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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Co-operation
(PC-CP)

DRAFT
CODE OF ETHICS FOR PRISON STAFF

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

Recalling that the aim of the Council of Europe is to achieve greater unity between its members;

Bearing in mind that it is also the purpose of the Council of Europe to promote the rule of law, which constitutes the basis of all genuine democracies;

Considering that the criminal justice system plays a key role in safeguarding the rule of law and that prison staff have an essential role within that system;

Having regard to the European Convention on Human Rights 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 and in particular the standards it has developed in its general reports;

Reiterating that no one shall be deprived of liberty save as a measure of last resort and in accordance with a procedure prescribed by law;

Stressing that the enforcement of custodial sentences and the treatment of prisoners necessitate taking account of the requirements of safety, security and good order, while also ensuring prison conditions which do not infringe human dignity and which offer meaningful occupational activities and treatment programmes to prisoners, thus preparing them for their reintegration into society;

Considering it important that Council of Europe member states continue to update and observe common principles regarding their prison policies;

Considering, moreover, that the observance of such common principles will enhance international co-operation in this field;

Considering that the achievement of a number of the objectives of the prison service depend on public involvement and cooperation and that the efficiency of the prison service is dependent on public support;

Noting the significant social changes which have influenced important developments in the penal field in Europe in the course of the last two decades;

Endorsing once again the standards contained in the recommendations of the Committee of Ministers of the Council of Europe, which relate to penitentiary policy and practice and in particular:

Recommendation n°R (89) 12 on education in prison;

Recommendation n°R (93) 6 concerning prison and criminological aspects of the control of transmissible diseases including AIDS and related health problems in prison;

Recommendation n°R (97) 12 on staff concerned with the implementation of sanctions and measures;

Recommendation n°R (98) 7 concerning the ethical and organisational aspects of health care in prison;

Recommendation n°R (99) 22 concerning prison overcrowding and prison population inflation

Recommendation Rec(2003)22 on conditional release (parole);

Recommendation Rec(2003)23 on the management by prison administrations of life sentence and other long-term prisoners;

Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules;

Recommendation Rec (2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;

Rec (2008)11 on the European Rules for juvenile offenders subject to sanctions or measures;

Bearing in mind the United Nations Code of Conduct for Law Enforcement Officials, United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Standard Minimum Rules for the Treatment of Women Prisoners and Non-custodial measures for Women Offenders (Bangkok Rules);

Bearing also in mind Recommendation Rec(2001)10 on the European Code of Police Ethics;

Considering the need to establish common European principles and guidelines for the overall objectives, performance and accountability of prison staff to safeguard security and individual's rights in democratic societies governed by the rule of law,

Recommends that the governments of member states be guided in their internal legislation, practice and codes of conduct of prison staff by the principles set out in the text of the European Code of Ethics for Prison Staff, appended to the present recommendation, with a view to their implementation, and to give the widest possible circulation to this text.

Definition of the scope of the Code

This Code applies to all bodies and staff authorised by the state to detain persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction.

In this Code the term “prisoner” has been used to describe all who are held on the grounds described in the previous paragraph, including adults and juveniles detained in detention facilities during the investigation of a crime; while awaiting trial; after conviction and before sentencing; and after sentencing.

I. Objectives of prison staff

1. The main purposes of prison staff in a democratic society governed by the rule of law are:

- to protect and respect the individual’s fundamental rights and freedoms as enshrined, in particular, in the European Convention on Human Rights;
- to ensure that all prisoners are safe and held in conditions that comply with relevant international standards and in particular the European Prison Rules;
- to respect and protect the right of the public to be safeguarded from criminal activity;
- to work towards the social reintegration of prisoners on release, by providing them with the opportunity to use their time in prison positively.

II. Legal basis of prison staff under the rule of law

2. A prison administration is a public body which shall be established by law. Where privately managed prisons exist, the European Prison Rules and this Code shall apply.

3. Prison operations must always be conducted in accordance with the national law and international standards.

4. Legislation guiding a prison administration shall be accessible to the public and sufficiently clear and precise, and supported by clear regulations equally accessible to the public and clear.

5. Prison staff shall be subject to the same legislation as ordinary citizens, and exceptions may only be justified for reasons of the proper performance of their work in a democratic society.

III. Prison staff and the criminal justice system

6. There shall be a clear distinction between the role and duties of prison staff and those of the police, the prosecution and the judiciary in respect of prisoners.

7. Prison staff shall respect the importance of all institutions of the criminal justice system and establish functional and appropriate cooperation with them, including with probation services, where they exist.

8. The prison service shall not use the services of the police or military, except in cases of emergency. Records shall be kept of all such incidents.

9. Prison staff shall respect the role of defence lawyers in the criminal justice process and, whenever appropriate, assist in ensuring the right of access of prisoners to legal assistance.

IV. Organisational structures of the prison system

A. General

10. Prisons shall be the responsibility of civil authorities separate from military, police or criminal investigation services.

11. The prison organisation shall contain efficient measures to ensure the integrity and proper performance of prison staff, in particular to guarantee respect for individuals' fundamental rights and freedoms as enshrined, notably, in the European Convention on Human Rights.

12. Prison staff at all levels shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates; they shall always verify the lawfulness of their intended actions.

13. The prison organisation shall provide for a clear chain of authority within the prison service. It should always be possible to determine which superior is ultimately responsible for the acts or omissions of prison staff.

14. The prison service shall be organised in a way that promotes good prison/public relations and, where appropriate, effective co-operation with other agencies, local communities, non-governmental organisations and other representatives of the public, including minority groups.

15. Prison services shall be ready to give objective information on their activities to the public, without disclosing confidential information. Professional guidelines for media contacts shall be established.

16. The prison service shall develop functional and constructive cooperation with national, regional and international bodies responsible for the external oversight of prisons.

17. Effective measures to prevent and combat prison staff corruption shall be established in the prison organisation at all levels.

B. Qualifications, recruitment and retention of prison staff

18. Prison staff, at any level of entry, shall be recruited on the basis of their personal, moral and psychological qualities as well as qualifications and experience, which shall be appropriate for the objectives of the prison service.

19. Prison staff shall be able to demonstrate integrity, fairness, sound judgment, impartiality, maturity, good communication skills and, where appropriate, leadership and management skills. Moreover, they shall possess sufficient understanding of social, cultural and community issues.

20. Recruitment procedures shall be based on transparent, objective and non-discriminatory grounds, following a thorough screening of candidates. The policy shall aim at recruiting men and women from various sections of society, including minority groups, with the overall objective of making prison staff reflect the society they serve.

21. Procedures for promotions and dismissals of prison staff shall be established based on civil service rules, relevant contract agreements and individual merit.

C. Training of Prison Staff

22. Prison staff training, which shall be based on the fundamental values of democracy, the rule of law and the protection of human rights, shall be developed in accordance with the objectives as defined in Part I of this Code.

23. General initial training shall be followed by in-service training at regular intervals. Specialist, management and leadership training shall be provided as required.

24. Prison staff training shall include instruction on how to develop interpersonal skills which can be used to influence prisoners in a positive manner, to help their social integration or to defuse potentially dangerous situations.

25. Prison staff training shall include practical instruction on when force may be used, particularly in respect of self defence, and the limits on its use. This instruction shall respect established international and European human rights principles.

26. Prison staff training shall take full account of the need to challenge and combat racism and xenophobia, as well as to promote gender sensitivity and prevent sexual harassment of any form both in relation to other staff and to prisoners.

D. Rights of prison staff

27. Prison staff shall as a rule enjoy the same civil and political rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the prison service in a democratic society, in accordance with the law, and in conformity with the European Convention on Human Rights.

28. Prison staff shall enjoy social and economic rights to the fullest extent possible taking into account the particular character of prison work. In particular, staff shall have the right to organise or to participate in representative organisations, to receive an appropriate remuneration and social security, and to be provided with special health and security measures.

29. Prison staff shall have the right to appeal against any disciplinary sanction to an independent body or a court.

30. Public authorities shall support prison staff who are subject to ill-founded accusations concerning their duties.

V. Guidelines for prison staff conduct

A. Integrity

31. Prison staff shall maintain and promote high standards of personal honesty and integrity.

32. There shall be equal treatment of custodial staff and those, such as teachers, instructors and others, who carry out specialist duties. There shall be no discrimination between these groups.

33. Prison staff shall oppose all forms of corruption within the prison service. They shall inform superiors and other appropriate bodies of corruption within the prison service.

34. Prison staff shall not allow their private financial or other interests to conflict with their position. It is the responsibility of all prison staff to avoid such conflicts of interest.

35. Prison staff shall carry out instructions properly issued by their superiors, but they shall have a duty to refrain from carrying out any instructions which are clearly illegal and to report such instructions, without fear of sanction.

36. Information of a confidential nature in the possession of prison staff shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

37. Particular attention shall be paid to the obligation to respect principles of medical confidentiality.

38. The collection, storage, and use of personal data by the prison staff shall be carried out in accordance with international data protection principles and, in particular, be limited to the extent necessary for the performance of lawful, legitimate and specific purposes.

B. Relationships between prison staff and prisoners

39. Prison staff, and all prison operations, must respect everyone's right to life.

40. In the performance of their duty, prison staff shall respect and protect human dignity and maintain and uphold the human rights of all persons.

41. Prison staff shall not inflict, instigate or tolerate any act of torture or other inhuman or degrading treatment or punishment, under any circumstances, including when ordered by a superior.

42. Prison staff may use force only when strictly necessary, as a last resort, and only to the extent required to obtain a legitimate objective, with respect to the principle of proportionality. Clear rules and procedures shall be in place on the use of force by prison staff and there shall be contingency plans for dealing with major incidents.

43. Prison staff shall carry out their tasks in a fair manner, guided, in particular, by the principles of impartiality and non-discrimination. They shall respect plurality and diversity and not discriminate against any prisoner on the basis of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

44. All prisoners shall be assessed on admission through a process that takes into account their safety and be assigned to accommodation in a way that best protects them.

45. Effective measures shall be taken to ensure that prisoners' dignity and respect are protected during personal searches, which shall only be carried out by staff of the same gender, who have been properly trained in appropriate searching methods and in accordance with established procedures. Strip searches and invasive body searches should be carried out only when strictly necessary, based on individual assessment.

46. Prison staff shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

47. Instruments of restraint shall never be used on women during labour, during birth and immediately after birth.

48. Prison staff shall provide for the safety, hygiene and appropriate nourishment of persons in the course of their custody. They shall make every effort to ensure that conditions in prison comply with the requirements of relevant international standards, in particular the European Prison Rules.

49. Prison staff shall ensure that prisoners have regular and adequate access to their lawyers and families throughout their imprisonment and shall promote cooperation with non-governmental organisations and other community groups working for the welfare of prisoners.

50. Prison staff shall be sensitive to the special needs of individuals, such as juveniles, women, minorities, foreign prisoners, older and disabled prisoners, and any prisoner who might be vulnerable for other reasons, and make every effort to provide for their needs.

51. Decisions relating to children staying with their parent in prison should always be based on the best interests of the children;

52. Prison staff should work towards facilitating the social reintegration of prisoners after their sentence has been completed through a programme of positive care and assistance.

53. Prison staff shall apply objective and fair disciplinary procedures. They shall follow the principles that prisoners charged with a disciplinary offence shall be considered innocent until proven guilty and that they have the right to be informed promptly of the accusation against them, and to prepare their defence either in person, or where appropriate, through legal assistance.

54. Prison staff shall not enter into private relationships with prisoners or members of their families. .

55. Prison staff shall only interfere with individual's right to privacy when strictly necessary and only to obtain a legitimate objective.

VI. Accountability and Control of prison staff

56. The prison service shall be accountable to the state, the citizens and their representatives. It shall be subject to efficient external control.

57. Public authorities shall ensure effective and impartial procedures for complaints against the prison service. Staff shall co-operate with any ensuing investigation.

58. Accountability mechanisms, based on communication and mutual understanding between the public and the prison service, shall be promoted.

59. Prison staff shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

60. Prison staff who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities

61. Codes of ethics for prison staff, based on the principles set out in the present recommendation, shall be developed in member states and overseen by appropriate bodies.

VII. Research and international co-operation

62. Member states shall promote and encourage research on the prison service and prisoners, both by the prison services themselves and external institutions.

63. International co-operation on prison staff ethics and human rights aspects of the prison service shall be supported.

64. The means of promoting the principles of the present recommendation and their implementation must be carefully scrutinised by the Council of Europe.