

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.