



COUNCIL OF EUROPE CONSEIL DE L'EUROPE
Committee of Ministers
Comité des Ministres

**Recommendation Rec(2006)13
of the Committee of Ministers to member states
on the use of remand in custody, the conditions in which it takes place and the provision of safeguards
against abuse**

*(Adopted by the Committee of Ministers on 27 September 2006
at the 974th meeting of the Ministers' Deputies)*

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

Considering the fundamental importance of the presumption of innocence and the right to the liberty of the person;

Aware of the irreversible damage that remand in custody may cause to persons ultimately found to be innocent or discharged and of the detrimental impact that remand in custody may have on the maintenance of family relationships;

Taking into consideration the financial consequences of remand in custody for the state, the individuals affected and the economy in general;

Noting the considerable number of persons remanded in custody and the problems posed by prison overcrowding;

Having regard to the case law of the European Court of Human Rights, the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the opinions of United Nations human rights treaty bodies;

Taking into consideration Recommendation Rec(2006)2 of the Committee of Ministers on the European Prison Rules and Recommendation No. R (99) 22 of the Committee of Ministers concerning prison overcrowding and prison population inflation;

Considering the need to ensure that the use of remand in custody is always exceptional and is always justified;

Bearing in mind the human rights and fundamental freedoms of all persons deprived of their liberty and the particular need to ensure that not only are persons remanded in custody able to prepare their defence and to maintain their family relationships but they are also not held in conditions incompatible with their legal status, which is based on the presumption of innocence;

Considering the importance attaching to the development of international norms regarding the circumstances in which the use of remand in custody is justified, the procedures whereby it is imposed or continued and the conditions in which persons remanded in custody are held, as well as of mechanisms for the effective implementation of such norms;

Recommends that governments of member states disseminate and be guided in their legislation and practice by the principles set out in the appendix to this recommendation which replaces Resolution (65) 11 on remand in

custody and Recommendation No. R (80) 11 of the Committee of Ministers to member states concerning custody pending trial.

Rules on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse

Preamble

The present rules are intended to:

- a. set strict limits on the use of remand in custody;
- b. encourage the use of alternative measures wherever possible;
- c. require judicial authority for the imposition and continued use of remand in custody and alternative measures;
- d. ensure that persons remanded in custody are held in conditions and subject to a regime appropriate to their legal status, which is based on the presumption of innocence;
- e. require the provision of suitable facilities and appropriate management for the holding of persons remanded in custody;
- f. ensure the establishment of effective safeguards against possible breaches of the rules.

The present rules reflect the human rights and fundamental freedoms of all persons but particularly the prohibition of torture and inhuman or degrading treatment, the right to a fair trial and the rights to liberty and security and to respect for private and family life.

The present rules are applicable to all persons suspected of having committed an offence but include particular requirements for juveniles and other especially vulnerable persons.

I. Definitions and general principles

Definitions

1. [1] 'Remand in custody' is any period of detention of a suspected offender ordered by a judicial authority and prior to conviction. It also includes any period of detention pursuant to rules relating to international judicial co-operation and extradition, subject to their specific requirements. It does not include the initial deprivation of liberty by a police or a law enforcement officer (or by anyone else so authorised to act) for the purposes of questioning.

[2] 'Remand in custody' also includes any period of detention after conviction whenever persons awaiting either sentence or the confirmation of conviction or sentence continue to be treated as unconvicted persons.

[3] 'Remand prisoners' are persons who have been remanded in custody and who are not already serving a prison sentence or are detained under any other instrument.
2. [1] 'Alternative measures' to remand in custody may include, for example: undertakings to appear before a judicial authority as and when required, not to interfere with the course of justice and not to engage in particular conduct, including that involved in a profession or particular employment; requirements to report on a daily or periodic basis to a judicial authority, the police or other authority; requirements to accept supervision by an agency appointed by the judicial authority; requirements to submit to electronic monitoring; requirements to reside at a specified address, with or without conditions as to the hours to be spent there; requirements not to leave or enter specified places or districts without authorisation; requirements not to meet specified persons without authorisation; requirements to surrender passports or other identification papers; and requirements to provide or secure financial or other forms of guarantees as to conduct pending trial.

[2] Wherever practicable, alternative measures shall be applied in the state where a suspected offender is normally resident if this is not the state in which the offence was allegedly committed.

General principles

3. [1] In view of both the presumption of innocence and the presumption in favour of liberty, the remand in custody of persons suspected of an offence shall be the exception rather than the norm.

[2] There shall not be a mandatory requirement that persons suspected of an offence (or particular classes of such persons) be remanded in custody.

[3] In individual cases, remand in custody shall only be used when strictly necessary and as a measure of last resort; it shall not be used for punitive reasons.
4. In order to avoid inappropriate use of remand in custody the widest possible range of alternative, less restrictive measures relating to the conduct of a suspected offender shall be made available.
5. Remand prisoners shall be subject to conditions appropriate to their legal status; this entails the absence of restrictions other than those necessary for the administration of justice, the security of the institution, the safety of prisoners and staff and the protection of the rights of others and in particular the fulfilment of the requirements of the European Prison Rules and the other rules set out in Part III of the present text.

II. The use of remand in custody

Justification

6. Remand in custody shall generally be available only in respect of persons suspected of committing offences that are imprisonable.
7. A person may only be remanded in custody where all of the following four conditions are satisfied:
 - a. there is reasonable suspicion that he or she committed an offence; and
 - b. there are substantial reasons for believing that, if released, he or she would either (i) abscond, or (ii) commit a serious offence, or (iii) interfere with the course of justice, or (iv) pose a serious threat to public order; and
 - c. there is no possibility of using alternative measures to address the concerns referred to in *b.*; and
 - d. this is a step taken as part of the criminal justice process.
8. [1] In order to establish whether the concerns referred to in Rule 7*b.* exist, or continue to do so, as well as whether they could be satisfactorily allayed through the use of alternative measures, objective criteria shall be applied by the judicial authorities responsible for determining whether suspected offenders shall be remanded in custody or, where this has already happened, whether such remand shall be extended.

[2] The burden of establishing that a substantial risk exists and that it cannot be allayed shall lie on the prosecution or investigating judge.
9. [1] The determination of any risk shall be based on the individual circumstances of the case, but particular consideration shall be given to:
 - a. the nature and seriousness of the alleged offence;
 - b. the penalty likely to be incurred in the event of conviction;
 - c. the age, health, character, antecedents and personal and social circumstances of the person concerned, and in particular his or her community ties; and

- d. the conduct of the person concerned, especially how he or she has fulfilled any obligations that may have been imposed on him or her in the course of previous criminal proceedings.

[2] The fact that the person concerned is not a national of, or has no other links with, the state where the offence is supposed to have been committed shall not in itself be sufficient to conclude that there is a risk of flight.

10. Wherever possible remand in custody should be avoided in the case of suspected offenders who have the primary responsibility for the care of infants.
11. In deciding whether remand in custody shall be continued, it shall be borne in mind that particular evidence which may once have previously made the use of such a measure seem appropriate, or the use of alternative measures seem inappropriate, may be rendered less compelling with the passage of time.
12. A breach of alternative measures may be subject to a sanction but shall not automatically justify subjecting someone to remand in custody. In such cases the replacement of alternative measures by remand in custody shall require specific motivation.

Judicial authorisation

13. The responsibility for remanding someone in custody, authorising its continuation and imposing alternative measures shall be discharged by a judicial authority.
14. [1] After his or her initial deprivation of liberty by a law enforcement officer (or by anyone else so authorised to act), someone suspected of having committed an offence shall be brought promptly before a judicial authority for the purpose of determining whether or not this deprivation of liberty is justified, whether or not it requires prolongation or whether or not the suspected offender shall be remanded in custody or subjected to alternative measures.

[2] The interval between the initial deprivation of liberty and this appearance before such an authority should preferably be no more than forty-eight hours and in many cases a much shorter interval may be sufficient.
15. The existence of an emergency in accordance with Article 15 of the European Convention on Human Rights shall not lead to an interval greater than seven days between the initial deprivation of liberty and the appearance before a judicial authority with a view to remanding in custody unless it is absolutely impossible to hold a hearing.
16. The judicial authority responsible for remanding someone in custody or authorising its continuation, as well as for imposing alternative measures, shall hear and determine the matter without delay.
17. [1] The existence of a continued justification for remanding someone in custody shall be periodically reviewed by a judicial authority, which shall order the release of the suspected offender where it finds that one or more of the conditions in Rules 6 and 7 *a*, *b*, *c* and *d* are no longer fulfilled.

[2] The interval between reviews shall normally be no longer than a month unless the person concerned has the right to submit and have examined, at any time, an application for release.

[3] The responsibility for ensuring that such reviews take place shall rest with the prosecuting authority or investigating judicial authority, and in the event of no application being made by the prosecuting authority or investigating judicial authority to continue a remand in custody, any person subject to such a measure shall automatically be released.
18. Any person remanded in custody, as well as anyone subjected to an extension of such remand or to alternative measures, shall have a right of appeal against such a ruling and shall be informed of this right when this ruling is made.

19. [1] A remand prisoner shall have a separate right to a speedy challenge before a court with respect to the lawfulness of his or her detention.
- [2] This right may be satisfied through the periodic review of remand in custody where this allows all the issues relevant to such a challenge to be raised.
20. The existence of an emergency in accordance with Article 15 of the European Convention on Human Rights shall not affect the right of a remand prisoner to challenge the lawfulness of his or her detention.
21. [1] Every ruling by a judicial authority to remand someone in custody, to continue such remand or to impose alternative measures shall be reasoned and the person affected shall be provided with a copy of the reasons.
- [2] Only in exceptional circumstances shall reasons not be notified on the same day as the ruling.

Duration

22. [1] Remand in custody shall only ever be continued so long as all the conditions in Rules 6 and 7 are fulfilled.
- [2] In any case its duration shall not exceed, nor normally be disproportionate to, the penalty that may be imposed for the offence concerned.
- [3] In no case shall remand in custody breach the right of a detained person to be tried within a reasonable time.
23. Any specification of a maximum period of remand in custody shall not lead to a failure to consider at regular intervals the actual need for its continuation in the particular circumstances of a given case.
24. [1] It is the responsibility of the prosecuting authority or the investigating judicial authority to act with due diligence in the conduct of an investigation and to ensure that the existence of matters supporting remand in custody is kept under continuous review.
- [2] Priority shall be given to cases involving a person who has been remanded in custody.

Assistance by a lawyer, presence of the person concerned and interpretation

25. [1] The intention to seek remand in custody and the reasons for so doing shall be promptly communicated to the person concerned in a language which he or she understands.
- [2] The person whose remand in custody will be sought shall have the right to assistance from a lawyer in the remand proceedings and to have an adequate opportunity to consult with his or her lawyer in order to prepare their defence. The person concerned shall be advised of these rights in sufficient time and in a language which he or she understands so that their exercise is practicable.
- [3] Such assistance from a lawyer shall be provided at public expense where the person whose remand in custody is being sought cannot afford it.
- [4] The existence of an emergency in accordance with Article 15 of the European Convention on Human Rights should not normally affect the right of access to and consultation with a lawyer in the context of remand proceedings.
26. A person whose remand in custody is being sought and his or her lawyer shall have access to documentation relevant to such a decision in good time.

27. [1] A person who is the national of another country and whose remand in custody is being sought shall have the right to have the consul of this country notified of this possibility in sufficient time to obtain advice and assistance from him or her.
- [2] This right should, wherever possible, also be extended to persons holding the nationality both of the country where their remand in custody is being sought and of another country.
28. A person whose remand in custody is being sought shall have the right to appear at remand proceedings. Under certain conditions this requirement may be satisfied through the use of appropriate video-links.
29. Adequate interpretation services before the judicial authority considering whether to remand someone in custody shall be made available at public expense, where the person concerned does not understand and speak the language normally used in those proceedings.
30. Persons appearing at remand proceedings shall be given an opportunity to wash and, in the case of male prisoners, to shave unless there is a risk of this resulting in a fundamental alteration of their normal appearance.
31. The foregoing Rules in this section shall also apply to the continuation of the remand in custody.

Informing the family

32. [1] A person whose remand in custody is being sought (or sought to be continued) shall have the right to have the members of his or her family informed in good time, about the date and the place of remand proceedings unless this would result in a serious risk of prejudice for the administration of justice or for national security.
- [2] The decision in any event about contacting family members shall be a matter for the person whose remand in custody is being sought (or sought to be prolonged) unless he or she is not legally competent to make such a decision or there is some other compelling justification.

Deduction of pre-conviction custody from sentence

33. [1] The period of remand in custody prior to conviction, wherever spent, shall be deducted from the length of any sentence of imprisonment subsequently imposed.
- [2] Any period of remand in custody could be taken into account in establishing the penalty imposed where it is not one of imprisonment.
- [3] The nature and duration of alternative measures previously imposed could equally be taken into account in determining the sentence.

Compensation

34. [1] Consideration shall be given to the provision of compensation to persons remanded in custody who are not subsequently convicted of the offence in respect of which they were so remanded; this compensation might cover loss of income, loss of opportunities and moral damage.
- [2] Compensation shall not be required where it is established that either the person remanded had, by his or her behaviour, actively contributed to the reasonableness of the suspicion that he or she had committed an offence or he or she had deliberately obstructed the investigation of the alleged offence.

III. Conditions of remand in custody

General

35. The conditions of remand in custody shall, subject to the Rules set out below, be governed by the European Prison Rules.

Absence from remand institution

36. [1] A remand prisoner shall only leave the remand institution for further investigation if this is authorised by a judge or prosecutor or with the express consent of the remand prisoner and for a limited period.

[2] On return to the remand institution the remand prisoner shall undergo, at his or her request, a thorough physical examination by a medical doctor or, exceptionally, by a qualified nurse as soon as possible.

Continuing medical treatment

37. [1] Arrangements shall be made to enable remand prisoners to continue with necessary medical or dental treatment that they were receiving before they were detained, if so decided by the remand institution's doctor or dentist where possible in consultation with the remand prisoner's doctor or dentist.

[2] Remand prisoners shall be given the opportunity to consult and be treated by their own doctor or dentist if a medical or dental necessity so requires.

[3] Reasons shall be given if an application by a remand prisoner to consult his or her own doctor or dentist is refused.

[4] Such costs as are incurred shall not be the responsibility of the administration of the remand institution.

Correspondence

38. There shall normally be no restriction on the number of letters sent and received by remand prisoners.

Voting

39. Remand prisoners shall be able to vote in public elections and referendums that occur during the period of remand in custody.

Education

40. Remand in custody shall not unduly disrupt the education of children or young persons or unduly interfere with access to more advanced education.

Discipline and punishment

41. No disciplinary punishment imposed on a remand prisoner shall have the effect of extending the length of the remand in custody or interfering with the preparation of his or her defence.
42. The punishment of solitary confinement shall not affect the access to a lawyer and shall allow minimum contact with family outside. It should not affect the conditions of a remand prisoner's detention in respect of bedding, physical exercise, hygiene, access to reading material and approved religious representatives.

Staff

43. Staff who work in a remand institution with remand prisoners shall be selected and trained so as to be able to take full account of the particular status and needs of remand prisoners.

Complaints procedures

44. [1] Remand prisoners shall have avenues of complaint open to them, both within and outside the remand institution, and be entitled to confidential access to an appropriate authority mandated to address their grievances.

[2] These avenues shall be in addition to any right to bring legal proceedings.

[3] Complaints shall be dealt with as speedily as possible.