



## Briefing on Council of Europe Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents

### Background and context

A important recent achievement for Children of Prisoners Europe is its collaboration with the Council of Europe in order to produce Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents<sup>1</sup>. COPE was instrumental in the publication of this Recommendation, having worked closely with the Council since 2016 to produce the Recommendation. The Recommendation relies heavily on previous guidelines laid out by the Italian Memorandum of Understanding and the United Nations Convention on the Rights of the Child. The Italian Memorandum of Understanding is a tri-partite agreement between the Italian Ministry of Justice, the National Ombudsman for Childhood and Adolescence and COPE Member organisation Bambinisenzasbarre. The memorandum was passed in 2014 and specifically regards the rights of children with incarcerated parents. The eight primary topics of the Memorandum include: visits, decisions and practices concerning judicial orders, judgments and sentences, relationships with the imprisoned parents, training for correctional facilities, information for minor children, collection of data, children residing in prison with their families, and establishment of a working group to monitor and evaluate progress. The majority of the Recommendation was consequently based around these concepts. The fundamental rights of the UNCRC supplied the basic framework from which the Recommendation was established, but special heed was paid to Article 12 of the UNCRC which refers to children having a right to have their viewpoints heard, respected and applied to the decisions made about their lives.

An estimated 2.1 million children in Europe live with a parent in prison on any given day<sup>2</sup>. While legislation such as the Italian Memorandum of Understanding applies directly to children separated from a parent in prison, it is not customary. While the UNCRC is essential in the domain of children's rights, it does not relate directly to

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<sup>1</sup> <https://rm.coe.int/cm-recommendation-2018-5-concerning-children-with-imprisoned-parents-e/16807b3438>

<sup>2</sup> Extrapolation using a demographic 'parenting rate' of 1.3 offspring per offender, based on the results of a 1999 study conducted by France's national statistics institute

children of prisoners. The Recommendation was designed to specifically target the realities and unique experiences of children with parents in prison.

In October 2016, in conjunction with the European Committee on Crime Problems and Council for Penological Co-operation (PCCP) the mission to create guidelines for prisoner services related to children of imprisoned parents was taken up after its original discussion in June 2016. At the October 2016 meeting the PCCP had agreed on the importance of these guidelines to be delivered in the form of a Recommendation therefore giving the issue the gravitas on the European level. Consultancy positions were subsequently established to act as the primary workforce on drafting the Recommendation and a questionnaire that would be sent to countries in an attempt to better understand where individual member States stood in terms of their services, policies and practices regarding children with imprisoned parents. These consultants worked directly for and with COPE prior to and during the drafting process.

### **Prison Services questionnaire**

In February 2017, the appointed consultants, Ms. Kate Philbrick (current COPE Treasurer and former COPE President) and Ms. Ria Wolleswinkel (Faculty of Law's Director of Studies at Maastricht University), presented the PCCP with a preliminary draft of the questionnaire to be sent to the prison services of all 47 COE member states. They once again discussed that the question and situation of children with imprisoned parents would be best addressed by a Recommendation. They also discussed how to best define a 'child' for the purpose of drafting the Recommendation, ultimately deciding that the definition of child should coincide with the UN Convention on the Rights of the Child. It was decided that the Recommendation would "suggest practical measures to be implemented, based on good practices existing in different countries,". The PC-CP also decided that the Recommendation would be accompanied by an explanatory report detailing the current situation of children with imprisoned parents in Europe. Additionally, the questionnaire was revised further and sent to the member states of the Council of Europe. COPE played an important role in the development of this questionnaire as data previously collected by COPE, largely due to COPE's extensive network of NGOs across Europe, allowed researchers and the Council of Europe to formulate their questions specifically for prison administrations.

In April 2017, the Council was able to view and comment on the replies that had been sent in from member state prison administrations. A total of twenty-six countries sent replies to the questionnaire, with seven different Länders from Germany responding as well, bringing the total responses to thirty-two as of this meeting. Ms. Kate Philbrick and Ms. Ria Wolleswinkel brought a draft of the recommendation to the PCCP. They proceeded to make a number of comments and amendments. COPE's work was invaluable to this step as the organisation was able to contribute information that had been previously collected, analysis of the recorded answers and records of good practices. This data was sent to the PC-CP in June 2017, who then returned their feedback and thoughts in July.

### **Drafting process and adoption**

At the Council's next meeting in September 2017, the information, analysis and answers had been reported to the PCCP and feedback had been sent back. At this meeting

the revised draft was further examined and analysed along with the explanatory memorandum. There were additional comments made by the Committee. It was decided that the final draft should be received by September 26. In this meeting, additional measures were also taken in regards to prison conditions such as updated policies of staff development, recruitment and staff training. The responses to the COPE drafted questionnaire were continuing to be submitted.

In September 2017, the revised amendments were submitted and an agreement was made that a new text would be sent out later that month. In November 2017, the PCCP and the Council of Europe published the final draft of the Recommendation on children with imprisoned parents as well as its explanatory memorandum. The publication came after months of work between COPE, the consultants, the PCCP and the Council of Europe.

In January 2018, the final modifications were made to the draft. In April 2018 the work came to a conclusion when the Recommendation and its Explanatory Memorandum were published. The publication of Recommendation CM/Rec (2018) 5 of the Committee of Ministers to member States concerning children with imprisoned parents marked a massive shift in European policy. It is the first international piece of legislation to directly address children with imprisoned parents. The Recommendation rests on the principles that:

- all children, without discrimination and regardless of the legal status of their parents, are guaranteed the enjoyment of all rights covered by the United Nations Convention on the Rights of the Child, including the right to have their best interests protected, the right to development, the right to have their views respected, and the right to maintain personal relations and direct contact with their parents on a regular basis;
- it is necessary to protect the child's right to, and need for, an emotional and continuing relationship with their imprisoned parent, who has a duty and right to play their parental role and to promote positive experiences for their children;
- children, family, the child-parent relationship and the imprisoned parent's role in this relationship need support before, during and after detention. All interventions and measures in support of children with a parent in prison and their relationship with that parent should ensure they create no stigma and discrimination against these children;
- awareness-raising, cultural change and social integration are necessary to overcome prejudices and discrimination arising from the imprisonment of a parent.

The Explanatory Memorandum further addressed the needs behind the development of the Recommendation. These needs included the rising number of children with parents in prison, lack of awareness and competent data:

“The number of children in Council of Europe member States who have one or more parents in prison at any given time is estimated to be some 2.1 million.<sup>[2]</sup> To this number, should be added the significant number of children of former prisoners and the number of adults who, in their childhood, have experienced having one or more parents in prison. Viewed from this perspective, children who have, or have had, a parent in prison may experience trauma,

anxiety or other concerns which may be detrimental to their life and well-being. These children have thus far, remained largely outside the scope of public attention and concern. This situation is aggravated by the fact that related and reliable data is not sought and is therefore lacking at local, national and European levels. As a result, measures that need to be taken urgently in order to prevent the potential harm which parental imprisonment can cause, are currently inadequate in many European countries."

The Explanatory Memorandum also addressed the serious psychological and emotional impacts that can be faced by children with an imprisoned parent. In addition it highlights the importance of the child-parent relationship and highlights how integral a multidimensional approach is to improving awareness and supports provided to children with a parent in prison. Prison administrations, law enforcements, local, national and international governments, incarcerated parents, caregivers and most importantly the children themselves must be included in this conversation to effect meaningful, sustainable change. The Recommendation encompasses the above agencies to enhance child protection and support the healthy development and well-being of children. COPE is grateful for the opportunity to assist, contribute and continue work with the Council of Europe and PCCP on this historic accomplishment and precedent for this group of children who deserve to have their rights respected, their voices heard and be supported.



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