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**OPEN-ENDED INTERGOVERNMENTAL EXPERT GROUP  
ON THE STANDARD MINIMUM RULES FOR THE  
TREATMENT OF PRISONERS**

**VIENNA, AUSTRIA, 25 – 28 March 2014**

**RESPONSE OF THE GOVERNMENT OF FINLAND<sup>1</sup>  
TO NOTE VERBALE CU 2013/129/DO/JS**

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## **STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS**

### **COMMENTS OF THE MINISTRY OF JUSTICE OF FINLAND**

International conventions and recommendations of both the United Nations and the Council of Europe have significantly shaped the Finnish legislation on imprisonment. According to the Ministry of Justice of Finland the Standard Minimum Rules for the Treatment of Prisoners are very important in complementing national legislation and binding international conventions. Although the Standard Minimum Rules do not bind the Member States, their significance as universal norms on the treatment of prisoners is widely accepted. The Standard Minimum Rules form the basis of national legislation and prison reforms in many UN member states.

The Ministry of Justice of Finland considers it is important to revise the Standard Minimum Rules for the Treatment of Prisoners in the areas agreed at the meetings held in Vienna in 2012 and 2013. The existing rules are in some respects outdated and even in contradiction with binding human rights conventions. It is important that the United Nation's Subcommittee on Prevention of Torture (SPT) would have in its own work universally accepted international standards.

The representative of Finland will be unable to participate in the Open-ended Intergovernmental Group Meeting to be held in Buenos Aires. For this reason, the Ministry of Justice of Finland would like to express its comments and views in writing.

The Ministry of Justice of Finland is of the opinion that those eight areas under revision are very important ones. Finland would like to make some suggestions as follows.

#### **Area (a) Respect for prisoners' inherent dignity and value as human beings (rules 6, para 1; 57-59; and 60, para 1)**

##### **Basic principles**

##### **SMR, rule 6 para 1**

The following rules shall be applied impartially.

(1) There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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The Ministry of Justice of Finland support that the ban on discrimination (Rule 6) would be amendmend althought the current rule is in line with the article 2 of the UN Convenant on Civil and Political Rights (ICCPR). However, some important aspects such as age and disability seems to be missing.

**The proposal of Finland ( rule 6, para 1):**

Prisoners shall be treated with justice and with respect for their human dignity. There shall be no discrimination, without a justifiable reason, on the grounds of race, national or ethnic origin, colour, language, sex, age, family status, sexual orientation, state of health, disability, religion, political opinion, political or professional activity or other reason relating to the prisoner.

Transposing Rules 57-59 and rule 60, para 1 into the basic principles is a clear improvement to the Minimum Rules. As regards to the formulation of these articles, Finland would like to propose some amendments as follows.

**SMR, Rule 57:**

Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

**The proposal of Finland (rule 57):**

The content of imprisonment shall be loss or restriction of liberty. The enforcement of imprisonment shall not restrict the rights or circumstances of the prisoner any other manner than that provided in the law or necessary due to mainteance of safety. Restrictions placed on prisoners shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

**SMR, Rule 58:**

The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

**The proposal of Finland (rule 58)**

The purpose and justification of imprisonment is to protect society against crime and support the prisoner towards a life without crime after release.

**SMR Rule 59:**

To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

**The proposal of Finland (rule 59)**

Prisoners should be treated individually based on their specific needs. Individual plans for the implementation of the sentence shall be prepared for each prisoner (individualisation principle -note also rule 63 of the SMR). Individual planning for the management of the prisoner's life shall include progressive movement through the prison system (progression principle). The purpose of work, education, rehabilitation and other activities organised in prison is to promote the prisoners' social integration into the society after release.

**SMR, Rule 60, para 1.**

(1) The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of prisoners or the respect due to their dignity as human beings.

**The proposal of Finland (rule 60, para 1):**

(1) Prison life should be arranged so as to approximate as closely as possible to the realities of life in the community (normalisation principle).

Finland would also like to point out that some important principles still remain in part II of the SMR. It might be justified to transpose also these principles into the basic principles. For example, it might be equally justifiable to transpose Rule 61 (social rehabilitation), Rule 63 (individualisation of treatment - see also above rule 59) and Rule 64 (after-care on release) into the basic principles.

**Area (b) Medical and health services (rules 22-26; 52; 62; and 71, para 2)**

The Ministry of Justice of Finland considers that rules concerning medical and health services should be revised. Finland proposes some amendments as follows.

**SMR, Rule 22**

(1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.

(3) The services of a qualified dental officer shall be available to every prisoner.

**The proposal of Finland:**

- (1) Prison authorities shall safeguard the health of all prisoners in their care. Medical services in prison shall be organised in close relation with the general health administration of the community or nation. Prisoners shall have access to the health services available in the country. All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner.
- (2) Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals, when such treatment is not available in prison. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment.
- (3) The services of dental health shall be available to every prisoner.

**SMR, Rule 23**

- (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.
- (2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

**The proposal of Finland:**

A pregnant prisoner shall, under the necessary supervision, be transferred to a hospital or another operational health-care unit outside the prison in sufficient time for the confinement. Where a child is born in prison the authorities shall provide all necessary support and facilities.

Infants may stay in prison with a parent only when it is considered to be in the best interest of the infants concerned. Prisoners' children shall not be treated as prisoners. Where such infants are allowed to stay in prison with a parent special provisions shall be made for a nursery, staffed by qualified persons. Special accommodation shall be set aside to protect the welfare of such infants.

The rule concerning prisoners' children in prison is important. However, Finland would like to express as a good practice employed in Finland, whereby the care of small children of prisoners is entirely the responsibility of the social welfare authorities. In Finland, a family unit has been established in conjunction with an open prison where prisoners and their children are placed. The prison authorities ensure the supervision of parents in that unit. In Finland, also the father of a small child may be placed in the unit. This is the situation also in many other countries. Therefore Finland proposes that instead of "women" this rule would have a reference solely to "a parent".

**SMR, rule 24**

The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of

prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

**The proposal of Finland (rule 24):**

The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission, and shall examine them unless this is obviously unnecessary.

When examining a prisoner a medical practitioner shall pay particular attention to:

- a. diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment;
- b. recording and reporting to the relevant authorities any sign or indication that prisoners may have been treated violently;
- c. dealing with withdrawal symptoms resulting from use of drugs, medication or alcohol;
- d. identifying any psychological or other stress brought on by the fact of deprivation of liberty;
- e. isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment;
- f. ensuring that prisoners carrying the HIV virus are not isolated for that reason alone; and
- g. determining the fitness of each prisoner to work and to exercise.

**SMR, rule 25**

(1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

(2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

**The proposal of Finland (rule 25):**

(1) The medical practitioner shall have the care of the physical and mental health of the prisoners and shall see, with a frequency consistent with health care standards in the community, all sick prisoners and all who report illness or injury. The medical practitioner or a qualified nurse reporting to such a medical practitioner shall examine the prisoner if requested at release, and shall otherwise examine prisoners whenever necessary.

(2) The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.

**SMR, rule 62**

The medical services of the institution shall seek to detect and shall treat any physical

or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.

**The proposal of Finland (rule 62)**

The medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer. All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose.

**SMR, rule 71, para 2**

(2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.

**The proposal of Finland (rule 71, para 1)**

When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to determining the physical and mental fitness of each prisoner to work and to take part in other activities organised in prison.

**Area (c) Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet (rules 27, 29, 31 and 33)**

**SMR, rule 27**

Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

**The proposal of Finland (rule 27)**

The maintenance of discipline in prison shall be based on firmness and fairness and on the use of dynamic security with no more restrictions than is necessary due to ensure good order in prison and safety of the prisoners and staff.

**SMR, rule 29**

The following shall always be determined by the law or by the regulation of the competent administrative authority:

- (a) Conduct constituting a disciplinary offence;
- (b) The types and duration of punishment which may be imposed;
- (c) The authority competent to impose such punishment.

**The proposal of Finland (rule 29)**

The following shall always be determined by the law or by the regulation of the competent authority:

- (a) Conduct constituting a disciplinary offence;
- (b) The types and duration of punishment which may be imposed;
- (c) The authority competent to impose such punishment and
- (d) Access to the appellate process.

### **SMR rule 31**

Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

#### **The proposal of Finland (rule 31):**

Collective and corporal punishments including confinement or reduction of diet, punishment by placing in a dark cell and all other forms of inhuman or degrading punishment shall be prohibited. Punishment shall not include a total prohibition on family contact.

Solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible. Solitary confinement of children, of pregnant women, parents with infants and breastfeeding mothers in prison and of persons with mental illnesses shall be prohibited.

### **SMR, rule 32**

- (1) The punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.
- (2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.
- (3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

#### **The proposal of Finland (rule 32).**

(1)The requirements regarding accommodation, personal hygiene, access to open air, light, to medical care, water and adequate nutrition and the right to exercise continue to apply where prisoners are undergoing punishment.

(2) The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff. The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by any condition of imprisonment, including conditions of solitary confinement.



**Area (d) Investigations of all deaths in custody, as well as of any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners**

**SMR, rule 7**

- (1) ) In every place where persons are imprisoned there shall be kept a register with numbered pages in which shall be entered in respect of each prisoner received:
- (a) Information concerning his identity;
  - (b) The reasons for his commitment and the authority therefor;
  - (c) The day and hour of his admission and release.
- (2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.

**The proposal of Finland**

- (1) No person shall be admitted to or held in a prison as a prisoner without a written commitment order in accordance with national law.
- (2) At admission the following details shall be recorded immediately concerning each prisoner:
- a. information on the identity of the prisoner;
  - b. the reasons for commitment and the authority for it;
  - c. the day and hour of admission;
  - d. an inventory of the personal property of the prisoner;
  - e. any visible injuries and complaints about prior ill-treatment; and
  - f. information about the prisoner's health, causes of death and serious injuries of the prisoner.

**SMR, rule 44**

- (1) Upon the death or serious illness of or serious injury to a prisoner, or his removal to an institution for the treatment of mental illnesses or abnormalities, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.
- (2.) A prisoner shall be informed at once of the death or serious illness of any near relative. In these cases and whenever circumstances allow, the prisoner should be authorised to go to this sick relative or see the deceased either under escort or alone.
- (3.) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

**The proposal of Finland (rule 44)**

- (1) The competent authorities as well as a near relative or another close person indicated by a prisoner shall be notified of serious injury to a prisoner or the death of the prisoner.
- (2) A prisoner shall be informed at once of the death or serious illness of any near relative or another close person indicated by a prisoner. In these cases a prisoner shall be granted permission to leave the prison under necessary supervision or escort for a short period of time in order to visit such person who is seriously ill or for the funeral of such person.

(3). Every prisoner shall have the right to inform at once as a near relative or another close person indicated by a prisoner his or her reception in prison and his or her transfer to another institution.

**Area (e) Protection and special needs of vulnerable groups deprived of their liberty taking into consideration countries in difficult situation (rules 6 and 7)**

According to the Ministry of Justice it would be better to generally emphasise that treatment during the imprisonment shall be based on the special needs of a individual prisoner rather than adding a long and detailed list of vulnerable groups.

**Area (f) The right of access to legal representation (rules 30; 35, para 1; 37; and 93)**

**SMR, rule 30**

- (1.) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.
- (2.) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a through examination of the case.
- (3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

**Proposal of Finland (rule 40)**

- (1) No prisoner shall be punished except in accordance with the law or regulation and never twice for the same act.
- (2) Any allegation of infringement of the disciplinary rules by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay.
- (3). Prisoners shall be informed promptly, in a language which they understand and in detail, of the nature of the accusations against them and have adequate time and facilities for the preparation of their defence.
- (4) Prisoners shall be allowed to defend themselves in person or through legal assistance when the interests of justice so require and have the free assistance of an interpreter if they cannot understand or speak the language used at the hearing.

**SMR, rule 35, para 1.**

- (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorised methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

**The proposal of Finland (rule 35)**

(1) On the arrival in prison prisoners shall be informed without delay of prison conditions as well as of the rights and obligations of the prisoners. The information shall be available in the most commonly used languages in accordance with the needs of the prisoners in the prison.

A foreign prisoner shall be informed of his or her possibility to contact the diplomatic representation of his or her home country. A foreign prisoner shall also be provided with interpretation assistance, where possible. A prisoner who uses sign language or requires interpretation services due to a disability shall be provided the necessary interpretation and translation assistance.

**SMR, rule 37**

Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

**The proposal of Finland (rule 37)**

Prisoners shall be allowed to communicate with their family, legal advisors and all persons or representatives of organisations and to receive visits from these persons at regular intervals subject only to such restrictions and supervision as are necessary in the interests of their treatment, the security and good order of the institution. Consultations and other communications including correspondence about legal matters between prisoners and their legal advisers shall be confidential.

**SMR rule 93**

For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

**The proposal of Finland (rule 93)**

Untried prisoners shall be informed explicitly of their right to legal advice. All necessary facilities shall be provided to assist untried prisoners to prepare their defence and to meet with their legal representatives. An untried prisoner shall be entitled to choose his or her legal representative and shall be allowed to apply for free legal aid where such aid is available. The untried prisoner shall be allowed to receive confidential visits from his or her legal adviser. Visits between the prisoner and the prisoner's legal adviser may be within sight but not within hearing. A judicial authority may in exceptional circumstances authorise restrictions on such confidentiality to prevent serious crime or major breaches of prison safety and security. A foreign prisoner shall also be provided with interpretation assistance, where possible. A prisoner who uses sign language or

requires interpretation services due to a disability shall be provided the necessary interpretation and translation assistance.

### **Area (g) Complaints and independent inspection (rules 36 and 55)**

#### **SMR, rule 36**

- (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorised to represent him.
- (2). It shall be possible to make requests or complaints to an inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other duly constituted authority entitled to visit the prison without the director or other members of the staff being present.
- (3.) Every prisoner shall be allowed to make a request or complaint, under confidential cover, to the central prison administration, the judicial authority or other proper authorities through approved channels..
- (4.) Unless it is obviously frivolous or groundless, every request or complaint addressed or referred to a prison authority shall be promptly dealt with and replied to by this authority without undue delay.

#### **The proposal of Finland (rule 36)**

- (1) Prisoners, individually or as a group, shall have an opportunity to make requests or complaints to the director of the prison, the central prison administration, the judicial authority or to any other competent authority. If a request is denied or a complaint is rejected, reasons shall be provided to the prisoner.
- (2) The prisoners shall have right to make requests or complaints to an inspector of prisons. The prisoner shall have the opportunity to talk to the inspector or to any other duly constituted authority entitled to visit the prison without members of the staff being present.
- (3) Prisoners shall not be punished because of having made a request or lodged a complaint.

#### **SMR, rule 55**

- (1) There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about objectives of penal services.

The Ministry of Justice of Finland would like to propose that it should be considered whether it is necessary to adopt a new detailed rule concerning independent inspection bodies and especially their competence when similar regulation already is legally binding in the Optional Protocol to the Convention Against Torture. However, Finland will not object if it is seen as good solution to write this rule also into the Minimum Rules. In this case it should have the same content as in the Optinal Protocol.

**Area (h) The replacement of outdated terminology**

The Ministry of Justice of Finland considers the linguistic corrections to several rules are needed ("insane and mentally abnormal prisoners", "he" and "mental diseases or abnormalities")

**Area (i) Training of relevant staff to implement the SMR (rule 47)**

Concerning rule 47 the Ministry of Justice supports the amendments suggested by the Expert Group in the Report of Secretariat, dated 4th February 2013.

When all the amended rules have been added into Standard Minimum Rules some illogicalities and new needs for change might still occur. Therefore it is important that the rules in the end of this reform process are also examined as a whole

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