

R E S O L U T I O N (62) 2

(Adopted by the Ministers' Deputies on 1st February 1962)

Electoral, civil and social rights of prisoners - Recommendation 195

The Committee of Ministers,

Having regard to Recommendation 195 of the Consultative Assembly of the Council of Europe on penal reform;

Having regard to the resolution adopted in Paris on 6th June 1961 by the Ministers taking part in the Conference of European Ministers of Justice;

Having regard to the necessity of promoting in member countries of the Council of Europe a prison system which, while protecting society, nevertheless upholds respect for human dignity;

Considering that the "Standard Minimum Rules for the Treatment of Prisoners", adopted on 30th August 1955 by the first United Nations Congress on the Prevention of Crime and Treatment of Offenders, should be supplemented to this end, defining by common agreement the limits which a regime of detention may legitimately set to the exercise by the prisoner of rights pertaining to him as an individual,

Recommends that member Governments of the Council of Europe should apply the following provisions so far as is consistent with their constitutional principles and international undertakings:

A. General Principles

1. The rules set out herein define the effect of detention on the electoral, civil and social rights which the prisoner, untried or convicted, would enjoy if he were free. They constitute examples of the application of common minimum rules.

2. When, in a given State, a person is deprived by law of the rights referred to at Point 1, it is desirable that these rules be taken into consideration should the relevant legislation be modified.

In the absence of any national law on a particular point, these rules should be regarded as expressing European legal conscience in that respect.

3. These provisions are founded on the principle that the mere fact of detention does not affect the possession of these rights, but that their exercise may be limited when it is incompatible with the purpose of imprisonment or the maintenance of the order and the security of the prison.

4. Under no circumstances shall the rules set out in this resolution be interpreted as restricting or derogating from the rights and freedoms recognised in the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocol thereto.

B. Electoral Rights

5. If the law allows electors to vote without personally visiting the polling-booth, a detainee shall be allowed this prerogative unless he has been deprived of the right to vote by law or by court order.

6. A prisoner permitted to vote shall be afforded opportunities to inform himself of the situation, in order to exercise his right.

C. Civil Rights

7. (a) Except as stated at Point 8 below, the mere fact of imprisonment shall not impede a prisoner from exercising his civil rights in person or through a representative acting on his behalf;

(b) If a prisoner finds it impossible to exercise his rights in person, he shall be allowed to be represented.

8. The prison administration may forbid a prisoner to exercise his civil rights :

(a) if the exercise of such rights is incompatible with the aims of imprisonment or the treatment of the offender;

(b) if, in the case of a convicted person, the exercise of such rights may be postponed without prejudice to his interests until his release.

D. Social Rights

9. When a prisoner has acquired the right to social security benefits before his imprisonment, this shall not be annulled by the mere fact of imprisonment.

10. A prisoner shall as far as possible preserve his right to social security benefits during imprisonment; all appropriate arrangements to that effect shall be made.

11. With the exception of pensions to which the prisoner is entitled by virtue of contributions paid only by him, the payment of benefits to the prisoner may be suspended or reduced during the period of imprisonment, but family allowances for his dependants should continue to be payable directly to the beneficiaries with or without the consent of the prisoner.

E. Protection of Rights

12. A prisoner may at all times defend a legal action. As a plaintiff he may continue proceedings which were pending at the time he was imprisoned, if the requisite action cannot conveniently be postponed until his release.

13. He may likewise institute new proceedings if such action cannot conveniently be postponed until his release and is compatible with the aims of the imprisonment or the treatment of the offender.

14. A prisoner shall not have the right to appear in person before the competent court, unless the law or the court require his presence.

15. In civil and administrative proceedings to which the prisoner may be a party under the rules now set out, he shall have the right to communicate orally or in writing with the person empowered to defend his interests.

16. Subject to the special regulations governing communications with lawyers, visits and correspondence received by a prisoner may be supervised by the competent authority.

17. A prisoner shall have the right to make prompt written application to government departments or similar bodies, in order to safeguard his interests. All correspondence from such departments or bodies shall be transmitted to the addressee without delay.