

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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

*(adopted by the Committee of Ministers on 24 September 2003
at the 853rd meeting of the Ministers' Deputies)*

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

Considering that it is in the Council of Europe member states' interest to establish common principles regarding the enforcement of custodial sentences in order to strengthen international co-operation in this field;

Recognising that conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community;

Considering that it should be used in ways that are adapted to individual circumstances and consistent with the principles of justice and fairness;

Considering that the financial cost of imprisonment places a severe burden on society and that research has shown that detention often has adverse effects and fails to rehabilitate offenders;

Considering, therefore, that it is desirable to reduce the length of prison sentences as much as possible and that conditional release before the full sentence has been served is an important means to that end;

Recognising that conditional release measures require the support of political leaders, administrative officials, judges, public prosecutors, advocates and the public, who therefore need a detailed explanation as to the reasons for adapting prison sentences;

Considering that legislation and the practice of conditional release should comply with the fundamental principles of democratic states governed by the rule of law, whose primary objective is to guarantee human rights in accordance with the European Convention on Human Rights and the case-law of the organs entrusted with its application;

Bearing in mind the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS No. 51);

Recognising the importance of:

- Resolution (65) 1 on suspended sentence, probation and other alternatives to imprisonment;
- Resolution (70) 1 on the practical organisation of measures for the supervision and after-care of conditionally sentenced or conditionally released offenders;
- Resolution (76) 2 on the treatment of long-term prisoners;
- Resolution (76) 10 on certain alternative penal measures to imprisonment;
- Recommendation No R (82) 16 on prison leave;
- Recommendation No. R (87) 3 on the European Prison Rules;
- Recommendation No R (89) 12 on education in prison;
- Recommendation No. R (92) 16 on the European rules on community sanctions and measures;
- Recommendation No. R (92) 17 concerning consistency in sentencing;
- Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions and measures;
- Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation;
- Recommendation Rec(2000)22 on improving the implementation of the European Rules on community sanctions and measures,

Recommends that governments of member states:

1. introduce conditional release in their legislation if it does not already provide for this measure;
2. be guided in their legislation, policies and practice on conditional release by the principles contained in the appendix to this recommendation;
3. ensure that this recommendation on conditional release and its explanatory memorandum are disseminated as widely as possible.

Appendix to Recommendation Rec(2003)22

I. Definition of conditional release

1. For the purposes of this recommendation, conditional release means the early release of sentenced prisoners under individualised post-release conditions. Amnesties and pardons are not included in this definition.
2. Conditional release is a community measure. Its introduction into legislation and application to individual cases are covered by the European rules on community sanctions and measures contained in Recommendation No. R (92) 16, as well as by Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures.

II. General principles

3. Conditional release should aim at assisting prisoners to make a transition from life in prison to a law-abiding life in the community through post-release conditions and supervision that promote this end and contribute to public safety and the reduction of crime in the community.
- 4.a. In order to reduce the harmful effects of imprisonment and to promote the resettlement of prisoners under conditions that seek to guarantee safety of the outside community, the law should make conditional release available to all sentenced prisoners, including life-sentence prisoners.

4.b. If prison sentences are so short that conditional release is not possible, other ways of achieving these aims should be looked for.

5. When starting to serve their sentence, prisoners should know either when they become eligible for release by virtue of having served a minimum period (defined in absolute terms and/or by reference to a proportion of the sentence) and the criteria that will be applied to determine whether they will be granted release (“discretionary release system”) or when they become entitled to release as of right by virtue of having served a fixed period defined in absolute terms and/or by reference to a proportion of the sentence (“mandatory release system”).

6. The minimum or fixed period should not be so long that the purpose of conditional release cannot be achieved.

7. Consideration should be given to the savings of resources that can be made by applying the mandatory release system in respect of sentences where a negative individualised assessment would only make a small difference to the date of release.

8. In order to reduce the risk of recidivism of conditionally released prisoners, it should be possible to impose on them individualised conditions such as:

- the payment of compensation or the making of reparation to victims;
- entering into treatment for drug or alcohol misuse or any other treatable condition manifestly associated with the commission of crime;
- working or following some other approved occupational activity, for instance, education or vocational training;
- participation in personal development programmes;
- a prohibition on residing in, or visiting, certain places.

9. In principle, conditional release should also be accompanied by supervision consisting of help and control measures. The nature, duration and intensity of supervision should be adapted to each individual case. Adjustments should be possible throughout the period of conditional release.

10. Conditions or supervision measures should be imposed for a period of time that is not out of proportion to the part of the prison sentence that has not been served.

11. Conditions and supervision measures of indeterminate duration should only be applied when this is absolutely necessary for the protection of society and in accordance with the safeguards laid down in Rule 5 of the European rules on community sanctions and measures as revised in Recommendation Rec(2000) 22.

III. Preparation for conditional release

12. The preparation for conditional release should be organised in close collaboration with all relevant personnel working in prison and those involved in post-release supervision, and be concluded before the end of the minimum or fixed period.

13. Prison services should ensure that prisoners can participate in appropriate pre-release programmes and are encouraged to take part in educational and training courses that prepare them for life in the community. Specific modalities for the enforcement of prison sentences such as semi-liberty, open regimes or extra-mural placements, should be used as much as possible with a view to preparing the prisoners’ resettlement in the community.

14. The preparation for conditional release should also include the possibility of the prisoners' maintaining, establishing or re-establishing links with their family and close relations, and of forging contacts with services, organisations and voluntary associations that can assist conditionally released prisoners in adjusting to life in the community. To this end, various forms of prison leave should be granted.

15. Early consideration of appropriate post-release conditions and supervision measures should be encouraged. The possible conditions, the help that can be given, the requirements of control and the possible consequences of failure should be carefully explained to, and discussed with, the prisoners.

IV. Granting of conditional release

Discretionary release system

16. The minimum period that prisoners have to serve to become eligible for conditional release should be fixed in accordance with the law.

17. The relevant authorities should initiate the necessary procedure to enable a decision on conditional release to be taken as soon as the prisoner has served the minimum period.

18. The criteria that prisoners have to fulfil in order to be conditionally released should be clear and explicit. They should also be realistic in the sense that they should take into account the prisoners' personalities and social and economic circumstances as well as the availability of resettlement programmes.

19. The lack of possibilities for work on release should not constitute a ground for refusing or postponing conditional release. Efforts should be made to find other forms of occupation. The absence of regular accommodation should not constitute a ground for refusing or postponing conditional release and in such cases temporary accommodation should be arranged.

20. The criteria for granting conditional release should be applied so as to grant conditional release to all prisoners who are considered as meeting the minimum level of safeguards for becoming law-abiding citizens. It should be incumbent on the authorities to show that a prisoner has not fulfilled the criteria.

21. If the decision-making authority decides not to grant conditional release it should set a date for reconsidering the question. In any case, prisoners should be able to reapply to the decision-making authority as soon as their situation has changed to their advantage in a substantial manner.

Mandatory release system

22. The period that prisoners must serve in order to become entitled to release should be fixed by law.

23. Only in exceptional circumstances defined by law should it be possible to postpone release.

24. The decision to postpone release should set a new date for release.

V. Imposition of conditions

25. When considering the conditions to be imposed and whether supervision is necessary, the decision-making authority should have at its disposal reports, including oral statements, from personnel working in prison who are familiar with the prisoners and their personal circumstances. Professionals involved in post-release supervision or other persons knowledgeable about the prisoners' social circumstances should also make information available.

26. The decision-making authority should make sure that prisoners understand the imposed conditions, the help that can be given, the requirements of control and the possible consequences of failure to comply with the conditions.

VI. Implementation of conditional release

27. If the implementation of conditional release has to be postponed, prisoners awaiting release should be kept in conditions as close as possible to those they would be likely to enjoy in the community.

28. The implementation of conditional release and supervision measures should be the responsibility of an implementing authority in compliance with Rules 7, 8 and 11 of the European rules on community sanctions and measures.

29. Implementation should be organised and dealt with in compliance with Rules 37 to 75 of the European Rules on community sanctions and measures, and with the basic requirements for effectiveness set out in the relevant provisions of principles 9 to 13 of Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures.

VII. Failure to comply with imposed conditions

30. Minor failures to observe imposed conditions should be dealt with by the implementing authority by way of advice or warning. Any significant failure should be promptly reported to the authority deciding on possible revocation. This authority should, however, consider whether further advice, a further warning, stricter conditions or temporary revocation would constitute a sufficient penalty.

31. In general, the failure to observe imposed conditions should be dealt with in accordance with Rule 85 of the European rules on community sanctions and measures as well as with the remaining relevant provisions of Chapter X of the rules.

VIII. Procedural safeguards

32. Decisions on granting, postponing or revoking conditional release, as well as on imposing or modifying conditions and measures attached to it, should be taken by authorities established by law in accordance with procedures covered by the following safeguards:

- a. convicted persons should have the right to be heard in person and to be assisted according to the law;
- b. the decision-making authority should give careful consideration to any elements, including statements, presented by convicted persons in support of their case;
- c. convicted persons should have adequate access to their file;
- d. decisions should state the underlying reasons and be notified in writing.

33. Convicted persons should be able to make a complaint to a higher independent and impartial decision-making authority established by law against the substance of the decision as well as against non-respect of the procedural guarantees.

34. Complaints procedures should also be available concerning the implementation of conditional release.

35. All complaints procedures should comply with the guarantees set out in Rules 13 to 19 of the European rules on community sanctions and measures.

36. Nothing in paragraphs 32 to 35 should be construed as limiting or derogating from any of the rights that may be guaranteed in this connection by the European Convention on Human Rights.

IX. Methods to improve decision-making

37. The use and development of reliable risk and needs assessment instruments which would, in conjunction with other methods, assist decision-making should be encouraged.

38. Information sessions and/or training programmes should be arranged for decision-makers, with contributions from specialists in law and social sciences, and all involved in the resettlement of conditionally released prisoners.

39. Steps should be taken to ensure a reasonable degree of consistency in decision-making.

X. Information and consultation on conditional release

40. Politicians, judicial authorities, decision-making and implementing authorities, community leaders, associations providing help to victims and to prisoners, as well as university teachers and researchers interested in the subject should receive information and be consulted on the functioning of conditional release, and on the introduction of new legislation or practice in this field.

41. Decision-making authorities should receive information about the numbers of prisoners to whom conditional release has been applied successfully and unsuccessfully as well as on the circumstances of success or failure.

42. Media and other campaigns should be organised to keep the general public informed on the functioning and new developments in the use of conditional release and its role within the criminal justice system. Such information should be made speedily available in the event of any dramatic and publicised failure occurring during a prisoner's conditional release period. Since such events tend to capture media interest, the purpose and positive effects of conditional release should also be emphasised.

XI. Research and statistics

43. In order to obtain more knowledge about the appropriateness of existing conditional release systems and their further development, evaluation should be carried out and statistics should be compiled to provide information about the functioning of these systems and their effectiveness in achieving the basic aims of conditional release.

44. In addition to the evaluations recommended above, research into the functioning of conditional release systems should be encouraged. Such research should include the views, attitudes and perceptions on conditional release of judicial and decision-making authorities, implementing authorities, victims, members of the public and prisoners. Other aspects that should be considered include whether conditional release is cost-effective, whether it produces a reduction in reoffending rates, the extent to which conditionally released prisoners adjust satisfactorily to life in the community and the impact the development of a conditional release scheme might have on the imposition of sanctions and measures, and the enforcement of sentences. The nature of release preparation programmes should also be subject to research scrutiny.

45. Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

Explanatory Memorandum

on Recommendation Rec (2003) 22

on conditional release (parole)

INTRODUCTION

In recent years, recourse to conditional release (parole) - i.e. release under certain individualised conditions with which prisoners must comply - has progressively diminished in a number of member states. The reasons for this include structural changes in the prison population, such as a higher proportion of prisoners sentenced for offences relating to violence, drugs or sexual abuse or assault, as well as changes in the attitude of the authorities entrusted with parole decisions. In several new member states, conditional release exists in theory but is not practised. This is usually due to the fact that services for the supervision of conditionally released offenders have not yet been created.

This situation is to be deplored and remedied at a time when almost all European countries face serious problems in reducing crime and re-offending rates, as well as prison overcrowding and prison population inflation. The work conducted by the Council of Europe on these issues has clearly demonstrated that "conditional release is to be regarded as one of the most effective and constructive measures, which not only reduces the length of imprisonment but also contributes substantially to a planned return of the offender to the community" (Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation). In addition, research has produced evidence of the positive effect of conditional release, when this is appropriately organised, on re-conviction rates.

The reasons mentioned above have led the European Committee on Crime Problems (CDPC) to give ad hoc terms of reference to one of its advisory organs, the Council for Penological Co-operation (PC-CP), to conduct a study on conditional release with a view to drawing up a draft recommendation. The PC-CP started its work in 2000 and finished it in February 2003. During this period, the PC-CP was composed of the following members: Mr Paolo Mancuso (Italian), Mr Włodzimierz Markiewicz (Polish), Mr Bertel Österdahl (Swedish), Sir Graham Smith (British, until August 2002), Mr Peter Best (German, until June 2001), Ms Irena Križnik (Slovenian, until June 2001), Mr Bart van der Linden (Dutch, until June 2001), Mr George Marjanović (citizen of "the former Yugoslav Republic of Macedonia", as from June 2001), Mr Michael Mellett (Irish, as from June 2001) and Ms Sonja Snacken (Belgian, as from June 2001). They were assisted by the following scientific experts: Mr Pierre Tournier, Research Director at the CNRS, France, Ms Hilde Tubex, Professor at the Free University of Brussels, Belgium and, at a later stage, Mr Norman Bishop, former Head of Research and Development Unit, National Prison and Probation Administration, Sweden.

The PC-CP listened to presentations by the following external consultants (in chronological order) Mr Johan Berg, Adviser, Department of Prison and Probation, Ministry of Justice, Norway, Ms Hélène Chevalier, Executive Director of the National Parole Board, Canada, Mr Freddy Pieters, Chairman of the Parole Board of Brussels, Belgium, Mr Robert Brown, Director of Vancouver Island Parole, Canada, Mr Mario Paparozzi, Chairman of the New Jersey State Parole Board, USA and Ms Julia Stevens, former Assistant-Chief of the Probation Office, England and Wales, currently seconded to the Home Office for the development of the joint prison/probation Offenders Assessment System (OASys).

Moreover, the PC-CP conducted a study on the legislation and use of conditional release in the member states of the Council of Europe. This study was based on an analysis by Ms Hilde Tubex, assisted by Mr Pierre Tournier, of 36 replies received to a general questionnaire.

The PC-CP drafted a recommendation and an explanatory memorandum to which the aforementioned analysis of Ms Hilde Tubex is appended. These were presented to the CDPC in June 2003.

COMMENTS TO THE PREAMBLE

In the preamble to the present recommendation (“the Recommendation”), the Committee of Ministers recalls the mission of the Council of Europe to promote international co-operation in the field of enforcement of sentences around common principles, which should be in accordance with the fundamental values shared by its member states: respect for Human Rights, Democracy and the Rule of Law.

A number of such principles have already been agreed upon in or derive from recommendations adopted in previous years; these recommendations are listed at the end of the preamble.

Thus, the Ministers use the preamble to recall that conditional release, ensuring a planned, assisted and controlled reintegration into the community, is one of the most effective and constructive means to prevent re-offending and to promote the resettlement of prisoners.

In the same vein, the Ministers recognise that conditional release, like all penal sanctions and measures, should be individualised and ordered in accordance with the fundamental precepts of a state governed by the Rule of Law, i.e. justice and fairness.

Moreover, the Ministers refer to the substantial financial cost of imprisonment, the adverse effect it risks having on offenders and the need to avoid it as much as possible - all these being considerations that have been taken into account in past recommendations, such as the European Prison Rules and the European Rules on community sanctions and measures.

The decrease in the use of conditional release among member states explains the Committee of Ministers’ determination, manifested in the preamble, to promote support for this measure among political leaders, officials, judges, public prosecutors, lawyers and the public.

Furthermore, the preamble makes reference to norms that are binding on all member states, i.e. the provisions of the European Convention of Human Rights and the important case-law developed over the years by the European Commission and Court of Human Rights. It also mentions the norms that are binding on the state parties to the Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders.

Finally, at the end of the preamble are listed a number of resolutions and recommendations that do not contain binding norms, but reflect a political consensus of the Council of Europe’s member states as to the principles that should guide their legislation, policy and practice on numerous issues related to the application of penal sanctions and measures.

COMMENTS TO THE APPENDIX TO THE RECOMMENDATION

I. Definitions

Paragraphs 1 and 2

Conditional release is a “community measure” within the meaning of Recommendation No. R (92) 16 on the European Rules on community sanctions and measures¹ and Recommendation No. Rec(2000)22 on improving the implementation of the European Rules on community sanctions and measures².

It differs from other forms of early release. As some of them, it must always be accompanied by a general condition that the prisoner should refrain from engaging in criminal activities. However, this is not enough. A release can only be defined as “conditional” when it is possible to impose on the prisoner additional conditions (and where necessary supervision consisting of help and control measures) to the extent that these are appropriate and needed for his/her safe and successful resettlement into society. These additional conditions must always be individualised, i.e. decided on the basis of the risks presented by each prisoner and his/her needs³.

Such is not necessarily the case for the release itself, which may be granted as of right after a prisoner has served a certain period of the prison sentence. This happens in the mandatory release system. In the discretionary release system a prisoner will not only have to serve a certain period of his/her sentence but a decision-making authority will have to assess whether s/he meets certain criteria⁴ before conditional release can be granted (some form of risk assessment underlies all decisions to release or not in this system).

Conditional release, unlike amnesty and pardon, does not put an end to the enforcement of the original court sentence; it is a measure intended to alter the manner of its implementation.

The recommendation does not concern special procedures for juvenile prisoners or the mentally ill.

It contains provisions concerning member states’ legislation on conditional release and its application to individual cases, the latter being a concept that, according to the glossary of the European Rules on community sanctions and measures, covers both the granting of conditional release and its implementation, i.e. the practical work ensuring that the period of conditionally release is properly served.

II. General Principles

Paragraph 3

The main objectives of a prison sentence are the protection of society, the reduction of crime and the successful resettlement of the convicted person. Experience and research have demonstrated that an appropriate use of conditional release is one of the most effective ways of achieving these objectives.

Conditional release aims at providing prisoners with the best possible means of succeeding in the transition from life in detention to a law-abiding life in the community. These means are to be found in the selection of post-release conditions and measures of control and assistance that are best adapted to the prisoner’s individual needs and risks and offer the best possible guarantees to prevent re-offending and to promote the prisoner’s resettlement as a law-abiding citizen. Providing the prisoner with these means leads to a substantial reduction of reconviction rates. Moreover, conditional release is an important factor influencing behaviour during detention.

¹ See the definition of community sanctions and measures in the glossary to the European Rules on community sanctions and measures (Committee of Ministers Rec. No. R (92) 16).

² Recommendation No. Rec(2000)22 includes a revision of Rule 5 of Rec. No. R (92) 16.

³ Reference is made to §§ 8 and 9 below.

⁴ Reference is made to §§18 to 20 below.

The policy, legislation and practice concerning conditional release should be guided by its main purpose, which is the successful resettlement of the prisoner under conditions that seek to guarantee community safety. However, as recalled in the preamble, the wider use of conditional release is also encouraged to serve other purposes such as attenuating detention's negative effects on prisoners and reducing the high costs of imprisonment. Conditional release is also recommended as an important measure contributing to the achievement of the objectives of Recommendation No. R (99) 22 on prison overcrowding and prison population inflation⁵.

Paragraph 4

Conditional release can provide a controlled, individualised and gradual transition from life in detention to life in freedom. The high reconviction rates and the numerous difficulties related to the resettlement of prisoners released after serving the full term of their sentence in prison show that it is necessary to provide such a transition to as many prisoners as possible. Therefore, the possibility of being granted conditional release should be available to all sentenced prisoners, regardless of the sentence-length or the nature of the offence for which they have been convicted.

Life-sentence prisoners should not be deprived of the hope to be granted release either. Firstly, no one can reasonably argue that all lifers will always remain dangerous to society. Secondly, the detention of persons who have no hope of release poses severe management problems in terms of creating incentives to co-operate and address disruptive behaviour, the delivery of personal-development programmes, the organisation of sentence-plans and security. Countries whose legislation provides for real-life sentences should therefore create possibilities for reviewing this sentence after a number of years and at regular intervals, to establish whether a life-sentence prisoner can serve the remainder of the sentence in the community and under what conditions and supervision measures.

For prisoners serving very short prison sentences (few months) a transitional measure such as conditional release may not be possible. This, however, does not mean that the objectives pursued by conditional release should be abandoned. They can be achieved by allowing these very short sentences to be served wholly or partly in the community (e.g. day release, weekend serving, electronic monitoring) or by imposing probation as an autonomous sanction.

Paragraph 5

The right of any sentenced person to know and understand what sanction or measure has been imposed on him/her, its practical implications and the manner of its implementation⁶ derives from the principle of legal certainty, which is an aspect of the Rule of Law. Knowledge of the exact release date (mandatory release system) or of the minimum period to be served and the criteria on the basis of which the decision to release or not will be made (discretionary release system) provides also an incentive for a prisoner to co-operate in the preparation of his/her release. Without the prisoner's active co-operation, the chances of a successful rehabilitation appear to be limited⁷.

Knowledge of the criteria is one way of encouraging the prisoner to make active use of the possibilities offered to increase his/her chances to be released by addressing his/her criminogenic needs (i.e. the needs that have led him/her to commit a crime or maintain criminal behaviour, such as alcohol and drug problems, aggressiveness etc) and by taking the necessary initiatives for promoting his/her resettlement (maintaining family links, professional training etc). Information about the date is also likely to enhance the prisoner's ability to plan for the post-release term of his/her sentence and to obtain the best possible conditions and supervision measures by demonstrating his/her active participation in existing pre-release schemes.

⁵ See §§ 24 and 25 of the Recommendation.

⁶ The term implementation is understood as in the commentary to §§ 1 and 2 of the Recommendation.

⁷ Reference is made to Rules 30 to 36 of Rec. No. R (92) 16 concerning co-operation and consent of the offender.

Paragraph 6

If conditional release is granted at a date too close to the end of the sentence, the transitional period and the supervision measures are unlikely to have the impact that would ensure that the prisoner is able to live a law-abiding life in the community. In addition, when conditional release is granted too late, the detrimental effects of imprisonment will have been accentuated while the beneficial effects of this measure on reducing the size of the prison population will be lost.

Paragraph 7

In a discretionary system before taking the decision to release or not a prisoner, the latter is individually assessed. Each such exercise requires the investment of assessment and decision-making resources. For prisoners serving short sentences it is argued that the risk-assessment exercise is not likely to produce more than a marginal change in the release date while the cost and effort involved can be more usefully invested in a mandatory release system allowing for a seamless management of pre- and post-release sentence planning.

Countries might, therefore, wish to consider introducing a combination of release systems depending on the length of the prison sentence imposed. There are countries that apply the discretionary release system to prisoners serving life and long sentences while other prisoners have the benefit of mandatory release after having served a fixed period. The idea underpinning the adoption of a mixed release system is to reserve discretionary decisions on the appropriate release date for those prisoners who might pose a significant threat to the public.

Paragraph 8

Conditional release should always be made subject to the condition of not committing any further criminal offences. In many cases, however, this sole condition will not be sufficient to prevent re-offending.

It follows that, in both the mandatory and the discretionary release systems, an authority should exist that should be able to examine what conditions each individual prisoner should be subjected to upon his/her release. Whenever this authority considers that the general condition not to re-offend is not sufficient, it should be able to decide to impose additional conditions as needed for the protection of society against the risks posed by a particular offender.

Care should be taken to make sure that additional conditions are adapted to the convicted person's personal risk-factors as well as to his/her possibilities to comply with them. Since individual circumstances may change during the period of conditional release, there should be a possibility periodically to review whether the imposed conditions are still adapted to the former prisoner's needs. Additional conditions should not be imposed or maintained unnecessarily.

In line with the definition given in paragraph 1 of the Recommendation, early release systems that do not allow for the imposition of additional conditions cannot be defined as conditional release systems within the scope of the Recommendation.

Paragraph 9

According to the definition given in the glossary of the European Rules on community sanctions and measures, the term “supervision” refers both to “helping” activities conducted by or on behalf of an “implementing authority”⁸ which are intended to maintain the convicted person in society and to actions taken to ensure that s/he fulfils any conditions or obligations imposed, the latter being referred to as “control”. Most conditionally released prisoners will need some form of social or psychological assistance to succeed in their resettlement into society. This also applies to control measures, which should be organised in such a way that breaches of conditions and recidivism can be addressed effectively. The type of assistance and the intensity of control measures should be adapted to the personal needs of the convicted person and to the conditions imposed and be reviewed periodically. When the circumstances change, supervision measures should be adapted accordingly. Unnecessary supervision would be a waste of resources and should be avoided.

Paragraph 10

The Recommendation allows for conditions and supervision measures of a duration that can exceed the term of the prison sentence imposed by the court. However, it also provides that their duration should not be out of proportion to the part of the sentence that has not been served in prison. In the case of life-sentence prisoners conditions and supervision measures may be imposed for life, provided that this is necessary for the protection of society and that the continued existence of this need is regularly reviewed⁹.

Paragraph 11

In exceptional cases, offenders may present personal characteristics, which give them a propensity continually to commit crimes. When this propensity constitutes a manifest grave and continuing risk to life, health or safety in the community and the offender has already committed a serious crime, it may be justified to extend conditions and supervision measures for a period of indeterminate length beyond the expiry of the prison sentence. However, imposing a measure of indefinite duration raises questions related to human rights protection. This is why, when Rule 5 of the European Rules on community sanctions and measures was revised to allow for the imposition of such a measure in exceptional circumstances, emphasis was put on the need to provide for its regular review by an independent body empowered by law.

Rule 5, as revised in Recommendation No. Rec(2000)22 “on improving the implementation of the European Rules on community sanctions and measures”, reads as follows:

“Ordinarily no community sanction or measure shall be of indeterminate duration.

Exceptionally, an indeterminate community sanction or measure may be imposed on offenders, who, by reason of a serious prior or current offence in combination with a specific personal characteristic manifestly pose a continuing grave threat to life, health or safety in the community. Legislative provision shall be made for the regular review of the imposition of such an indeterminate sanction or measure by a body independent of the executive and empowered by law to do so.

The duration of community sanctions and measures shall be fixed by the authority empowered to make the decision within the limits and under the conditions laid down by law.”

⁸ This is also defined in the glossary of Rec. No. R (92) 16; see also § 28 of the Recommendation.

⁹ See § 9 of the Recommendation.

III. Preparation for conditional release

Paragraph 12

Since conditional release serves a transitional function and is the interface between prison and the outside world, its preparation requires a co-ordinated effort by all those who are responsible for the prisoner while in detention and all those who will be responsible for him/her after release; this will ensure continuity not only in sentence-enforcement management but also in the educational and social support and health care for prisoners. Guidelines on how to improve collaboration between prison staff and those involved in post-release supervision are to be found in the provisions of Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions and measures.

This preparation should be initiated in good time before release actually takes place, preferably as soon as possible after the start of the prison sentence.

In a mandatory release system it is obvious that it should be concluded before the end of the fixed period. Moreover, paragraph 17 of the Recommendation provides that in the discretionary release system a decision on conditional release should be taken by the time the prisoner has served the minimum period. It follows that the preparation should also have been concluded before the end of the minimum period.

Paragraph 13

While it is the responsibility of the prisoner to be involved in pre-release programmes, it is the responsibility of the prison service to see to it that prisoners are provided with the necessary means for preparing their successful and safe return to life in the community. These will include the availability of adequate psycho-social treatment programmes to address offending and anti-social behaviour as well as criminogenic needs such as drug or alcohol addiction and aggressiveness.

Major importance should, furthermore, be given to the availability of educational and professional training courses that are adapted to the needs of the labour market and to the individual needs and skills of the prisoners. Since participation in educational and training courses is not compulsory, it is recommended that incentives be created to encourage prisoners to participate in them (e.g. by remunerating them). Guidelines on the organisation of educational programmes are to be found in Recommendation No. R (89) 12 on education in prison.

In order to make sure that prisoners can take part in programmes that are adapted to their specific needs, prisoners should be informed about the possibilities offered and the advantages linked to participation. This will, in particular, be the case when the granting of conditional release is discretionary. Since it is unlikely that every prison will offer a full range of programmes and courses adapted to all individual profiles, sometimes it may be necessary to re-allocate a prisoner to an institution that provides the most appropriate treatment programmes or training courses.

The preparation for conditional release should also be facilitated by making greater use of possibilities to increase gradually freedom of movement by placing prisoners in semi-liberty or in open prisons, or by allowing them to participate in extra-mural training or treatment programmes. The use of these modalities is particularly important for prisoners who are serving long sentences and who would encounter major difficulties in adapting from life in a closed prison to life in the community without transitional measures.

Paragraph 14

This paragraph concerns prisoners' contacts with their family and other close relatives and close friends as well as services, organisations and voluntary associations that can help in the preparation for release. Contact with such bodies might be necessary for prisoners who wish to start or continue a treatment, training or education, arrange for employment, housing etc.

Although it will often be possible to hold the necessary meetings in prison, prisoners will usually need leave to re-adapt to the circumstances encountered in the community. Prison leaves will also function as test-cases for the prisoner him/herself and, in countries where conditional release is discretionary, for decision-making authorities when they will have to evaluate the prisoner's suitability for release.

Guidelines on the purpose and organisation of various forms of prison leave are to be found in the provisions of Recommendation No. R (82) 16.

Paragraph 15

Good preparation takes time and depends on advance planning of the period of conditional release. The competent staff are, therefore, invited to examine possible conditions and supervision measures at an early stage and to discuss these with the prisoner concerned – this exercise being an essential part of sentence-planning.

The prisoner should, furthermore, be entitled to receive full information, in a form and language that s/he understands, on his/her rights and duties during the "implementation" phase¹⁰. Although prisoners may be provided with an information leaflet on conditional release, this should not replace an oral discussion on the issue.

IV. Granting of conditional release

The main difference between the discretionary and mandatory release systems concerns the granting of conditional release. While in the mandatory system release will be granted as of right as soon as the fixed portion of the prison sentence has been served, in the discretionary and most common system release will be decided on a case-by case basis. Discretionary release systems require, therefore, appropriate regulation of the procedures and criteria used.

Discretionary release system

Paragraph 16

Countries are invited to legislate on how the part of the prison sentence that has to be served before conditional release can be granted is fixed. The requirement that the minimum period should be fixed in accordance with the law derives from the legality principle.

In some countries the law will prescribe in a peremptory manner what the minimum period is. In others it will simply provide guidelines for the fixing of this period by other authorities, usually the courts. The laws of some countries might not even require the serving of a minimum period. In all these cases it is important that the judiciary should be consulted before any legislative initiatives. In the absence of such consultation, court practice could undermine the legislature's intention to allow for a part of the sentence to be served in the community. The courts might consider that the anticipated "erosion" of their judgments justifies heavier sentences.

Paragraph 17

It should not be for the prisoner to initiate the procedure for conditional release. The competent authorities - either the prison authorities or an outside body, often the decision-making authority - should start the procedure *proprio motu*.

Paragraph 5 of the Recommendation requires certainty concerning the earliest possible date of release. The competent authorities should make all necessary procedural and practical arrangements to render release possible on that date. If conditional release is refused the relevant decision should be notified as soon as possible and not later than the above-mentioned date.

¹⁰ See commentary to §§ 1 and 2 of the Recommendation.

Paragraph 18

In a discretionary release system the most important decision to be made is which criteria will be used to determine whether a prisoner can or cannot be granted release. The primary aim of these criteria should be to identify those prisoners who can be released without posing an unbearable risk to safety in the community¹¹. Whether and which of these criteria have been fulfilled will also be a relevant consideration in deciding on the conditions or supervision measures to be imposed. The personality and socio-economic circumstances of the prisoner should always be taken into account.

The criteria should be clear and explicit so as to avoid erratic decisions or disparities in decision-making. This requirement is also in the interest of the prisoners and the staff involved in the preparation of release. The lack of clear and explicit criteria might lead to reduced confidence in the system and less motivation on the part of prisoners to participate actively in the preparation for conditional release.

A similar lack of confidence or motivation would be produced if the criteria were felt to be unrealistic, in other words, impossible to fulfil given the prisoner's personal and social circumstances (such as age, family situation, health, professional qualifications etc) and the unavailability of resettlement programmes. If a prison service does not create conditions for the maintenance of family ties, for work during detention and for participation in training and especially in treatment programmes to address aggressive or offending behaviour and drug or alcohol problems, a prisoner cannot be expected to overcome his/her shortcomings in these fields during detention. To be realistic, the criteria related to these issues should, therefore, not be too rigid but should take account of the possibilities to address existing shortcomings during detention or after release in the community. The lack of such possibilities in prison or in the community should not preclude conditional release.

Care should also be taken to avoid criteria that are too closely related to the type of the offence committed, or the dangerousness of the offender at the start of his/her prison sentence. It has to be recalled that such criteria have already been used to decide on the length of the sentence and the classification and sentence plan of the prisoner. The decision to grant conditional release should be based on realistic criteria related to the present situation and prospects of the prisoner.

Paragraph 19

Having work and regular accommodation on release is significant for the successful resettlement of a prisoner and important assumptions are made on this basis about his/her future law-abiding behaviour. This is why no effort should be spared to ensure that a person to be conditionally released has found a job and a home. It would, however, be unrealistic always to require that. Given the general social and economic situation, many prisoners will not be able to find a job on release from prison and many will need some time to find regular accommodation. In these circumstances, the requirement to have a job contract can be replaced by a condition to follow a training course or engage in a useful occupation. In the same vein, regular accommodation can be replaced by temporary housing.

Paragraph 20

Conditional release should be granted to all prisoners in respect of whom it can be assumed that they can be released without posing a major threat to the safety of society.¹² This implies that the overriding consideration must be the absence of serious contra-indications for release. The criteria for conditional release should revolve around the prisoner's commitment to social rehabilitation – to being a law-abiding citizen: regular attendance at an educational establishment or vocational training course, a training placement with a firm, temporary employment, close involvement in family life, efforts to compensate the victim or attendance at rehabilitation programmes in the case of prisoners with addictions (to drugs, alcohol etc.) or who were convicted of sexual assault.

¹¹ See § 20 of the Recommendation.

¹² Reference is also made to the comments related to § 18 of the Recommendation.

In the light of the above, it is not for the prisoner to demonstrate that s/he fulfils the criteria to be released. It is the authorities that should be required to demonstrate that the criteria have not been met, when this is the case.

It is not enough that the criteria should be set in law. They must be genuinely applied, in the spirit in which they are intended, by the decision-making authorities. Paragraph 38 of the Recommendation, therefore, recommends information sessions and training programmes on the subject for decision-makers, with contributions from law specialists, social scientists and all involved in the rehabilitation of conditionally released prisoners.

Paragraph 21

In case of refusal of conditional release, the decision-making authority should set a date for reconsidering the question. This amounts to indicating a new date of possible release, which will allow prisoners and staff to re-start the preparation.

Prisoners should in any case be able to re-apply to the decision-making authority as quickly as possible if there has been a change in their situation as a result of which they can fulfil criteria for release that they could not fulfil until then (e.g. confirmation of an offer of employment that was not received in time for the previous hearing).

Mandatory release system

Paragraph 22

The mandatory release system sets no criteria for conditional release other than the term of the sentence that has to be served in prison. Legislation should fix this term.

Paragraphs 23 and 24

The postponement of the moment of release should only be possible in exceptional circumstances such as serious misbehaviour leading to disciplinary procedures or lack of consent on the part of the prisoner. These exceptions should be regulated by law. As in the discretionary system¹³, a decision to postpone should set a new date for release.

V. Imposition of conditions and supervision measures

Paragraph 25

The conditions and supervision measures need to be closely adapted to the needs and circumstances of each individual prisoner. When preparing release, the prison staff and those involved in post-release supervision will have assessed these needs in order to propose the most effective release plan which shall assist the prisoner in making a law-abiding adjustment into the life in the community. They will also have considered possible conditions and supervision measures well before the end of the minimum or fixed period¹⁴.

In order to have the best possible insight into a prisoner's personality and social circumstances and into the efforts made for preparing his/her release (training courses, personal change programmes etc), the decision-making authority should have access to all sources of information. These should include reports and oral comment by the staff working with the prisoner concerned or by other persons who are acquainted with the evolution of the prisoner's personal circumstances during the time of his/her detention and/or who have formed a view concerning his/her prospects following release.

¹³ See § 21 of the Recommendation.

¹⁴ See §§ 11 and 12 of the Recommendation concerning the preparation for release.

Paragraph 26

It is important that the decision-making authorities ensure that the prisoner has a proper understanding of the purpose and effect of the conditions and supervision measures imposed as well as of the consequences of failure to comply during the period of conditional release. The information given should also cover his/her procedural rights¹⁵ and the possibility of having the conditions and supervision measures reviewed.

This principle corresponds to Rule 76 of the European Rules on community sanctions and measures and follows from the requirement of paragraph 15 of the Recommendation, which concerns preparation for release.

VI. Implementation of conditional releaseParagraph 27

The prisoner should be released as soon as s/he becomes so entitled. In exceptional circumstances however – e.g. at the prisoner's request, pending the availability of adequate housing or the start of a treatment programme – release may have to be postponed. During the period of postponement, particular efforts should be made to provide the prisoner with the most relaxed conditions of detention so as to minimise the harm caused by the postponement.

Paragraph 28

In compliance with Rule 7 of the European Rules on community sanctions and measures, the implementing authorities, as well as their duties and responsibilities should be laid down in law. According to Rule 8, this also applies to the authority's powers to decide on methods of implementation, which may include delegation to or agreements with third parties. Rule 11 requires the law to provide for the regular and external scrutiny of the work of implementing authorities by qualified and experienced persons.

Reference is made to the text of these Rules and to the explanatory memorandum.

Paragraph 29

The success and credibility of conditional release as a measure to facilitate the prisoner's reintegration into society depends to a large extent on the professional and operational quality of the authority and staff in charge of implementation. The implementing authority should be able to control, in an adequate manner, the prisoner's compliance with the imposed conditions and provide him/her with all the necessary assistance for his/her adaptation to life in the community.

Rules 37 to 41 of the European Rules on community sanctions and measures contain principles regarding the recruitment, training and status of a sufficient number of professional staff responsible for the implementation. Rules 42 and 43 concern the financial resources with which the implementing authorities should be provided and which should be sufficient and adequate.

The implementation of conditional release should comply with the requirements of Rules 55 to 69 of the European Rules on community sanctions and measures. One of these principles that deserves special mention in the present context is Rule 55, which stipulates that "Community sanctions and measures shall be implemented in such a way that they are made as meaningful as possible to the offender and shall seek to contribute to personal and social development of relevance for adjustment in society. Methods of supervision and control shall serve these aims."

¹⁵ See §§ 33-37 of the Recommendation.

Rules 70 to 75 of the European Rules on community sanctions and measures refer to working methods of particular relevance for the implementation of conditional release and supervision measures.

Rules 44 to 54 of the European Rules on community sanctions and measures deal with community involvement and participation and are equally relevant for an adequate implementation.

Particular attention should be paid to the “basic requirements for effective implementation of community sanctions and measures” contained in principles 9 to 13 of Recommendation No. Rec(2000)22 on improving the implementation of the European Rules on community sanctions and measures.

Reference is made to the text of the European Rules on community sanctions and measures and the explanatory memorandum thereto, as well as to the text of Recommendation No. Rec(2000)22 and its report.

VII. Failure to comply with imposed conditions

Paragraphs 30 and 31

The consequences of non-compliance with a community measure such as conditional release are regulated in Rules 76-88 of the European Rules on community sanctions and measures.

When offenders fail to comply with the imposed conditions, the action to be taken is decided by the implementing authority¹⁶. When deciding on the action to be taken, a distinction should be made between minor and major failures.

Minor transgressions should normally be dealt with by advice and warning by the implementing staff or, where this would not suffice, by a formal administrative procedure before the implementing authority¹⁷.

As opposed to minor failures, which can be dealt with by the implementing authority, major or significant failures are those that can lead to a possible revocation of conditional release by the relevant decision-making authority. Although such breaches are normally defined by law, it is up to the decision-making authority to assess whether a particular failure is truly grave and whether it warrants a revocation decision. This assessment is necessary since the automatic conversion of conditional release to imprisonment in case of breach of conditions should be prohibited in accordance with Rule 10 of the European Rules on community sanctions and measures.

In case of a major breach of conditions, Rule 80 of the European Rules on community sanctions and measures requires the implementing authority to report this “promptly” and “in writing” to the body empowered to decide on possible revocation of conditional release. Revocation of conditional release implies that the offender will have to return to prison.¹⁸

However, according to Rule 85 of the European Rules on community sanctions and measures, a detailed examination of the failure concerned, the manner in which it occurred and the comments made by the offender should, in many cases, allow for a decision to make conditions stricter rather than a decision to revoke conditional release.¹⁹ It should be recalled that, in compliance with Rule 84, a failure to comply with the conditions attached to conditional release should not in itself constitute an offence²⁰.

¹⁶ See Rule 29 of Rec. No. R (92) 16.

¹⁷ See Rule 78 of Rec. No. R (92) 16.

¹⁸ Rule 86 of Rec. No. R (92) 16., which provides that “the decision to revoke a community sanction or measure shall not necessarily lead to a decision to impose imprisonment”, does not apply to conditional release.

¹⁹ See Rules 81 to 83 of Rec. No. R (92) 16.

²⁰ This Rule will, of course, not apply when the failure concerns a violation of the general condition under § 7 of the Recommendation to refrain from engaging in criminal activities.

VIII. Procedural safeguards

Paragraph 32

The European Rules on community sanctions and measures provide for a number of procedural safeguards with regard to the imposition, modification or revocation of community sanctions and measures. In the same vein, the Recommendation requires that the decisions on granting, postponing or revoking of conditional release, as well as on imposing or modifying conditions and supervision measures, should be taken by authorities that are established by law and afford due process safeguards. These concern the right to be heard in person and to be assisted and a fair and balanced consideration of the case, such as the authority's duty to consider all elements of the case, especially when these are presented by the convicted person concerned. The fairness of the procedure also requires that convicted persons be given adequate access to the files concerning them so as to enable them to prepare their hearing. The term "adequate access" takes account of the possibility not to disclose information that would endanger the security of vulnerable persons or witnesses provided, however, that this would not compromise the convicted person's chance of presenting his/her case in a globally effective manner. Reference is made in this connection, by analogy, to the relevant case-law under Article 6 § 1 and § 3 (b) of the European Convention on Human Rights. Finally, in order to provide the sentenced person with the opportunity to institute complaints proceedings, all the above-mentioned decisions should be notified to him/her in writing.

The European Rules on community sanctions and measures use the term "deciding authority" to refer to the authority that is empowered by law to impose or revoke a community sanction or measure or to modify its conditions (Rules 4, 77, 80, 82, 83, 87 and 88). According to the glossary, the notion of deciding authority is wider than that of judicial authority. This provision was made to allow the continuation of a long established tradition in some member states to empower administrative bodies - such as a ministry, a parole board or the prison service - to decide on measures related to sentence enforcement. However, recent case-law under Article 6 of the European Convention on Human Rights requires that, under certain very specific circumstances, some of the above-mentioned decisions should be taken by bodies that are not only established by law but comply in full with the requirements of independence and impartiality. This is the reason why the term "decision-making authority" is used in paragraphs 21, 25, 26, 32, 33, 41 and 44 of the Recommendation.

Paragraph 33

The procedural rights of the convicted person should also include the right to lodge a complaint against the decisions in paragraph 32 of the Recommendation. This is already recommended under Rule 13 of the European Rules on community sanctions and measures. Building on this, the Recommendation invites states to entrust the examination of such complaints to higher independent and impartial decision-making authorities established by law. The Recommendation also specifies that the convicted person should be able to lodge a full appeal, i.e. s/he should be able to ask for a review of the substance of the decision and complain about possible procedural irregularities.

Paragraph 34

Convicted persons should also be legally protected during the "implementation" phase. The decisions of the implementing authority should, therefore, be subject to a complaints procedure. It should also be possible to lodge complaints about a refusal to act or delays in taking decisions. Reference is made to Rule 15 of the European Rules on community sanctions and measures.

Paragraph 35

Rules 13 to 19 of the European Rules on community sanctions and measures contain the procedural guarantees applicable to the complaints procedures. It goes without saying that the procedures for complaints against the decisions in paragraph 32 of the Recommendation should also comply with the guarantees contained in this paragraph. Special mention should also be made here of Rule 14 of the European Rules on community sanctions and measures, which provides that a convicted person should have the right to appeal to a judicial authority against decisions by implementing authorities that are unlawful or incompatible with the requirements of conditional release.

Paragraph 36

Paragraph 36 of the Recommendation seeks to safeguard higher standards of procedural protection that may be guaranteed under the European Convention on Human Rights, the case-law of which is in evolution.

In particular, care should be taken to avoid situations where non-independent or non-impartial administrative bodies take decisions that amount to the imposition of a “criminal sanction” within the meaning of this provision, without the possibility of appeal to a body complying with Article 6 of the European Convention on Human Rights. According to the case-law of the European Court of Human Rights, the nature and severity of a penalty is one of the criteria for determining the existence of a “criminal charge” within the meaning of Article 6 of the European Convention on Human Rights, which guarantees the right to a fair trial by an independent and impartial tribunal established by law. The other criteria for distinguishing criminal from administrative charges are the nature of the offence and its classification under domestic law (*Engel and others v. the Netherlands* judgment of 8 June 1976, Series A no. 22). The provision of a severe and detrimental penalty creates a presumption that a “criminal charge” is involved.

In a recent judgment, the *Ezeh and Connors v. the United Kingdom* judgment of 15 July 2002²¹, the Court found that, in a system where a prisoner has a “legitimate expectation of release”²² on a specific date without being required to fulfil any additional conditions, the disciplinary decision by a prison governor to postpone conditional release by the imposition of “additional” days of imprisonment amounted to a decision on a criminal charge within the meaning of Article 6 of the Convention. The Court invoked the fact that, although continuation of the detention was clearly lawful under domestic law, the “applicants were detained in prison beyond the date on which they would otherwise have been released as a consequence of separate disciplinary proceedings unrelated to the original conviction”. Having examined the nature of the charges against the applicants and the nature and severity of the penalty incurred²³, on the basis of the above “Engel criteria”, the Court found that “the deprivations of liberty, which were at stake and which actually resulted from the awards of additional days to the two applicants, must be regarded as appreciably detrimental and that the presumption that the charges resulting in such awards were criminal had not been rebutted”. The Court concluded that “In such circumstances [...] the nature of the charges against the applicants, together with the nature and severity of the potential and actual penalties were such as to lead to the conclusion that both applicants were subject to criminal charges within the meaning of Article 6 §1 of the Convention and that, accordingly, Article 6 of the Convention applied to their proceedings before the Governor.”

²¹ This was a judgment by one of the Chambers of the Court. The case is currently pending before the Grand Chamber.

²² Reference is also made to the *Campbell and Fell v. the United Kingdom* judgment of 28 June 1984 (Series A no. 80) which deals, *inter alia*, with the distinction between a prisoner’s right to be released and a privilege and defines the notion of “legitimate expectation of release”.

²³ The first applicant had been accused of threatening a probation officer and the second of assault on a prison officer. In disciplinary proceedings before the prison governor they had both been found guilty of an offence under the Prison Rules and had been awarded 40 and 7 “additional” days’ custody respectively. The penalty they risked incurring was 42 “additional” days in respect of each offence. The applicants’ complaint to the European Court of Human Rights concerned the fact that they had been denied the opportunity to be legally represented at the adjudication hearings before the prison governor.

IX. Methods to improve decision-making

Paragraph 37

Decision-making on the granting of conditional release, as well as on the imposition of conditions and the degree of control and the nature of the help needed during the probation period, requires a thorough assessment of the risk of prisoners' not being able to lead law-abiding lives or to respect the imposed conditions, following release. Much research has been undertaken over the last years with a view to improving the reliability of the methods of assessment, which still remain controversial. This has led to an evolution from "static" to "dynamic" risk-assessment instruments. Unlike "static" risk-assessment instruments, based on historical objective factors in the prisoner's life that cannot be changed, "dynamic" instruments take account of factors that are susceptible to change. Static instruments, for example, take account of such factors as the number and nature of previous convictions, age at first conviction etc. Dynamic instruments will, in addition to historical facts, include such factors as drug or alcohol misuse, educational level, family and marital situation, companions, level of mental health, attitudes to crime and the future. But while dynamic risk-assessment tools are valuable guides to decision-making and treatment planning, they do not provide infallible information. Risk-assessment instruments need, therefore, to be evaluated so that their strengths and weaknesses become known to their users.

The use and development of appropriate assessment tools should also lead to an improved management of the risk of re-offending. Care should, therefore, be taken that such instruments are not only used to select the "good prisoners" who can be given conditional release, while leaving the others to serve their full sentences and then be released without any support. Risk-assessment tools should also be used to determine the appropriate conditions and supervision measures for prisoners, in particular those that are most difficult and dangerous and those who have the least prospects of finding a (new) place for themselves in the community.

Paragraph 38

The process of decision-making on the granting of conditional release and/or on the imposition of conditions and supervision measures should also be improved and facilitated by the organisation of appropriate information sessions and training programmes for decision-makers. The purpose of these programmes and sessions would be to inform decision-makers of developments in national and international policy and research concerning the implementation and effects of conditional release (resettlement of offenders and prevention of re-offending). Training sessions should be organised to ensure that decision-makers make the best possible use of existing criteria and methods of risk assessment.

The involvement, on a multidisciplinary basis, in the information and training sessions of researchers and specialists on issues related to the implementation and positive and negative effects of conditional release as well as of all categories of field workers (prison staff, social workers, behavioural therapists, job seekers' agencies etc) is a pre-condition for effective information-sharing and cooperation between decision-makers, researchers and practitioners involved in the resettlement of prisoners following conditional release.

Paragraph 39

In order to avoid reduced motivation on the part of the prisoners and staff during the preparation of release and to promote the credibility of conditional release, decision-making on conditional release should not only be as fair and consistent as possible, it should also be perceived as such. Measures to promote consistency in decision-making are particularly important in systems where more than one body is involved. The establishment and publication of clear and explicit criteria, the appropriate training of decision-makers in the handling of these criteria, the use of assessment methods and the provision of adequate information on the decisions taken by the various decision-making authorities are the most common examples of effective steps to ensure a reasonable degree of consistency.

X. Information and consultation on conditional release

Paragraph 40

This paragraph stresses the need to enlist the support of all key stakeholders for conditional release, by informing and consulting them. While each stakeholder group will be interested in particular aspects of conditional release, the advantages of interdisciplinary dialogue should not be forgotten.

Paragraph 41

Decision-making authorities have an obvious interest in receiving, in addition to the above information, regular information on the direct effects of their decisions. It is by analysing the successes or failures in particular conditional release cases that decision-makers will be able to identify possible weaknesses and adapt their decision-making pattern where needed and possible.

Paragraph 42

Faced with crimes of extreme violence and repeated attacks on property, people need reassuring that the authorities take their right to security seriously. They should be given objective information on the crime figures recorded by the police and on the courts' response. It is important that this information also covers what happens after the sentence has been passed. While police inquiries and trials are stages in the criminal-justice process that are fairly familiar to the citizens, this is not the case with the way in which sentences are enforced.

In the absence of appropriate information, the conditional release of prisoners to whom the courts have, with good reason, given custodial sentences might readily be interpreted as a sign that the criminal-justice system is lax, weak and failing to shoulder its responsibilities. It might even give rise to a climate of insecurity. People should, therefore, be informed of what conditional release actually entails. They should also be shown how conditional release may benefit society as a whole.

XI. Research and statistics

Paragraph 43

The help of the academic community should certainly be enlisted for these information campaigns. Ways of involving the judiciary, without compromising their independence and impartiality, should also be explored.

The main purpose of conditional release is to promote the successful resettlement of offenders while reducing the risk of re-offending²⁴. At present, two different systems have been developed to achieve this aim: the discretionary release system and the mandatory release system. While in the first system the date of release depends on a discretionary decision on the prisoner's suitability for release, or on the absence of serious contra-indications for release, the mandatory release system provides the prisoner with a right of release on a date fixed by law.

While both systems present advantages, neither of them is exempt from weaknesses. In the absence of objective knowledge about the relative effectiveness of both systems, it is not yet possible to formulate an evidence-based preference for either the discretionary or the mandatory release system. At present, no consensus can be found as to which system can best achieve the shared purpose.

Proper evaluation and monitoring of the functioning and effectiveness of existing systems are, therefore, essential for enhancing the credibility of conditional release and its further development and would greatly assist member states in determining their future policies.

²⁴ See § 3 of the Recommendation.

While all conditional release systems should be evaluated on their success and failure rates and the relevant findings should be compiled in appropriate statistics, monitoring should also aim at identifying the existence of possible weaknesses in each system and exploring ways of overcoming them.

On the one hand, the following potential weaknesses have been identified for discretionary release systems:

- An absence of explicit criteria for granting conditional release rendering decision-making erratic;
- Disparities in decision-making when more than one body is involved in deciding on conditional release;
- Assessments made of the likelihood of relapse into crime without the assistance of scientific risk instruments proving unreliable;
- Uncertainty about the date of release making it difficult to make practical release arrangements for prisoners;
- The possibility that the foregoing factors lead to reduced confidence in the system and reduced motivation on the part of prisoners to co-operate in the observance of conditions and the requirements of supervision.

Mandatory release systems, on the other hand, risk presenting the following weaknesses:

- Knowing with certainty the date for conditional release reduces motivation on the part of prisoners to take part in programmes and courses designed to enable them to lead crime and drug-free lives after release from prison;
- Knowing for certain the date of release leads to worsened behaviour by prisoners during their stay in prison;
- The lack of the possibility to withhold conditional release leads to a marked increase in crime in the community being committed by conditionally released prisoners;
- The mandatory release will lead judicial authorities to impose longer custodial sentences.

Paragraph 44

Besides the above-mentioned evaluative research, which focuses on the effectiveness of the two conditional release systems in meeting their common aim, further research should be carried out to gather more knowledge about the functioning of conditional release in a wider context.

If appropriate information is to be provided on conditional release, it is necessary to find out what is known about the enforcement and adjustment of sentences and what the opinions on the subject are according to different professional and social categories of society. Studies could be carried out to obtain a clear picture of the views and attitudes on conditional release of judges and prosecutors, of professionals involved in the decision-making and implementation of conditional release, of victims and victim associations and of prisoners and former prisoners. Such studies could also be undertaken on the opinion of the wider public and its variations according to the political and social environment and over time.

Furthermore, research should be carried out to study whether different sentence adjustments and release arrangements have a different impact on the re-offending rate. Comparisons must naturally be made using a “constant population”, which makes the work difficult and expensive but would provide a useful contribution to the public debate.

The effectiveness of different pre-release programmes should also be studied, in close relation to the functioning of conditional release systems. The results of this research are of the utmost importance to ensure cost effectiveness of pre- and post-release interventions and to avoid a waste of effort and expense.

Finally, the effect of a wider use of conditional release on the sanction system should be studied carefully, so as to gather more knowledge on the development of the sentencing practice and of the implementation of penal sanctions and measures.

Paragraph 45

The development of research and the need to provide appropriate information to professional target groups and the wider public require the creation of reliable statistics on relevant issues such as the number of prisoners granted conditional release, the percentage of applications granted and the proportion of all releases that are conditional, the length of the prison sentences imposed and the offences committed, the proportion of the sentence served in prison as well as the number and percentage of failures. Statistics on the criminal history and the socio-demographic background of conditionally released prisoners would also be useful information for criminologists and policy-makers.