

## **Chapter 2**

### **Commentary on 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 No. R (73) 5 of the Committee of Ministers. They sought to adapt the United Nations Standard Minimum Rules for the Treatment of Prisoners, which were initially formulated as far back as 1955, to European conditions.

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

The 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 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 No. 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 member 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.