

Council of Europe's Draft European Code of Ethics for Prison Staff

EPSU comments (September 2011)

1. Introduction

EPSU is grateful for the opportunity to make a contribution to the Draft European Code of Ethics (version dated 17 May 2011).

EPSU is the European Federation of Public Service Unions representing 8 million employees in Europe in health and social services, national government, local and regional governments and utilities. Our membership includes a majority of national unions organizing prison staff (security, health, social, probation, catering, maintenance...). Across Europe, according to the Council of Europe's space data, some 300 000 men and women work in prisons, a very high number of whom are organised in trade unions.

Today, many European prisons are facing major challenges such as overcrowding mainly due to the excessive use of imprisonment, non-compliance with basic prisoners' rights, understaffing, heavy workload and inappropriate or insufficient training of staff. These have grave consequences for prisoners and staff, and ultimately for public safety. The past decade's trend of contraction of the welfare state and expansion of imprisonment is in our view a major obstacle to improving prison systems.

In addition, the austerity measures, that have been put in place in most European countries following the financial crisis in 2007-2008, translate into cuts in public service jobs and pay including in prison services, new restrictions on trade union rights, and heighten the risks of privatization. These measures, in our view, make it even more difficult to improve detention conditions, invest in sound rehabilitation schemes, including probation services and in alternatives to imprisonment, whilst they may well further exacerbate the increasing, and inappropriate use of imprisonment.

In the face of these common problems we strongly support European cooperation and common standards as laid down in the European Prison Rules on detention conditions, prison management and staff. Clearly, no matter how sophisticated prison buildings and security systems are, the dynamics in prisons rests essentially on the relationship between staff, managers and prisoners.

Furthermore, the European Prison rules stress not only the obligations of front line staff but also require that those who manage prisons show strong leadership, have a clear sense of purpose, treat staff with respect and provide them with proper levels of support, remuneration, training and development.

Yet it is our experience, and we believe of the Council of Europe, that the European Rules are not implemented consistently across Europe's prisons.

In principle, we need and welcome initiatives that can help support or indeed improve the quality of detention conditions of inmates and of working conditions of staff, that take due account of the European Prison rules and promote a human rights approach including adherence with fundamental trade union rights and a public sector ethos.

We can therefore see much merit in a European Code of Ethics. We strongly believe that the ethical context of prison management is crucial as is the case in any situation where one group of people is given considerable power over another that can easily become an abuse of power. This ethical context is not just a matter of individual members of staff towards prisoners, but of the overall prison management.

That said, codes of ethics, however good, are no substitutes for fair national labour legislation and decent detention conditions, enacted and effectively implemented by government, nor for international standards.

In our view, codes of conduct are a handle that workers and their representatives as well as management should use to carry out their job, help enforce duties and rights, as part of the mechanisms of "normal" industrial relations and prison service regulations.

In other words, given the harsh European economic and social context and attacks on trade union and workers' rights it is all the more crucial that the Code be perceived as a helpful tool to staff, not harmful or that can be used for sanctions or repression.

It is our view that trade unions, as representatives of prison staff, are fundamental to the success of prison management and the implementation of high standards of detention conditions. Indeed, good quality working conditions and effective social dialogue between labour and management can have a positive effect on the quality of detention conditions.

It is thus our belief that the best way to develop a meaningful code of ethics for staff and ensure it be implemented is through the very involvement of staff and their representatives throughout the full process – design, implementation, monitoring and review.

Therefore, EPSU and its affiliates will welcome further involvement in the course of the finalisation of the Code at the CoE's Committee and in its implementation and review stages at national levels, as is the case in other parts of the world, for instance South Africa¹.

In our view, this would also be in line with the Council of Europe's Recommendation of 1997 "*Staff concerned with the implementation of sanctions and measures*" that confirms the key role played by prison staff at all levels, and its Explanatory Memorandum that rightly underlines:

- the ethical nature of both corporate and individual responsibility
- that regulations regarding recruitment, working conditions and management responsibilities be formulated in consultation with the staff and their professional representatives.
- that adequate financial resources should be allocated in the budget of the service for the carrying out of these policies.

2. General comment

Whilst there are many points EPSU agree with, we focus here on issues of concern or that may require clarification.

¹ As an example from outside Europe, in South Africa the *Guiding staff conduct to a high level of professionalism and an ideal correctional official* was drafted in cooperation with trade unions and provides for "sound labour and interpersonal relations".

As the draft Code stands, our main concern is that the abovementioned dynamics – management, staff and prisoners - is unbalanced with much emphasis on duties of staff, but very little on the following:

- The distinction between staff duties on the one hand and management duties on the other. The wording “staff at all levels” is unclear in our view, in some countries it will implicitly cover management, in others not.
- Workers’ rights including freedom of expression and protection against victimization and proper information and consultation of staff and their representatives in the design, implementation, monitoring and review of the European Code and complementary national Codes. We support also consultation of prisoners.
- The demanding nature of the job and the dramatic changes it has undergone over the past decade, such as the higher proportion of inmates from diverse cultural backgrounds, with addictions, mental health problems and of pre-trial detainees. This means that a large number of prisoners have nothing to do in prisons, prisoners and staff know it, which makes the work in prisons much harder. Clearly this goes beyond prison management but it is staff and managers that have to cope with the consequences.
- Support in terms of resources, training and personal development of staff to achieve the goals of the Code.

3. Specific comments

Draft recommendation (pages 2 and 3 in the draft)

Title of the Code : European Code of Ethics for prison staff.

To avoid the blurring of responsibility lines, it is proposed to retitle the Code for “*prison staff and management*” or “*for prison services*” and add references to management where appropriate in each of the below sections.

We support the principles and European recommendations including R(97) on staff.

Second to last Paragraph, p3, second line, after prison staff “*and management*”

Final paragraph, p3: to add, after European Prison Rules “*and in cooperation with staff and their trade union representatives*” with a view to ensure their implementation.

To add a new sentence subject to final text of the Code: “*the drafting of the present Code was subject to consultation of EPSU, the European Federation of Public Service Unions*”.

As said above, the involvement of the national trade unions in the implementation of the Code offers, in our view, the best guarantee that the Code will be implemented.

Appendix to Recommendation

I. Definition of the Scope of the code

As said above the responsibilities of management should be clearly identified also in view of a better implementation of the Code.

1st sentence:

- Request for clarification of the scope of “prison staff” i.e. are staff employed by another ministry than justice are also covered e.g. healthcare, social affairs, education, which we think should be the case.
- Please add after at all levels “*including management*”

2nd sentence: request for clarification: are detention centres, in case some may be under judicial authority (and not administrative) included in the scope?

3rd sentence: to add at the end *“and cannot be used to infringe upon International and European standards on workers’ and trade union rights, national labour and industrial relations regulations as well as national rules regarding grievances procedures relating to disciplinary charges against staff”*

II. Objectives of prison staff

Paragraph 1 : To add, after staff “ and management”

To add new paragraph *“It is the duty of management to ensure that this Code be widely understood and implemented and to:*

- *respect and care for their staff including protection against victimization;*
- *ensure a safe and healthy workplace;*
- *promote equality of opportunities and treatment;*
- *recruit the appropriate staff;*
- *ensure that salaries are adequate to attract and retain suitable staff;*
- *provide the adequate training and support for personal development;*
- *provide the appropriate assistance, including clarity of orders, to help carry out their work;*
- *consult with staff and their trade union representatives on all matters, especially on matters to do with work organisation and working conditions;*
- *ensure that appropriate channels and arrangements are in place to deal with disciplinary charges against staff including the right to appeal to a competent, democratic authority.”*

III. Prison staff and the criminal justice systems

Paragraph 3: to delete “where they exist“

In line with our reference to probation services in the introduction, we think that the Code should promote the existence of probation services that are essential to the sound rehabilitation of detainees.

IV. Guidelines for prison staff conduct

We agree that in order to maintain high standards, it is essential that anyone working for prison services, as in any other public services, feels able to raise any concerns where there is a belief that the public interest is not being served, that wrongdoings are taking place from abuse of power to corruption. However, to be effective freedom of speech must be supported by safe channels so that staff can indeed raise concerns without intimidation or retaliation from management or other staff.

Accordingly we propose adding a new paragraph, possibly at the start of chapter IV, that reads: *“ Employees who raise concerns (whistleblowing) relating to wrongdoings, malpractices or illegal or inappropriate orders will be protected from victimisation as a result of the disclosure, provided the concern is raised in good faith. Guidance on whistleblowing should be easily available at the workplace.”* We can provide examples of national rules on whistleblowing/reporting malpractices at the workplace if need be.

B. Integrity

Paragraph 5: to delete “personally” (redundant)

To add new paragraph: “ *to promote integrity, creating and sustaining a culture of open communication and dialogue, while providing guidance and training to promote understanding, are essential.*” (OECD Recommendation 4 on guidelines for managing conflict of interest in the public service (2003))

We also consider that the level of remuneration of staff can play a positive or negative role in the risks of staff corruption, hence the importance that the Code recognises that wages must be adequate to attract and retain suitable staff as proposed above and inline with European Prison Rule 79.1.

C. Respect and protection of human dignity

Paragraph 13: to add end of sentence: “, *the appropriate mechanisms to challenge those types of orders without fear of retaliation should be in place*”

Paragraph 14: Please add after integrity of all “ *of other staff, visitors and*” . This is in line with paragraphs 25 and 15 respectively that includesuch references.

E. Fairness, impartiality and non discrimination

Paragraph 24: to add “*sexual orientation, gender identity or expression, disability*”

F. Cooperation

Paragraph 29: to add after organisations “ *and trade unions*”

Paragraph 30: to add end of sentence “ *and management shall promote compliance with workers' rights and a good social dialogue with staff and/or trade union representatives*”

Add end of paragraph 33 or in a New paragraph “ *Likewise, special attention will be paid to protect the security and integrity of staff personal data*” .

V. General

Paragraph 34: to add “*and be provided by management and prison authorities with the necessary resources, information, training, competence development and specialist assistance to enable them to do their job properly, ensure that prisoners are kept securely, in good mental and physical health, and assisted to address their offending behavior with a view to their reintegration into society.*”

Paragraph 35: to add “*and be protected for doing so against victimisation*”

Paragraph 36: to add end of the sentence “*including workers and trade unions' representation bodies, and in consultation of prisoners*”

To note, in Spain, a Code of Ethics, adopted earlier this year, provides for the establishment of a Commission charged with monitoring the implementation of the code on an annual basis. The composition of the Commission includes a trade union representative². We consider this is a good example to follow.

² Codigo deontologico, Ministerio del interior, 2011