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49. Arbeits- und Fortbildungstagung der
Bundesvereinigung der Anstaltsleiterinnen und
Anstaltsleiter im Justizvollzug
25. April 2023 Bremen

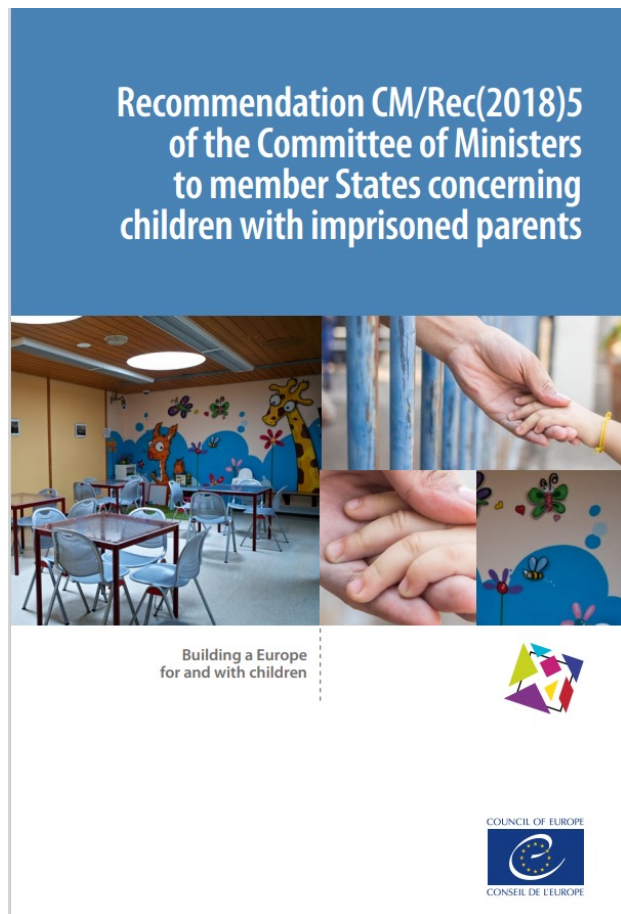
„ARBEIT IM EUROPARAT“

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Aktivitäten des Europarates auf dem Gebiet des Strafvollzugs

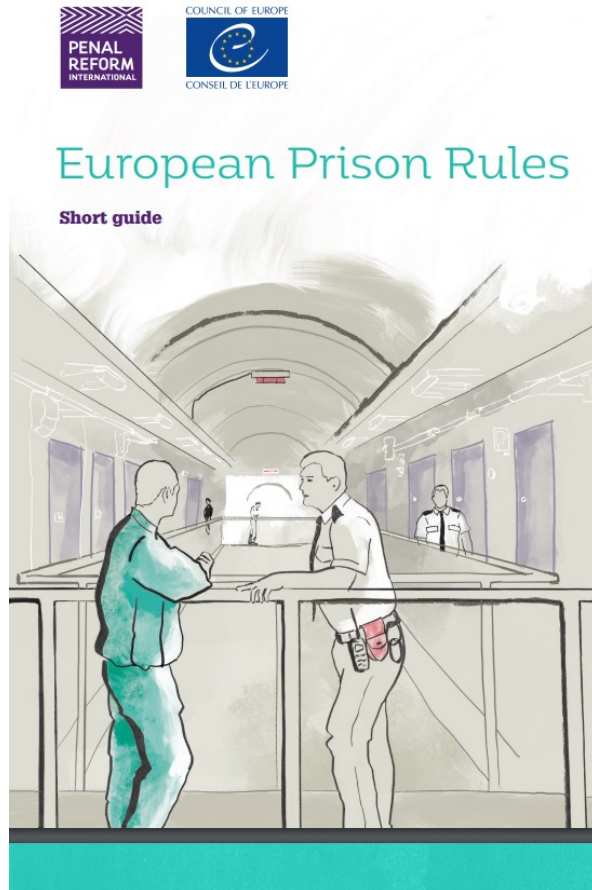


1.

Empfehlung CM/Rec(2018)5 des
Ministerkomitees an die
Mitgliedstaaten zu Kindern
inhaftierter Eltern

April 2018

European Prison Rules



2. European Prison Rules Überarbeitet 2020

„Neu“: Art. 15, 16A, 53, 53A, 60.6
Art. 34

Vgl. Forum Strafvollzug Heft 2/3
2021

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a346cb

Admission and record keeping

⇒ Immediately upon admission [Rules 15*, 30.1]

The day and hour of admission and specific details about the person being admitted must be recorded. This includes information on their identity, any visible injuries and important health information, and family members or next of kin. People must also be informed of the rules governing prison discipline, and their rights.

⇒ As soon as possible after admission [Rule 16]

Health information recorded upon admission must be supplemented by a medical examination. Information collected upon admission must be evaluated to address the individual's personal or welfare needs. Their potential threat to safety and the appropriate level of security must also be determined. In the case of sentenced persons, steps must be taken to implement their sentence plans.

⇒ Continuous record keeping [Rule 16A*]

Information collected during admission must be updated and supplemented where appropriate and kept confidential. Further information must be collected throughout an individual's period of detention, including in relation to sentence planning, behaviour, any requests or complaints made (unless confidential), and the use of disciplinary measures, restraints or intrusive searches to which they are subject.

Prison conditions

⇒ General [Rule 4]

Prison conditions should be of a basic minimum standard to ensure that the dignity of all persons in prison is upheld. Staff play an important role in this respect. A lack of resources can never justify conditions that infringe human rights.



- **15.1** Bei der Aufnahme sind für jede Gefangene/jeden Gefangenen unverzüglich folgende Angaben zu dokumentieren:
 - a. Angaben zur Identität;
 - b. Gründe der Einweisung und einweisende Behörde;
 - c. Tag und Stunde der Aufnahme;
 - d. ein Verzeichnis der persönlichen Gegenstände des/der Gefangenen, die nach Grundsatz 31 in Verwahrung zu nehmen sind;
 - e. jede sichtbare Verletzung und Beschwerden über frühere Misshandlungen;
 - f. vorbehaltlich des Gebots der ärztlichen Schweigepflicht alle Angaben zur Gesundheit des/der Gefangenen, die für das physische und psychische Wohl des/der Gefangenen oder Dritter von Bedeutung sind,
 - g. Namen und Kontaktdaten jeder von dem/der Gefangenen benannten Person, die im Falle des Todes oder einer schweren Verletzung oder Erkrankung des/der Gefangenen benachrichtigt werden soll, und
 - h. die Zahl der Kinder, ihr Alter und ihre derzeitige Hauptbetreuungsperson.

- **15.2** Alle Gefangenen erhalten bei der Aufnahme die in Grundsatz 30 vorgesehenen Informationen.

- **15.3** Unmittelbar nach der Aufnahme ist die nach Grundsatz 24 Absatz 9 vorgesehene Benachrichtigung über die Inhaftierung des/der Gefangenen vorzunehmen.

- **16A.1.** Die Angaben, die bei der Aufnahme und so bald wie möglich nach der Aufnahme dokumentiert wurden, werden gegebenenfalls aktualisiert und ergänzt.
- **16A.2.** Für jede Gefangene/jeden Gefangenen sind insbesondere folgende Angaben zu erheben:
 - a. Angaben zum Gerichtsverfahren;
 - b. individuelle Vollzugspläne, die Strategie zur Vorbereitung der Entlassung sowie das Entlassungsdatum;
 - c. Angaben zum Verhalten und zur Führung, einschließlich Selbstgefährdung oder Gefährdung Dritter;
 - d. Anträge und Beschwerden, sofern nicht vertraulich;
 - e. Anordnung und Dauer von Absonderung und Disziplinarstrafen, einschließlich Einzelhaft;
 - f. Anwendung von Zwangsmitteln, einschließlich ihrer Art und Dauer;
 - g. invasive Durchsuchungen, insbesondere Durchsuchungen von Körperhöhlen, und Durchsuchungen von Hafträumen;
 - h. alle Verlegungen und
 - i. persönliche Gegenstände.
- **16A.3** Alle bei der Aufnahme und danach erhobenen Angaben sind vertraulich zu behandeln und nur denjenigen verfügbar zu machen, deren berufliche Aufgaben den Zugang dazu erfordern.
- **16A.4** Den Gefangenen ist Einsicht in ihre medizinischen und sonstigen Unterlagen zu gewähren, mit Ausnahme derjenigen, die nach innerstaatlichem Recht aus Sicherheitsgründen als eingeschränkt zugänglich eingestuft sind.
- **16A.5** Das innerstaatliche Recht legt fest, welche Angaben erhoben und verarbeitet werden, und stellt durch klare Regelungen sicher, dass in Bezug auf diese Informationen die Datenschutzbestimmungen eingehalten werden.

⇒ **Accommodation and allocation** [Rules 17-18, 32]

Accommodation must respect human dignity, privacy and health. This requires paying particular attention to floor space, air, lighting, heating and ventilation. For instance, windows must enable people to read or work by natural light and (unless there is suitable air conditioning) allow the entrance of fresh air.

Conditions during prison transfer require, among other things, adequate lighting and ventilation.

Persons should be allocated to facilities close to their homes or communities. Allocation should take into account their safety, security, and availability of an appropriate regime.

⇒ **Physical wellbeing** [Rules 19-22, 25, 27]

All parts of every prison must be clean and properly maintained and people must have access to sanitary and washing facilities – with special provision made for the sanitary needs of women – as well as their own bed. Clothing must be suitable for the climate, in good condition, and must not be degrading. Everyone must be provided with adequate food, both in quantity and nutritional diet that takes into account religion and culture, and clean drinking water must be available at all times.

The prison regime itself must provide a balanced programme of activities and facilitate an adequate level of human and social interaction. In addition, all persons in prison should be offered at least one hour of open-air exercise a day where they are allowed to associate with one another. Alternative arrangements for should be put in place if weather does not permit outdoor exercise.

⇒ **Prison work** [Rules 26, 100, 105]

Prison work must not be used as a punishment; it should be of a useful nature, provide fair payment, and include vocational training for those able to benefit from it. People should be given a degree of choice over the work they undertake and working standards (including maximum hours and health and safety precautions) must not be lower than they are outside of prison. The pursuit of financial profit must not be prioritised over the interests of people in prison.

People in pre-trial detention may be allowed to work but must not be required to. Those sentenced who have not reached retirement age may be required to work, subject to physical and mental fitness.

⇒ **Education** [Rules 28 and 106]

People should have access to comprehensive educational programmes, with particular attention paid to young people, those with special needs and those who lack basic education. Educational programmes for those who have been sentenced must be tailored to their projected length of stay in prison.

⇒ **Contact with the outside world** [Rules 23-24, 99]

Everyone must be allowed to communicate as often as possible with people outside of prison, including through visits, letters, and phone calls. This is a vital component of their right to private and family life and is essential for mental wellbeing. Communications may only be subject to restrictions or monitoring where this is necessary, for instance for the prevention of criminal offences, but even where restricted an acceptable minimum level of contact must be allowed. Assistance in maintaining adequate contact with the outside world should be provided.

People in prison are entitled to legal advice, which must be kept confidential. The only exceptional circumstances for interference with lawyer-client confidentiality would be to prevent serious crime or major breaches of prison safety and security.

⇒ Release [Rules 33, 107]

Upon release, all property must be returned. Identification papers should be provided and assistance given in finding suitable accommodation and work. People released must be provided with sufficient means to ensure they can meet their immediate needs and make their way home. Pre-release assistance must be provided, including through cooperation with probation agencies, community agencies and support networks.

Health

⇒ Access to health care [Rules 39-41, 46-47]

The full range of health services, including necessary medical, surgical and psychiatric services, must be accessible to those in prison, without discrimination and equivalent to those available outside of prison (see principle of normalisation). Access must also be provided to dentists and opticians. The Rules apply equally to mental and physical health. The prison medical service must therefore provide for psychiatric treatment where needed and pay special attention to suicide prevention.

⇒ Duties of the medical practitioner [Rules 41-45]

Each prison must have at least one qualified medical practitioner, as well as other trained health care staff, and make arrangements to ensure the medical practitioner can be available in matters of urgency. Alongside diagnosing health conditions and prescribing treatment, they have numerous duties, including:

- Recording and reporting any sign that an individual may have been treated violently, whether a result of inter-prisoner violence or staff ill-treatment
- Dealing with withdrawal symptoms from drugs, including alcohol

- Identifying psychological impacts of detention and reporting to the director when an individual's physical or mental health is put seriously at risk by any condition of imprisonment, including solitary confinement
- Making arrangements with community agencies for the continuation of treatment after release
- Visiting people subject to solitary confinement daily and providing them with prompt medical assistance at their request
- Regularly inspecting and reporting on the hygiene, sanitation and food quality in the prison (which may also be undertaken by another designated authority) and take immediate steps to remedy any concerns identified.

Safety, security and discipline

⇒ Security [Rule 51]

Measures and conditions must not be more restrictive than is necessary. A key way this can be achieved is through the use of **'dynamic security'**, which is based on staff building relationships with people in prison through communication and interaction.

Dynamic security

A concept and a working method by which staff prioritise the creation and maintenance of everyday communication and interaction with people in prison based on professional ethics. It aims at better understanding individuals and assessing the risks they may pose as well as ensuring safety, security and good order, contributing to rehabilitation and preparation for release. This concept should be understood within a broader notion of security which also comprises structural, organisational and static security (walls, barriers, locks, lighting and equipment used to restrain people in prison when necessary).

⇒ Safety [Rule 52]

Procedures must be put in place to ensure the safety of all staff, persons in prison, and visitors. Detained persons must be able to contact staff at all times in case there is a threat to safety. See also 'Admission and record keeping' in relation to risk assessments.

⇒ Special high security or safety measures [Rule 53*]

Where a person poses a particular threat to security or safety, they may be subject to special high security or safety measures. These should only be applied in exceptional circumstances based on current risk, to individuals rather than groups, and only for as long as security or safety cannot be maintained in a less restrictive way. Such measures must only be approved for a specified period of time, beyond which further approval is needed, and the individual must be informed in writing how to challenge the measure.

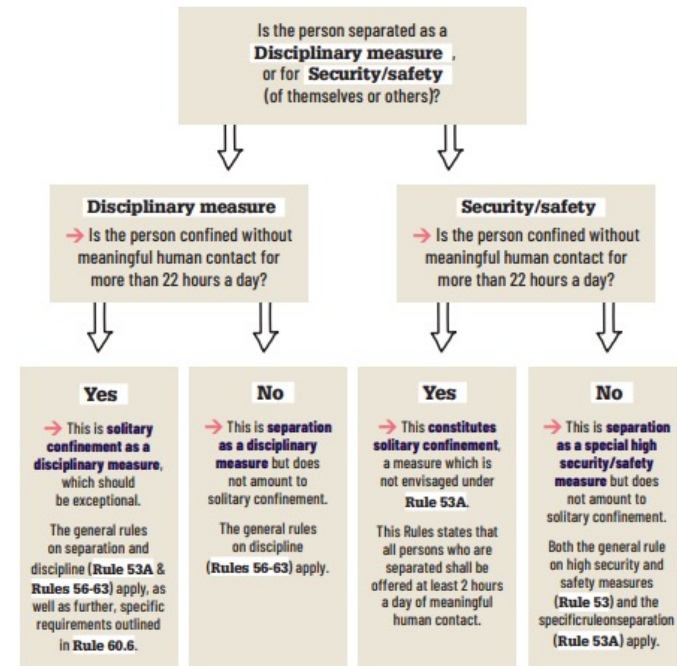
⇒ Disciplinary measures [Rules 56-63]

Disciplinary procedures must be used only as a last resort, with restorative measures or mediation used instead, wherever possible. National law must define what constitutes a disciplinary offence (which may only include acts or omissions likely to constitute a threat to good order, safety or security), limit the types and duration of disciplinary measures that can be used, and set out an appeals process.

An individual charged with a disciplinary offence must be informed promptly and given adequate time and facilities to prepare a defence – including, in some cases, access to legal assistance. An individual must never be punished twice for the same conduct.

⇒ Separation and solitary confinement [Rule 53A*, 60.6*]

People in prison may be separated as a special high security or safety measure, or for disciplinary reasons. Different rules apply in each case. Separation without meaningful human contact for longer than 22 hours a day constitutes 'solitary confinement' – an extreme form of separation, likely to harm the physical and mental health of a person. This measure may only exceptionally, and subject to strict safeguards, be imposed as a disciplinary punishment for the shortest possible period.



⇒ **Separation as a special high security or safety measure [Rule 53A*]**

As well as the general requirements for special high security and safety measures, further rules apply in the case of separation as a high security or safety measure. Proportionality is vital: restrictions should be the minimum necessary to achieve the objectives of separation and be regularly reviewed in line with the objectives in each case, to assess whether continuation is necessary. Separated people must also have a right of complaint (see Complaints). The decision to separate someone must also take into account their physical and mental health and any disabilities they have which may exacerbate the likely negative health impacts of separation.

If someone is separated for security or safety reasons, whether to protect themselves or others, they shall be offered at least two hours a day of meaningful human contact. Whether human contact is 'meaningful' will depend on the quality of interaction and the level of psychological stimulation. For contact to be meaningful it must be face-to-face, 'more than fleeting or incidental' and it must not be limited to routine contact experienced as part of daily prison life (see Commentary to the Rules, Rule 53A, *Further resources*).

Separated people must be visited daily, including by the prison director or staff acting on their behalf. If separation adversely affects anyone's health, it must be suspended or replaced with a less restrictive measure. The longer someone is separated, the more steps must be taken to facilitate their contact with others and provide facilities and activities – to mitigate the harmful effects of separation. Facilities and activities should include, as a minimum from the very start of separation, access to reading materials and the opportunity for at least an hour of exercise a day.

⇒ **Solitary confinement as a disciplinary punishment [Rule 60.6*]**

Solitary confinement is defined as the confinement of a detained person for more than 22 hours a day without meaningful human contact. It must never be used on children, pregnant women, breastfeeding mothers, parents with infants in prison, or people with mental or physical disabilities when their condition would be exacerbated by solitary confinement. It may only be used in exceptional cases and must never amount to torture or inhuman or degrading treatment or punishment.

Solitary confinement may only be implemented for a specified period, which must be as short as possible, and limited to a maximum time period outlined in national law. People must be visited daily, including by the prison director or staff acting on their behalf, as well as the medical practitioner, and their confinement must be terminated or suspended if their mental or physical condition deteriorates.

⇒ **Use of force and restraint [Rules 64-68]**

Force may only be used by staff subject to detailed procedures in self-defence, cases of attempted escape, or resistance to lawful order. It must always be a last resort, and only the minimum level of force necessary should be used – staff must be trained in techniques to enable the minimum use of force.

Instruments of restraint may only be used when authorised by law, and when no lesser form of control would be effective. They must never be used on women during labour or childbirth, or immediately after childbirth. The method of restraint must be the least intrusive possible, and restraints must be removed when the risk is no longer present. Each instance where restraints are used must be recorded in a register.

Besondere Maßnahmen zur Sicherung/Sicherheit

53.1 Besondere Maßnahmen zur Sicherung/Sicherheit gehen über die in den Grundsätzen 51 und 52 bezeichneten Maßnahmen hinaus und werden gegen Gefangene verhängt, die die Sicherheit besonders gefährden.

53.2 Derartige Maßnahmen dürfen nur unter außergewöhnlichen Umständen und nur so lange angeordnet werden, wie die Sicherheit nicht durch weniger restriktive Mittel aufrechterhalten werden kann.

53.3 Die Absonderung eines/einer Gefangenen von anderen Gefangenen kann zu diesen Maßnahmen gehören. Die Absonderung unterliegt den Bestimmungen dieses Grundsatzes sowie zusätzlich des Grundsatzes 53A.

53.4 Die Art dieser Maßnahmen, ihre Dauer sowie die Zulässigkeitsvoraussetzungen und die bei ihrer Verhängung und Durchführung zu befolgenden Verfahren werden durch innerstaatliches Recht geregelt.

53.5 Die Anordnung einer derartigen Maßnahme ist von der zuständigen Stelle für eine bestimmte Dauer zu genehmigen. Dem/Der Gefangenen ist eine Kopie der schriftlichen Entscheidung zusammen mit einer Rechtsmittelbelehrung zur Verfügung zu stellen.

53.6 Die Verlängerung der genehmigten Dauer bedarf einer erneuten Genehmigung durch die zuständige Stelle. Dem/Der Gefangenen ist eine Kopie der schriftlichen Entscheidung zusammen mit einer Rechtsmittelbelehrung zur Verfügung zu stellen.

53.7 Diese Maßnahmen dürfen nur bei Einzelpersonen, nicht aber bei Gruppen von Gefangenen angewendet werden.

53.8 Diese Maßnahmen dürfen sich nur auf die aktuell von dem/der Gefangenen ausgehende Gefahr stützen, müssen im Hinblick auf diese Gefahr verhältnismäßig sein und dürfen nur die Einschränkungen umfassen, die erforderlich sind, um dieser Gefahr zu begegnen.

53.9 Gefangene, gegen die diese Maßnahmen angeordnet werden, haben ein Beschwerderecht gemäß den Bestimmungen in Grundsatz 70.

Absonderung

53A Die folgenden Bestimmungen finden auf die Absonderung eines/einer Gefangenen von anderen gefangenen als besondere Maßnahme zur Sicherung/Sicherheit Anwendung:

- a. abgesonderten Gefangenen ist täglich mindestens zwei Stunden echter zwischenmenschlicher Kontakt zu ermöglichen;
- b. bei der Entscheidung über die Absonderung sind der Gesundheitszustand der betroffenen Gefangenen und etwaige Behinderungen, die ihre Anfälligkeit gegenüber den nachteiligen Auswirkungen der Absonderung erhöhen könnten, zu berücksichtigen;
- c. die Absonderung ist nur für den kürzesten Zeitraum anzuwenden, der zur Erreichung der damit verbundenen Ziele erforderlich ist, und ist entsprechend diesen Zielen regelmäßig zu überprüfen;
- d. abgesonderten Gefangenen dürfen keine weiteren Einschränkungen auferlegt werden, die über diejenigen hinausgehen, die zur Erreichung des festgelegten Zwecks der Absonderung notwendig sind;
- e. die für die Absonderung genutzten Hafträume müssen die Mindeststandards erfüllen, die in diesen Grundsätzen für die sonstige Unterbringung von Gefangenen vorgesehen sind;
- f. je länger ein Gefangener/eine Gefangene von anderen Gefangenen abgesondert ist, umso mehr Schritte sind zu unternehmen, um die negativen Auswirkungen der Absonderung dadurch zu mindern, indem sein/ihr Kontakt zu anderen maximiert wird und er/sie Zugang zu Einrichtungen und Aktivitäten erhält;
- g. abgesonderten Gefangenen ist zumindest Lesematerial zur Verfügung zu stellen und ihnen ist täglich mindestens eine Stunde Bewegung zu ermöglichen, wie in den Grundsätzen 27.1 und 27.2 festgelegt;
- h. bei abgesonderten Gefangene sind tägliche Besuche der Anstaltsleitung oder eines/einer Bediensteten, der/die im Auftrag der Anstaltsleitung handelt, vorgeschrieben;
- i. wird die physische oder psychische Gesundheit eines/einer Gefangenen durch die Absonderung beeinträchtigt, ist dafür zu sorgen, dass die Absonderung ausgesetzt oder durch eine weniger restriktive Maßnahme ersetzt wird;
- j. Gefangene, die abgesondert werden, haben ein Beschwerderecht gemäß den Bestimmungen in Grundsatz 70.

- 60.1 Jede aufgrund eines disziplinarischen Pflichtverstoßes verhängte Disziplinarmaßnahme muss mit dem innerstaatlichen Recht vereinbar sein.
- 60.2 Die Schwere der Disziplinarmaßnahme muss in einem angemessenen Verhältnis zu dem Pflichtverstoß stehen.
- 60.3 Kollektivstrafen, Körperstrafen, Dunkelhaft sowie alle sonstigen Formen der unmenschlichen oder erniedrigenden Strafe sind verboten.
- 60.4 Die Disziplinarmaßnahme darf kein vollständiges Verbot des Kontakts zur Familie umfassen.
- 60.5 Zwangsmittel dürfen nie zur Bestrafung angewendet werden.
- 60.6.a Einzelhaft, also die Haft von Gefangenen für mehr als 22 Stunden am Tag ohne echten zwischenmenschlichen Kontakt, darf nie gegen Kinder, Schwangere, stillende Mütter oder mit Kindern in einer Justizvollzugsanstalt lebende Eltern verhängt werden.
- 60.6.b Bei der Entscheidung über Einzelhaft ist der aktuelle Gesundheitszustand des/der betroffenen Gefangenen zu berücksichtigen. Einzelhaft darf nicht gegen Gefangene mit geistigen oder körperlichen Behinderungen verhängt werden, wenn ihr Zustand dadurch verschlimmert würde. Ist Einzelhaft verhängt worden, ist deren Vollzug zu beenden oder auszusetzen, wenn sich der psychische oder physische Zustand des/der Gefangenen verschlimmert hat.
- 60.6.c Einzelhaft darf als Disziplinarstrafe nur in Ausnahmefällen und für einen fest umrissenen, möglichst kurzen Zeitraum verhängt werden und darf niemals der Folter oder unmenschlicher oder erniedrigender Behandlung oder Bestrafung gleichkommen.
- 60.6.d Der maximale Zeitraum, für den Einzelhaft verhängt werden darf, ist im innerstaatlichen Recht festzulegen.
- 60.6.e Wird gegen eine/n Gefangenen, die/der bereits den maximal zulässigen Zeitraum in Einzelhaft verbracht hat, wegen eines neuen disziplinarischen Pflichtverstoßes Einzelhaft verhängt, darf diese Disziplinarmaßnahme nicht durchgeführt werden, ohne der/dem Gefangenen zunächst zu ermöglichen, sich von dem vorherigen Zeitraum der Einzelhaft zu erholen.
- 60.6.f Bei Gefangenen in Einzelhaft sind tägliche Besuche der Anstaltsleitung oder eines/einer Bediensteten, der/die im Auftrag der Anstaltsleitung handelt, vorgeschrieben.

Separation

Rule 53A sets out requirements, in addition to those contained in Rule 53, that should be applied to all forms of separation of a prisoner from other prisoners.

As stated in Rule 53A.a, prisoners who are separated shall be offered at least two hours of meaningful human contact a day. The concept of 'meaningful human contact' has been applied by the CPT in a number of its reports.[116] In applying the concept, the CPT has explicitly adopted the same approach as the Essex Paper drafted by a group of independent experts.[117] The CPT has accepted the description of 'meaningful human contact' as referring to "the amount and quality of social interaction and psychological stimulation which human beings require for their mental health and well-being. Such interaction requires the human contact to be face-to-face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity.[118]"

The purpose of meaningful human contact is to avoid inhuman and degrading isolation. Decisions on whether an instance of human contact is meaningful inevitably can only be assessed on a case-by-case basis. Family visits are a form of meaningful human contact. However, visits such as, for instance, visits from medical professionals, lawyers, prison staff or prison chaplains may also amount to meaningful human contact, these examples not being exhaustive. As mentioned in the previous paragraph, such interactions require face-to-face contact. However, indirect contacts such as contacts by telephone, mail or electronically, may also contribute to meaningful human contact.

The CPT regards all forms of separation of individual prisoners as needing justification. These justifications are encapsulated by the CPT in the simple mnemonic PLANN. This means that all such separation must be “proportionate”, “lawful”, “accountable”, “necessary” and non-discriminatory.[\[119\]](#)” While some of these requirements, such as lawfulness are included in Rule 53, others are spelled out more fully in Rule 53A. The concept of necessity, for example, is relevant to separation of individual prisoners in two different ways. Such separation should not be allowed to continue for longer than necessary and should be regularly reviewed by someone of a sufficiently senior level with the authority to overturn any previous decision (Rule 53A.c).

Rule 53A.d provides that necessary restrictions may vary according to the reason for which a particular prisoner is subject to separation. They should always be the minimum required for the purpose of the separation. Rule 53A.e emphasises that the minimum standards with regard to the cells used for separation are the same as those for prison cells generally. The CPT has stressed the principle established in Rule 53A.f, that special efforts should be made to enhance the regime of those prisoners kept separate from others for a long time, who need particular attention to minimise the damage that this measure can do to them.[120]

The analysis of the CPT is also useful in recognising that prisoners may be separated for different reasons: as a result of a court decision, for the purposes of good order or the protection of the prisoner concerned, or as a disciplinary punishment imposed within the prison system.[121] Rules 53A.b and 53A.c contain proportionality restrictions expressed more generally in Rule 53.8, that depend on recognising these different purposes. For example, a prisoner who is separated for his or her own protection should not be subject to the same restrictions as the violent prisoner who is separated from others to maintain good order. Separation must also be understood in light of Rule 24.2, which guarantees a minimum level of contact with the outside world for all prisoners, including those who are separated.

Separation of a prisoner from other prisoners may have negative effects on the prisoner in question, depending on the degree of separation entailed. Similarly, Rule 53A.f recognises that negative effects on separated prisoners grow increasingly likely the longer the prisoner is separated. As such, more steps are required to mitigate these effects the longer such separation continues. This is especially the case for prisoners with physical, mental or intellectual disabilities, who are particularly vulnerable to these adverse effects.

The CPT has elaborated on the material conditions of separation. It places particular emphasis on the necessity for separated prisoners to be able to communicate with prison staff, and on such prisoners having access to suitable toilets and showers[122]. Exercise for separated prisoners should meet the standards set in Rule 27.1 and 2. With respect to the right of separated prisoners to exercise, as guaranteed in Rule 53A.g, the CPT has noted that the exercise area used by such prisoners, “should be sufficiently large to enable them genuinely to exert themselves and should have some means of protection from the elements[123]”.

Rule 53A.h, on the duty to visit separated prisoners, requires the director of a prison, or a member of staff acting on their behalf, to visit, on a daily basis, prisoners who are separated. This rule should be read together with Rule 43.2 which places a duty on medical personnel to pay particular attention to the health of prisoners who are strictly separated, including visiting them daily. These various visits are also opportunities for the prisoner to experience meaningful human contact, although such contact may not necessarily be meaningful if it is only fleeting and unstimulating.

As detailed above, the effects of separation can be very harmful. It is therefore necessary that, when separation is adversely affecting a prisoner's physical or mental health, action shall be taken in terms of Rule 53A.i to suspend it or replace it with a less restrictive measure. The purpose of this is to safeguard the prisoner's health.

Handcuffs, restraint jackets and other body restraints may only be used to prevent escape during transfer, or when ordered by the prison director to prevent harm to the individual or others – in which case the medical practitioner must be immediately informed. Degrading forms of restraint, such as chains and irons, must never be used.

⇒ Requests and complaints [Rule 70]

People in prison must have the opportunity to make requests or complaints both to internal authorities, such as the prison director, or externally, to competent authorities such as inspection or monitoring bodies. Systems and procedures must ensure there is no risk of censorship or breach of confidentiality. They must not be subject to reprisals or sanctions for making a request or complaint. Authorities must also take into account complaints from family or support networks.

Staff have an important role to resolve minor requests or complaints to mitigate more serious issues. A record of requests and complaints must be kept, and they must be dealt with as soon as possible, ensuring participation of the person concerned. If a request is denied or a complaint is rejected, reasons should be provided and an appeal possible to an independent authority.

Groups with specific needs

⇒ Women [Rule 34*]

The Rules require the implementation of specific gender-sensitive policies, and for positive measures to be taken in all areas to meet the needs of women in prison.

When making decisions that affect any aspect of women's detention, particular attention must be given to their physical, vocational, social and psychological needs, as well as any caregiving responsibilities.

Particular efforts must be made to protect women from physical, mental or sexual abuse in prison and, where women are survivors of such abuse, they must be given access to specialised services including psychological support or counselling, and appropriate medical advice.

⇒ Children [Rule 35]

Children (persons under 18) should not be detained in adult prisons. The European Rules for Juvenile Offenders (see *Further resources*) provide detailed rules on the management of children accused or convicted of an offence. Where, exceptionally, a child is detained in an adult prison, they must have access to all the social, psychological and educational services available to children in the community and should be housed in a separate section to adults.

⇒ Infants [Rules 34.4*, 36]

Arrangements must always be made for detained women to give birth outside of prison. If, in exceptional circumstances, they give birth in prison, all necessary support and facilities must be provided. An infant may stay in prison with a parent only when it is in the best interest of the infant concerned. They must not be treated as detained and special provision must be made for a nursery and appropriate accommodation to protect their welfare.

⇒ Foreign nationals [Rule 37*]

Positive measures must be taken to meet the distinctive needs of foreign nationals (for more detailed requirements, see the Council of Europe Recommendation on foreign prisoners in *Further resources*). Steps must be taken to facilitate their contact with family and networks outside of prison as well as, where the person consents, diplomatic or consular representatives.

↳ **Ethnic or linguistic minorities** [Rule 38]

Special arrangements must be made to meet the needs of ethnic or linguistic minorities (for instance, through the use of competent interpretation services or adapting for cultural dietary needs – see Physical wellbeing). As far as practicable, the cultural practices of different groups shall be allowed to continue in prison.

Training and prison management

↳ **Principles** [Rules 71-75 and 83]

Prison management must be guided by respect for human dignity and a focus on reintegration. At all times, staff must perform their duties in such a manner as to influence the prison population by good example and to command their respect. Systems of organisation and management must be in place to ensure that prisons can meet human rights standards.

↳ **Prison management** [Rules 82-89]

Staff must be appointed without discrimination and should include specialists like psychiatrists and teachers and a balance of men and women. The director, management and the majority of staff must be able to speak the majority language of the prison population.

Prison administrations should work with government to ensure there is adequate staffing at all times. This includes a director who is appointed on a full-time basis and adequately qualified.

↳ **Training** [Rule 81]

Prison management should ensure consistently high standards of prison staff in recognition that they carry out an important public service. Prison staff should be able to maintain and improve their knowledge throughout their career by attending training and development courses. Specific training must be provided to staff working with

specific groups such as children, young adults, foreign nationals, women or older persons. Training must include instruction in the European Convention on Human Rights, the European Prison Rules, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and other human rights standards.

Inspection and monitoring [Rules 92 and 93]

To ensure that prisons comply with national and international law, including the provisions of the European Prison Rules, they must be inspected regularly by a State agency and monitored by an independent body, whose findings shall be made public.

Independent monitoring bodies must be guaranteed access to all parts of the prison and to all prison records that they require. They must be able to visit all prisons and be able to choose which prisons to visit – unannounced or otherwise. They must be able to choose who to interview and to conduct confidential interviews with people detained and staff. No one should be disciplined for providing information to an independent monitoring body.

Independent monitoring bodies must have the authority to make recommendations, to which national authorities or prison administration must respond publicly in a reasonable time in relation to the action being taken.

3. Empfehlungen zur Einstufung, Überwachung und (Re-)Integration von verurteilten oder angeklagten Sexualstraftätern in die Gesellschaft

https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a4397a

RECOMMENDATIONS

Recommendation CM/Rec (2021) 6
of the Committee of Ministers to member States
regarding the assessment, management and reintegration of persons accused or convicted
of a sexual offence

(Adopted by the Committee of Ministers on 20 October 2021 at the 1415th meeting of the Ministers' Deputies)

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

Having regard to the European Convention on Human Rights (CETS No. 5) and the case law of the European Court of Human Rights;

Having regard also to the work carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and in particular the standards it has developed in its general reports;

Noting that sexual offences cause significant and lasting harm, including physical and mental harm, to victims and their immediate environment and that therefore it is vital to reduce sexual reoffending through targeted risk assessment and individualised treatment and intervention plans in order to achieve successful social reintegration;

Noting further that sexual offences also have a serious impact on society in terms of health and wellbeing and the cost to public services in the areas of both health and criminal justice, and increasingly have national, international and transnational implications;

Aware that assessment, treatment and interventions in the management as well as the reintegration of persons who are accused or convicted of a sexual offence are a challenge for many prison services and probation agencies of the Council of Europe member States and beyond;

Noting that there are disparities among jurisdictions regarding the definitions of different sexual offences, the age of sexual consent and the types of sanctions applicable, which have developed over time due to cultural, social and legal differences; there are nevertheless universally accepted principles across the Council of Europe member States regarding assessment, treatment and intervention in the management and the reintegration of persons accused or convicted of a sexual offence;

Having regard to the standards contained in the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) and in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210) and in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No.108), as amended by its Protocol (CETS No. 223);

Having also regard to the standards contained in the recommendations of the Committee of Ministers of the Council of Europe, which relate to specific aspects of penal policy and practice and in particular Recommendations: *Rec(2006)2-rev* of the Committee of Ministers to member States on the European Prison Rules and *CM/Rec(2010)1* on the Council of Europe Probation Rules;

Further taking note of the following Recommendations: *Rec(97)12* on staff concerned with the implementation of sanctions and measures; *Rec(2003)22* on conditional release (parole); *Rec(2003)23* on the management by prison

Am 20. Oktober 2021 vom Ministerkomitee verabschiedete Empfehlung.

Es handelt sich bei “Empfehlungen” des Europarats nicht um verbindliche Rechtsakte eines der Hauptorgane des Europarats.

Ungeachtet dessen können diese „soft-law“ Regelungen durchaus eine Form der „Erhärtung“ finden, wenn sie Eingang in Entscheidungen des Europäischen Gerichtshofs für Menschenrechte finden.

II. BASIC PRINCIPLES

1. Prison services and probation agencies should manage and seek to reintegrate persons accused or convicted of a sexual offence in line with the risk they pose and in accordance with the *same standards and principles applied to other persons under their responsibility*.
2. Positive steps should be taken to meet the distinctive needs of persons accused or convicted of a sexual offence, including their separate accommodation while in prison, where deemed necessary, and special management while in prison and under probation.
3. Preventing and responding to sexual offending are most effective in a multi-disciplinary setting, involving partner agencies and facilitating sharing of information, expertise and resources in order to build a common vision of risk management and effective social reintegration.
4. Offending behaviour should be considered in a comprehensive manner, which takes account of behavioural, social, psychological and health factors.
5. Interventions and treatments should be evidence-based, proportionate and part of a comprehensive approach which helps individuals to address their offending behaviours.
6. Facilitating the co-operation of persons accused or convicted of a sexual offence is central in all aspects of effective reintegration, including risk assessment, risk management, treatment and interventions.
7. Individually tailored sentence plans should be agreed at the beginning of the sentence, should continue until the end of the sentence and should be regularly updated. When drafting and implementing the sentence plan, the opinion and the co-operation of the person concerned should be sought, as far as practicable, to create a shared vision for their social reintegration.
8. Agencies managing persons accused or convicted of a sexual offence should work with local communities where appropriate, to facilitate risk management approaches and the social reintegration of individuals.
9. As far as possible, arrangements should be made to avoid disruptions of treatment or interventions, particularly when an accused or convicted person is moved between prison and probation services.
10. International co-operation should be facilitated where appropriate, in conformity with data protection rules and international agreements, with the aim of ensuring public protection while guaranteeing an appropriate level of protection of personal data.

- III. RISK AND NEEDS ASSESSMENT
- IV. MANAGEMENT, INTERVENTIONS AND TREATMENT IN PRISON
- V. MANAGEMENT, INTERVENTIONS AND TREATMENT UNDER PROBATION
- VI. DATA COLLECTION, INFORMATION SHARING AND WORK IN PARTNERSHIP
- VII. VICTIMS AND COMMUNITY SUPPORT
- VIII. STAFF SELECTION AND TRAINING
- IX. MEDIA AND COMMUNICATIONS STRATEGY
- X. RESEARCH, EVALUATION AND DEVELOPMENT

DRAFT RECOMMENDATION ON THE MANAGEMENT OF PERSONS WITH MENTAL DISORDERS AND THE PROMOTION OF POSITIVE MENTAL HEALTH BY THE PRISON AND PROBATION SERVICES (Derzeit noch im Entwurfstadium)

- This Recommendation applies to the management of the mental health needs of all persons who are under the responsibility of the prison and probation services following the commission of an offence. In some jurisdictions those who are diagnosed with a mental health disorder may be managed jointly with the healthcare system in specialised forensic institutions. The interagency approach is very important in both cases.
- The Recommendation aims to assist the relevant authorities who have responsibilities with regard to offenders with mental disorders at all levels of decision-taking and expertise, including relevant ministries, managers of prisons and probation services, and practitioners working directly with offenders. These responsibilities include preventing mental health disorders at primary, secondary and tertiary level, and in detecting and dealing with persons with mental health disorders in an effective and humane way in order both to provide for better rehabilitation and resocialisation, and better protect society.

Definition

Mental disorder: a clinically significant disturbance in an individual's cognition, emotional regulation, or behaviour. It is usually associated with distress or impairment in important areas of functioning.

Equivalence of care

- Persons in prison and under the responsibility of probation services should have access to mental healthcare that is of equivalent quality to that provided for the general population.
- Treatment for mental disorders should take place in adequate facilities in penal institutions like hospital units or medical units suitable for the treatment of mental disorders.

- Persons whose state of mental health is *incompatible* with detention in a prison should be transferred urgently from a penal institution to an *appropriate hospital* if their health needs so require.
- All persons under the responsibility of the prison and probation services should receive the *support they need* in order to promote and maintain their mental health in good state.
- Persons with mental disorders should have *access to relevant information* on how they can get help if needed.

Promoting the maintaining of mental health in good state

- All persons under the responsibility of prison and probation services should have access to meaningful activities, and support in maintaining social and family ties, recognising the important part played by these factors in promoting good mental health of the offender and the family members, especially children.
- Persons with mental disorders should have access to suitable such activities which take into consideration their state of mental health, including their cognitive abilities.
- Where conditions of imprisonment include some level of isolation, particular measures should be taken to protect the mental health of inmates.
- Mental disorder may have a direct impact on reoffending, this should be taken into account and addressed in reintegration plans.

Standards of care

Specific standards and service specifications should be developed and regularly reviewed for mental healthcare in prisons and for those under the supervision of the probation services

Accreditation systems should be developed for the mental healthcare received by prisoners and by persons under the supervision of the probation service, so that the quality of these services can be monitored and assured.

Continuity of care

Persons with mental disorders should experience *continuity of mental healthcare as they pass between different parts of the health and criminal justice systems*. This includes transfers between mainstream mental health services and prison on admission; when transferring between prisons, or between prison and healthcare facilities; and when leaving prison, whether or not under the supervision of probation services.

Consent

- Without prejudice to circumstances where treatment for mental disorder may lawfully be provided without a patient's free and informed consent, particular attention must be placed on promoting *respect for a person's capacity to consent*, or refuse, medical treatment, in light of the nature of the prison or probation environment.
- Particular care must be given to ensure that consent for *research participation* in prison or under probation reflects a person's free and informed decision.

Co-ordinated and multi-disciplinary approach

- A co-ordinated and *multi-disciplinary* approach is required in order to ensure that the needs of persons with mental disorders are taken sufficiently into account in the prison or probation environment.
- Decisions by prison and probation staff should take into account the person's mental health condition. Mental health needs should take *priority over disciplinary sanctions* if a harm could be done regarding the person's mental health condition.

Staff training and support

Staff dealing with people with mental disorders in prison or probation must be adequately trained to understand and recognise signs of mental distress and respond appropriately. As a minimum, all staff working in prisons and probation services should be adequately trained in basic mental health awareness and in suicide prevention measures. Avoid burn-out, turn over staff, not leave them long time working with difficult cases, debriefing, crisis management, supervision (psychiatrist term)

Information systems, information sharing and research

- Anonymised data on *suicide, attempted suicide and self-harm* should routinely be collected and monitored.
- Relevant information about a person's care should be *shared with other professionals involved in their care*

Investment in research

An improved evidence base is urgently required with respect to effective interventions supporting people with mental health disorders in prison or under the supervision of probation services, and with respect to the implementation of mental health policies and practices in the criminal justice system.

4. ETHICAL AND ORGANISATIONAL ASPECTS OF THE USE OF ARTIFICIAL INTELLIGENCE AND RELATED DIGITAL TECHNOLOGIES BY PRISON AND PROBATION SERVICES

(Derzeit in Entwurfsphase)



General Provisions

- Public authorities should also ensure that the private companies which design, develop, provide, deliver, operate and maintain such technologies, should also follow the same ethical and organisational principles and standards as stated in this Recommendation.
- AI and related digital technologies should be used legitimately and proportionately when and if they: (1) contribute to bringing about positive change in offenders; (2) do not replace prison and probation staff but assist them in their everyday work; (3) help the criminal justice system, the execution of penal sanctions and measures and the reduction of recidivism.
- The rapid pace of advancement of AI and related digital technologies, as well as the pace and scale of their use by the European jurisdictions means that this Recommendation needs to be reviewed regularly and revised accordingly in order to endeavour to protect the human rights and fundamental freedoms of its users and safety and security of our societies.

Definition ?

Artificial Intelligence (AI): Artificial intelligence” (AI) means a system that is either software-based or embedded in hardware devices, and that displays intelligent behaviour by, inter alia, collecting and processing data, analysing, and interpreting its environment, and by taking action, with some degree of autonomy, to achieve specific goals.

Related digital technologies: This generic term refers to all electronic devices, automatic systems, and technological resources that generate, process or store information and data which are being used by AI.

Related digital technologies are for example facial recognition technologies, algorithmic risk assessment tools, wrist bands monitoring biometric data.

Basic Principles

- All processes related to the design, development and maintenance of AI and related digital technologies to be used by the prison and probation services and the private companies acting on their behalf should be in conformity with the relevant international standards and should be defined by national law. Liability for any unlawful harm caused by the use of AI and related digital technologies should be ensured (**principle of legality, legal certainty and liability**).

“Prinzip der Gesetzmäßigkeit, Rechtssicherheit und Verantwortung“ (jeweils freie Übersetzung)

- When designing, developing or using AI and related digital technologies biases should be prevented. Measures should be taken to ensure equality and to prevent or resolve the creation or intensification of any discrimination or inequality between individuals or groups of individuals. (**principle of equality and non-discrimination**).

“Prinzip der Gleichheit und Unvoreingenommenheit/Vorurteilsfreiheit“

- AI and related digital technologies should be used only in a manner that implies the least negative impact on human rights, and if its intended use and its intensity correspond to the purpose and the expected results and in addition this should be done if strictly necessary (**principle of proportionality, efficacy and necessity of AI**).

“Prinzip der Verhältnismäßigkeit, Wirksamkeit und Notwendigkeit”

- The process of designing, developing and use of AI and related digital technologies should be transparent to public scrutiny, monitored on a regular basis and the logic behind and the outcomes of their use should be explainable at a reasonable level (**principle of good governance, transparency, traceability and explicability**).

“Prinzip des verantwortlichen Handelns, der Transparenz, Nachverfolgbarkeit und Erklärbarkeit”

- When a decision is based on the use of AI and related technologies and affects human rights of offenders or staff, human supervision and effective complaint procedures should be put in place (**principle of the right to a human review of decisions**).

“Prinzip (des Rechts auf) der Überprüfbarkeit durch natürliche Personen”

- Reliable and accurate AI and related digital technologies should be obtained by using certified sources, tangible data and validated scientific methods and values. Data should be accurate, and the samples should be sufficiently representative of the key characteristics of the general population and minority groups, including the target groups that might be impacted. The design and use of AI and related digital technologies should be done in a secure and audited technological environment in order to ensure safety and security of these tools, of their users and of those affected by their use (**principle of quality, trustworthiness and security**).

“Prinzip der Qualität, Zuverlässigkeit sowie Sicherheit”

- AI and related digital technologies should be used in a manner which preserves and promotes positive and beneficial human relations between staff and offenders as this is instrumental in changing behaviour and in ensuring social reintegration (**principle of human centred use of AI and related digital technologies**).

“Prinzip der menschenzentrierten Nutzung”

- All AI and related digital technologies users should understand the basics regarding what this use implies, including how and for what purpose and what are the ethical rules to be respected (**principle of “AI and digital literacy”**).

“Prinzip der digitalen Kompetenz”

Weitere vorgesehene Bereiche der Rec.

- **Data Protection**
- **Use for the purpose of safety, security and good order**
- **Use for Offender Management Purposes: Risk Assessment, Rehabilitation and Reintegration**
- **The use of AI and related digital technologies for Staff Selection, Management, Training and Development**
- **Research, Development, Evaluation and Regular Revision**

Danke für Ihre Aufmerksamkeit !