

***Managing high risk offenders  
– from sharing experiences to  
drafting better national laws  
and European tools***



## JCN project

mutually agreed definition on high risk offender: ***someone (violent/sexual offender) who presents a high probability to commit crimes which may cause very serious personal, physical or psychological harm***

certain national provisions and legal bases are necessary alongside the phase of execution sentence: supervision, competent authorities, cooperation

## Council of Europe Annual Penal Statistics SPACE I - Survey 2012

### Table 7 – Length of sentence

Median percentage of sentences from 10 to 20 years imprisonment is 9,5; from more than 20 years is 0,7 (in total 17,686) and with life imprisonment is 1,5 (in total 17,686). We have also 0,2 percentage of population with sentences of indeterminate lengths (in total 8,766)

### Table 5.2: Dangerous offenders under security measures

In 2011, efforts should be done in order to have common understanding of the criteria based on what we are collecting data for SPACE statistics

## EUROPEAN UNION



art.5 (2) of the Framework Decision of the Council of the European Union of 13 June 2002 on the European arrest warrant and the surrender procedures

2011 Green Paper on the application of EU criminal justice legislation in the field of detention

post-Stockholm program, 26-27 June 2014

LIBE – European Parliament, April 2014



COUNCIL  
OF EUROPE

CONSEIL  
DE L'EUROPE

The core European instruments relies on the Council of Europe mechanisms:

**Convention for the protection of human right and fundamental freedoms and the jurisprudence of the European Court of Human Rights (ECHR)**

**European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**

**Committee of Ministers Recommendations**



art.3 - one of the most fundamental values of democratic society (Labita v.Italy § 119)

public order can justify high-security prisons for particular categories of detainees (Van der Vliet v. Netherlands §§ 50-51, Mastromatteo v. Italy § 72) but those persons should be detained in conditions which are compatible with respect for human dignity

imposition of an irreducible life sentence on an adult may raise an issue under Article 3 (Kafkar v. Turkey § 97, Lazlo Magyar v. Hungary, § 48, Vinters and others v. UK §106)

for a life sentence to remain compatible with Article 3, there must be both a prospect of release and a possibility of review (Vinters and others v. UK § 110-112)

**European Committee for the Prevention of Torture  
and Inhuman or Degrading Treatment or Punishment  
(CPT)**



## CPT standards

### **Key CPT standards (CPT/Inf/E (2002)-Rev 2011):**

solitary confinement for dangerousness of prisoners, continuous moving of troublesome prisoners, medical aspects – of particular interest

high security units – should be a small percentage of prison population

life-sentenced and other long-term prisoners – they experienced a range of psychological problems, the regime should compensate the negative effects

**Key CPT reports:** Portugal (2012) – a satisfactory program of diverse activities; Sweden (2013) – relaxing the measure; Germany (2014) – eliminate the prohibition of outdoor exercise

## Committee of Ministers Recommendation



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

Recommendation Rec (2003) 23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners

Recommendation CM/Rec (2014) 3 of the Committee of Ministers to member states concerning dangerous offenders

Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member states concerning the Council of Europe Probation Rules

Recommendation Rec(2003) 22 of the Committee of Ministers to member states concerning conditional release (parole)

Recommendation CM/Rec (2012) 12 of the Committee of Ministers to Member States concerning foreign prisoners

Recommendation CM/Rec (2008) 11 of the Committee of Ministers to member states concerning the European Rules for juvenile offenders subject to sanctions or measures



## **Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules (EPR)**

h and every aspect of life in prison: contact with outside world (R.24.1-24.12); release of prisoners (R.33.1-33.8) etc

and order, safety, security, searching, controls (R.49-54.10) – especially dynamic security  
proportionality condition

objective of the regime (R.102.1-104.3)

implementation starts when the person enters the prison (R.103)

release of sentenced persons – gradually prepared (R.107)

## **Recommendation Rec (2003) 23 of the Committee of Ministers to member states the management by prison administrations of life sentence and other long-term prisoners**

general objectives (R.2), general principles – security and safety (R.6), progression (R.8)  
sentence planning -the systematic approach (R.9 and the follow.)  
risk and needs assessments – personal needs (R.12), periodically reviewed & supplemented (R.  
15)  
reintegration into society – specific pre-release and post-release plans, close cooperation between  
agencies (R.33-34)

## **Recommendation CM/Rec (2014) 3 of the Committee of Ministers to Member States concerning dangerous offenders**

definition: declared aim to narrow it, difficulties to define, should be dynamic (§6,7, 37  
Commentary), not covering certain categories(R.2) but only those ***who has been convicted of  
very serious sexual or very serious violent crime against persons and who present a high  
likelihood of re-offending***  
risk assessment during the implementation (R.34 and the follow.)– dynamic and responsive (§143  
Commentary)  
risk management (R.34 and the follow.)– one planned process, realistic and achievable  
objectives(R.37), social measures and cooperation (§143 Commentary)  
treatment and conditions of imprisonment: security measures reviewed regularly (R.41), adequate  
treatment (R.42-45), meaningful activities (R.46)

## **Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member states on the Council of Europe Probation Rules**

cooperation with authorities, offenders, families, communities is essential (R.59-60), transition to be organized with prisons and probations working together (R.39)  
supervision following early release – to meet the offenders needs (R.59)  
resistance is a process not an event, aftercare is necessary (R.62, § 62 Commentary)

## **Recommendation Rec (2003) 22 of the Committee of Ministers to member states on conditional release (parole)**

general principles: assisting in transition from prison to law-abiding life in community – § 3, 4  
- commentary makes reference to life-sentence prisoners who should have the hope to be released  
preparation for conditional release (R.12 and the follow.): in close collaboration with all relevant persons working in prison and those involved in post-release supervision, appropriate pre-release programs with educational and training courses, specific modalities are encouraged: semi-liberty, open regimes or external placements, various forms of prison leave

## **Recommendation CM/Rec (2012) 12 of the Committee of Ministers to Member States concerning foreign prisoners**

the risk of flight to be properly analyzed, since custody is rather the norm than the exception (§ of Commentary related to Rule 13)  
nationality, culture, religion – not determinative factors in risk assessment (R.32.1-32.4)  
dynamic security, also by promoting awareness and respect for cultural and religious differences (R.32.1 and the follow)  
specific aspects of the preparation for release (R.35.1-37.2)

## **Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures**

deprivation of liberty shall provide for the possibility of early release (R.49.2)  
an individual overall plan that aims at progression through less restrictive regimes and preparation for release and reintegration into society (R 50.1)  
assistance from the beginning of and throughout any period of deprivation of liberty (R.51)  
making the transition - special forms of interventions included in an individual plan as to ensure a gradual return in free society (R.100 and the follow.) e.g.- returning to their family /finding a foster family; finding accommodation; continuing their education and training; providing monetary assistance

# Conclusions

**JCN, European tools** – all came from shared learning, practice exchange and networking of practitioners in this field, including the challenges for identifying common understanding of terms and common standards

**Permanent challenge for legislator** – national or European to pay attention and to reflect the needs of the practitioners in special and communities in general, and to up-date standards and rules

**JCN project - solid basis** for what can be a wider European effort for a common mechanism for managing high risk offenders

**Developing a model for better results** - not only for the prisoners leaving custody but also for communities and the criminal justice systems

***thank you!***

***Alina Barbu, legal adviser***

***Department of drafting legislation,***

***Public law division, Ministry of Justice,  
Romania***

***vice-chair of the Council of Europe PC-CP***

***abarbu@just.ro, alina.barbu@coe.int***