

The European Probation Rules: A Celebration and a Reflection

The [European Probation Rules](#) (EPR) (Recommendation CM / Rec (2010) 1) were formally adopted on 20th January 2010 by the Committee of Ministers of the Council of Europe. They are now ten (nearly eleven!) years old and this anniversary is an occasion to celebrate their achievements and also to reflect on what can be learnt from the experience of trying to put the Rules into effect.

The Council of Europe, no doubt encouraged by the success of the European Prison Rules, considered it important to affirm the standing of probation by developing a Recommendation to regulate the policies and activities of probation agencies across Europe. While the human rights of prisoners are especially vulnerable, the rights of those subject to community supervision must also be safeguarded and enhanced.

The Council already had a recommendation on Community Sanctions and Measures. The Probation Rules look specifically at the work of probation agencies, but since the responsibility to give effect to CSM is held by probation in most countries, the relationship between these Recommendations was something to be managed with care. There was an increasing awareness - confirmed by more recent research and scholarship (for example, Durnescu 2011; Hayes 2015; McNeill 2018) - that, whatever the intentions of probation staff, community supervision can bring burdens and hardships and in some circumstances imperil human rights. Supervision raises questions about privacy, data protection and intrusions into the lives not only of offenders, but also their families. In some countries, a failure to comply with the requirements of supervision can lead to imprisonment - imprisonment, that is, for an offence that was not originally considered to warrant this loss of liberty and with consequent implications for proportionality.

The structure of EPR may be familiar, but can be set out briefly here. There are eight sections with a glossary as an appendix:

- I. Scope, application, definitions, basic principles
- II. Organisation and staff
- III. Accountability and relations with other agencies
- IV. Probation work: tasks and responsibilities ...
- V. ... processes of supervision ...
- VI. ... work with victims of crime
- VII. Complaint procedures, inspection and monitoring
- VIII. Research, evaluation, work with the media and the public

As is usual for Council Recommendations, the Rules are accompanied by a Memorandum or Commentary which explains the rationale of each rule and provides further detail. While the Memorandum does not have the same legal status as the Recommendation itself, it does carry some authority and can often provide information and guidance to support the implementation of the Rules.

The Committee for the Prevention of Torture draws on the European Prison Rules all the time in its inspection work, but there is no comparable process for monitoring the effects of the Probation Rules systematically. In 2013, however, an opportunity arose to undertake research into the impact of EPR. Funded by the European Union, the STREAM project (Strategic Targeting of Recidivism through Evaluation And Monitoring [JUST/2011/JPEN/AG/2892]) undertook this investigation. It is to be borne in mind that this project was only able to investigate the position in member states of the EU.

The research found that, in several countries, the Rules were not at all well-known. (In my own country, England and Wales, for example, I found that many probation staff had never heard of them.) And in a number of countries, the Rules have not been used at all. This seems to have been the case in some (by no means all) countries where probation had been long established and there was little or no felt need for guidance. But more encouragingly, it was also found that in a number of countries, EPR had proved to be an invaluable resource. This had been the case especially for those countries with new and developing probation agencies, but also for those who were finding the need to review organisation, policies and practices. Among the contributions that the rules had been able to make to policies and practice, these were emphasised:

- Inspiration
- Detailed guidance
- Influencing legislation
- Informing National Standards for practice
- Basis of inspection procedures
- A significant reference point
- A research topic
- Training
- Useful in support of [Framework Decisions](#)
- Benchmarking

The benchmarking function could be of value to all countries. This would involve comparing current arrangements with the requirements of the EPR. If this exercise were to be undertaken, there might be three likely consequences: first, the country might find that it complies well with EPR or even exceeds the Rules in their defence and enhancement of human rights; second, it may turn out that some practices do not conform, prompting changes within the probation agency; or third (and perhaps most interestingly) an agency may conclude that, while its practices do not altogether conform, it is the EPR that need to change. This would be an important discovery. For all the experience and wisdom that the Council of Europe can bring to the drafting of Rules, their real effects - strengths and limitations - are only apparent when attempts are made to implement them.

Problems of implementation included:

- Not all Rules are relevant everywhere (e.g. work with victims is not undertaken by probation agencies in all countries)
- Limited interest in EPR because 'everything to do with Europe has a low profile' - resistance to rules and practices being 'imposed' from outside
- Indifference because '[this country] is already confident that its practices are of a high standard ... *(even if evidence for this may be lacking)*'
- Varying conceptions of probation, e.g. 'control and monitoring' of offenders is seen in some countries as more important than 'welfare' and rehabilitation (After all, probation has different meanings in different countries and so the thinking behind probation practice and organisation structures is likely to differ too.)

It is instructive to note that limited attention to the Rules did **not** mean a low level of compliance. A number of countries remarked that 'we do this anyway' as a reason for setting the Rules aside.

Since the global pandemic is at the forefront of all our minds at the moment, it is important to reflect on what this may mean for probation. In many countries, understandably because of the enormous duty of care that the pandemic has imposed upon prisons to safeguard the health and well-being of those in custody, it is imprisonment that has been the principal focus of attention. Yet the pandemic has implications for probation. For example, where countries have tried to release people early to mitigate the hazards brought about by overcrowding, there will be problems of post-release support, including the challenges of homelessness and poverty. In some countries, it is the probation agency that is expected to offer support in such circumstances and the agency's own resources will be put under considerable strain. As for those already subject to community sanctions and measures, the pandemic is causing any number of problems for everyone, especially for the most vulnerable, and where individuals have confidence in probation, it may well be that they turn to the agency for help.

Will the pandemic accelerate the deployment of technologies that facilitate 'remote' modes of supervision? Technology has a way of bringing with it unanticipated consequences that have implications with human rights. Again, the first Basic Principle of EPR refers to the importance of 'establishing positive relationships with offenders' but the whole dynamic of this is radically altered by the consequences of pandemic. Reporting to offices and visits at home will be hard and even impossible, while verbal exchanges 'from the bottom of the garden path' look like a poor substitute for the usual conversations. Telephone calls are likely to be difficult - not only for those under supervision who may have no ready place to go to participate in a conversation with any depth, but also for probation staff whose attempts to respond to the problems of others may be interrupted by the expectations of other members of their own family. What can be said of 'prosocial modelling' or 'motivational interviewing' under the conditions forced upon us by the pandemic? These challenges must be kept in perspective. Present circumstances put the rules to test, but

about the only certainty is that things will change – and probably in ways that cannot be clear to anyone at the moment. The fundamental commitment embodied by the EPR to the protection and enhancement of human rights must be upheld, but what this entails for practice is altogether more difficult to foresee.

An omission from the Rules, perhaps, is the requirement that they should be reviewed and refreshed periodically. This important stipulation is included both in the Prison Rules and in the Rules on Community Sanctions and Measures. There will come a time when the Council decides that the 2010 EPR need to be revisited in this way. It is suggested that at that point there will be a number of decisions to be taken about the content and structure of the document. Since 2010, other Rules have been adopted, among the most important of which are:

- Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring
- Recommendation of the Committee of Ministers to member States on the European Rules on community sanctions and measures
- Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters

The Guidelines regarding recruitment, selection, education, training and professional development of prison and probation staff (2019) should also be noted. (All these documents can be found [here](#). (See also the Council's [Compendium](#).)

All of the matters elaborated in these documents are touched upon in the EPR. To my knowledge, there are no contradictions among these various provisions, but the detailed attention to these specific topics largely supersedes the relevant sections of EPR and any later edition of EPR would probably do better to refer to these other Recommendations than to attempt to summarise or replicate them.

Consideration will also be given, no doubt, to the question of whether other more detailed and specific Recommendations should be drawn up. One example might be the writing of presentence reports for courts. It is also worth thinking about provisions for resettlement and 'through the gate' services. Both the Probation Rules and the Prison Rules have something to say about this essential topic, but perhaps the mere fact that these provisions sit in different Recommendations mirrors the dysfunctional separation of services that all too often fall between the responsibilities of prison and probation agencies. The question of the relationship between EPR and the CSM Rules also merits discussion. That these are separate Recommendations may be a puzzle to people, especially when so much similar ground is covered.

The EPR includes, especially in the Explanatory Memorandum, considerable detail about practice. Yet it may well be that guidance of this kind would be better included in other texts and disseminated differently. [Implementing community sanctions and measures](#) by Vivian

Geiran and Ioan Durnescu (2019) and [Standards and Ethics in Electronic Monitoring](#) by Mike Nellis (2015) are excellent examples of how this might be achieved.

There are, then, a number of tough decisions to be made about whether and when a second edition of EPR should be developed, how it should be structured, what it should include and its relationship to other Recommendations. But however the Council decides to proceed, there are some processes that should guide its work. First of all, any revision should draw upon the experiences of agencies who have tried to put Recommendations into effect. This should be done systematically, so that the Council is as comprehensively and reliably informed as possible and does not have to depend upon the experience of a few individuals (which is always unavoidably limited) or general impressions. The CEP may have an invaluable role here. Secondly, insights into the effect of the Rules should not be confined to canvassing the opinions of policymakers and senior managers. They have valuable perspectives, but so do middle managers and practitioners. Thirdly, and perhaps most importantly of all, the Council should think widely and imaginatively about how to learn from the experience of service users. What the work of probation agencies has meant for those under supervision is perhaps the litmus test of its achievements in promoting human rights. No matter how sincerely benevolent the probation agency, service users are well placed to inform us about the lived realities of community supervision, although their insights have been insufficiently drawn upon in the past.

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