

Commentary to the European Rules for juvenile offenders subject to sanctions or measures



General

The European Rules for Juvenile Offenders Subject to Sanctions or Measures apply to both the imposition and implementation of sanctions and measures in the community, and to the deprivation of liberty. Its coverage in respect of juveniles parallels that of the European Rules on Community Sanctions and Measures (ERCSM) and the European Prison Rules (EPR) in respect of adults. However, it goes further than the latter by including all juveniles who are deprived of liberty as a result of the alleged or actual commission of criminal offences, no matter where they are held, be it in penitentiary, welfare or mental health institutions. This was essential as juvenile offenders who are deprived of their liberty have many of the same needs, but in the various European countries they are dealt with by a range of institutions which are often the responsibility of different government departments. Some of these sanctions and measures are imposed on juveniles who have not been found guilty, for example, those held awaiting trial. The fact that they are dealt with in these Rules does not mean that the presumption of innocence is undermined or restricted in any way. Their inclusion is designed to ensure that such juveniles also have the protection of these Rules.

Various rules refer to “national law”. National law refers to all forms of primary or delegated legislation, case law any other form of law regarded as such by the State concerned.

The wide coverage of these Rules is reflected in their structure. Part I, which deals with basic principles, scope and definitions, relates to all juvenile offenders who fall within the remit of the Rules. As the first steps in dealing with juvenile offenders usually involves community sanctions and measures, Part II deals only with juvenile offenders subject to such sanctions and measures.

Part III E establishes general rules that apply to all forms of deprivation of liberty. Part III F deals with the special rules applicable in addition to the general rules in case of, police custody, pre-trial detention and other forms of deprivation of liberty prior to sentencing; welfare institutions; and mental health institutions respectively.

The remainder of the Rules, those contained in Parts IV to VIII, again refers to all juvenile offenders covered by these Rules. Legal advice and assistance (Part IV), Complaints procedures, inspection and monitoring (Part V), staff (Part VI) Evaluation, research, work with the media and the public (Part VII), and updating the Rules (Part VIII) are all matters of general concern.

The introduction sets out the general aims of the recommendation which is to uphold the rights and ensure the safety of offenders who are subject to the forms of intervention covered by the Recommendation. It recognises that juvenile offenders are already protected to a greater or lesser extent by other international and European instruments that are listed in the Recommendation. The safeguards they contain should continue to be recognised. It also points to the particular relevance of the European Prison Rules and the European Rules on Community Sanctions and Measures in this regard. However, these Rules go further than any of these instruments and should be the first source of reference in the treatment of all juvenile offenders who fall within their remit.

Part I: Basic principles, scope and definitions

A. Basic principles

Rule 1

Rule 1 of this recommendation corresponds to Rule 1 of the EPR. The European Rules on Community Sanctions and Measures are of particular relevance as well. Human rights issues arise not only when deprivation of liberty is used, but also when community sanctions and measures are applied. Both full-scale deprivation of liberty and lesser restrictions of liberty can be intrusive and may violate human rights if the principle of proportionality contained in Rule 5 is not applied. It is a basic standard of all international instruments that the human rights of juveniles have to be protected in the same way as it is the case for adults. The United Nations Convention on the Rights of the Child as well as the recommendations of the Council of Europe in the

field of juvenile justice emphasise this issue. It should be noted that Rule 1 refers to protecting all human rights of juvenile offenders both deprived of their liberty or under community sanctions and measures. It should be clear that in addition other international instruments, such as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty of 14 December 1990 (The Havana Rules, adopted by Res. 45/113 of the UN General Assembly) have played a part in the development of these Rules.

Rule 2

The first part of this principle is derived from Art 7, European Convention on Human Rights (ECHR) and the second part from Rule 3 of Recommendation no. R (92)16 on the European Rules on Community Sanctions and Measures (ERCSM).

All juvenile justice and welfare systems are based on the principles of social integration and education. This leaves a much lesser place, and in some countries no place at all, for the principle of general deterrence or other (more punitive) aims that are a feature of the criminal justice system for adults.

In the field of juvenile justice it is recognised that the personalities of juveniles are still developing and open to positive influences. Emphasis must be placed on the possibility of re-integrating young persons. This may be achieved in some cases only by intensive educational or therapeutic efforts. The rule on social integration would therefore not allow long-term security measures or life sentences that aim solely at protecting society from juvenile offenders and do not give them the prospect of release within a reasonable period. (See in this respect the case law of the European Court of Human Rights: *T. v. the United Kingdom* [GC], no. 24724/94, 16 December 1999; *V. v. the United Kingdom* [GC], no. 24888/94, ECHR 1999-IXT).

The emphasis that is placed on the major aim of education for the prevention of re-offending is important. In most international instruments education is not clearly defined. This is problematic as the term "education" may be misused as can be seen by repressive forms of authoritarian education, for example military style detention regimes that do not correspond to the European concept of human rights and dignity. On the one hand, the aim of preventing re-offending is modest, for it does not seek to achieve more than law-abiding integration into society. On the other hand, it is ambitious, for it is connected to the term social integration and therefore aims to promote the juveniles' personal and wider social development, and their taking responsibility for their behaviour. Education therefore should be understood to include measures such as enhancing their communication skills or requiring them to make reparations such as write appropriate letters of apology. Equally, society has to enable these changes to take place. It is important that the opportunities for learning and the interventions chosen to achieve these goals should be evidence-based (see also Rules 135-138 and the commentary on them below) and should contribute to the development and differentiation of the capacities of perception, interpretation, decision making and responsible action.

Rule 3

The restriction of the power to impose sanctions and measures to a court or to another legally recognised authority enshrines the principle of legality. Prompt judicial review where the imposition is decided by another authority is a further guarantee in this regard. Detention only for a legitimate purpose follows the requirements set by the European Court of Human Rights in its interpretation of Article 5 of the ECHR. It further relates to Rule 2 which emphasizes the primary goals of any sanction or measure imposed on juvenile offenders.

It is important that all sanctions and measures imposed on juveniles be of determinate duration because of the need for legal certainty and realistic prospects for reintegration into society. Where the sanctions or measures are open-ended this can be achieved by making them subject to regular review. The principle of proportionality applies both to the imposition and to the implementation of sanctions and measures. This principle should be applied at every stage of the procedure, so that juveniles are not subject to unnecessary restrictions.

Rule 4

Rule 4 stipulates that the law should set a minimum age for any type of intervention resulting from an offence. This includes the determination of the age of criminal responsibility as well as the age from which more punitive penal measures can be taken. This follows directly from the universally recognised principle of legality: the condition for any criminal liability is that the criminalized behaviour and the possible offender must be described by law. Thus, age limits clearly must also be fixed by law. The principle of legality applies in the same way to other types of intervention.

The age of criminal responsibility has to correspond to "an internationally acceptable age" (see *United Nations, Committee of the Rights of the Child, General Comment No. 10 (2007), para. 32 (CRC/C/GC/10, 25 April 2007)*). Although it might be difficult to find a general European consensus, such minimum age should not be too low and should be related to the age at which juveniles assume civil responsibilities in other spheres such as

marriage, end of compulsory schooling and employment. The majority of countries have fixed the minimum age between 14 and 15 years and this standard should be followed in Europe. Criminal responsibility for juveniles of less than 12 years exists only in a few countries such as England and Wales and Switzerland (see Appendix I).

In any case, very young offenders who are formally criminally liable should not be admitted to juvenile penitentiary institutions. In some countries the age for admission to such institutions is 15 (as in Switzerland) or 16, whereas the general age of criminal responsibility might be lower, usually between 12 and 14 years.

(See in this respect also Rule 4.1 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules, adopted by General Assembly resolution 40/33 of 29 November 1985); and Rule 11, the Havana Rules)

Rule 5

Rule 5 provides that all sanctions and measures must be subject to what is in the best interests of the juvenile and this needs to be established in every individual case. This implies regular assessments by social workers, psychologists, psychiatrists or other professionals. On the other hand, the best interests of the juvenile should not be an excuse for excessive or disproportionate interventions. Measures that promote social integration are generally in the best interests of the juvenile.

This Rule contains two further interrelated principles. The principle of individualization is inherent in traditional juvenile justice. When a sanction or a measure is imposed the age, physical and mental well-being, development, capacities and personal circumstances of the offender shall be taken into consideration. Information about these individual circumstances of the juvenile will usually be obtained from psychological, psychiatric or social inquiry reports and therefore a multi-agency approach as indicated in Rule 15 is necessary. The principle of proportionality serves as a corrective to avoid extended educational sanctions or measures that cannot be justified in terms of the gravity of the offence. The principle of individualisation should, therefore not be used to justify interventions that are disproportionately severe with respect to the offence.

Sanctions and measures imposed on juvenile offenders should not be held against them for the rest of their lives. This implies that they should not be punished more heavily as adults because of their youthful indiscretions. It also follows that records of the offences of juveniles should not be kept for longer than absolutely necessary.

(See also in this respect Rule 1.3, 5, the Beijing Rules and Rules 6 and 56, ERCSM)

Rule 6

Rule 6 stipulates that in the implementation of sanctions and measures a certain degree of discretion must be given to the implementing authorities in order to meet the individual circumstances of each case. This should, however, not lead to serious inequality of treatment. There should be careful documentation of the sanctioning practice as well as of the implementation of sanctions and measures. In order to avoid discrimination (as referred to in Rule 11) particular attention must be paid to identifying local, cultural, ethnic and other differences and determining whether a different treatment would be justified in order to achieve the same results of social reintegration, education and prevention of re-offending.

(See also in this respect Rule 6, the Beijing Rules)

Rule 7

Any violation of human dignity is to be prohibited. Overcrowding in institutions and harsh, military-type regimes, solitary confinement, depriving juveniles of social contacts are examples of what should be avoided. Equally, some forms of community work can also stigmatise juvenile offenders and would not be consistent with this rule (special uniforms which identify them as offenders, etc).

(See also Art. 3, ECHR)

Rule 8

Rule 8 corresponds to Rules 26 and 28 of the ERCSM as well as to Rule 102.2 of the EPR. There should be no forms of implementation of sanctions or measures that aggravate their afflictive character, for example by hard and degrading work either in prisons or as a form of community service. Therefore, different regimes in juvenile penitentiary institutions which are (for punitive reasons) related to the gravity of the offence are not allowed. Overcrowding is one of the well-known circumstances that can endanger the well-being and physical or mental integrity of detained juveniles. An undue risk of physical or mental harm can be caused by exposing detained

juveniles to other detainees who are dangerous or violent. Conditions of detention that are not sufficiently stimulating and social or sensory deprivation of any kind are prohibited by Rule 8. As far as community sanctions are concerned, special emphasis should be given to avoiding stigmatizing or humiliating conditions (see also Rule 7 above).

(See also Rules 26 and 27, ERCSM)

Rule 9

Rule 9 refers to the principle of speedy implementation of sanctions and measures. Undue delay is undesirable also because it undermines the effectiveness of the interventions. Rule 9 relates to Rule 5 and limits community sanctions or measures as well as deprivation of liberty to the minimum necessary. Therefore review schemes must be provided by law that can shorten the execution of a sentence where continued enforcement does not seem to be necessary for the social integration of the juvenile offender. All countries have introduced early release schemes concerning imprisonment. Community sanctions and measures can also be adjusted in order to lessen their negative impact, or their duration may be reduced. The principle of minimum intervention also better protects human rights and preserves social ties while not increasing risks posed to society.

(See also Rule 14, Recommendation Rec(2003)20 on new ways of dealing with juvenile delinquency and the role of juvenile justice and Rule 20, the Beijing Rules)

Rule 10

Rule 10 reflects Rule 17 of the Beijing Rules and the Council of Europe's Recommendation N°R (87) 20 concerning Social reactions to Juvenile Delinquency and Recommendation Rec(2003)20 on New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice. It follows from Rule 9 on minimum intervention and emphasizes that deprivation of liberty should only be a measure of last resort: normally other less intrusive sanctions should have been tried first. The Beijing Rules give examples of what is meant by the provision that deprivation of liberty shall be limited to "exceptional cases": Deprivation of liberty shall be restricted to older juveniles involved in violent or persistent serious offending. Many national legislations have responded to this idea by raising the age for being sentenced to youth custody or youth imprisonment to a minimum of 15 or 16 years, whereas the general age of criminal responsibility might be lower (see the table in Appendix I and the commentary to Rule 4 above).

Furthermore, deprivation of liberty is also to be restricted to the minimum necessary period. This is important as it prevents the prolonging of detention unnecessarily in order for instance to complete educational and treatment programmes or other forms of intervention. Instead, there should be provision for juvenile offenders who have been released early to complete such programmes outside the institution. Even where the initial deprivation of liberty is linked also to other goals, such as retribution, it must be clear that preparing the juvenile for re-integration into society becomes increasingly important as the sanction is being implemented ("progressive principle"). The final decision remains with the judicial authority that has the legal power to order the deprivation of liberty.

The problem of pre-trial detention is already extensively addressed by Rules 16-18 of the Recommendation Rec (2003) 20. It reflects the empirical evidence that pre-trial detention in many countries is used extensively, for longer than justified and for purposes that are not provided by law; for example, as a form of crisis intervention or for reducing public concern. Therefore Rule 16 of Rec (2003) 20 states: "When, as a last resort, juvenile suspects are remanded in custody, this should not be for longer than six months before the commencement of the trial." In addition Rule 17 of the above Recommendation clearly outlines that "where possible, alternatives to remand in custody should be used for juvenile suspects, such as placements with relatives, foster families or other forms of supported accommodation. Custodial remand should never be used as a punishment or form of intimidation or as a substitute for child protection or mental health measures." The present Rules incorporate these restrictions on pre-trial detention by requiring that "special efforts must be undertaken to avoid pre-trial detention".

(See also Rule 2, the Havana Rules)

Rule 11

The principle of non-discrimination is a basic principle in all human rights instruments of the Council of Europe and the United Nations (see, for example, Art 14 of the ECHR and Rule 13 of the EPR). It does not mean that formal equality should be the ideal if it would result in substantive inequality. Protection of vulnerable groups is not discrimination, nor is treatment that is tailored to the special needs of individual juvenile offenders. Therefore, this principle is not infringed by special positive measures aimed at addressing juvenile offenders or groups of juvenile offenders with specific needs.

(See also Art. 14 ECHR; Art. 2 UN Convention on the Rights of the Child; Rule 13, EPR; Rule 4, the Havana Rules; Rule 2.1, the Beijing Rules)

Rule 12

Mediation and other restorative justice measures have become important forms of intervention in juvenile welfare and justice systems. In many countries recent national legislation gives priority to mediation and restorative justice as methods of diversion from formal proceedings at various stages in the juvenile justice process. These strategies should be considered at all stages of dealing with juveniles and be given priority because of their special preventive advantages for the juvenile offenders as well as for the victims and the community.

(See also Rule 11, Beijing Rules)

Rule 13

This principle includes the right to be informed, to have access to legal remedies, to legal assistance, complaints procedures and other procedural rights and safeguards. (see also Rule 15, Recommendation Rec(2003)20). The principle of effective participation in this case refers to the stage of imposition as well as of execution of sanctions and measures. Independently of which specific model of criminal investigation and procedure is followed, the juveniles and their parents or legal guardians must be informed about the offence or offences the juveniles are alleged to have committed and the evidence against them. The juveniles have the right to legal defence counsel also in purely welfare proceedings. In cases where deprivation of liberty is possible, legal defence counsel must be allocated to the juveniles from the outset of the procedure. The Rule makes it clear that there is no justification for giving juveniles lesser rights than adults. Therefore regulations that restrict the right to appeal or complaints procedures with arguments of education cannot be justified. Other examples refer to issues of data protection: The more comprehensive social inquiry reports and case records within the juvenile justice and welfare system should not be transferred to criminal records that could possibly disadvantage juvenile offenders in their later adult life. Juvenile criminal records should include only serious sanctions and interventions in order to prevent stigmatisation as far as possible.

(See also Rule 7, the Beijing Rules)

Rule 14

Rule 14 emphasizes the rights and responsibilities of parents and legal guardians to participate at all stages of investigations and proceedings. This is already inherent in the general principle of effective participation. However, it is important to stress the parents' or legal guardians' individual rights of participation. Nevertheless, these rights can be restricted if parents or guardians act against the best interests of the juvenile. The need for such restriction should be assessed by psychologists or other professional staff of the juvenile welfare authorities and formally decided by the judicial authorities. While the participation of parents or legal guardians of juveniles is generally mandatory, this is not the case for young adults who have reached the age of civil majority. Nevertheless, their participation may still be desirable, especially if the young adults still live with them. Even if the juveniles' parents and guardians live abroad, attempts should be made to contact them. Where these parents and guardians cannot participate, their place should be taken where appropriate by an appointed representative. Restrictions may also be imposed where required by ongoing criminal investigations, but only for the period for which it is strictly necessary.

Proceedings against juveniles and the execution of sanctions and measures that may follow from them take place in a wider context in which family members and the wider community may have a role to play where this is applicable and can have a positive impact on the juvenile and society. One example of such involvement of the community is the execution of a community sanction or measure where the local community is by definition involved. Reintegration after deprivation of liberty also necessarily supposes acceptance by and interaction with the local community. This too is subject to the principle that such involvement must be in the best interests of the juvenile. The corollary of the Rule is that juveniles have a right to have contact with the members of their family.

(See also Rule 7, the Beijing Rules)

Rule 15

The characteristics of juveniles require a specific multi-disciplinary and multi-agency approach. The key disciplines to be included are psychology, social work and education. The multi-agency approach is a normal form of co-operation between youth welfare and justice agencies in many countries. Social workers, the police, school and vocational training authorities, prosecutors and juvenile judges as well as lay organisations of

juvenile welfare should work closely together in order to act in the best interests of the juvenile. The multi-agency approach should involve as fully as possible agencies and organisations outside the justice system, for they may be socially and environmentally closer to the juvenile. In this context the principle of through care is of major importance. The principle of “end to end” offender management where a community based social worker or probation officer maintains contact with the offender throughout the sentence is of particular value in providing continuity of care. Discharge arrangements should be planned carefully so that continuity of care is ensured. Institutions for the deprivation of liberty must work together closely with aftercare services and other relevant welfare agencies. However, data protection concerns must be born in mind when cooperating in this way.

(See also in this respect Rule 2, recommendation Rec(2003)20 and Rule 9, the UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines, adopted by General Assembly resolution 45/112 of 14 December 1990)

Rule 16

Juvenile offenders and their families have specific rights to privacy to protect them from negative stigmatisation. This recognises the need to help juveniles in their development to adulthood. The Rule places a duty on the state to provide the necessary protection for juvenile offenders and their families. In particular, the identity of juveniles and their families should not be communicated to anyone who is not legally authorised to be informed about it.

Legal authorisation to receive information must be limited strictly to persons and institutions that require particular information related to a specific case. This should not lead to the public disclosure of entire lists of names of specific juvenile offenders. It follows too that only information that is necessary for this purpose should be collected in the first place.

(See also Rule 8, the Beijing Rules)

Rule 17

Recommendation Rec(2003)20 states in Rule 11 that “reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults.” Similarly, Rule 3.3 of the Beijing Rules states: “Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.” Rule 17 continues in the same vein. Young adults in general are in a transitional stage of life, which can justify their being dealt with by the juvenile justice agencies and juvenile courts. Particularly in the past 15 years, many countries have taken into consideration this extended period of transition by either providing the possibility of applying educational measures to young adult offenders or at least by providing for special mitigation of their sentences (see the table in Appendix 1). Applying sanctions or measures provided under the juvenile criminal law does not automatically mean that young adults will receive milder sanctions than adults over the age of 21; but where appropriate, they should benefit from the variety of educational sanctions and measures that are provided for juvenile offenders. It is an evidence based policy to encourage legislators to extend the scope of juvenile justice to the age group of young adults. Processes of education and integration into social life of adults have been prolonged and more appropriate constructive reactions with regard to the particular developmental problems of young adults can often be found in juvenile justice legislation (see for example the special emphasis given to mediation, and family conferencing in many new juvenile justice laws).

(See also Rule 17, Recommendation n°R(87)20; Rule 11, Recommendation Rec(2003)20)

Rule 18

Rule 18 corresponds to Rule 8 of the EPR and places the staff of juvenile welfare and justice agencies or institutions at the centre of caring for juvenile offenders as they need special and intensive assistance. Rule 18 is strongly related to Rule 15 emphasizing the co-operation of different agencies involved (multi-agency approach). All staff in the field of juvenile welfare and justice must be suitable for working with juveniles and be specially trained or experienced in developmental and educational matters. Regular in-service training and supervision should be provided. Positive role models are particularly important, as in many instances staff have to play the role which is normally taken by members of the juvenile’s family. The standards of care and accountability apply not only when staff are employed on a permanent basis but also when execution is delegated to, or commissioned from, other agencies.

(See also Rule 8, EPR; Rules 1-3, ERCSM)

Rule 19

Rule 19 is related to Rule 18 and is designed to make clear that juvenile welfare and justice agencies must receive the necessary funding in order to achieve the educational and social integration goals required. The different agencies must be equipped in a way that enables them to provide the appropriate standard of care to meet the distinctive needs of juveniles. This can also mean that services are allocated according to different needs and risks posed by offenders. The rule corresponds to Rule 4 of the EPR. It conveys the message that lack of resources can never justify the infringement of human rights of juveniles. By imposing sanctions or measures on juvenile offenders the state intervenes at an age where normally the family is responsible for the upbringing of the juvenile. If the state partially replaces the parents it must guarantee that its interventions are meaningful, positive and effective.

(See also Rule 4, EPR)

Rule 20

Rule 20 reflects the necessity of regular government inspection as well as of independent monitoring. This Rule corresponds to Rule 9 of the EPR. Independent monitoring by persons or institutions that are not controlled by state agencies is an essential and important element of democratic control as it may guarantee effective supervision of the general juvenile justice system that is independent from individual complaints procedures. The Rule envisages monitoring by recognised bodies such as boards of visitors or accredited NGOs, ombudsmen and other similar agencies. An effective individual complaints procedure available to juveniles concerning the imposition and execution of sanctions and measures complements the inspection and monitoring mechanisms.

(See also Rule 14, the Havana Rules)

B. Scope and definitions**Rule 21**

Rule 21 defines what is meant by the key terms in the Recommendation. These definitions do not affect in any way the presumption of innocence, as explained above under the heading "General".

(See also Rule 11, the Havana Rules; Glossary, EPCSM)

Rule 22

This Rule makes it possible to extend the protections of this Recommendation to the benefit of all other persons who are held in juvenile institutions or are dealt with in the setting of community sanctions and measures together with juvenile offenders. This is particularly important in closed institutions of juvenile residential care where persons who are not formally offenders may be deprived of their liberty by administrative or civil law. It would therefore also include juveniles detained in such institutions because of their anti-social behaviour. It could also be extended to, for example, illegal immigrants who may be detained together with juvenile offenders.

Table 1 shows that all countries provide that juvenile offenders who have reached the age of 18 may be allowed to stay on in some institutions where they have started to serve their term, normally until the age of 21, sometimes even longer (23, 24 or even 27 years of age, see Appendix 1). This Rule also covers instances where national legislation may allow persons other than juvenile offenders to serve their sentences in institutions or settings designed for juvenile offenders (for example mature young adult offenders, as is the case in Germany).

(See also Rule 3, the Beijing Rules)

Part II: Community Sanctions and Measures**C. Legal framework****Rule 23**

23.1. The implementation of the basic principles, in particular those contained in Rules 5 to 10, 12 and 15, requires that the authorities have at their disposal a wide range of non-custodial ways of responding. This is not only for the imposition of sentence but also during the investigation of offences, as the pre-trial detention should be avoided wherever possible. Rule 1 of Appendix 2 of Recommendation Rec(2000)22 on improving the implementation of the ERCSM lists a number of such community sanctions and measures that could be adapted to the needs of juveniles. The reference to a wide range of community sanctions and measures in these Rules is

not designed to prescribe the form of criminal procedure to be adopted when dealing with juveniles. It is included because the imposition and implementation of such sanctions and measures are inextricably linked. Moreover, the making of appropriate adjustments should remain possible during the period in which the sentence is being enforced (see Rule 27). It is crucial above all, that the community sanctions and measures provided by law take account of the varying degrees of personality development of the juveniles concerned. While, for example, it may be appropriate to require an older juvenile to do community work, a juvenile of school going age should be given the alternative of participating in a training course. When legal provision is made for different kinds of community sanctions and measures additional factors should be considered. The law should provide for community sanctions that can be used for serious offences as well as for relatively trivial offences. There should be community sanctions that can be applied to juveniles of both sexes including those with mental disorders and drug addictions. These sanctions should be applicable to all juveniles, also those on the margins of society.

(See in this regard also Rule 2.3, the Tokyo Rules, and Rules 7 and 9, Recommendation Rec(2003)20)

23.2. As the responsible authorities normally have several community sanctions or measures at their disposal, the question arises as to the appropriate criteria for selecting which of them to apply in an individual case. When sanctions and measures are chosen priority should be given to educational criteria (including the principle of restorative justice). These considerations are more important than blaming the juvenile, or placing as light a burden on the juvenile as possible. The most effective community sanctions and measures are those which can be perceived by juveniles as an understandable reaction to their behaviour in a specific case and as supportive of their further development (ref. the basic principle contained in Rule 2). Community sanctions and measures which represent a meaningful reaction to the specific offence are particularly suitable, for instance requiring a young person who had committed vandalism either to make reparation or compensate in some other way (see also Rule 44).

Rule 24

It is in the interests of legal certainty and transparency that national legislation should specify, for juvenile as is the case for adult offenders, the fundamental requirements of the different community sanctions and measures. These requirements should be mandatory across the jurisdiction concerned. The Rule lists the minimum requirements for what is to be specified in law. It is desirable that requirements that go beyond the minima should be laid down in law too, but the choice of the extent to which it should be done is to be left to the national legislator.

(See also Rules 3, 4, 8 and 11, ERCSM)

Rule 25

Beyond the general essential requirements laid down in Rule 24, national legislation also has to set additional requirements that are necessary to meet the special needs of juveniles. Since juveniles are frequently not able to evaluate adequately the law applicable to them, the responsible authorities have an express obligation to explain to them, and, if necessary, also to their parents and legal guardians, the content and the underlying aims of the legal provisions (subparagraph a). Beyond that, these authorities are obliged actively to seek the best possible cooperation not only with juvenile offenders, but also with their parents or legal guardians (subparagraph b). The involvement of parents or legal guardians must be more intensive when the juveniles concerned are still very young and not yet independent than with juveniles who have almost reached adulthood and who do not live with their families any more. There must be clear legal regulation of the rights of parents and legal guardians with regards to the imposition, implementation and execution of community sanctions and measures as well as possible restrictions on such rights (subparagraph c). In this context it should be born in mind that the rights of parents and legal guardians can come into conflict not only with the requirements set by the authorities but also with the legal position of the juvenile offender. For example, a juvenile could agree to accept an obligation to do community work, while his parents could reject it (or vice versa). In order to avoid unnecessary conflicts between the authorities and parents or legal guardians as well as the juveniles it is essential that the law governing such situations is clear.

Rule 26

The decision to impose or to revoke a community sanction or measure can involve serious consequences for the juvenile offender concerned, which is why such decisions should normally be made by a judicial authority. However, unlike what happens in the case of adults, in some national legal orders aspects of such decisions in respect of juveniles are within the competence of an administrative authority. If, for the imposition or revocation of a community based therapeutic measure for instance, an authority responsible for the social welfare or protection of children and young people is the competent authority, that can be quite adequate. However, it is vital that decisions taken by such an authority always be subject to judicial review. Therefore such decisions

should be recorded in writing. They must also explain the procedures to be followed if the juveniles or their parents or legal guardians wish to appeal against the decision.

(See also Rule 12, ERCSM)

Rule 27

Since Rule 23.2 requires that community sanctions or measures are imposed for their educational and restorative effects, in the interests of the juvenile concerned and of society, they should be implemented flexibly where juveniles have made good progress. For this reason it should, where the possibility for modifying of a final court decision is provided for in national law, in principle be possible to reduce the duration of the sanction or measure that was originally imposed, to make conditions and obligations less strict or to terminate sanction or measure entirely before it has been fully implemented.

Which authority is responsible for such modifications can be left to national legislation to determine. However, no powers should be given to extend the originally imposed sanctions or to make them more onerous.

(See also Rules 5, 7 and 87, ERCSM; Rule 6 and 23, the Beijing Rules)

Rule 28

The imposition and implementation of community sanctions or measures must not lead to the legal entitlements of juveniles in respect of education, vocational training, and physical and mental health care as well as safety and social security being limited, because this would reduce their opportunities in life. Juveniles should not, for example, lose either their legal claims to unemployment benefits or their social insurance entitlements because of not being active in the job market while they are doing community work. These legal rights should not be limited by the implementation of community sanctions or measures: for example, unintended restrictions could arise, if the educational or vocational training of juvenile offenders is compromised by an obligation to participate, at the same time, in a certain treatment course or to make reparations.

(See also Rule 28, ERCSM, Rule 24, the Beijing Rules)

Rule 29

In some cases national laws require the express agreement of the juvenile offenders concerned or of their parents or legal guardians, not only when individual community sanctions or measures are imposed but also during their implementation. The former usually applies to the obligation to do community work; the latter, for instance, to intrusive therapeutic measures. Particular caution should be exercised in cases where juveniles suffer from a mental disorder. In all cases where agreement is needed it must be required, without exception, that the consent should be informed and explicit. The offenders (and their parents or legal guardians) must know that they are being asked to give their consent. They should give their consent in full knowledge of what they are consenting to and must therefore be given information about it in a form that someone of their age and level of sophistication can easily understand.

(See also Rule 36, ERCSM)

Rule 30

30.1 National legislation must provide for the eventuality that juvenile offenders may not meet their obligations in terms of a community sanction or measure. In many instances a discussion with the juveniles concerned will reveal the reasons for non-compliance as well as which changes to the conditions are necessary to enable them to fulfil their obligations. It is good professional practice for the responsible authority to take into account the views of the juveniles when making such decisions (see in addition also Rules 46-48). Non-compliance should never lead to automatic deprivation of liberty. National law may describe the particular serious circumstances that – as a last resort – justify such a conversion of community sanctions and measures into deprivation of liberty. That failure to comply should not lead automatically to deprivation of liberty is the necessary conclusion to be drawn from the basic principle in Rule 10, which provides that deprivation of liberty should be a measure of last resort. In individual cases one must first determine whether one can intervene by modifying the community sanction or measure or by replacing it by another community sanction or measure. The concrete circumstances of the individual case are to be considered, in particular what the consequences of a revocation of a community sanction or measure will be for the development of the juvenile offender and in addition, what proportion of the sentence the juvenile already has completed (Rule 48.4). The responsible authority should be given an appropriately broad discretion and be able to react in a flexible and differentiated way without this resulting in serious inequality of treatment (Rule 5).

(See also Rules 9, 10 and 86, ERCSM)

30.2 The prohibition contained in this Rule is an example of the general penal law principle that the same illegal act may generate a series of further illegal acts, as a result of which the cumulative penalties would be entirely disproportionate to the harm caused by the initial illegal act. Failure to comply does not mean that there will be no sanction in cases where there has been a serious breach. But non-compliance should not be met automatically with the full force of the criminal law. Instead the principles for dealing with non-compliance contained in Rules 46-48 should be applied. In some countries failure to comply with an obligation not to leave a place of residence outside of allowed hours, may in itself constitute an offence.

(See also Rule 84, ERCSM)

D. Conditions of implementation and consequences of non-compliance

D.1 Conditions of implementation

Rule 31

31.1 These rules elaborate the basic principles formulated in Rules 5 to 9. Regardless of the fact that different community sanctions and measures have very different educational effects and consequences for the personal development and the social behaviour of juvenile offenders, one should seek to ensure that the implementation of all community sanctions and measures contributes as far as possible to the educational development and the enhancement of the social skills of juvenile offenders (see Rule 23.1). Furthermore, all these sanctions and measures should be implemented in such a way that juveniles can interpret them as meaningful for them personally as well as being as helpful as possible for their further development. However, this presupposes that they are not implemented in an undifferentiated way, but that their implementation is aligned to what is needed in each individual case.

31.2 The compliance with and effectiveness of community sanctions and measures will be improved if juveniles are involved actively in the process of implementation. Therefore Rule 31.2 provides that juveniles shall be encouraged to discuss matters relating to the implementation of community sanctions and measures and to communicate individually or collectively with the authorities about these matters.

(See also Rule 55, ERCSM; Rule 24, the Beijing Rules)

Rule 32

Unlike when a sanction of deprivation of liberty has been imposed, juveniles remain in their community while a community sanction or measure is being implemented. Social networks and family relationships that can make a positive contribution to the personal and social development of the juvenile should be incorporated constructively into the implementation process. Naturally, there are also juvenile offenders, who are involved in other networks, such as criminal gangs, which will not have a positive influence on them, or from whose parents no support can be expected. In such cases it must be ensured that, if at all possible, such social relationships have no negative effects on the juvenile offender. In cases of doubt there should be an assumption that even social contacts that are not completely unproblematic for the development of the juvenile can be more positive than a complete absence of social relationships. For example, a stable relationship of a drug-addicted juvenile offender with his girlfriend may prove quite positive for his development, even if she is similarly dependent on drugs.

(See also Rule 25, the Beijing Rules)

Rule 33

33.1 It follows from the basic principle in Rule 13 that juvenile offenders must be informed about the modalities of the implementation of the community sanction or measure imposed on them. This information must naturally be in a language they understand and couched in an appropriate easily understandable manner. If necessary, the oral information must be conveyed by an interpreter, who is able to translate the content in a culturally appropriate way. If juvenile offenders are not able to understand orally conveyed information sufficiently well, it may be necessary to put such information into a written form and to give it to the juveniles concerned for them to consult later if necessary.

(See also Rule 33, ERCSM)

33.2 The right given to juvenile offenders by this Rule is designed to ensure in the first instance that juvenile offenders subject to the implementation of community sanctions or measures are not treated by the responsible authorities as mere objects. In all formal decisions taken with regard to implementation the juveniles should, on

the one hand, be given the legal right to be heard and, on other the hand, the legal right subsequently to contest any decision taken. The latter presupposes that such decisions are recorded in writing. The decisions should also include an explanation of the procedures to be followed if the juvenile wishes to appeal against the decision.

(See also Rule 13, 15 and 57 -59, ERCSM)

Rule 34

34.1 Individual case records must be used to record all information that could possibly be useful for future decisions about the course of the entire process of implementing of community sanctions or measures. They should also include information about the personal and social situation of the juveniles concerned. The creation of such complete and constantly updated case records by the implementing authority is indispensable for several reasons. The case records should be kept up to date, so that the implementing authority is able to produce, at regular intervals, an account of the progress that has been made with the implementation of the community sanction or measure and, if necessary, to report on it at short notice. In those cases where a multiplicity of participants are involved in the implementation (that is, several authorities and agencies as well as parents or legal guardians) the necessity of having comprehensive records is particularly apparent. Moreover, it is possible that in the course of the implementation there will be changes of personnel in the responsible authority and that a new official, who will be dependent on the documentation in the case record, will assume responsibility for the case.

34.2 There is usually a list of requirements that must be met by the case record kept by the implementing authority. The question about what precise information is to be included in the case record, cannot be answered definitively. Subparagraph (a) of the Rule embodies the fundamental principle that the case record may contain only information that refers to the community sanction or measure and is relevant to its implementation. This can include information about third parties, such as the parents of juvenile offenders and the friends, teachers or instructors of such juveniles. Such information can be extremely sensitive: for instance, there may be reference to the fact that parents of the juvenile offender are dependent on alcohol; that his best friend is receiving psychotherapy; or that the firm at which the juvenile is serving an apprenticeship is in economic difficulties. Since such information can be extremely important for the implementation of a community sanction or measure, the recording of such information should not be avoided, but it needs to be formulated very carefully to ensure the privacy of others, but always bearing in mind the best interests of the juvenile concerned.

(See also Rules 60-65, ERCSM)

A degree of control of the information included in a case record is ensured by subparagraph (b) of the Rule: Juveniles and their parents or legal guardians should have access to the case records and have the right to contest their contents. This right of access is limited only when inspecting the record could lead to the rights of third parties being impaired or if this is not in the best interests of the juvenile. It follows that objections to information contained in the case record must be noted in the record, even if the implementing authority does not accept these objections. If the implementing authority uses the information in case records for reports to third parties, these reports should be made available and if necessary explained to the juveniles concerned and to their parents or legal guardians. National legislation may provide the access via a legal advisor. In this case the competent authorities shall allocate a legal advisor to the juveniles.

Such reporting of information that is in principle confidential to the case records may naturally not be made arbitrary to third parties, but presupposes an express legal basis for doing so. Its contents should be limited to what is necessary for the third party to know (subparagraph (c) of the Rule).

Finally, subparagraph (d) of the Rule is designed to ensure that the possibly sensitive information in case records is not abused after completion of the community sanction or measure. Case records should either be destroyed or archived in such a way that access to their content should be restricted by rules providing safeguards on revealing their content to third parties. National law should specify professional practice on this matter.

Rule 35

If, during the implementation of a community sanction or measure, a juvenile offender attends a school or undergoes vocational training or comes into an educational or therapeutic relationship with a third party, it can clearly be in the interests of the juvenile that these agencies are contacted by the implementing authority and are informed about the relevant circumstances in connection with the community sanction or measure. It is crucial that such information is limited to circumstances, which it is necessary for the third party to know in order to perform its task. Thus it can be important for a relevant third party to know about the obligations placed on juvenile offenders as a part of a community sanction or measure. Where appropriate, the third party should also

be given detailed information such as whether the juveniles concerned are regarded as suicide risks, or whether there are particular problems arising from their family circumstances. Conversely, there is normally no reason to give information about a mental illness of the juveniles' parents to a third party.

Personal information about the juvenile offenders and about their offences may normally be given to third parties with the explicit and informed consent of the juveniles and/or their parents or legal guardians. This principle is only problematic if partial consent is given and consent to provide some information is explicitly refused. However, the passing on of such information should be permissible, if it, with due consideration taken to fundamental rights and freedoms of the juveniles, in particular the right to privacy, is deemed necessary in order to protect the interest of the future development of the juvenile concerned.. In individual cases it may clearly be in the interest of juvenile offenders that a teacher or an instructor be informed about their drug addiction or a therapist about their psychological test results or medical findings. However, where juveniles or their parents or guardians have not agreed to information being passed on, this should not be done lightly, as was formerly the case in countries that adopted a paternalistic attitude towards these matters. Rather, careful consideration should be given in each individual case about whether information transmission is actually necessary and how detailed it should be. In making these decisions the well established principle of the best interests of the juvenile must always be born in mind.

(See also Rules 64 and 66, ECCSM)

Rule 36

36.1 In many countries, because community work is not conducted on the basis of a contract of employment, but rather as implementation of a sentence, general national health and safety legislation is not directly applicable to such work. Notwithstanding this, the protection provided for juveniles doing community work should not be worse than that of juveniles in an ordinary employer-employee relationship. This principle should be kept in mind not only in respect of legislative provisions but also with the implementation of community work in individual cases.

36.2 In order to prevent the implementation of community sanctions or measures creating unintentional financial burdens for the juveniles subject to them, such juveniles must be insured or the state must assume liability in some other way in case of accident or injury arising as a result of implementation of a community sanction or measure. This obligation does not arise with all community sanctions or measures. However, but it is not limited to community work, as it may also arise, for example, where juveniles are required to participate in training courses.

(See also Rule 68, ERCSM)

Rule 37

The costs of the implementation of community sanctions or measures should in principle not be born either by the juvenile or by his parents or guardians. On the other hand, according to national law, the costs for public transport to travel to the place where a social training course or other educational activities are taking place need not be regarded as costs of the implementation of community sanctions and measures. The principle that the costs of implementation should not be born by the juvenile or his parents or legal guardians also does not exclude the obligation that juvenile offenders may have to contribute to paying for the damage caused by their criminal offences (Rule 44). The normal legal obligation of parental care remains. This means that parents who can afford to do so, should continue to contribute to the costs of upbringing of juveniles who are subject to community sanctions or measures.

(See also Rule 69, ERCSM)

Rule 38

If community sanctions and measures prioritise educational development and support for juvenile offenders (Rule 23.2), then this must obviously also be the objective of their implementation and must govern the relationship between juveniles and staff so that this objective can be met. It is important that this approach of staff is communicated to the juveniles concerned and that it is emphasised repeatedly in the course of the process of implementation.

(See also Rule 70, ERCSM; Appendix II, Rule 19, Recommendation n°R (97)12)

Rule 39

39.1 In view of the consequences that the implementation of a community sanction or measure can have for the further development of juvenile offenders it is vital that methods of work used in this regard meet proven professional standards. It would be intolerable if an authority carrying out penal policy on behalf of the state would have a counterproductive influence on the juveniles concerned because of the unprofessional way in which it operated. The Rule requires, on the one hand, that the authorities responsible for the implementation of community sanctions or measures have at their disposal methods of intervention that are consistent with proven professional standards, that is, well-documented programmes, the efficacy of which is tried and tested. On the other hand, the Rule requires also that the assignment of the juvenile offenders to particular programmes should be based on individualised assessments. An adequate, individualised implementation of a community sanction presupposes, on the one hand, a precise description of the available programmes and, on the other hand, an exact knowledge of the personal characteristics of the individual juvenile offender who is subject to it.

39.2 Rule 39.2 underlines this evidence-based approach to methods of intervention: The professional standards addressed in Rule 39.1 should be based on research findings and best practices in social work, youth welfare and allied fields of activity. In many cases such standards can be adopted directly from other specialisations, for example, from those used in medical treatment. In practice, the implementing authority has to ask itself in advance, whether for a certain community sanction or measure, there are existing professional standards that can be applied. If this is the case, it has then to examine whether such standards are directly applicable or whether they require further elaboration. Otherwise, the implementing authority must develop its own standards, on the basis of the best available specialised knowledge, and evaluate them. This procedure is to be understood as a description of a sequential process, which presupposes regular re-examinations of the standards and the making of appropriate adjustments, where necessary.

(See also Rules 71, 75, ERCSM)

Rule 40

The Rule assumes that the methods which should be used for the implementation of the individual community sanctions and measures have not already been finally determined at the legal level. There should be a range of different methods of implementing a community sanction or measure, which are to be applied depending upon the individual requirements and needs of the juvenile offenders concerned. Suitability for enhancing social integration, educational value and the prevention of re-offending (see the basic principle in Rule 2) should determine which method is adopted in individual cases.

(See also Rule 13.1, the Tokyo Rules)

Rule 41

41.1 The implementation of community sanctions and measures in principle reduces the liberty of the juveniles subject to them. The Rule requires firstly that juvenile offenders should be subjected only to restrictions of their liberty that result directly and necessarily from the implementation of the community sanction or measure. Restrictions of liberty that go beyond that are inadmissible, even if the implementing authority believes them to be in the interest of the juvenile concerned. If a juvenile is sentenced to community work, for example, then it may well be appropriate that the court additionally orders him to avoid certain contacts during this time. If the court, however, did not make such an order, then in principle the implementing authority cannot later make and enforce such an order of its own. If, however, the juvenile concerned in the particular case faces a specific danger, for example, is heavily dependant on alcohol, to the extent that his ability to do community work is undermined, then the implementing authority would nevertheless be allowed, contrary to the principle developed above, to impose its own prohibition of contact.

In addition the principle of proportionality must be considered: restrictions of liberty should be proportionate to the community sanction or measure. This is to be understood in this context as meaning that the restrictions on the juvenile resulting directly from the implementation of a community sanction or measure determine the absolute maximum permissible restriction of liberty. How far such restrictions of liberty may go in the concrete individual case depends on which restrictions of liberty are necessary for achieving the goals of the specific community sanction or measure.

41.2 The application of the principles developed in Rule 41.2 presupposes that appropriately specific and precise instructions are given to the staff directly responsible for the implementation of community sanctions or measures. Staff may find it helpful if the permissible and/or impermissible restrictions of liberty are illustrated by typical case examples.

(See also Rule 73, 74 ERCSM)

Rule 42

The implementation of community sanctions and measures is to be focused, following the basic principle in Rule 2, on the education and social integration of the juvenile offenders. Since educational and integrative effects are not likely to be obtained in the short term, but only as result of long-term processes that presuppose that the juvenile develops a relationship of trust with the person responsible for his case, it is crucial, also for effective supervision and the reduction of risk of re-offending, that juveniles are allocated to a specific case worker. Wherever possible, this person should remain in post for the entire duration of the community sanction or measure. The relationship of a juvenile with a person he or she can trust should be preserved, if necessary in another form, also where there are changes in the juvenile's place of residence, legal status or programme. The importance of maintaining a continuous and long-term relationship between juveniles and the persons responsible for them is undisputed in theory; in practice however, there are frequently bureaucratic hurdles to realising it. Such hurdles can be reduced if a transparent and continuous co-operation between the authorities is institutionalised.

Rule 43

43.1 Appropriate community sanctions and measures should be available to all juvenile offenders, including foreign nationals or members of nationally recognised ethnic or linguistic minorities. (see the basic principle in Rule 5). These include, for example, national members of groups such as the Roma. Suitable interventions should therefore be available for implementing community sanctions and measures for these juveniles.

43.2 Where multilateral or bilateral agreements allow for community sanctions and measures imposed on juvenile offenders who are foreign nationals to be implemented in their countries of origin, such juveniles should be informed that this is a possibility. The information provided should be sufficiently detailed to allow such juveniles to make representations on their own behalf in this regard. If juvenile offenders are transferred to their countries of origin for the implementation of a community sanction or measure, contact should be established with the welfare and justice agencies in that country in order to facilitate juveniles receiving the necessary assistance immediately upon arrival in their country of origin.

43.3 In the light of the basic principle in Rule 2 juvenile offenders of foreign nationality should not be returned to their countries of origin after the completion of a community sanction or measure, if it would hinder their education or social integration. Laws relating to foreigners normally do not provide for the expulsion of a juvenile when they are sentenced only to a community sanction or measure. In exceptional cases where, on grounds of additional circumstances, expulsion cannot be avoided, efforts should be made to establish contacts with the welfare authorities in their countries of origin, as far as such contacts are in the best interest of the juveniles concerned. The latter can be assumed to be the case if the juvenile's development and integration is dependent in his country of origin on the assistance of such authorities and no noteworthy disadvantages arise from it. This may appear at first sight to be unrealistic, for expulsions are usually carried out by the police, who will not undertake the additional task of establishing links and making inquiries about welfare provisions. It is to be noted, however, that this rule is addressed in the first instance to the authorities responsible for the implementation of the community sanction or measure: during the implementation phase they should already be seeking to establish such contacts, if necessary.

Rule 44

It is not only in the interests of the victim and of public order to encourage juvenile offenders to make reparation to the best of their ability for any damage or negative effects caused by their offences, but in the long run it is also in the best interests of the juvenile offenders themselves. An active engagement of juveniles with the consequences of their acts is valuable educationally and a favourable indication that they will avoid committing criminal offences in the future. This applies also to reparation made by such juveniles for the damage they caused. There are two restrictions on requiring such engagement that must be respected. On the one hand, the engagement must not undermine the social integration of the juvenile offender and therefore cannot be expected to exceed what can reasonably be required of a juvenile in a concrete case. On the other hand, such engagement is to be sought only if it lies within the scope of the community sanction or measure. It must not place an additional and unforeseen burden on the juvenile in the implementation phase.

Rule 45

This Rule relates expressly to community work and requires that it should not be undertaken for the exclusive purpose of making a profit. Profit may be a result of community work and could then be invested in community activities or used, for example, to compensate victims or fund specific projects of value to the community such as buying solvents that are used to remove graffiti. It should also be emphasized that this Rule does not exclude

community work also being performed in the context of profit-oriented enterprises, for such a restriction would unnecessarily limit the range of application of community work. What the Rule is designed to exclude, however, is that enterprises or the state take part in programmes of community work in order to increase their profits by using unpaid labour.

(See also Rule 67, ERCSM)

D.2 Non-compliance

Rule 46

This Rule applies the general duty to supply information established in Rule 33.1 to the authority responsible for the implementation phase: not only the juvenile offenders themselves, but also their parents or legal guardians are to be informed about the consequences of non-compliance with the conditions and obligations of community sanctions and measures, and of the procedures which can be used to establish, if necessary, whether there was non-compliance, as well as of the principles which will be applied in such an instance. It must be recognised that no matter how much information has been given to juvenile offenders at the imposition stage, the beginning of the actual implementation is a favourable moment to reinforce it. Juveniles can be expected to be highly receptive to information about the significance and consequences of the community sanction or measure at this stage, provided that the information given is clear, comprehensive and explicit. The information should normally be given orally so as to permit a dialogue to take place between the practitioner and the juvenile. It is desirable also to give a written statement to the juveniles and their parents or legal guardians recalling the conditions and obligations that the juveniles are required to respect and to provide other generally useful information about the implementation of the community sanction or measure.

(See also Rule 76, ERCSM)

Rule 47

47.1 This Rule is the mirror image of the preceding Rule. If it is essential in the interests of efficient implementation to give juvenile offenders and their parents or legal guardians a clear idea about the situation, it is no less important to do so for the staff. The procedures that are to be followed in connection with non-compliance with the requirements of the community sanction or measure procedures must be defined precisely. The purpose of the Rule is not, however, to require comprehensive regulation of this matter. The discretionary power enjoyed by the staff should enable them to act fairly in individual cases, as required by the basic principles in Rules 5-11.

(See also Rule 77, ERCSM)

47.2 In the course of implementation there can be minor failures to observe the conditions or obligations that have been imposed, for which it is unnecessary to make use of a procedure for revocation of the sanction or measure. The same applies to minor transgressions against instructions of the implementing authority. However, when national law provides otherwise, these failures and transgressions should be reported to the judicial authority. It is essential that the implementing authority reacts promptly even to such minor transgressions. Since there is a risk of further infringements minor transgressions should also be recorded in the individual case record of the juvenile. However, if the responsible staff member is to react appropriately to a minor transgression in an informal and educational way it should not be compulsory to bring such a minor transgression to the notice of the decision-making authority.

(See also Rule 78, ERCSM)

47.3 It is clear that significant failure to comply with the requirements should be reported promptly to the authority deciding on non-compliance and that this reporting must take place in a written form. A breach must be treated as "significant" if it is not a "minor transgression" in the sense of Rule 47.2. Although what constitutes such breaches is normally laid down in law because a breach may give rise to revocation or modification of the sanction or measure, it is for the implementing authority to assess whether the failure should be considered significant. The implementing authority will have to consider the basic principles in Rules 5 to 11 when it evaluates a particular infringement.

(See also Rule 80, ERCSM)

47.4 The provision of proper information to the deciding authority presupposes the reliability of the written complaint. The report asserting non-compliance with the requirements of the sanction or measure should therefore be based on statements that are precise and clear and from which subjective assessments have been excluded. The statement should relate both to the facts of the case as well as to the context in which they are

situated. The report should also point out what the consequences of the various responses are likely to be on the education and integration of the juvenile offender, as well as what the risk is that he or she will commit further criminal offences. This is a necessary condition for the deciding authority to be able to make a true assessment of the breach complained of and to decide on the possible modification or revocation of the sanction or measure.

(See also Rule 81, ERCSM)

Rule 48

48.1 Since the decision to modify or revoke a community sanction or measure is a serious matter that entails the consequences of exposing a juvenile offender to a greater degree of coercion, the deciding authority must be bound by certain guarantees of fairness. The most obvious of these consists in the deciding authority's careful scrutiny of the component parts of the breach reported to it by the implementing authority. Before coming to its decision the deciding authority has to take into account all the facts and to evaluate them.

(See also Rule 82, ERCSM)

48.2 If sufficient information is not available for an appropriate decision, the deciding authority must obtain further information or update what it has. With juvenile offenders it can be particularly useful to request current psychological or psychiatric assessments or observations, as well as social inquiry reports. If necessary, further sources of information are also to be sought, for instance, by putting specific questions to the teacher or employer of the juvenile.

48.3 This Rule guarantees that juvenile offenders and, where appropriate, their parents or legal guardians have a right of access to the file, personally or at least via an advisor, and a right to make their views known to the deciding authority. In order to ensure juveniles are not seen merely as objects against whom official action is taken, it is important that they are given a real opportunity to examine the documents reporting the alleged breach and to comment on them. The implementing authority therefore should draw these rights to the attention of the juveniles concerned and facilitate as far as possible their ability to use them.

(See also Rule 83, ERCSM)

48.4 The principle of proportionality, which is guaranteed in general terms by Rules 5 and 8, is applied in this Rule to the revocation or modification of a community sanction or measure. The Rule requires that in such decisions due account is to be taken of the extent to which the juvenile has already fulfilled the requirements of the initially imposed sanction or measure. However this criterion should not be considered mechanically but applied fairly on a case by case basis. For example, it would be disproportionate to revoke a community sanction or measure if it had been successfully completed, except for the last few hours, before an infringement was committed.

(See also Rule 85, ERCSM)

48.5 In some legal orders deciding on non-compliance with the requirements of community sanctions or measures is not always a judicial responsibility. Because the consequences of such a decision for the juveniles concerned may be extremely serious and may sometimes even lead to imprisonment, it is required that in such cases decisions about the revocation or modification of community sanctions or measures should be subject to judicial review. Such review shall be sufficiently prompt to ensure that action is taken at a stage when it can still be effective. It is essential that the decisions of non-judicial authorities should also be in writing and should explain the procedures to be followed if the juvenile wishes to appeal against the decision. On educational grounds prompt judicial review is particularly important for juveniles.

Part III: Deprivation of Liberty

E. General Part

E.1 Overall Approach

Rule 49

Rule 49.1 makes it clear that deprivation of liberty should only be implemented for the purpose for which it is imposed, that is, for juveniles whose guilt has been ascertained, and with the primary aim of education and social integration. In the case of pre-trial detention or other forms of preliminary deprivation of liberty it may be imposed with other appropriate aims such as ensuring that the juveniles will stand trial, not commit other crime,

not interfere with witnesses and evidence, etc. In practice, it can be observed that pre-trial detention is sometimes used for different purposes that are not justified by law, such as crisis intervention or even a “short sharp shock”. Such hidden penal purposes are not acceptable.

The second idea in Rule 49.1, that deprivation of liberty is a punishment in itself and that any further punitive steps should be avoided, builds on the basic principles laid down in Rules 7 and 8. It corresponds to Rule 102.2 of the EPR. The principle should remind those countries which provide different forms of regimes depending on the seriousness or gravity of the offence, to review their policy in the light of the general European view that deprivation of liberty should not contain any further restriction than is necessary to guarantee safety and security of the detained juveniles, other persons in the institution and staff. This does not mean that differentiation according to security levels may not be used. If a careful, scientific risk assessment shows that individual juveniles are dangerous they may be accommodated in more secure facilities than low risk offenders. Nevertheless, it should always be considered that this is only the start of a progressive system which aims at preparing also high risk offenders for release through a gradual return into society. This should include periods of leave and accommodation in more open facilities towards the end of the stay in the institution (see Rule 101 below).

Rule 49.2 contains the general statement that all forms of deprivation of liberty should provide a system of early release. This means that there should be legal provisions defining the preconditions for early release such as the minimum time a juvenile has to serve before being considered for early release, the prognostic assessments that are required and the period and conditions of supervision after early release. Such schemes for early release have proven to contribute to social reintegration. Their impact is particularly evident if they form part of an overall approach of progressive preparation for release and continuity of care.

Rule 50

Rule 50.1 contains the general principle of establishing a daily routine in an institutional setting that improves the juvenile's capacity for later re-integration. For that purpose the juveniles should be guaranteed a variety of meaningful activities and interventions which are laid down and further developed in an overall plan (see Rules 62.6 (c) and 79.1 in combination with Rule 77) and aim at progression through less restrictive regimes and preparation for release. This general approach is expressed in a similar way in Rule 26 of the Beijing-Rules as well as in Rule 12 of the Havana Rules. The objective of fostering physical and mental health, self-respect and a sense of responsibility reflects the humanistic approach of the Rules, which do not see the juvenile offender as an object of intervention but as someone whose inherent sense of self-responsibility must be stimulated by the activities provided in the institution. The duty of the institution to provide such activities and interventions should ideally be complemented by the juvenile being prepared to cooperate by participating in them. Active participation by juveniles is a necessary condition for the success of their activities. It is to be encouraged by a comprehensive system of rewards and recognition of achievements (see Rule 50.2). Such a system should encompass education and vocational training as well as work and leisure time activities.

Education, understood in its broad meaning in the context of institutions that deprive juveniles of liberty, aims at developing their personality and their social skills in order to enable them to lead a law abiding and socially responsible life. It encompasses all forms of support, as well as learning, clarifying and accepting norms and values, which are essential for living together within the institution and after release in society. Such learning should primarily be based on encouraging juveniles to develop pro-social values and behaviour and to take responsibility for inadequate behaviour through methods of restorative conflict resolution. Only as a last resort may disciplinary measures be used as well (see also Rules 88.3 and 94.1. below).

Rule 50.3 strengthens the idea of active participation by encouraging juveniles to raise and discuss matters relating to general conditions of life and regime activities in the institution with the administration and to communicate individually or where applicable collectively with it about these matters. This participatory approach is of major importance as juveniles feel in this way involved and attached to decisions which concern them and their present and future development.

Rule 51

Rule 51 emphasises the continuity of care and the principle of through care as expressed in the basic principle contained in Rule 15. This principle is of major importance, as it obliges the aftercare and welfare services and agencies to engage from the very beginning of the juvenile's stay in an institution with preparation for release. This includes interventions that are aimed at avoiding or reducing the period of pre-trial detention, which is in line with Rule 16 of Recommendation Rec(2003)20. The principle of through care is emphasised more strongly than in Rule 7 of the EPR, which refers to the co-operation with outside social services that is “to be

encouraged". Empirical studies of recidivism after release from juvenile institutions have demonstrated the high risk of re-offending if the preparation for release and the co-operation of the institution with aftercare and welfare services have been unsatisfactory. Good practices of an ongoing role for aftercare and welfare agencies can be seen in countries where national law provides for the welfare or justice agencies (normally social workers operating in community settings) to remain responsible for those juveniles for whom they have been responsible during the implementation of community sanctions or measures prior to the placement in an institution. It is also good practice for welfare agencies to work together immediately when a juvenile is being taken into pre-trial detention or other forms of preliminary deprivation of liberty. This puts them in a better position to find out whether such detention is necessary and, where appropriate, to propose alternative non-custodial dispositions that could better promote the educational development of the juvenile. These examples are particularly well developed where a multi-agency approach (see the basic principle in Rule 15) has been institutionalised.

Rule 52

Rule 52.1 emphasises that the State has a particular duty to protect persons taken into its care from violence committed by other persons deprived of liberty or by staff members. This may make it necessary, for example, to separate younger juveniles deprived of liberty from their older peers in order that their physical and psychological well-being can be better protected. The principle is relevant to the interpretation of Rule 63.2 in respect of individual accommodation. Priority shall be given to strategies and measures that prevent offending behaviour, such as violence, bullying or blackmail which may sometimes be associated with subcultures, by temporarily separating or sanctioning the offenders, but in specific cases it might be more appropriate to separate the victims by transferring them to a more secure unit or institution. In many countries national law explicitly provides for the duty of institutional administration to effectively protect possible victims or those who have been victimised. Institutions should develop systematic strategies of violence prevention. A part of these may be further training of staff in order to sensitise them to critical situations, but also all measures that improve interactions and relations between staff and juveniles and between juveniles themselves. The required small living units (Rule 53.4) and a participatory approach as indicated in Rules 50.2 and 50.3 can be seen as further elements of such a preventive strategy (see also the principle of least restrictive security as laid down in Rules 53.2 and 56).

52.2 is based on empirical studies which show that a considerable number of juvenile offenders in institutions have experienced physical violence or mental or sexual abuse in their childhood. Therefore the institutional authorities involved in developing the overall treatment plans must pay special attention to such cases and develop interventions aimed at treating the possible negative consequences of such past abuses (see Rule 53.2 which is in line with Rule 25.4 of the EPR).

(See also Rules 7 and 25.4, EPR; Rule 1, the Havana Rules; the 9th General Report on the CPT's activities, Juveniles deprived of their liberty [CPT/Inf(99)12, par. 20 – 41])

E.2 Institutional Structure

Rule 53

Functional differentiation, as stipulated in Rule 53.1, is a fundamental principle for institutions oriented to meet social and educational needs of juveniles held there. Individual treatment plans can only be implemented in institutions that are focused on the needs of each juvenile. In order to preserve as far as possible the individual approach in larger institutions there should be a variety of sections with particular responsibility for meeting specific treatment and educational needs.

The CPT noted with regard to its visit in Turkey in 2004: "The essential components of an appropriate custodial environment for juveniles are: accommodation in small units; a proper assessment system to ensure suitable allocation to units; a multi-disciplinary team (preferably of mixed gender) selected and specially trained for work with juveniles; a full programme of education for those below school leaving age, with emphasis on literacy and numeracy skills, as well as further education and vocational training for older juveniles; a daily programme of sport and other recreational activities; association and social activities; facilities to allow juveniles to maintain close contact with their families. The CPT recommends that care be taken to ensure that these components are present in all existing and future detention facilities specifically designed for juveniles, whether on remand or sentenced." *(See Report to the Turkish Government on the visit to Turkey carried out by the CPT from 16-29 March 2004 [CPT/Inf(2005)18, paragraph 73])*

Furthermore the CPT emphasises the need of providing for special juvenile institutions: "In the CPT's view, all juvenile prisoners, including those on remand, should be held in detention centres specifically designed for persons of this age, offering regimes tailored to their needs and staffed by persons trained in dealing with young persons." *(See Report to the Government of Bosnia and Herzegovina carried out by the CPT from 27 April to 9 May 2003 [CPT/Inf(2004)40, paragraph 106])*

Empirical research has demonstrated that institutions with less strict approaches to security have fewer problems with suicide, self-harm and aggressive behaviour. The principle of minimum restriction of fundamental rights, as it is laid down in Rule 53.2, is related to the principle of proportionality, which is guaranteed in many national constitutions and reflects the basic principle in Rule 5. In addition, the principle of normalisation, as expressed also by Rule 5 of the EPR, providing that life in the institution “should approximate as closely as possible the positive aspects of life in the community” is of major importance and therefore specially mentioned in Rule 53.3. This approach also serves to protect staff as well as the wider society. The reference made only to the positive aspects of normalisation makes it clear that the worst features of society should not be replicated inside institutions.

According to Rule 53.4 institutions for juveniles should be of a manageable size. A specific maximum size cannot be laid down as the conditions across Europe vary greatly. Some youth imprisonment institutions are relatively large with several hundred places (like in Eastern Europe or in Germany) while in contrast others often have only 15-30 places, as is the case in the Scandinavian countries or in Switzerland. The recent French approach of establishing youth penitentiary institutions (“*établissements pénitentiaires pour mineurs*” or EPM) with no more than 60 places could be regarded as a good practice depending on the level of staffing and the range of activities that are put in place. In addition, the French approach to establish closed educational institutions deserves positive evaluation. Such closed institutions (*centres fermés éducatifs*) have no more than 10 places (with about 20 educational staff members). Independent of the overall size of an institution it is important to divide institutions into living units which should usually have up to 10, but no more than 15 places. Dividing institutions into smaller living units is the most effective way of organising an effective system of intervention. This applies also to pre-trial detention, although in this case this may create practical difficulties as usually juveniles accused of involvement in the same offence are held separately. Furthermore, social skills are more easily learned in small groups. The dynamics of small group living encourage juveniles to take responsibility to organise their daily lives. This includes self-catering and, more widely, deciding practical questions with others in a democratic way (see in this respect also Rules 50.2, 50.3 and 52.1).

According to Rule 53.5 juvenile institutions should be located in places that are easy to access and facilitate contact between the juveniles and their families. They should be established and integrated into the social, economic and cultural environment of the community, which corresponds to the basic principle in Rule 15. This facilitates contacts with the outside agencies and increases the prospects of successful reintegration after release. The requirements regarding the location of juvenile institutions should be linked to the requirement contained in Rule 55 that juveniles themselves should be allocated to institutions easily accessible from their homes or places where they are to be reintegrated into society after release. It is important that juvenile institutions are not in remote areas but in places that have good public transport as that will assist access to them.

(See also Rule 13, Recommendation n°R(87)20; Rule 17, EPR; Rule 30, the Havana Rules; Recommendation Rec(2005)5 on the rights of children living in residential institutions; the 9th General Report on the CPT's activities, Juveniles deprived of their liberty [CPT/Inf(99)12, par. 20 – 41])

E.3 Placement

Rules 54-61 relate to the allocation of individual juvenile offenders to the institutions that are best suited to meeting their needs. They complement the rules regarding the institutional structure (Rules 53.1-53.5).

Rule 54

Rule 54 contains the principal criteria for determining which type of care is most appropriate for the particular needs of a given juvenile. It may need to be implemented flexibly in countries that have very small numbers of juveniles deprived of their liberty. It refers back to the basic principle of individualisation in Rule 5; a primary objective is to guarantee the physical and mental integrity and well-being of the juveniles by allocating them to institutions in which their human dignity can best be respected. Rule 54 is strongly related to Rules 62.6 (c) and 79.1-4 in requiring the creation of an overall plan which aims at developing their personalities, social skills and competences in order to lead crime-free life and find their place in society after release.

Rule 55

Rule 55, like Rule 17.1 of the EPR, contains the principle of allocating juveniles to institutions as close as possible to their homes or place of social integration. This facilitates the involvement of parents as well as of aftercare and welfare services in the process of social reintegration as required by the basic principles in Rules 14 and 15. On other occasions it may be in the interest of the juveniles to be allocated to an institution which is not so close to their families or social environment but which offers interventions best suited for their case.

Rule 56

Rule 56 complements Rule 53.2. After an appropriate risk assessment juveniles should be allocated in institutions that provide the least restrictive level of security which can be justified in each individual case. Procedures should also exist to transfer juveniles without undue delay from institutions with more restrictive levels of security to institutions with less restrictive levels in instances where they are considered to pose less risk than at the beginning of their deprivation of liberty.

Rule 57

A considerable number of juvenile offenders in institutions suffer from mental disorders of various kinds which have existed before their deprivation of liberty or which are due to the latter. In addition they may come from seriously problematic backgrounds. It is sometimes difficult to decide whether such juveniles are mentally ill or have mental disorders due to distress or inability to cope with the situation. Therefore psychiatric experts should be involved in the diagnosis of such cases. If the diagnosis reveals serious mental illness a transfer to a specialised mental institution is indispensable. This Rule is in line with Rule 12.1 of the EPR.

Rule 58

Parents and legal guardians must be informed about the initial allocation and any transfer to another institution. Rule 58, like 17.3 of the EPR, stipulates that the juveniles and where practicable the parents or guardians should be consulted as far as possible regarding allocation. This involves taking into consideration their views on the kind of vocational or school education that their children will receive in the institution. However, in exceptional cases the parents and guardians might not be interested in the educational programmes that the institution provides or it may simply not be possible to contact them.

Rule 59

Rule 59.1 requires special institutions for juveniles and their strict separation from adults. The general requirement of separation of juveniles from adults is a principle enshrined in international treaty law.

(See Article 10, paragraphs 2(b) and 3 of the International Covenant on Civil and Political Rights; Article 37 (c) of the Convention on the Rights of the Child; and Rule 11.1 of the EPR)

The principle of separation holds even if exceptionally juveniles are accommodated in institutions for adults. This should never be allowed unless it would be in the best interests of the juvenile concerned. This should be considered on a case by case basis. It may be allowed, for example, if otherwise the juvenile would be completely isolated and not able to take part in programmes and activities provided for by the institution. It is important to state that this principle must not be departed from for security or disciplinary reasons, but only if the social integration may be better effected in an institution for adults (see Rule 59.2). The exception from not accommodating juveniles in institutions for adults may be particularly applicable to female juveniles who, because of their small numbers, could otherwise be held in isolation. The joint participation in activities with adults does not mean that juveniles may be held during the night in the same sleeping accommodation as adults.

Rule 59.3 allows young adults to remain in juvenile institutions after they have reached the age of majority. The general idea is that young adult offenders may serve the remainder of their sentence in the same institution thus ensuring that positive educational results are not undermined by a subsequent stay in a prison for adults.

The principle of keeping juveniles that have reached the age of majority in institutions primarily designed for juveniles is a common practice in European countries as can be seen from the table in Annex 1. Most countries provide such possibilities to serve the remainder of the sentence in a juvenile institution, regularly until reaching the age of 21, but in many countries even until the age of 23, 24 or 27 (see also Rule 22). In addition in some countries young adults, who have been sentenced as if they were juveniles, may be held in juvenile institutions. However, as the CPT states with respect to the German practice in this regard, careful management is required in order to prevent the possible negative influence that older offenders may have on the younger ones: "The practice [...] of holding juveniles and young adults together can be beneficial to the young persons involved, but requires careful management to prevent the emergence of negative behaviours such as domination and exploitation, including violence." *(See Report to the German Government on the visit to Germany carried out by the CPT from 20 November to 2 December 2005 [CPT/Inf(2007)18], paragraph 106)*

Rule 60

Rule 60 provides the principle of separation of male and female juveniles. However, the separation of male and female juveniles may be seen differently in penitentiary institutions, on the one hand, and welfare and mental

health institutions, on the other. In the first case such separation is generally desirable as girls usually form a small part of the general juvenile population in such institutions. There is an undeniable risk of secondary victimisation of girls. This reality does not exclude the possibility of joint activities such as joint schooling or vocational training etc. Rule 61 refers to the existing practice that male and female juveniles are usually held in the same welfare and mental health institutions. It does not exclude either the practice, in, for example Danish penitentiary institutions, of jointly accommodating male and female offenders in certain (open) settings, which can have positive effects in this specific cultural context. Where male and female juveniles are held in the same institutions single accommodation at night as provided for by Rule 63.2 guarantees that they do not have to share sleeping accommodation.

Rule 61

Rule 61 adds to Rules 53.2 and 56 a further differentiation according to the educational, developmental and safety needs of juveniles with respect to departments or units within the institution to which they should be allocated. In countries where there are very few juveniles deprived of their liberty and institutions cannot realistically be divided into units or departments the allocation would mean differentiation where appropriate in the regimes for the individual juveniles. There cannot be a general recommendation on whether or not special age groups or offenders with similar crimes (violent or sex offenders, for example.) should be allocated together. Nevertheless, special attention has to be given to the potentially negative effects of stigmatisation if special groups of offenders are concentrated in special living units or departments. On the other hand, with respect to special treatment programmes it can be advisable to concentrate groups of offenders, such as drug addicts, in one place.

In some institutions an initial evaluation allocation is made after an assessment of co-operation and behaviour. Progress is rewarded with privileges as incentives, known also as the token economy approach. The CPT states in this context with respect to the visit in Germany, where a differentiated regime was in operation based on allocation of individuals according to their status, behaviour and needs, that "a behavioural approach can be beneficial in encouraging young inmates to abide by the norms of living within a group and pursue constructive paths of self-development. However, withdrawal of incentives due to non-compliance can quickly reach a level of deprivation incompatible with minimum requirements." (*See Report to the German Government on the visit to Germany carried out by the CPT from 20 November to 2 December 2005 [CPT/Inf(2007)18], paragraph 118*).

(*See also Rules 7, 13 and 14, Recommendation n°R(8 7)20; Rules 11, 18.8 and 18.9, EPR; Rule 29, the Havana Rules*)

E.4 Admission

Rule 62

Rule 62.1 and Rule 62.2 correspond to Rule 14 and Rule 15.1 of the EPR respectively. The only additional requirement concerns an assessment of whether the juvenile is at risk of self-harm. Adequate admission and detention procedures are vital for the protection of liberty as guaranteed by Article 5 of the ECHR. The emphasis on record keeping (Rule 62.2) is to be seen in the same light, as it guarantees that only persons detained for a legitimate purpose are admitted. This is a practical application of the basic principle in Rule 3.

Rule 62.3 emphasises that the rules of the institution and the rights and obligations of the juvenile should be explained in a language and manner that the juvenile understands. This is in line with Rules 15.2 and 30 of the EPR. In juvenile institutions special emphasis should be placed on oral explanations as the juveniles may be illiterate or have difficulties in reading or understanding the instructions. Often juveniles from foreign or migrant backgrounds do not understand the national language. For these cases it may be a useful strategy for the institution to recruit staff with knowledge of specific languages. With regard to language problems and fully understanding instructions the CPT states: "For this age group especially, the information form should be easy to understand and available in a variety of languages. Special care should be taken to ensure that the information provided is fully understood" (*See Report to the German Government on the visit to Germany carried out by the CPT from 20 November to 2 December 2005 [CPT/Inf(2007)18], paragraph 36*). In this connection, reference can also be made to Rule 15 of the Recommendation Rec(2003)20, which reads as follows: "Where juveniles are detained in police custody, account should be taken of their status as a minor, their age and their vulnerability and level of maturity. They should be promptly informed of their rights and safeguards in a manner that ensures their full understanding ...".

Rule 62.4 supplements Rule 58 and guarantees the rights of the parents and guardians to be informed.

Rule 62.5 guarantees a prompt medical examination, usually to be conducted within 24 hours, as recommended by the CPT (*See the Report to the authorities of the Kingdom of the Netherlands on the visit carried out to the*

Netherlands Antilles by the CPT in June 2007 [CPT/Inf(2008)2], paragraph 56; the Report to the Georgian Government on the visit to Georgia carried out by the CPT from 21 March to 2 April 2007 [CPT/Inf(2007)42], paragraph 79 and the Report to the Polish Government on the visit to Poland carried out by the CPT from 4 to 15 October 2004 [CPT/Inf(2006)11], paragraph 124 in order to record any possible injury or medical condition and assess the risk of suicide or self-harm. In these respects juvenile offenders are at greater danger than adults, particularly in pre-trial detention especially if they are very young.

According to Rule 62.6 fundamental questions of health and other care, and of the level of security for the juvenile must be addressed by the institution as soon as possible. Furthermore, with the exception of cases where juveniles stay only for very short periods in the institution, an overall plan has to be developed to guide the interventions the institution will provide in the future (see also Rule 50.1). This should usually be completed within four weeks, or six weeks in the case of mental institutions. Even if the plan is not yet fully developed, educational activities (for example schooling) can immediately start in order not to lose valuable time.

This plan should specify the developmental interventions and the regime activities mentioned in Rules 76.2 and 77. In most cases of pre-trial detention or other preliminary forms of deprivation of liberty, such an overall plan cannot be developed as the time period of stay in the institution will be unclear. Nevertheless, in these cases the institution should examine whether the juveniles, with their consent, can be integrated in schooling, vocational or other programmes in which they may continue to participate after being sentenced or released or transferred from preliminary detention to another institution.

If, as is the case in most countries, national law provides for determinate sentences of youth custody or imprisonment for juveniles, this plan should be oriented to the preparation for early release, whenever such release is legally possible and justified (see Rule 79.3). The system of early or conditional release has the advantage of linking the time spent in the institution to a systematic aftercare. Empirical evaluations demonstrate lower recidivism rates if well-implemented educational programmes are combined with a systematic policy of early release (see in this respect also Rules 49.2 above and 101.1 and 101.2 below).

The juvenile has a legitimate expectation that the institution will provide the activities mentioned in the overall plan. In some countries this may even be enforceable by a court, as the institution binds itself by the undertakings in the plan. The plan may only be altered if there are good reasons for doing so, for example, if new evidence about how best to treat the juvenile comes to light.

It is good practice for the institution to take juveniles' views into account when developing an overall plan and deciding about the security level under which they are to be held (see Rule 62.6 (d)). Only if juveniles agree to participate in the programmes provided for them are these programmes likely to be successful. It is also recommended that the consent of the parents or legal guardians be obtained wherever possible and when it is in the best interests of the juvenile (see also the basic principle in Rule 14). This is important, particularly with respect to the schooling and vocational training measures.

(See also Rules 14 to 16, EPR; Rules 21-25, the Havana Rules)

E.5 Accommodation

Rule 63

Protection of human rights is very much linked to ensuring that accommodation meets standards of human dignity. The violation of human rights very often happens during nights and weekends when supervision by prison staff is reduced as staff themselves are reduced in numbers. Therefore it is important to seek to eliminate situations where a juvenile might be victimised by other inmates. Single accommodation at night (required by Rule 63.2) is the best option for the prevention of interpersonal violence.

The accommodation in general should provide an environment that promotes the physical and mental well-being and personal development of juveniles and that respects their human dignity and, as far as possible, their privacy (see Rule 63.1). Large dormitories should not be used, as they do not respect privacy at all. The CPT has pointed out in its *11th General Report* [CPT/Inf(2001)16, paragraph 29] that large-capacity dormitories which are still used in some Central and Eastern European countries are inherently undesirable. As long as particular institutions for juveniles cannot be re-organised in the sense of smaller living units with single accommodation, there should be at least a possibility for a juvenile to receive periods of "time out" and to experience institutional settings that meet the requirements of human dignity and of privacy. Accommodation facilities should also be designed in a way that pays due regard to the need for sensory stimulation, opportunities for association with other juveniles and participation in sports, physical exercise and leisure-time activities.

(See also Rule 18.7 of the EPR and Rule 32 of the Havana Rules)

According to the statements of the CPT (summarised in the *Commentary to the European Prison Rules, Rule 18*) accommodation of less than 6 sq metres per person in single accommodation, or 4 sq metres for persons in shared accommodation, should be prohibited. Most national legislation in Central and Eastern European countries does not yet meet these standards, while in other countries, although these have been specified in legislation, they are not implemented in practice.

Sanitary facilities must be separated from the part of the room where the detainees live and eat. It is important that national law provides written standards of minimum size of floor space, cubic content of air, standards for the lighting, heating and ventilation (see Rule 63.1). Where juveniles are held in shared accommodation the risk of victimisation should be assessed and steps taken to minimise the risk of their being victimised by other inmates (see the commentary to Rule 52.1 above). Furthermore, the consent of the juveniles concerned should be sought before requiring them to share accommodation. In brief, when deciding on whether accommodation should be shared, the best interests of the juvenile should be given priority over those of the institution (see Rule 63.2).

Rule 64

In order to guarantee the protection of juveniles' health and safety prison staff have to monitor the accommodation closely, particularly at night without disturbing or intimidating the juveniles. In addition an effective alarm system must be provided for cases of violent victimisation, health, accidents, fire and other emergencies.

(See also Rule 18, EPR; Rules 31-32, the Havana Rules)

E.6 Hygiene

Rule 65

Rule 65 emphasises both the cleanliness of institutions and the personal hygiene of the juveniles held in them. The significance of the institutional hygiene has been underlined by the ECtHR which has held that unhygienic, unsanitary conditions, which are often found in combination with overcrowding, contribute to an overall situation of degrading treatment. The CPT has also noted that "ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment" (2nd General Report [CPT/Inf (92) 3], paragraph 49).

There is a link between institutional and personal hygiene, for the institutional authorities must teach and enable juveniles to keep themselves and their quarters clean by providing them, as required by Rule 65.4, with the means to do so. It is important that the authorities take overall responsibility for hygiene, also in the cells or rooms where juveniles sleep, and that they ensure that these rooms are clean when juveniles are admitted. At the same time, all juveniles can, if able to do so, be expected at least to keep themselves and their immediate environment clean and tidy.

In the context of hygiene, access to various facilities is of particular importance. These include sanitary facilities, and baths and showers (see Rule 65.3). As juveniles are given more access to outdoor exercise and sports activities than inmates in institutions for adults, they should be allowed daily showers, although this might create an organisational problem in some institutions. Institutional authorities should ensure both that the facilities are available and that access to them is not denied. It is also important that the institutional authorities provide juveniles with the means to keep their clothes clean and tidy. This means, for example, that juveniles must have access to washing machines, washing powder and other such materials.

(See also Rule 19, EPR; Rule 34, the Havana Rules)

E.7 Clothing and Bedding

Rule 66

The issues of clothing and bedding are closely related to those of hygiene: inadequate clothing and unsanitary bedding can all contribute to a situation which may be held to contravene Article 3 of the ECHR. The specific provisions of Rules 66 and 67 indicate to the authorities what active steps must be taken to avoid such a situation. Cleanliness extends to a requirement that underclothes, for example, are changed and washed as often as hygiene may require.

It should be noted that, in contrast to Rule 20 of the EPR, sentenced juveniles also have the right to wear their own clothes, if it is "suitable". This last concept may be interpreted widely. It may mean that in certain

circumstances own clothing might be considered unsuitable if it risks creating undesirable social and financial ranking among juveniles or putting significant financial burden on their families. If national law provides for uniform clothing within the institution, there should nevertheless be provision for a certain degree of individualization.

Juveniles who leave the institution for different purposes, for example to visit their family while on prison leave, for humanitarian reasons, for training, treatment or work purposes should not wear uniforms which stigmatise them and make them easily recognisable as juvenile offenders deprived of their liberty. Ordinary school uniforms or working clothes may still be worn as long as they are not associated with a particular institution, for example, by displaying the name of the institution.

Rule 67

Rule 67 is largely self explanatory. Beds and bedding are in practice very important to persons deprived of their liberty. "Bedding" in this Rule includes a bed frame, mattress and bed linen for each juvenile. Sharing of beds because of lack of sufficient places should not be permitted.

(See also Rules 20-21, EPR; Rule 36, the Havana Rules)

E.8 Nutrition

Rule 68

Ensuring that juveniles receive nutritious meals is an essential function of institutional authorities. The use of the term "nutrition" rather than "food" is indicative of the emphasis on healthy and nourishing meals. There is more emphasis than in the EPR on self-catering arrangements, but where there are such arrangements they must be implemented in a way that enables juveniles to have three nutritious meals daily. In some countries institutional authorities allow juveniles to cook their own meals, as this enables them to approximate a positive aspect of life in the community. In such cases they must provide them with adequate cooking facilities, guidance and enough food to be able to meet their nutritional needs. Where juveniles cater for themselves, appropriate control shall be exercised to ensure adequate hygienic conditions.

These requirements would have to reflect the nutritional needs of different groups of juveniles. They should consider specific medical or religious requirements for special diet or food (see Rule 68.1). The Rule that three meals a day with reasonable intervals between them have to be prepared and served hygienically (Rule 68.3) is of particular importance with regard to weekends and holidays. Institutions sometimes tend to reduce their services because they have fewer staff on duty. Once such specific standards are in place, internal inspection systems as well as national and international oversight bodies will have a basis for determining whether the nutritional needs of juveniles are being met in the way that the law demands.

(See also Rule 22, EPR; Rule 37, the Havana Rules)

E.9 Health

Rules 69-75

The Rules on health care have their basis in Article 12 of the International Covenant on Economic, Social and Cultural Rights, which establishes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Alongside this fundamental right, which applies to all persons, juveniles deprived of their liberty have additional safeguards as a result of their status. When a state deprives people of their liberty it takes on a responsibility to look after their health in terms both of the conditions under which it detains them and of the individual treatment that may be necessary. The authorities have a responsibility not simply to ensure effective access for persons deprived of liberty to medical care but also to establish conditions that promote the well being of both juveniles and staff. Juveniles should not leave institutions in a worse condition than when they entered. This applies to all aspects of institutional life, but especially to healthcare.

This principle is reinforced by Recommendation No. R (98)7 of the Committee of Ministers to member states concerning the ethical and organisational aspects of health care in prison and also by the CPT, particularly in its *3rd General Report* [CPT/Inf(93)12]. There is also an increasing body of case law coming from the European Court of Human Rights, which confirms the obligation of states to safeguard the health of persons who are deprived of liberty. These various recommendations, standards and judgments which were made with adults in mind apply even more strongly to juveniles deprived of liberty.

Rule 69

Rule 69.1 emphasises that the provisions of international instruments on medical care of adult inmates are applicable also to juveniles. This is particularly the case for Rules 39-48 of the EPR and for Rules 49-55 of the Havana Rules.

Rule 69.2 guarantees the same medical standards as in the wider community and thus can be seen as an expression of the principle of normalisation (see Rule 53.3).

Rule 70

Places of deprivation of liberty often are not the best environment for ensuring that juvenile offenders remain healthy. This is particularly true in settings like pre-trial detention or prison-like custody in old and possibly overcrowded facilities with a lack of movement, sports and other health related activities. Therefore Rule 70.1 requires that particular attention should be paid to dealing with health hazards linked to deprivation of liberty.

A particular problem in this context is the problem of suicide and self harm which have a high occurrence in pre-trial and other preliminary or more restrictive forms of detention. Therefore Rule 70.2 provides that special policies should be developed and implemented to prevent suicide and self harm by juveniles, particularly during their initial detention, segregation according to Rules 91.4 and 95.4 and other recognised periods of high risk (see also the commentary to Rule 52.1).

Rule 71

The requirement of preventive health care and health education in Rule 71 should be interpreted as including education on how to protect themselves from sexually transmissible diseases, how to lead a healthy life, as well as special training courses about healthy nutrition. Nutritional education should be included in the regular schooling and in the social skills or further education programmes that juveniles receive. It should therefore be mentioned in the juvenile's overall detention plan that is referred to in Rules 50.1, 62.6 (c) and also Rules 78 (a), 78 (e) and 78 (j). Such preventive health care education may be delivered by the health care service of the institution (see Rule 75), but also by teachers and other staff members or external persons from the wider community (see also Rule 131.2)

Rule 72

It is emphasised in the present rules (see Rule 72.1), that medical interventions, including the use of drugs, should be made only on medical grounds that are in the juvenile's interest. They should never be a form of punishment or a means of restraint (*see also Rule 55, the Havana Rules*). There is a danger, which arises not only in mental health institutions, that juveniles may be exposed to pharmaceutical treatment in order to guarantee good order or discipline rather than for medical reasons.

Furthermore, Rule 72.2 stipulates that juveniles should never be subject to experimental use of drugs or treatment. The danger, although probably rather small, that the profit-oriented interests of the pharmaceutical industry may lead to inappropriate medical treatment must be mentioned in the context of all forms of deprivation of liberty. Rule 72.2 corresponds to Rules 48.1 and 48.2 of the EPR. The CPT's *3rd General Report* [CPT/Inf(93)12] underlines the need for "a very cautious approach" when there is any question of medical research with prisoners, given the difficulty of being sure that issues of consent are not affected by the fact of imprisonment. All applicable international and national ethical standards relating to human experimentation should be respected. Although these standards may have been designed with adults in mind, they apply even more strongly in the case of juveniles.

Rule 73

Rule 73 lists specially vulnerable groups, such as younger juveniles (that is, those who are significantly younger than 18 years of age), pregnant girls and mothers with infant children, juveniles with addiction problems or physical or mental health problems, juveniles who have experienced physical, mental or sexual abuse, socially isolated juveniles (for example foreign nationals whose parents are not in the country where they are detained). The medical needs mentioned in this Rule include all aspects of health and well-being. Particularly with respect to drug addicts special attention should be paid to HIV/AIDS and other chronic diseases. In these cases there should be close co-operation with appropriate agencies and medical through- and aftercare is to be provided. Juvenile detention facilities should offer specialised drug abuse prevention and rehabilitation programmes provided by qualified personnel. Juveniles with mental health problems should be treated in specialised institutions or at least in special departments of the institution where they are detained.

(*See also Rules 53 and 54, the Havana Rules*).

Rule 74

In the field of health care a multi-disciplinary approach, as stated in the basic principle contained in Rule 15, is generally necessary in order to achieve a planned positive long-lasting effect (see Rule 74.1). Therefore the medical personnel should work closely together, not only with psychologists, psychiatrists, social workers and teachers inside the institution but also with staff from outside that have regular contacts with juvenile offenders (see Rule 74.2). The members of health care services in juvenile institutions should also be trained in general questions of intervention and treatment in an institutional setting, and particularly in dealing with juvenile offenders.

Rule 75

The work of the health care service in juvenile institutions should not be limited to treating sick patients, for it is also responsible for social and preventive medicine and the supervision of nutrition. This Rule complements Rule 71 which envisages that juveniles shall receive preventive healthcare and health education by creating a positive obligation for the authorities to maintain a high standard of preventive health care, in addition to educating juveniles on health matters. This is very important in closed residential care where any disease or contamination may spread very quickly. Rule 75 adopts a holistic approach to medical care with emphasis on preventive medicine. This approach coincides with the World Health Organisation's concept of "healthy prisons" laid down in the WHO Ottawa-Charter for Health Promotion of 1986 (WHO/HPR/HEP/95.1). It is generally accepted that the climate in the institution has a significant impact on health and adjustment of persons held there. Central dimensions of this concept are personal safety, respect, and opportunities to undertake purposeful activities and self-improvement and to make contacts with the outside world. The institutional environment affects juveniles' perceptions of insecurity and isolation and the development of psychological symptoms. Medical services contribute to health in a wider sense by providing preventive medicine and by thus improving the institutional climate in general.

(See also Rules 39- 48, EPR; Rules 49 – 55, the Havana Rules)

E.10 Regime activities**Rule 76**

In terms of the Rule 76.1, read with the basic principle in Rule 2, priority should be given to programmes that aim at the improvement of the juvenile's personal development and social skills in order to prevent re-offending. Juveniles should be encouraged to participate in them. The Rule does not provide any compulsion to participate: there is no provision for any disciplinary measure for not participating in developmental programmes. Nevertheless, participation in schooling and vocational training may be obligatory according to general national legislation and then be subject to disciplinary measures in case of non-compliance.

Rule 76.2 concretises the basic principle of individualisation by providing specific educational programmes to meet the needs of juveniles in accordance with their age, gender, social and cultural background, stage of development and type of offence committed. This does not mean that these offender groups necessarily should be accommodated in the same living groups or units (see the commentary to Rule 61). However, it may be reasonable to provide programmes for juveniles in the initial stage of their detention and for the stage of preparation for release. The latter preferably should be organised in an open or semi-open setting with more freedom to move inside the institution and contacts with the outside world.

(See also Rule 26.4, EPR)

Rule 77

Rule 77 enumerates possible regime activities that aim at education, personal and social development, vocational training, rehabilitation and preparation for release. It must be emphasised that an institution does not necessarily provide all of the enumerated programmes. Nevertheless, the list in Rule 77 is useful as a checklist when drafting the overall plan according to Rule 79 read with Rules 50.1 and 62.6 (c). Where the plan for a particular juvenile recommends a specific programme that is not available in the institution, a transfer to a more appropriate institution should be considered if it would be in the overall best interests of the juvenile.

All institutions should normally provide at least schooling and vocational training programmes (if possible by using facilities in the community), social skills training, physical education and sport, creative leisure time activities, activities in the community and preparation for release and aftercare. However, in the case of pre-trial detention or other preliminary forms of deprivation of liberty these regime activities may be restricted to activities inside the institution. As the organisation of regime activities in pre-trial institutions in general is often problematic, particular attention should be paid to ensuring that in such institutions there is also a variety of meaningful activities, particularly schooling, creative leisure time activities and hobbies, and exercise.

(See also Rule 25, 28 EPR; Rule 47, the Havana Rules; Recommendation Rec(2005)5; Rule 22, the Beijing Rules)

Rule 78

Rule 78.1 gives schooling and vocational training and also treatment interventions priority over work. Therefore schooling and vocational training should take place during normal working hours and the participation should be rewarded in the same way as ordinary work in the institution.

Rule 78.2 prioritises arrangements to attend local schools and training centres and other activities in the community. This form of education will be practiced particularly in open facilities. On the other hand, in the case of closed institutions detainees may not be allowed to leave the institution to participate in external programmes from the beginning of their stay in the institution.

Rule 78.3 provides therefore for the implementation inside the institution of such programmes, which should be under the auspices of external educational and vocational training agencies (for example, ministries of education or other authorities or professional bodies that may set and enforce educational standards). However, there should be a regular evaluation (for example, every 6 months, see in this respect Rule 80.4 concerning the updating of the overall plan) of whether outside schooling or vocational training should subsequently be permitted.

Rule 78.4 takes account of the empirical fact that most juveniles that are sent to juvenile penitentiary institutions or to institutions for residential care have not completed their school education. The institution should ensure that juveniles are enabled to continue their schooling or vocational training if possible. This may be difficult where education requires major resources such as laboratories or where the stay in custody is so brief that it is impractical. Those who have not completed their schooling may be obliged to do so. This obligation may be applied particularly to juveniles who are still of compulsory school going age or who are illiterate. Those in preliminary detention cannot be compelled to undergo education if they are not of school-going age.

Rule 78.5 emphasises the continuation of school education or vocational training after release. Therefore juveniles in a residential setting should be integrated into the educational and vocational training system of the country so that after their release they may continue their school education and vocational training without difficulty. This is important, for often the time to spend in an institution is not long enough to finish the programmes mentioned above. The stay in the institution may never be prolonged in order that the juvenile may complete the programme in the institution. Therefore throughcare and education is to be provided that guarantees the continuation of schooling and vocational programmes after release. Integrating juveniles into the educational and vocational training system of the country can ensure that educational programmes inside the institution provide the same quality level as outside the institution. However, special courses may need to be developed, particularly for juveniles with deficits in literacy and numeracy skills and those with other special needs.

School leaving certificates issued after release should not bear any indication of the juvenile offenders' institutional affiliation. This positive practice should be maintained as it does not stigmatise offenders and facilitates their further education and entry into the labour market.

Rule 79

Rule 79 deals with the overall plan which according to Rules 50.1 and 62.6 (c) has to be developed within the first weeks of detention. Rule 79.1 points out that this plan must be based on the programmes enumerated in Rule 77 and lists those in which the juveniles should participate. As mentioned in the commentary to Rule 77 above, not all programmes listed in Rule 77 can be available in every institution, but certain educational and recreational opportunities should be an integral part of institutional life (such as the programmes enumerated in Rule 77 (a) (b), (e), (l), (m), (n) and (o)). The objectives of this plan should be to enable juveniles to make the best use of their time in the institution in order to develop the necessary skills, attitudes, behaviour and competences that will enable them to integrate in free society as quickly as possible after release (Rule 79.2).

A very important objective of Rule 79.3 is to orient the stay in the institution to the time of the earliest possible release, which in case of juvenile offenders in many countries may be after having served one third or half of the sentence. This Rule corresponds to the basic principle in Rule 10 as it specifies that deprivation of liberty should be applied only "for the shortest period possible" (see also Rules 49.2 and 101.2). Furthermore, the overall plan should indicate post-release measures. Therefore, it should be put in place as soon as possible and thus give the juvenile motivation by providing for realistic prospects of early release and allow the involvement of the aftercare and welfare services to prepare for these measures.

It is essential that the overall plan is seen as a dynamic instrument for planning and implementing all interventions, while taking into consideration the progress the individual juvenile is making. Therefore the plan should be implemented and updated regularly with the participation of the juvenile, the outside agencies concerned and, as far as possible, the parents or legal guardians (Rule 79.4).

(See also Rule 103, EPR)

Rule 80

Rule 80 deals with activities that take place outside the sleeping accommodation. It corresponds closely to Rule 25 of the EPR.

Rule 80.1 provides for a minimum of preferably 8 hours of activities outside the sleeping area in order to guarantee an adequate level of social interaction. Of these 8 hours at least 4 to 6 hours should be during recreational time. The CPT recommends that the authorities do their utmost to ensure that all minors are able to spend a reasonable part of the day (that is, eight hours or more) outside their cells engaged in purposeful activity of a varied nature every weekday and, if possible, at weekends (*see Report to the Luxembourg Government on the visit to Luxembourg carried out by the CPT from 2 to 7 February 2003 [CPT/Inf(2004)12], paragraph 41*).

Rule 80.2 stipulates that the institution should provide meaningful activities also on weekends and holidays. Often it can be observed that institutions do not provide many activities on weekends and that the staff complement is reduced. It cannot be accepted that juveniles spend most of their time during weekends in their sleeping accommodation without supervision and control by the institutional staff, as this may encourage the development of subcultural phenomena. This problem has become more evident in recent years following wide media coverage of cases of homicide and suicide in juvenile institutions. It requires the institutional authorities to change the working patterns of staff. Week-ends and holidays could also be the time where volunteers from outside the institutions may offer sports and other activities and thus assist the permanent staff members.

Rule 81

Rule 81 stipulates that all juveniles deprived of their liberty should be allowed to exercise regularly for at least two hours every day of which at least one hour in the open air. Exercise includes but is not limited to sporting activities. It has to be stressed that they are allowed, but not obliged, to exercise in the open air. Rule 81 extends the hours of exercise compared to Rule 27.1 of the EPR, as juveniles need more opportunities for sport and other recreational outdoor activities than adults. The institution should provide adequate clothing that allows them to take exercise also under bad weather conditions. Furthermore, if the weather is inclement then provisions should be made for exercise inside the institution.

Rule 82

Rule 82 deals with work. Although school education and vocational training is given priority (see Rule 78.1) many older juveniles in correctional and other institutions may work at least part time. For these juveniles Rule 82.1 stipulates that the institution should provide sufficient work which is stimulating and of educational value. The organisation and methods of work in the institution should resemble as far as possible those of similar work in the community in order to prepare the juvenile for the rigours of normal occupational life (see Rule 26.7 of the EPR). However, the organisation of work should focus primarily on its educational aspects. It should not be oriented to profit in the first instance and therefore preferably should remain under the auspices and supervision of the institution.

Work should be adequately rewarded (Rule 82.2). Juveniles should be allowed to spend at least part of their earnings on approved articles for their own use. The remainder should be saved for use after release, for support for their own families (if the juvenile is married or has children), and for compensating victims. The problem in many countries is that remuneration for work (and in case of school or vocational training for the participation at these programmes, see Rule 82.3 below) is more of a symbolic nature. The German Constitutional Court has decided that adequate remuneration of a substantial nature is an essential aspect of the principle of resocialisation (*BVerfG, decision of 1 July 1998, ZfStrVo 1998, 242*). If, because of budgetary restrictions, an adequate monetary payment cannot be effected, there should be additional provision for non-monetary systems of reward, which may include early release or other incentives.

Rule 82.3 guarantees that juveniles who participate in programmes during work time should be rewarded in the same way as if they were working. According to Rule 82.4 juveniles should receive adequate social security coverage similar to that provided in free society. Rule 82.4 tries to avoid unjustified disadvantages (also in the later stages of life) because of an exclusion from national social security and social insurance systems. Good practice can be found in Central and Eastern European countries and Russia, where prisoners are included in national social security and social insurance systems.

(See also Rule 26, EPR; Recommendation Rec(2005)5)

E.11 Contact with the outside world

Rule 83

Contacts with the outside world are basic elements of a system that is oriented to re-integration into society, on the one hand, and that aims at diminishing the negative effects of deprivation of liberty and of institutional subcultures, on the other. In this regard the CPT stresses that the active promotion of good contact with the outside world can be especially beneficial for juveniles deprived of their liberty, many of whom may have behavioural problems related to emotional deprivation or a lack of social skills. (*Report to the Austrian Government on the visit to Austria carried out by the CPT from 14 to 23 April 2004, CPT/Inf(2005)13, para. 100*). Such contacts can be institutionalised by establishing boards of visitors and parents boards that assist in organising educational and leisure time activities as is the case, for example, in Russia and some other countries.

Rule 83 provides for communication by an unrestricted number of letters and, as often as possible, by telephone or other forms of communication. These latter forms may include contacts through the internet, by e-mail for example. The persons with whom communication should be allowed are not only members of the family, but also other persons and representatives of outside organisations who may have a beneficial effect on the juvenile. Visits are the principal forms of personal contact as they play a major role in maintaining and developing personal relationships with the family and with other persons of relevance for the juveniles' development. Only in exceptional cases may such visits or contacts be restricted. Rule 14 mentions one such exceptional ground on which contacts with the family may be limited: where they are not in the best interests of the juvenile concerned. It should, however, be clear that terms such as being in the "best interests of the juvenile", must be interpreted restrictively, particularly when the constitutional rights of parents and family members are also involved. Another reason for restricting visits temporarily is if an offence, for example, the smuggling of drugs, has occurred during such a visit.

Rule 84

As visits are the only way of having direct personal contact for those who do not have the right to leave the institution, there should be arrangements for visits that allow juveniles to maintain and develop family relationships in as normal a manner as possible. Working with the family and mobilising family members to take care of and maintain relationships with the juvenile by visits and other forms of personal contact are important components of enabling re-integration. Limits are only exceptionally permitted in cases where such visits are against the best interests of the juvenile. Again it has to be stressed that objections based on the best interests of the juvenile must be interpreted restrictively.

Rule 85

Rule 85.1 establishes the duty of the institution to assist juveniles in maintaining adequate contact with the outside world and to provide them with the appropriate welfare support to do so. This can mean that the institution may pay the travel expenses of juveniles who otherwise would not be able visit their families. It can also require institutional arrangements for visiting hours during weekends or in the early evening hours if the relevant persons otherwise would not be able to visit the juvenile. Therefore, the CPT states: "Further, steps should be taken ... to ensure that prisoners ... can also receive visits at weekends" (*See Report to the German Government on the visit to Germany carried out by the CPT from 20 November to 2 December 2005 [CPT/Inf(2007)18], paragraph 149*). In certain cases, and in consequence of Rules 54 and 55 the above mentioned duty may lead to a transfer of juveniles to institutions which are situated closer to their homes or places of social reintegration.

Rule 85.2 provides that communication and visits may be subject to restrictions and monitoring. But these restrictions should only be allowed if concrete facts in the individual case provide evidence that they are necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime. Thus Rule 85.2 recognizes the special importance of visits and contacts with the outside world for juveniles by reaffirming the "acceptable minimum" mentioned in Rule 24.2 of the EPR. Similarly the German Constitutional Court in its decision of 31 May 2006 has emphasized the special need that juveniles deprived of their liberty have to receive regular visits and noted that this need goes even further than that of adults (*see BVerfG Neue Juristische Wochenschrift 2006: 2093*)

Rule 85.3 makes it clear that any information received of the death or serious illness of any near relative should be promptly communicated to the juvenile. The juvenile concerned can be given special leave in order to attend the funeral or to come into personal contact with his or her relatives in their actual environment (see Rule 86).

Rule 86

Rule 86.1 stipulates that juveniles should be allowed as part of their normal regime while in an institution regular periods of leave, either escorted or alone. However final decisions may be made on an individual basis. Such leave is an integral part of an education for reintegration into society and should be granted as early as possible. It contributes not only to the juvenile's social integration, but also improves the climate inside the institution (inter alia by reducing subcultural values and orientations). Regular periods of leave are an indispensable part of preparation for release and give the juvenile (and the institution) a realistic opportunity to test new social competences. Successful periods of leave make it easier to decide that a juvenile has a good prognosis and may facilitate the decision on early release required by Rule 79.3 (see also Rule 49.2).

In addition, juveniles should be allowed to leave the institutions for humanitarian reasons. These are, for example, serious illnesses, the death of relatives (in order to attend the funeral), but also can be weddings, the birth of the juvenile's own child. It is clear that regular periods of leave are mostly excluded in the context of pre-trial detention, but even then escorted leave should be possible, particularly for such humanitarian reasons.

Rule 86.2 requires that, if regular periods of leave are not practicable, provision should be made for additional long-term visits by family members or other persons who can make a positive contribution to the development of the juvenile. Such long-term visits are particularly important for juveniles or young adults with families and children and may contribute to developing 'normal' family relationships. Furthermore, they are an expression of the principle of normalisation laid down in Rule 53.3.

(See also Rule 24, EPR; Rules 59-62, the Havana Rules)

E.12 Freedom of thought, conscience and religion

Rule 87

Rule 87 deals with freedom of thought, conscience and religion. The Rule reflects the basic principle of non-discrimination contained in Rule 10 and corresponds to Rule 29 of the EPR. As stated there, religious freedom as well as freedom of thought and conscience is of increasing importance as in recent years more juveniles with strong religious views have been deprived of their liberty and the situation needs careful handling to ensure the protection of their fundamental rights. As stated in the explanatory memorandum to Recommendation Rec(2005)5 on the rights of children living in residential institutions, account should also be taken of the views of the juvenile's parents or legal guardians and staff should be trained to respect the juvenile's religious origin.

Rule 87.1 seeks to recognise religious freedom as well as freedom of thought and conscience.

Rule 87.2 puts a positive duty on the authorities to assist in respect of religious observance as well as the observance of beliefs. Rule 68.1 already requires that religious preferences be taken into account when juveniles' diets are determined. So far as is practicable, places of worship and assembly should be provided at every institution for juveniles of all recognised religious denominations and persuasions. If an institution contains a sufficient number of juveniles of the same religion, an approved representative of that religion should be appointed. Approved representatives of recognised religions should have access to the institution in order to hold regular services and confidential visits to juveniles of their religion. Access to an approved representative of a recognised religion should not be refused to any juvenile.

Rule 87.3 provides safeguards to ensure that juveniles are not subject to pressure in the religious sphere. Any direct or indirect pressure from the institution, religious representatives or other juveniles in the institution must be avoided.

(See also Rule 29, EPR; Rule 48, the Havana Rules)

E.13 Good order

E.13.1. General approach

Rule 88

Rule 88 deals with general aspects of good order. Key issues in this context are safety, security, discipline and respect for human dignity, as mentioned also in Rule 49 of the EPR. In the case of juveniles a friendly and safe institutional environment plays an even more important role as it contributes to the overall aim of education and promotes their re-integration into society.

According to Rule 88.1 good order should be maintained by creating a safe and secure institutional environment in which the dignity and physical integrity of juveniles deprived of liberty can be respected and their primary developmental goals can be met. Institutions for juveniles with a more "correctional" approach are particularly at risk of developing violent institutional subcultures. Therefore Rule 88.2 requires the institutional authorities to pay specific attention to protecting vulnerable juveniles and preventing victimisation. In particular, careful consideration should be given to the mental state of juveniles before disciplinary steps are taken or punishment imposed on them.

Physical and technical security arrangements may be features of some institutions but on their own they are not sufficient to ensure good order. Safety and security also depend on an alert staff who interact with juveniles, who have an awareness of what is going on in the institution and who make sure that juveniles are kept active in a positive way. This is often described as "dynamic security" and is much more effective than security which is entirely dependent on static measures. Where there is regular contact between staff and inmates, an alert member of staff will be responsive to situations which are different from the norm and which may present a threat to safety and security. Staff who are engaged directly with juveniles will be able to prevent escapes more effectively by being aware of what is happening in the institutional community before an incident occurs. The strength of dynamic security is that it is likely to be proactive in a way which recognises a threat to security at a very early stage.

Juveniles deprived of their liberty should be seen as individuals who are co-responsible for creating and maintaining good order by taking responsibility for their own conduct (see Rule 88.4). This aspect underlines the potential of restorative justice elements and establishing a culture of restorative conflict resolution. Good order in this sense is an integral part of developmental programmes of re-integration into society. Juveniles should rather be encouraged to take responsibility than threatened with disciplinary punishments, which should be seen as a last resort for conflict resolution in the institution (see also the basic principle in Rule 12 above and Rule 122.2 concerning complaints procedures below).

E.13.2. Searching

Rule 89

This Rule lays down that in each institution there should be a clearly understood set of procedures which describe in detail the circumstances in which searches should be carried out, the methods to be used and their frequency. All searches are inherently intrusive and should therefore not be conducted unnecessarily. When they are done, the dignity and privacy of those being searched should be of paramount concern. Searches should not be conducted at night. Personal and intimate information (diaries, letters, photos etc.) may never be confiscated unless this is necessary for further investigation of planned or committed criminal acts. In particular, intimate searches of juveniles and all searches of visitors may be conducted only if there is a "reasonable suspicion" that they have something in their possession that is not allowed. The staff of the institution who conduct searches need not to be of the same gender as the juvenile who they may search. However this should not apply to medical personnel. Although not specially mentioned here, but in accordance with Rule 54.10 of the EPR, it should be clear that the searching of professional visitors, such as legal representatives, social workers and doctors, must be the rare exception and should not infringe the right of confidential professional access. Metal detectors and other forms of non-contact surveillance should not be regarded as searches for the purposes of this Rule.

E.13.3 Use of force, physical restraint and weapons

Rule 90

Rule 90.1 reinforces the principle that staff may only use force within clearly defined limits and in response to a specific threat to security or good order. Physical resistance includes, for example, a juvenile barricading him or herself in a room or cell, or other similar forms of resistance, which can only be dealt with by the use of force.

Where sound relationships exist between staff and juveniles they can be put to good effect in de-escalating potential incidents or in restoring good order through a process of dialogue and negotiation. Only when these methods fail or are considered inappropriate should physical methods of restoring order be considered. When force has to be used against inmates by staff it should be controlled and should be at the minimum level necessary to restore order (Rule 90.2).

Good staff training is essential if the use of force is to be kept to a minimum (Rule 90.3). Such training must include an understanding of the detailed procedures listed in Rule 90.4, as their implementation is essential to keeping the use of force to a minimum.

Rule 91

The practical effect of Rules 91.1 and 91.2 is that handcuffs and restraint jackets are the only instruments of restraint that can be used on juveniles and may be used only for the purposes set out in the Rule 91.1. They should never be used routinely and only for a limited period. Precisely how they should be used must be set out in national law (see Rule 91.3), which should also provide for safeguards against their abuse.

Temporary isolation in a calming down cell as provided for by Rule 91.4 is a measure of restraint that shall be used only exceptionally and should last only a few hours. Such a cell should be equipped as a normal secure cell but steps should be taken to remove any objects with which juveniles could harm themselves. The maximum period of its use shall not exceed 24 hours, during which alternative, less interventionist ways of maintaining good order should be developed (see Rule 91.4). Vulnerable juveniles may find isolation particularly traumatic and this should be born in mind when deciding to use it. It must be made clear that the medical practitioner is not involved in imposing isolation but is only alerted to it in order to look after the interests of the juvenile concerned as a patient.

Rule 92

Rule 92 prohibits the carrying of any weapons by staff in institutions in which juveniles are deprived of their liberty. Weapons are defined as firearms, knives, batons and similar instruments that can cause physical injuries. Not included are instruments used purely for self defence that cannot cause serious harm or instruments used to sound the alarm (whistles etc.). In exceptional cases where an immediate and major operational emergency so requires, weapons may be used inside institutions. Such situations include serious threat to life of the staff, juveniles or third persons. It should nevertheless be noted that the use of lethal weapons by staff against juvenile offenders in any institution is not allowed in a number of European countries. In any event the use of lethal weapons is prohibited in welfare and mental health institutions.

In the rare instances where juveniles are held in adult prisons, Rule 69 of the EPR applies in this regard.

*E.13.4. Separation for security and safety reasons***Rule 93**

Separation as provided for by Rule 93.1 is a distinct measure that can be used for purposes of both safety and security, that is, to protect highly vulnerable juveniles and deal with those juveniles that pose a threat to others. The risk of suicide should be dealt with as a medical issue in terms of Rule 70.2. The restrictions on the use of separation set out in this Rule should be followed strictly as separation is a very intrusive measure which should be used only in very exceptional circumstances (see Rule 53.1 of the EPR, which contains similar restrictions on the use of high security or safety measures for adult prisoners). Similarly to Rule 91.1 a medical practitioner shall be given an immediate access to the juvenile.

*E.13.5. Discipline and punishment***Rule 94**

Rule 94.1 corresponds to Rule 56.1 of the EPR. In institutions for juveniles even more than for adults the inevitable breaking of rules by some of the detainees should be met by giving priority to educational and restorative means of conflict resolution. Therefore open and honest conversations with juveniles by staff members and discussions in the living groups should take place in order to validate the norms violated and to find a solution by restoring the damage and, where appropriate, compensating the victim.

Not all deviant behaviour shall be subject to disciplinary procedures. Therefore, Rule 94.2 stipulates that only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence. This implies that the institutional authorities should exclude from the disciplinary process petty misbehaviour that can be dealt with by serious educationally oriented discussions or restorative action. On the other hand, the authorities should record all incidents that threaten good order.

An essential aspect of learning rules and complying with them is that there should be clarity about what constitutes disciplinary offences, the procedures to be followed at disciplinary hearings, the types and duration of punishment that may be imposed, the authority competent to impose such punishment and the appellate process. Accordingly, all these matters should be governed by national law (Rule 94.3 in accordance with Rule 57.2 of the EPR).

Rule 94.4 (in accordance with Rule 59 of the EPR) outlines certain requirements for the disciplinary proceedings that can be seen as minimum requirements of the rule of law. They concern the well known principles relating to information about the accusation and the rights of defence.

Rule 95

Rule 95 sets limits and deals with the due process requirements for the imposition of certain punishments. First of all, Rule 95.1 points out that disciplinary punishments should be selected as far as possible for their educational impact. They should not be more severe than justified by the seriousness of the offence. This reflects the basic principle of proportionality in Rule 5.

Like all international human rights instruments, Rule 95.2 strictly prohibits collective punishments and corporal punishment, punishment by placing in a dark cell and all other forms of inhuman and degrading punishment.

The present rules go further than the EPR (see Rule 60.5 of the EPR), for Rule 95.3 prohibits solitary confinement in a punishment cell for juveniles entirely. A punishment cell refers to a bare cell which has no basic facilities, for example has no or only a concrete bed. A dark cell or any other cell that is inhuman or degrading is absolutely prohibited (Rule 60.3 of the EPR).

Rule 95.4 does allow segregation for disciplinary purposes but only subject to severe restrictions. It may only be used in exceptional cases when nothing else would work. Furthermore, it must be for a specified period of time, which must always be as short as possible. An acceptable maximum duration may be linked to the overall conditions of such segregation. The CPT supports the idea that three days should be the maximum period of segregation (ref. doc. CDPC(2008)08). Such segregation is not absolute, for the juveniles must have human contact and access to reading material as well as to the standard minimum period of at least one hour exercise in the open air each day. As with isolation in a calming down cell as a means of restraint (see Rule 91.4), it must be emphasised that vulnerable juveniles may find disciplinary segregation particularly traumatic and this should be borne in mind when deciding to impose it. It must be made clear that the medical practitioner is not involved in imposing segregation but is only alerted to it in order to look after the interests of the juvenile concerned as a patient (see Rule 95.5).

In accordance with Rule 60.4 of the EPR, the present Rule 95.6 underlines the importance of family contacts and visits (see also Rules 83 and 84 and the commentary to them above). Those contacts and visits should never be restricted for disciplinary reasons, unless the disciplinary offence relates to such contacts or visits.

Outdoor exercise, as provided by Rule 81 should not be restricted as part of a disciplinary punishment. During the execution of disciplinary punishments the juveniles should have the possibility of normal contacts with other juveniles in the institution, at least during outdoor exercise. Separate outdoor activities of disciplined juveniles should be restricted to cases where the juvenile may pose a danger to the safety of other detainees.

E.14 Transfer between institutions

Rule 96

Rule 96 clarifies that a transfer to another institution may occur where the initial criteria for allocating the juvenile or the further promotion of reintegration into society can be met more effectively in another institution, or when serious security and safety risks make such a transfer essential. It is important to recognise that primarily transfers are justified only for educational reasons, in order to promote reintegration into society. One of the most common transfers in this respect is the transfer from a closed to an open or a semi-open institution, which facilitates the preparation for release. This corresponds to the principle of progression through less restrictive regimes as a means of preparation for release as mentioned in Rules 50.1 and 101. Apart from these educational reasons a transfer is possible only in exceptional cases where serious security and safety risks are concerned. The institution must give good reasons as not all security risks are acceptable grounds for a transfer. Risks are serious if behaviour is exceptionally violent or an increased danger of escape cannot be handled in the original institution.

Rule 97

Transfers from one institution to another mean that juveniles lose personal relationships with staff and other detainees. They also lose their places in a school or vocational training or the workplace, which all are of major importance to them. As a consequence Rule 97 stipulates that a transfer should not be possible for purely disciplinary reasons. Therefore, for example, the frequent transfer from one institution to another of "difficult" juveniles should be prohibited. Nevertheless, such transfers may be justified for other reasons, namely, security or education, as the disciplinary offence can demonstrate that the juvenile is not suitable for a particular kind of institution.

Rule 98

Rule 98 stipulates that a juvenile may be transferred from one type of institution to another only if this is prescribed by law. This refers to transfers between different classes of institutions, for example from a mental health institution to a welfare or to a penitentiary institution and vice versa as this would mean that the responsibility for a given juvenile could pass from one national authority to another.

As the consequences of being transferred from one class of institutions to another may amount to an infringement of human rights, Rule 98 furthermore provides that such a transfer should take place only if this is ordered by a judicial or administrative authority after an appropriate inquiry has been conducted. This normally means that the decision should be based on a psychological or psychiatric assessment and on reports of the responsible social worker and the authorities of the institution from which a juvenile is being transferred.

Rule 99

Being transferred from one institution to another usually causes a break in personal relationships with staff members such as social workers, psychologists and teachers. In order to minimise the possible detrimental effects inherent in such a transfer, Rule 99.1 provides that all relevant information and data relating to the juvenile should be transferred in order to ensure continuity of care. In some cases it might be possible that the same educational staff keep contact, but where this is impossible staff members of the new institution may use the information in order to guarantee if not continuity of the relationship at least continuity of the intervention. The principle of continuous or through care inherent to Rule 99.1 is a special case of the basic principle laid down in Rule 15.

The transport of juvenile detainees sometimes may last several days. The facilities in which transported detainees are accommodated often do not meet the requirements of humane containment and are in a worse condition than regular accommodation in institutions from which juveniles come or to which they are going. Therefore, Rule 99.2 emphasises that the conditions under which juveniles are transported should meet the requirements of humane detention.

In addition, Rule 99.3 requires that the anonymity and privacy of juveniles being transported should be respected. Humane accommodation during transfer is an essential aspect that is often neglected. But further human rights violations often occur during transfer as the responsibility for supervision and control during this period may be unclear and the possibilities for the juvenile to complain are restricted.

(See also Rule 32, EPR; Rule 26, the Havana Rules)

E.15 Preparation for release**Rules 100-103**

Rules 100-103 broadly correspond to Rule 107 of the EPR.

Rule 100

Rule 100 concretises the principle laid down in Rule 79.3, which addresses the importance of beginning preparation for release as early as possible and the necessity of adopting a systematic strategy of gradual steps towards social reintegration. Rule 100.1 establishes the general rule that all juveniles deprived of their liberty should be assisted to make the transition to life in the community. This idea is already expressed in basic principles contained in Rules 2 and 15.

The preparation for release should be organised through special forms of intervention (Rule 100.2) that are included in the individual plan in terms of Rule 79.1 in combination with Rule 77. It should be implemented in good time prior to release (Rule 100.3). This means that social workers (for example, the probation service) and welfare institutions from outside should be involved. Preparation for release should begin at least 6 months before the earliest possible date on which the juvenile may be released (see also Rule 102.3 below).

Rule 101

Rule 101.1 stipulates that steps should be taken to ensure a gradual return of the juvenile to life in free society. Therefore, additional leave and partial ('day parole', work release etc.) or conditional release, combined with effective social support, should be provided (Rule 101.2). Gradually allowing juveniles more liberty and increasing the possibility for them to take more and more responsibility for their own conduct have been proven by numerous empirical studies to be effective ways of encouraging social reintegration. As mentioned in the commentary to Rules 49.2, 62.6 and 79.3, conditional release combined with effective social support is to be seen as an effective strategy of offender rehabilitation. The advantages of systems of conditional or early release have been addressed by the Recommendation Rec(2003)22 on conditional release (parole) and emphasised by Rule 107.3 of the EPR to which the present rule corresponds.

Rule 102

Rule 102 is a concretisation of the basic principle of continuous care laid down in Rule 15. Rule 102.1 requires that from the beginning of the deprivation of liberty the institutional authorities and the services and agencies that supervise and assist released juveniles should work closely together to enable them to re-establish themselves in the community, by assisting them in returning to their family, finding a foster family and helping them develop other social relationships, finding accommodation, continuing their education and training, finding employment, referring them to appropriate physical and mental health care agencies, and providing monetary assistance. The importance of this rule is that preparation for release begins on the very first day of detention, no matter how long the stay in the institution may last.

Rule 102.2 further develops this idea by guaranteeing the representatives of services and agencies that supervise and assist released juveniles access to juveniles in institutions to help them with preparation for release. These services and agencies should also be obliged to provide timely pre-release assistance before the envisaged dates of release (Rule 102.3). As mentioned above, "timely" in this context normally means at least 6 months before the earliest possible release of the juvenile.

Rule 103

Rule 103 clarifies that where juveniles are released conditionally the implementation of such conditional release should be subject to the same principles that guide the implementation of community sanctions and measures in terms of these Rules (see Rules 23-48).

(See also Rules 33 and 107 EPR; Recommendation Rec(2003)22; Rule 79-80, the Havana Rules)

E.16 Foreign nationals**Rule 104**

Rules 104 and 105 correspond to Rule 37 of the EPR. The present rules, like the EPR and other human rights instruments such as the United Nations Standard Minimum Rules on the Treatment of Prisoners, emphasise that foreign nationals experience special problems and often form a disadvantaged minority in institutions. Rule 104 deals first with foreigners who are to remain in the host country (see Rule 104.1). The second group of foreigners to whom they apply are those whose further stay has not yet been decided (see Rule 104.2) and the third group are those who are to be expelled (see Rules 104.3 and 104.4).

Those foreign juveniles who will remain in the country in which they are held according to Rule 104.1 should be treated in the same way as other juveniles. Nevertheless, special programmes should be provided in order to improve their chances to integrate in that country. The need for special interventions refers to the specific difficulties and disadvantages these particularly vulnerable groups of juveniles may experience. These interventions may include language training, but also special social skills training aimed at improving their chances of finding work, accommodation and thus social reintegration.

As long as there has not been a definite decision on whether to transfer juveniles to their countries of origin they should be allowed to participate in the same institutional regime and treatment interventions as nationals (Rule 104.2). This rule is very important as many foreign nationals experience exclusion from educational or rehabilitative programmes due to uncertainty about whether they will be sent back to their country of origin.

The institutional authorities not only have the responsibility to take care for the reintegration of those foreign juveniles who stay in the country, but also should take the necessary steps in order to promote the reintegration of those who may be expelled and sent back to their country of origin. In these cases Rule 104.3 requires close co-operation, where possible, with the juvenile welfare and justice agencies in the home country in order to guarantee the necessary assistance for such juveniles immediately upon arrival in their country of origin.

This co-operation may lead to a request from juveniles to serve their sentences in their countries of origin (Rule 104.4). Many countries have signed bilateral agreements allowing such transfers. The general legal framework in this context consists of the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders of 1964 (ETS No. 51) and the Convention on the Transfer of Sentenced Persons of 1983 (ETS No. 112) with its Additional Protocol from 18th December 1997 (ETS No. 167).

Rule 104.5 provides for foreign juveniles to have extended visits or other forms of contact with the outside world where this is necessary to compensate for the lack of regular access they may have to such contacts. This includes, for example, extended telephone calls to their home countries and long-term visits.

Rule 105

It is important to guarantee basic rights of information and contact of foreign juvenile offenders with the diplomatic or consular representative of their state, particularly if a transfer to the home country is at stake (see Rules 105.1 and 105.2). The institutional and welfare authorities are required to closely work together with these diplomatic officials in order to meet the special needs of such juveniles, if they request that such contact be made (see Rule 105.3). Even if there may be practical problems, the institutional authorities should at least try seriously to establish such a co-operation in order to meet the special needs of foreign juveniles.

Rule 105.4 stipulates that foreign juveniles who face expulsion shall be provided with legal advice and assistance in this regard. This means that in all these cases a legal advisor should be allocated to the juvenile.

E.17 Ethnic and linguistic minorities in institutions

Rule 106

In many countries members of ethnic and linguistic minorities face problems of social reintegration, particularly when they are held in institutions. Although such juveniles do not live under the threat of being expelled, they often experience the same disadvantages as foreign nationals. This is partly due to language or cultural problems, but partly also due to organisational problems in the institutions. Rule 106 corresponds to Rule 38 of the EPR. Rule 106.1 therefore requires special arrangements for these groups. Rule 106.2 emphasises the continuation of cultural practices of different groups as far as possible. Institutional staff need to be sensitised to the cultural practices of various groups in order to avoid misunderstandings. Linguistic problems and needs should be addressed by providing competent interpreters and written material in the range of languages used in a particular institution. There should also be language courses for juveniles who are not proficient in the local language (see Rules 106.3 and 106.4).

(See also Rule 37, EPR)

E.18 Juveniles with disabilities**Rule 107**

Another especially vulnerable group is formed by juveniles with physical disabilities (for juveniles with mental health problems see Rules 57 and 117-119). Rule 107.1 very clearly favours not segregating juveniles with disabilities but instead accommodating them in ordinary institutions. It is self-evident that this refers only to institutions for deprivation of liberty and it should only be considered where the accommodation has been adjusted to meet the needs of persons with physical disabilities. There should also be specifically adapted schooling methods (for example for those who are visually impaired), vocational training and other programmes that meet their particular needs. If an ordinary institution cannot be found that meets the special needs of juveniles with disabilities, they should be transferred to specialised institutions where these needs can be met (Rule 107.2).

F. Special Part**F.1 Police custody, pre-trial detention, and other forms of deprivation of liberty prior to sentencing****Rules 108-113**

Rules 108-113 broadly correspond to Rules 94-101 of the EPR. Juveniles detained in police custody and pre-trial detention are highly vulnerable, especially if this is their first contact with deprivation of liberty and this is demonstrated by the much higher rates of suicide or self harm during the initial stage of detention in many countries. Therefore, national legislations often provide a more restrictive application of pre-trial detention and similar forms of preliminary deprivation of liberty for juveniles. Special rules are also needed with respect to the execution of pre-trial detention concerning juveniles.

Rule 108

Rule 108 is based on the principle of the presumption of innocence and requires that the regime and the approach adopted by the staff in police custody, pre-trial and other initial forms of detention should take into consideration the fact that the guilt of the juvenile has not yet been established.

Rule 109

Rule 109 takes into consideration the special vulnerability of juveniles in preliminary detention and requires full respect for their dignity and personal integrity at all times. One consequence should also be to provide special arrangements for suicide prevention by establishing a service for crisis intervention and for intensive psychological counselling and supervision. The CPT in this context recommends that a suicide prevention policy be developed and implemented (*See Report to the German Government on the visit to Germany carried out by the CPT from 3 to 15 December 2000 [CPT/Inf(2003)20], paragraph 105*). The CPT also recommends that juveniles in police custody be allowed to inform immediately their families or third parties of the fact of their detention and that they should not be required to make statements and sign documents without their lawyer or a trusted person being present to assist them. (*See the 9th General Report on the CPT's activities covering the period 1 January to 31 December 1998 [CPT/Inf(99)12], paragraph 23*)

Rule 110

Many juveniles who are detained before trial are later sentenced to unconditional detention in a correctional institution or transferred to a welfare institution. In these cases it would be an advantage if the personnel of these institutions could already get into contact with the juvenile during the initial period of pre-trial detention or other forms of preliminary deprivation of liberty. In some countries half or even more of the pre-trial detainees are released from pre-trial detention to pursue the execution of a sanction or measure in the community. In these cases as well, early contact with aftercare and welfare services or agencies is of major importance. Therefore Rule 110 stipulates that, in order to guarantee the throughcare of such juveniles, they should be assisted immediately by the agencies that will be responsible for them after their release or while they are subject to custodial or non-custodial sanctions or measures in the future. The principle of continuous or through care is a basic principle already laid down in Rules 15 and 51 of the present Rules.

Rule 111

Rule 111 is an application of the basic principle in Rule 3, which emphasises that any deprivation of liberty may be applied only for a legitimate purpose. The purpose of pre-trial or other preliminary detention is to guarantee the juvenile's presence at the trial and, particularly in the case of welfare institutions, to make inquiries in order to develop an overall plan for further educational measures that will promote the social integration of the juvenile.

Rule 112

As a consequence of the presumption of innocence, juveniles cannot be compelled to work prior to conviction and all educational measures and activities may only be initiated with the consent of the juvenile unless they are under the school leaving age (see Rule 112).

Rule 113

In order to use the time in pre-trial detention for later social reintegration, the institution should seek to gain the juvenile's consent and encourage the juvenile to use educational opportunities offered by the institution. The institution should seek to offer a range of interventions that are provided for sentenced juveniles (Rule 113.1) and the juveniles should be allowed, when possible, to participate in these interventions on their request (Rule 113.2).

(See also Rule 17-18, the Havana Rules; Rules 94-101 EPR; Recommendation Rec(2006)13)

F.2 Welfare institutions**Rules 114-116**

There are only few specific regulations for welfare institutions compared to the general rules laid down in Rules 49-107 that also apply to them.

Rule 114

One major difference to correctional and mental health institutions is that welfare institutions are primarily open institutions. This is reflected by Rule 114, which restricts closed accommodation to exceptional cases and for the shortest period possible. In many countries closed welfare units have been abolished completely since the late 1960s or are used only in very exceptional cases for highly problematic juveniles who are under the age of criminal responsibility. In other countries, such as the United Kingdom, secure children's homes, which are primarily welfare institutions but also accommodate juvenile offenders, are used as they have proven to provide a high quality of care to both juvenile offenders and others.

Rule 115

As welfare institutions are often run by private organisations, the problem of accreditation, supervision and quality management arises. Therefore Rule 115 requires that all welfare institutions should be accredited and registered with the competent public authorities and should provide care to the required national standards.

Rule 116

Welfare institutions as stated in the commentary to Rule 114 may accommodate a mixture of juvenile offenders and other juveniles in need of care but who are not offenders. Rule 116 stipulates that juvenile offenders should not be discriminated against if mixed together, as otherwise the inequality of treatment may lead to a number of problems both for the juveniles themselves as well as for the institution. Even where juvenile offenders are segregated to a certain extent and accommodated in special living units of a welfare institution, non-discriminatory treatment is still necessary. This does not mean that measures designed only for juvenile offenders should not be applied to them.

(See also Recommendation Rec(2005)5)

F.3 Mental health institutions

Rules 117-119

The general rules for deprivation of liberty (Rules 49-107) also apply to mental health institutions. Only a few special regulations are provided in Rules 117-119. In addition, the treatment of such juveniles shall be governed by the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (ETS n°164) and by Recommendation Rec(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder.

Rule 117

Rule 117 clarifies that juvenile offenders in mental health institutions should receive the same general treatment as other juveniles in such institutions. This means in the first place that the fact of their being offenders must not deprive them of the treatment interventions offered to ordinary patients in such institutions. In addition, they shall also benefit from regime activities offered to juvenile offenders held in other types of institutions. This means that Rules 76- 82 shall have the same value and force for them as well.

Rule 118

Rule 118 stipulates that treatment for mental health problems should be determined only on medical grounds and shall follow recognised national and international standards. It should also be noted that drugs should only be used in order to address health problems and not for disciplinary reasons.

Rule 119

In line with the purely medical reasons for keeping such juveniles in mental health institutions, Rule 119 states that safety and security standards for juvenile offenders should be determined primarily on medical grounds.

Part IV: Legal advice and assistance

Rule 120

Juveniles and their parents are entitled to effective legal advice and assistance in relation to the imposition and execution of sanctions or measures. Therefore, national legislation should provide those juveniles or their parents or guardians who cannot afford to pay with free legal advice or free assistance by a legal representative where the interests of justice so require. In some countries the right of access to such effective and confidential advice and assistance is a constitutionally recognised principle. Legal advice should be provided during the execution of sanctions and measures in the same way as during a trial, where it is guaranteed by criminal procedure legislation. Legal advisers must be given access to the juveniles' files even in the rare instances where juveniles or their parents or legal guardians are not entitled to it.

In the case of deprivation of liberty the institution should allow regular access, including unsupervised visits, for legal advisers who meet certain professional requirements. Such legal advice could possibly be provided by non-profit organisations or the professional organisations of lawyers.

Part V: Complaints procedures. Inspection and monitoring

G. Complaints procedures

Rules 121-124

The right to make requests or complaints is a basic fundamental right in any system governed by the rule of law. During the execution of sanctions and measures many situations may occur where juveniles will have good reason to make a complaint. The rules on complaints procedures must consider the particularly vulnerable situation of juveniles. They often do not understand the meaning of obligations or disciplinary sanctions imposed by staff members, and have particular difficulties in formulating written complaints. Therefore, besides the right to legal advice laid down in Rule 120 there must be a comprehensive set of regulations that guarantee an effective possibility to complain and to have access to judicial review of the decisions made by the agencies responsible for the execution of community sanctions or for the institutions in which juveniles are held.

Rule 121

Rule 121 establishes the general right of juveniles serving community sanctions and measures or held in institutions and of their parents or guardians to be given ample opportunities to make requests or complaints.

Rule 122

Rule 122.1 stipulates that procedures for making requests and complaints should be simple and effective and that decisions on such requests and complaints should be taken promptly. This implies that juveniles may also submit complaints orally if they are not able to express themselves sufficiently well in a written statement. Furthermore, at the request of juveniles or their parents or guardians an oral hearing should take place, even if the procedure in general is a written one. This is reflected in Rule 122.5. Prompt decision making includes a procedure for the interim protection of the juveniles' rights. For example, the German Constitutional Court has considered that courts must also be available to give interim decisions on serious complaints during weekends and holidays. Such a practice is important where in an institutional setting disciplinary measures and particularly solitary confinement (as it still exists in many countries) are executed immediately and where a complaint made under the regular complaints procedure does not suspend the implementation of the punishment.

Rule 122.2, together with Rule 94.1 and the basic principle contained in Rule 12, emphasises the priority of mediation and restorative justice in conflicts that may be subject of a complaints procedure. If such a mutual agreement is not reached, or if a request is denied or a complaint is rejected, reasons should be provided to the juvenile and where appropriate to the parent or guardian who made the original complaint or request and they should have the right to appeal to an independent and impartial authority (Rule 122.3).

Rule 122.4 enumerates some standards for the independent authority that is responsible for conducting the appellate process. It should be composed of persons with experience in juvenile matters and should meet at a place as close to the institution or place of execution of community sanctions and measures as possible. This Rule corresponds to the requirement for specialised and experienced judges and prosecutors in the area of juvenile justice laid down in the relevant international instruments (*see No. 1.4, 22.1 and 22.2 of the Beijing Rules*). Rule 122.5 emphasises the importance that there is a possibility for the juveniles to be heard in person in complaints procedures in order to meet the special needs of juveniles and to take account of their limited ability to express their complaints by means of a written statement or to fully grasp the contents of a written text. If appropriate oral hearings can be conducted by means of video-conferences or similar technical equipment in accordance with international standards.

Rule 123

Rule 123 is also self-explanatory. Juveniles should not be punished because of having made a request or lodged a complaint. This implies also that all indirect negative consequences are prohibited as well, such as the denial of privileges that have been awarded, for example, leave of absence from institutions or less restrictive conditions imposed under amended community sanctions and measures.

Rule 124

Rule 124 is a special case of application of Rule 120 as it guarantees legal advice about complaints and about appeal procedures and legal assistance in these matters when the interests of justice so require.

H. Inspection and monitoring**Rules 125-126**

Regular inspection and monitoring are indispensable instruments of control that can contribute to preserving and protecting human rights of juvenile offenders in institutions and under community sanctions and measures, and, at the same time, can ensure that the agencies involved function well. They may be realized by governmental (see Rule 125) and independent (see Rule 126.1) bodies. Rule 126.1 allows juveniles to have confidential access to such bodies, for example, by sending them sealed and uncensored letters.

In such monitoring particular attention should be paid to the use of force, restraints, disciplinary punishments and other restrictive forms of treatment (see Rule 126.2). All instances of death or serious injury of juveniles shall be investigated promptly, vigorously and independently (see Rule 126.3). In many countries in these cases parliamentary inquiries will also take place. It is very important therefore that medical practitioners are included in such monitoring visits.

Independent bodies should closely work together with international bodies such the CPT and the UN Committee against Torture (see Rule 126.4).

Part VI: Staff**Rules 127-134**

Rules 127-134 are mainly based on, and correspond to, the principles developed in Recommendation n° R(97)12 on staff concerned with the implementation of sanctions and measures.

Rule 127

Rule 127.1 stipulates that a comprehensive policy concerning the staff responsible for the implementation of community sanctions and measures and the deprivation of liberty of juveniles should be laid down in a formal document covering recruitment, selection, training, status, management responsibilities and conditions of work. Such a policy document will help to set and preserve high standards of care. In particular all staff shall be closely vetted before appointment to ensure that they have no background that disqualifies them from working with juveniles.

Rule 127.2 specifies that this policy must be based on the fundamental ethical and professional standards which guide staff dealing with juveniles. There should also be an effective mechanism to deal promptly and efficiently with violations of these standards. Similarly, Rule 1 of Recommendation n° R(97)12 states that this "explicit" policy (laid down in a formal document) "should emphasise the ethical nature of corporate and individual responsibilities and particular reference should be made to national adherence to human rights instruments". The necessity of specially considering ethical values and of guaranteeing high professional and personal standards is also underlined by the EPR (see *Rules 72.1 and 72.4 of the EPR*).

Rule 128

Rule 128 deals with the recruitment and selection of staff to work with juvenile offenders. Specific requirements must be set concerning not only the educational qualifications and professional experience of prospective staff members but also their personal aptitude for dealing with juveniles and acting as a positive role model for them (Rule 128.1). In democratic societies governed by the rule of law, recruitment and selection procedures have to be explicit, clear, fair and non-discriminatory. In reality this is not always the case and therefore the present Rule 128.2 is needed.

In institutions for juveniles, but also at places where community sanctions and measures are implemented, it is of particular importance to provide personnel with a variety of different backgrounds. In some institutions a large minority or even the majority of the juveniles come from migrant or foreign backgrounds. Therefore, Rule 128.3 stipulates with good reason that staff recruitment and selection should take into account the necessity of ensuring that there are sufficient staff members with appropriate skills for communicating and making positive contacts with the juveniles for whom they are responsible.

Rule 129

Rule 129 deals with staff training and further education during employment.

Rule 129.1 emphasises the need for adequate initial training which should be centred not only on the theoretical but also on the practical aspects of the work with juvenile offenders. It is important that such training should not only promote a better understanding of the work with juvenile offenders and consideration of their specific backgrounds and socialisation, but that it should also address the ethical requirements of such work. This implies the in-depth study of human rights instruments such as the present rules and their implication for day-to-day work. This training should also enable staff to work with the parents and legal guardians of juvenile offenders.

Rule 129.2 underlines that the professional competence of staff needs to be updated and improved regularly by providing in-service-training. The contents of training are spelt out in Rule 129.3. This implies that staff working in community or institutional settings with juvenile offenders will normally have to receive a special education and training and that universities or colleges should develop and offer such training curricula. In many countries (such as Germany) such special education consists of a two to three year programme based on a combination of periods of theoretical instruction and in-service practical stages. In Russia five-year programmes of specialised higher educational establishments exist in order to prepare the future staff of institutions. Where institutions are privately run, special attention should be paid to ensuring that the staff members meet the same requirements of a qualitatively high standard of training and further education as in state run institutions.

Rule 130

Rule 130 deals with aspects of quality management. A sufficient number of staff should be employed in order to enable them to carry out their various duties efficiently. Furthermore, Rule 130 explains that "staff shall include a sufficient range of specialists to meet the needs of the juveniles in their care." For institutional settings this means that normally psychiatrists, psychologists, social and welfare workers, educators, teachers and vocational, physical education and sports instructors should be available. In smaller institutions the full range of specialists may not be available on a permanent basis. However, in these cases the institution may ensure adequate staffing by entering into contracts with specialists from outside the institution. Unfortunately the standards of what can be regarded as "sufficient" are difficult to concretise and may vary between different institutions and settings. In this context, it should be noted that Rule 132 stipulates that staff should be employed "in a way that ensures the maximum continuity in the treatment of juveniles". Rule 130 is a concretisation of the basic principle in Rule 15 and corresponds also to Rule 42. This implies that institutional staff should be equipped in a way that permits them also to undertake aftercare work, and that aftercare and other welfare services should be well staffed enough to work in the institutions and to co-operate in the preparation for release as required by Rules 102.1-102.3. This idea is also underlined in Rule 134.1, which encourages the practical training and secondment of community staff members to custodial settings and vice versa.

As to the minimum standards of "sufficient" staffing, in general it can be said that in an institutional setting a social worker or a psychologist should not have more than 15 to 20 clients at the same time. In community settings social workers or probation officers should be sufficiently numerous to make individual care possible. A case load of more than 30 clients, which is the reality in many countries, is too many to allow for effective individual care.

Rule 131

Rule 131.1 stipulates that staff normally should be employed on a permanent basis. This, too, can be seen as a measure of quality management, as only permanent staff can develop the necessary intensive relationships that increase the social rehabilitative effects of the intervention. A further element of developing positive relationships can be the integration of volunteers into the institutional 'team'. Therefore Rule 131.2 stipulates that the public should be encouraged to get involved in the rehabilitative work of institutions and agencies working with juvenile offenders.

It frequently happens that several public authorities, private organisations and persons are involved in the implementation of a community sanction or measure. Rule 131.3 makes it clear that overall responsibility, for partially or fully delegated functions, remains with the authority responsible for the implementation. This responsibility for ensuring the adherence to the rules specified here stays with the authority for the full duration of the implementation process. This is the case whether third parties are compensated for their contributions or not.

(See also Rule 29, ERCSM)

Rules 133-134

High quality staff can only recruited and retained if they have appropriate conditions of work and pay that are commensurate with the difficult nature of their task. In order to achieve transparency and certainty the conditions of work and pay of staff should be linked to the conditions of others employed in similar professional activities, such as teachers, psychologists, and social workers; in addition, staff should receive extra payment for working with juvenile offenders.

The secondments for which Rule 134.1 provides can play an important role in giving practitioners an insight into the working of organisations, other than their own, which deal with juveniles. This should encourage networking and improve communication and coordination of treatment. The same objective of ensuring high standards of treatment and care underlies the statement in Rule 134.2 that "budgetary constraints shall never lead to the secondment of persons who lack the necessary qualifications."

Part VII: Evaluation, research, work with the media and the public**I. Evaluation and research****Rules 135-138**

As already emphasised by Recommendation (2003) 20 all interventions with regard to juvenile offenders should be "evidence based". Rule 5 of that Recommendation stipulates that "interventions with juvenile offenders should, as much as possible, be based on scientific evidence on what works, with whom and under what circumstances." Rule 23 of the Recommendation adds: "To increase the knowledge base as to what interventions work, funds should be allocated to the independent scientific evaluation of such interventions and the dissemination of findings to practitioners." The present Rules 135-138 are in line with this scientifically based approach to the development of penal policy.

Rule 135

Rule 135 stipulates that sanctions and measures designed for juveniles are to be developed on the basis of research and scientific evaluation. This means in addition that the most up to date and sound research findings should be used. Scientific methods of evaluation should be applied to give constant feedback to national authorities as to which sanctions and measures are best suited for juvenile offenders.

Rule 136

Rule 136.1 provides for the collection of comparative data in order to assess the positive results as well as any negative impact of the use of sanctions and measures both in residential and community settings. Such evaluation has to pay specific attention to recidivism rates and their causes.

Evaluation studies are difficult, time consuming and expensive. Nevertheless, they are indispensable for a rational crime policy that is based on empirical evidence. Therefore it is to be recommended that institutions for research be developed that are funded in a way that also permits long-term evaluative research (see also Rules 136.3 and 137 below).

Furthermore, it is important that data are collected which describe the working conditions of staff. This is underscored by the basic principles laid down in Rules 18 and 19, which emphasise that the staff perform an important public service and that sufficient resources and staffing should be provided. In order to allow an evaluative judgement about the adequacy of staffing and of the working conditions of staff, empirical studies on their situation and their perceptions of it must be carried out (see Rule 136.2). Rule 136.2 mentions the necessity of collecting and collating empirical data on the social circumstances of juvenile offenders and on the conditions in institutions where such juveniles may be held. Specific studies on the circumstances of particular groups, such as young migrants, foreigners and female offenders, should also be required in order to identify the specific difficulties of social reintegration of these particular vulnerable groups of juvenile offenders.

Rule 136.3 clarifies that the data collected should allow regional and other (for example, longitudinal) comparisons. Therefore, the authorities should establish differentiated systems of statistical data collection.

Rule 137

Empirical research should be carried out primarily by independent research departments or units (for example, universities). However, there is often the problem of funding. Therefore, Rule 137 provides that "criminological research on all aspects of the treatment of juveniles by independent bodies shall be fostered by the provision of financial support and access to data and institutions." State run research institutions may also serve to promote adequate criminological research in this field if they are sufficiently independent and their results are subject to impartial evaluation. The credibility of research in the wider community will only be preserved if research findings are published in all cases, also when the research was commissioned by state authorities. Therefore state authorities should grant contracts to independent researchers and allow publication of scientific findings even if they are not favourable to the authorities or agencies which are responsible for community sanctions and measures or for institutions for the deprivation of liberty.

All research and publication of data on juvenile offenders, but also on staff members (see Rule 136.2), should respect privacy and meet the standards of national and international data protection law (Rule 138).

J. Work with the media and the public

Rules 139-141

Working with media and the public is of major importance. The media can have great influence on the development of penal policy. They should be encouraged not only to report on sensational individual events such as escapes from institutions but also to present a broader perspective on dealing with juvenile offenders. The agencies and ministries responsible for community sanctions and measures and for institutions for deprivation of liberty have an interest in rational and accurate reporting, not only of single events but also on the situation of juveniles subject to these sanctions, their living conditions and the effects of educational and training measures in general. Mass media ought to inform citizens about the problems and difficulties that the authorities face in seeking to reintegrate juveniles into society. They should make it clear that this is a general task of the whole society and not only of professionals. Reporting about juvenile criminal justice issues should avoid creating or increasing prejudices about juvenile offenders. In this context, Rule 25 of Recommendation Rec(2003)20 rightly states: "To counter overly negative perceptions, inform public opinion and increase public confidence, information strategies on juvenile delinquency and the work and effectiveness of the juvenile justice system should be developed, using a wide range of outlets, including television and the Internet. This should be accomplished without making available personal information or other data that may lead to the identification of an individual offender or victim."

Rule 139

Any rational reporting is dependent on the information given by the responsible authorities. Therefore, Rule 139.1 lays down that the media and the public should be provided regularly with factual information about conditions in institutions for the deprivation of liberty of juveniles and of the steps taken to implement community sanctions and measures for juveniles. They should furthermore be informed of the general and specific purposes of community sanctions and measures and the deprivation of liberty of juveniles as well of the work of staff, in order to facilitate a better understanding of the role of such sanctions or measures by the media and by society in general (Rule 139.2).

Rule 140

It is important that the authorities responsible for welfare, mental health and justice issues prepare regular reports and statistical information on the implementation of community sanctions and measures, and about institutions for the deprivation of liberty of juvenile offenders. Therefore, it is recommended that at least once every two years the responsible authorities should publish a report on developments in institutions for juveniles and of the implementation of community sanctions and measures. Many countries go further and publish annual reports on their prison and probation services as well as on their institutions or agencies. Therefore, in most cases this rule will not raise any practical problems.

Rule 141

Institutions for the deprivation of liberty should follow a policy of transparency. The directors of such institutions should, in principle, "open their doors" to the community and the public. Rule 141 stipulates that the media and members of the public with a professional interest (for example, law or social work students, researchers, etc) in matters concerning juveniles should be given access to institutions where juveniles are held, provided that the privacy and other rights of such juveniles are protected.

Opening the institutions for deprivation of liberty and places where community sanctions and measures are implemented to the public also means inviting the participation of volunteers who provide services related to community sanctions or measures and deprivation of liberty of juveniles. The authorities should encourage members of the public to volunteer for such work. (see also Rule 131.2) In this way the understanding of members of the public and in society in general that reintegration of juvenile offenders is a general social task can be developed further.

Part VIII: Updating the Rules**Rule 142**

This Rule is identical to Rule 108, EPR. As stated in the commentary to the latter, knowledge of best practices is constantly evolving as societies are evolving themselves. Therefore, in the present case it is also essential that these developments are reflected in the European Rules for Juvenile Offenders Subject to Sanctions or Measures in order to ensure an appropriately high level of the treatment and reintegration of such juveniles, which is in their best interests as well as in the interest of society. An appropriate mechanism should be established to ensure regular revision and updating of the present Rules, based on research and scientific evaluation as well as on developments in other international legal instruments in the field of juvenile justice.

Appendix

Table 1: Comparison of the Age of Criminal Responsibility in Europe

Country	Minimum age for <i>educational</i> measures of the family/youth court (juvenile welfare law)	Age of Criminal responsibility (juvenile criminal law)	Full criminal responsibility (adult criminal law can/must be applied; juvenile law or sanctions of the juvenile law can be applied)	Age range for youth detention/custody or similar forms of deprivation of liberty
Austria		14	18/21	14-27
Belgium		18	16**/18	Only welfare institutions
Bulgaria		14	18	14-21
Croatia		14/16*	18/21	14-21
Cyprus		14	16/18/21	14-21
Czech Republic		15	18/18 + (mit. sent.)	15-19
Denmark****		15	15/18/21	15-23
Estonia		14	18	14-21
Finland****		15	15/18	15-21
France	10	13	18	13-18 + 6 m./23
Germany		14	18/21	14-24
Greece	8	13	18/21	13-21/25
Hungary		14	18	14-24
Ireland		10/12/16*	18	10/12/16-18/21
Italy		14	18/21	14-21
Latvia		14	18	14-21
Lithuania		14***/16	18/21	14-21
Moldova		14***/16	14/16	14-21
Montenegro		14/16*	18/21	14-23
Netherlands		12	16/18/21	12-21
Norway****		15	18	15-21
Poland	13		15/17/18	13-18/15-21
Portugal	12		16/21	12/16-21
Romania		14/16	18/(20)	16-21
Russia		14***/16	18/21	14-21
Serbia		14/16*	18/21	14-23
Slovakia		14/15	18/21	14-18
Slovenia		14***/16	18/21	14-23
Spain		14	18	14-21
Sweden****		15	15/18/21	15-25
Switzerland		10	18/25*****	10-22/17-25/30
“The former Yugoslav Republic of Macedonia”		14***/16	14/16	14-21
Turkey		12	15/18	12-18/21
Ukraine		14***/16	18/21	14-21
United Kingdom: England & Wales		10/12/15*	18	10/15-21
United Kingdom: Northern Ireland		10	17/18/21	10-16/17-21
United Kingdom: Scotland	8	16	16/21	16-21
Belarus		14***/16	14/16	14-21

- * Criminal majority concerning juvenile detention (youth imprisonment etc.);
 ** Only for motoring offences and exceptionally for very serious offences;
 *** Only for serious offences;
 **** Only mitigation of sentencing without separate juvenile justice legislation;
 ***** Special custodial measure for 18-25 years old young adults.