (appl. nr. 27229/95 – 03/04/2001)] the European Court of Human Rights 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. In its 3rd General report, the CPT stated that suicide prevention is a matter falling within the purview of a prisons' health care service. It should ensure that there is an adequate awareness of this subject throughout the establishment, and that appropriate procedures are in place.

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 penal institutions should be respected with regard to their health care. They should be transferred between penal institution and hospital if their health needs so require. Appropriate therapeutic options should be available for persons with mental disorder detained in penal institutions. Involuntary treatment for mental disorder should not take place in penal institutions except in hospital units or medical units suitable for the treatment of mental disorder. An independent system should monitor the treatment and care of persons with mental disorder in penal institutions.

Other matters

Rule 48

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.

Part IV

Good order

General approach to good order

Rule 49

Referring to Rule 49, it may be recalled that it is important that good order should be maintained in prisons at all times. This will be achieved if there is 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". Lord Justice Woolf, in his report on the Strangeways (Manchester Prison) riots insisted that for the avoidance of prison disturbances it was essential to treat prisoners with justice, fairness and equity.

The majority of prisoners accept the reality of their situation. Provided they are subject to appropriate security measures and fair treatment they will not try to escape or seriously disrupt the 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 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.

Rule 50

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

Rule 51

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 do 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. 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. This subject is referred to in Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life-sentence and other long-term prisoners, section 18.a.

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 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.

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 automatically are 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

Rule 52

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 a proper set of procedures in place. 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 posted instructions about 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 European Court of Human Rights. See Edwards v. the United Kingdom: (Application number 46477/99) 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.

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 or coming 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

Rule 53

Since the publication of the European Prison Rules in 1987 there has been a significant increase in a number of States in the use of special high security or safety measures for individual prisoners or groups of prisoners. For this reason it has been considered appropriate to introduce a new Rule to cover these practices.

Rule 53.1 emphasises that special high security or safety measures shall only be applied in exceptional circumstances. The reason for this is that if large numbers of prisoners are assigned to special maximum security facilities there will be a danger that, for many, these conditions will be excessive and disproportionate to the potential threat which they pose. As a general rule prisoners should only be subject to special high security or safety measures where their behaviour has shown them to pose such a threat to safety and security that 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.

Some special security facilities involve the virtual isolation of prisoners. These matters are referred to in section 20 of Recommendation (2003) 23 of the Committee of Ministers to member states on the management by prison administrations of life-sentence and other long-term prisoners.

Long-term prisoners are not necessarily dangerous prisoners and the regime applicable to the latter should not be extended to encompass them. The treatment of dangerous prisoners is dealt with by Recommendation (82) 17 concerning Custody and Treatment of Dangerous Prisoners.

The European Court of Human Rights has issued several judgments about the application of special security measures against prisoners. In four cases it has found violations of Article 3 (Prohibition of torture) of the European Convention on Human Rights (Case of Indelicato v. Italy: appl. nr. 31143/96 – 18/10/2001, Case of Labita v. Italy: appl. nr. 26772/95 – 06/04/2000, Case of van der Ven v. The Netherlands: appl. nr. 50901/99 - 04/02/2003 - and Case of Lorsé and others v. The Netherlands: Application number 52750/99 – 04/02/2003). In another case it was held that restrictions on correspondence amount to a violation of Article 8 (Right to respect for private and family life) of the European Convention on Human Rights because of and to Article 13 (Right to an effective remedy) in that the plaintiff was unable to make an effective appeal against decisions to extend special security measures imposed on him (Case of Messina v. Italy: appl. nr. 25498/94 – 28/09/2000). The United Nations Committee against Torture has expressed concern at the severe conditions of detention imposed on prisoners in the highest security category in one member state (CAT/C/CR/29/3 Conclusions and recommendations of the Committee against Torture: Spain. 23/12/2002). The CPT has also made adverse comment on the special security measures applied against a number of prisoners in some of the states it has visited.

Searching and control

Rule 54

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 should be provided, such as cells and dormitories, 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 search from time to time. Staff who are to carry out searches need to be specially trained to achieve a balance between ensuring that they can detect and prevent any escape attempt or secretion of contraband 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.

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 the sort of 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 European Court of Human Rights 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 (Case of Valasinas v. Lithuania: appl. nr. 44558/98 – 24/07/2001) or in proceeding with certain body searches, because of the frequency and method used (Case of Van der Ven v. The Netherlands: appl. nr. 50901/99 – 04/02/2003). 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 a prisoner, 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 a prisoner may have hidden drugs or any other item that is forbidden in his body, arrangements should be made to keep him under close supervision until such time as he expels any item he may have in his body. 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 a prisoner's body

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 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.

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

Rule 55

Rule 55 makes its 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.

Discipline and Punishment

Rule 56

This Rule stresses that disciplinary procedures shall be mechanisms of last resort. 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.

Rule 57

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.

Rule 58

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 a 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.

Rule 59

In line with this Rule any prisoner who is to be charged under a disciplinary proceeding has the right to know details of the charge in advance and should be given sufficient time to prepare a proper defence. In case a prisoner is held in isolation pending the hearing the procedure should not be delayed unjustifiably, namely due to internal or external investigation. In all cases the accused prisoner should be present at the hearing of the case.

The CPT has endorsed several of the elements of Rule 59 in a number of its reports (for example, CPT/Inf (2003) 1 Report to the Government of Cyprus on the visit to Cyprus carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 to 30 May 2000. Strasbourg, 15 January 2003; CPT/Inf (2001)27 Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 January to 3 February 1999. Strasbourg, 22 November 2001; CPT/Inf (2002) 16 Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 18 May 2001. Strasbourg, 27 August 2002).

The right of an accused prisoner to have legal representation when facing a serious charge has been confirmed by the European Court of Human Rights (Case of Ezeh and Connors v. the United Kingdom: Application numbers 39665/98 and 40086/98).

Rule 60

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.

In the case of Ezeh and Connors mentioned above the European Court of Human Rights found that the right of prison governors in England and Wales to add up to 42 days to the time a prisoner spent in prison was a breach of Article 6 (Right to a fair trial) of the European Convention on Human Rights.

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 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 must be heard and punishments imposed on an individual basis.

There are specific prohibitions against all forms of corporal punishment, punishment by placing in a dark cell, and all other inhuman or degrading punishments. The European Court of Human Rights has found that shaving the head of a prisoner as a disciplinary measure is a breach of Article 3 (Prohibition of torture) of the European Convention on Human Rights (Case of Yankov v. Bulgaria: Application number 39084/97). It is now widely held that a reduction of diet is a form of corporal punishment and constitutes inhuman treatment; this reflects professional opinion that has developed in recent years.

Solitary confinement, mentioned in Rule 60.5, refers to all forms of removing prisoners from association with other prisoners by placing them alone in a cell or a room. It should not be considered an appropriate punishment other than in most exceptional circumstances. This Rule is confirmed by Principle 7 of the United Nations Basic Principles for the Treatment of Prisoners. There are various forms of solitary confinement. The most extreme occurs when an individual is held entirely on his or her own and is subject to sensory deprivation by lack of access to light, sound or fresh air in what are often called "dark cells". This form of isolation should never be imposed as a punishment. Another form of solitary confinement occurs when a prisoner is held in a single cell with access to normal light and air and can hear prisoners moving in adjacent areas. This type of punishment should only be used in exceptional circumstances for short periods of time. During this period, prison staff shall make regular and reasonably frequent contact with these prisoners. (See the commentary on Rule 42). The CPT pays particular attention to the use of solitary confinement, or any conditions similar to it. It has noted that "Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible" (CPT, 2nd General Report on the CPT's Activities, para 56).

It must be stressed that the requirement of one hour of daily outdoor exercise for prisoners (Rule 27.1) applies equally to inmates placed in solitary confinement as a punishment. Such prisoners should also be provided with reading material. The same applies to prisoners under special high security (Rule 53).

Rule 60.6 relates to the use of instruments of restraint as means of security or to prevent injury. These must never be used as a form of punishment. Instruments of restraint may include handcuffs, chains, irons, straitjackets and any form of electronic control of the person.

Rule 61

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.

Rule 62

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

Rule 63

No prisoner should be punished twice for the same offence**.** This Rule should be interpreted in the light of member-States' international engagements in particular those obligations undertaken in the framework of the implementation of international treaties which contain provisions on the Rule of "non bis in idem".

Use of Force

Rule 64

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 it. 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 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.

Rule 65

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 66

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.

Rule 67

This Rule deals with the intervention in prison of law enforcement agencies. In exceptional circumstances it may be that the level of prisoner violence is so great that prison staff cannot themselves contain it 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 will 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 will 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 should agree a standing protocol with the senior management of any other agency that may be called on to help 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

Rule 68

This Rule is largely identical to Rule 39 in the previous Rules. Since the 1987 Rules were published there has been a much greater use of restraints on prisoners in a variety of circumstances in a number of member states. However, the principles to be applied to the use of instruments of restraint have not changed in the intervening years. It is worth repeating the relevant section of the Explanatory Memorandum to the 1987 Rules. “The use of such apparatus in coercive circumstances rightly bears implications that are morally repugnant to civilised conduct. Their use must, therefore, be strictly controlled and avoided wherever possible. There are, however, inevitably occasions on which physical restraint will need to be applied with the additional help of specially designed equipment or instruments in order to prevent physical injury to the prisoners concerned or to staff, escape or unacceptable damage. These rules are designed to set acceptable limits within which such restraint may be employed”.

Routine use of instruments of restraint is not acceptable, e.g. to escort prisoners to the prison.

The former Rule 39.b has been deleted. This allowed the use of instruments of restraint on medical grounds, by direction and under the supervision of the medical practitioner. The circumstances covered by the new Rule

68.2.b (formerly Rule 39.c) still permit the exceptional use of restraint on the basis of the need to protect the prisoner or others.

Rule 68.4 provides for the ultimate authority for the use of instruments of restraint to be vested in law or regulation and not depend on the discretion of the prison administration.

Weapons

Rule 69

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 (CPT Inf (96) 31 para 149), and on Slovenia (CPT Inf 2002 (36), paras 13 and 14).

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. An escaping prisoner may be stopped by the use of a firearm if the prisoner presents an immediate threat to the life of another person or cannot be stopped by any other means. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are quite explicit on this point: “In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life” (Principle 9).

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

Rule 70

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. The prison authorities shall not obstruct or punish the making of requests or complaints but shall facilitate the effective exercise of the rights embedded in this rule. This does not preclude the introduction of legal mechanisms to deal summarily with minor issues.

Requests of prisoners concern favours or facilities that they are not entitled to by right, but which may be granted by the prison management or other competent authorities. For instance, in some penitentiary 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 penitentiary 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.

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

This Rule does not require that requests or complaints should be submitted in writing. Given the illiteracy of quite a number of prisoners, a prisoner should be able to ask to meet the civil servant or the competent agency in order to transmit the request or the complaint orally *(CPT/Inf (96) 18 – Visit in Slovenia in 1995),* and the authorities have the obligation to put it in a written form.

The competent authorities should deal promptly with requests and complaints and should accompany this with reasons making it clear whether action will be taken and if so, what action. This also applies to requests or complaints from prisoners' relatives or organisations referred to in Rule 70.6.

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 mediation first. This calls for a mediation mechanism to be inserted in the penitentiary legislation. 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 mediation, the prisoner must still have the right to lodge a formal complaint. National law can state that complaints about trivial matters can be declared inadmissible.

The requests are submitted to the prison administration or another authority empowered to decide on the matter. 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 be allowed to communicate on a confidential basis with the independent authorities entrusted with the handling of complaints and appeals. Decisions of these authorities shall be made accessible to prisoners.

Requests and complaints should be registered for the benefit of the prison administration itself and for inspection by visiting bodies. *(CPT/Inf (2002) 1 - Visit to Bulgaria in 1999 and CPT/Inf (2001) 20 – Visit to The Former Yugoslav Republic of Macedonia in 1998).*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 70.6.allows the prisoner to oppose the complaint being made in this way.

When, after an internal appeal has failed, a complaint is successfully made to an independent authority complainants must have confidence that the decision of that authority will be executed fully and promptly by the prison administration.

To ensure an 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 some specified place (e.g. the library), thereby avoiding a prisoner having to ask for them specifically. A system of transmission should be devised that avoids prisoners having to hand the confidential access envelope to prison staff. *(CPT/Inf (91) 15 – visit to the United Kingdom: England/Wales 1990).*

Confidential communication with national and international bodies authorized 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 lest they be considered to represent effective remedies in terms of art. 13 of the ECHR (see: *Van der Ven v. The Netherlands* (appl. nr. 50901/99 – 04/02/2003)). 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), supervising prosecutor, court, or a Public Defender *(CPT/Inf (2002) 14 – Visit to Georgia in 2001)*.

Authorities involved in handling complaints should exchange views and experiences on a regular basis, the aim being to harmonise as far as possible their practice*. (CPT/Inf (96) 9 – visit to Spain 1991).*

Part V

Management and staff

Prison work as a public service

Rule 71

This Rule requires prisons to be 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 the army or other military power. 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 N° R (2001)10, The European Code of Police Ethics).

Rule 72

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.

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.

Rule 73

This Rule places positive obligation on prison authorities to ensure the observance of the rules concerning staff.

Rule 74

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.

Rule 75

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

Rule 76

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.

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 levels of salary. 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 have to pursue an active recruitment policy.

Rule 77

This Rule deals with the selection criteria of staff. 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 in the difficult situations which they may well face so that to ensure that only those applicants who are suitable are in fact selected to join the prison system.

Rule 78

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.

Rule 79

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..

Rule 80

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

Rule 81

This Rule addresses the requirements for initial training of newly selected staff. This training should be adequate and should emphasise the ethical context of their work.

Staff should then be given the necessary technical training. They need to be made aware of security requirements. They need to learn how to keep proper records and what sort of reports need to be written.

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.

Their training should also extend to the wide range of international and regional human rights standards concerned with deprivation of liberty [rules emanating from the European Court of Human Rights and the Committee for the Prevention of Torture (CPT)].

Prison management

Rule 82

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 make an effort to recruit sufficient proportions of staff from similar backgrounds.

Rule 83

This Rule requires that member states should ensure that individual prisons are managed to a consistent standard which conforms with international human rights instruments. One way of achieving this is by having a system of internal auditing and inspection to ensure that relevant law is being implemented different from and complementary to the independent inspection which is referred to in Part VI of these Rules.

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.

Rule 84

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 in each prison be a director who has been carefully selected for his suitability to carry out what is one of the most complex tasks in public service.

Rule 85

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

Rule 86

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.

Rule 87

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 depend 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. Where necessary an interpreter should be available as stipulated in Rule 37.4.

Rule 88

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

Rule 89

This Rule deals with the need for prison services to have a sufficient number of appropriate specialists to work with prisoners. Health is an important issue in all prisons and prisoners have a right to proper health care. These matters are dealt with more fully in Part III of these Rules. One way of providing the prisoners with proper health care is by ensuring that a properly qualified doctor is always available to deal with any urgent medical matter.

If prisons are to fulfil their functions and to help prisoners to rehabilitate themselves, they need to have sufficient specialist staff. These should work alongside and complement the custodial staff. Given that almost all prisoners will one day return to their communities, it is important that volunteers from the community be encouraged to come into prisons to contribute to many of the activities which take place.

Public awareness

Rule 90

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

Rule 91

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 European Court of Human Rights and the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. 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

Rules 92 and 93

These Rules intend to make a clear distinction between the inspection of prisons by governmental agencies that are responsible for the effective and purposeful spending of the allocated budget and monitoring or of conditions of detention and treatment of prisoners by an independent body.

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 a 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.

These Rules are compatible with the requirements of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (to be referred to as UN-CAT; G.A. res. A/RES/57/199. adopted Dec. 18, 2002) regarding setting up and maintaining domestic preventive mechanisms, which in these Rules take the form of independent supervisory bodies.

The Rules leave room for the various forms monitoring bodies may have. Some countries will opt for a prison ombudsman, others 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.

Governmental inspection

Rule 92

This Rule uses the neutral term ‘governmental agency’. This agency can be part of one ministry, e.g. the Ministry of Justice or the Ministry of the Interior, or can be an agency 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 ways in which governmental inspection is organised will vary from mere checking of the book keeping of prisons to in depth and on the spot audits, which take into account all aspects of prison administration and of the treatment of prisoners. What is important is that the results of these inspections are 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 organized, as this is for the governmental authorities to decide.

Independent monitoring

Rule 93

In the member-states of the Council of Europe different models of independent monitoring of conditions of imprisonment can be found. In some countries an ombudsman has powers in this respect; in other states this task is entrusted to judicial authorities, often combined with the power to receive and handle complaints of prisoners. This Rule does not intend to prescribe one single form of monitoring but underlines the need for a high quality of such independent supervision. This presupposes that these monitoring bodies are supported by a qualified staff and have access to independent experts.

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. Reports of the monitoring bodies may contain proposals and observations concerning existing or draft legislation.

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 and allow them to keep their finger on the pulse of the national penitentiary systems. Because of their limited financial resources and the increase of the number of states to be visited, international bodies must rely increasingly on communication with independent national monitoring bodies.

In many penitentiary systems individual prisons are being monitored in some way or another by boards of visitors, consisting of (professionally) interested volunteers recruited from the community. A common approach of these boards is that its members take turns to visit the prison, talk to prisoners about their worries and complaints and, in most cases, try to mediate between the prison management and the prisoners to find solutions for perceived problems.

Though it is self evident that the existence of local boards of visitors can be a guarantee for a more intensive and involved monitoring, in small countries with only a few prisons and a small prison population independent monitoring by a national authority could be sufficient.

Part VII

Untried Prisoners

Status of untried prisoners

Rule 94

This Rule is primarily definitional. It implies that a prisoner who has been finally convicted and sentenced 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

Rule 95

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 (Iwanzcuk v Poland (applic 25196/94), para 53). They deserve the special protection of the state.

All untried prisoners must be presumed innocent of a crime. Therefore Rule 95.2 provides additional safeguards for them.

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

Rule 96

This Rule restates the principle about the desirability of single cells (cf. Rule 18.5) in the context of untried prisoners. As such 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

Rule 97

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

Rule 98

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.

Contact with the outside world

Rule 99

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.

Work

Rule 100

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

Rule 101

This Rule recognises that there might be an interest for untried prisoners to begin 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

Objective of the regime for sentenced prisoners

Rule 102

This Rule states the objectives of the regime for prisoners in simple, positive terms. The emphasis is on measures and programmes for sentenced prisoners that will encourage and develop individual responsibility rather than focussing narrowly on the prevention of recidivism.

The new Rule is in line with the requirements of key international instruments including Article 10(3) of the International Covenant on Civil and Political Rights, 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.

In this regard Rule 102 follows the same approach as Rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners. It is an enabling provision for what follows. The new Rule replaces the current Rules 64 and 65, whose general principles applicable to all prisoners are included in Parts I and II of the new Rules.

Implementation of the regime for sentenced prisoners

Rule 103

This Rule provides a point of departure for a regime designed to meet the objective for sentenced prisoners. It emphasizes the need to take action 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 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 must 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. The programmatic aspects of work, education and other activities are only mentioned 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.

Rule 103.7 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 N° 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.

Rule 103.8 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 N° R 87 (21) on assistance to victims and the prevention of victimisation and N° R (99) 19 on mediation in penal matters.

Rule 103.9 underscores the importance of the Recommendation Rec(2003)23 of the Committee of Ministers on the management by prison administrations of life sentence and other long-term prisoners.

Organisational aspects of imprisoning sentenced prisoners

Rule 104

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 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 born 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

Rule 105

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.

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

Rule 106

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 authorities to encourage the educational endeavours of sentenced prisoners and to provide appropriate educational programmes for them.

Release of sentenced prisoners

Rule 107

The provisions in Rule 107.1 supplement for sentenced prisoners the stipulations in Rule 33 in respect of release generally. Rule 107 should be read together with Recommendation (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 read to include probation services, for where prisoners are to be released conditionally cooperation with the agency responsible for supervising the conditional release is particularly important.

Part IX

Updating the Rules

Rule 108

As knowledge of best prison practice is constantly evolving, it is essential that the EPR reflect this evolution. A mechanism should be created to ensure that updates are undertaken regularly. Such updates should be based on scientific research and 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) Resol. 4 Final, paragraph 11).