

***Recommendations by the Council for the Administration of Criminal Justice and
Protection of Juveniles
(summary for publication)***

title : *the power to impose punishment in penal institutions*
for : *the State Secretary for Justice*
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In penal establishments it happens with increasing frequency that disciplinary penalties are imposed by officials other than those authorised to do so by virtue of the Custodial Institutions Act. This has been the case for some time in several institutions that have implemented a so-called settlement policy. In the context of the administrative reform of the prison system, the question arises as to whether the heads of wards should be authorised to impose minor penalties.

The Constitution and international regulations stipulate that the authority to impose punishment can only be conferred by law. The Custodial Institutions Act provides that this authority is reserved for the director and deputy director of the institution. Case law also takes this line.

The Council has already made recommendations concerning this subject on two previous occasions: on 9 January 1992 concerning the exercise of authority to impose punishment and on 9 May 2000 with regard to the settlement policy. In these recommendations the Council concluded as follows: no delegation of the authority to impose punishment without a change in legislation; the settlement policy is in contravention of the law. To ensure objective decision-making regarding punishment it is important to preserve the distance between the individual imposing punishment and the prisoners' immediate environment.

In accordance with the position taken in its earlier recommendations on this subject, the Council now recommends that, first and foremost, the practice of imposing punishment should be brought into conformity with legislation, and that to this end the settlement policy should be abolished. Punishment imposed by officials not authorised to do so or by officials who have been appointed as deputy director with the sole intention of their being empowered to impose punishment should be avoided.

In the event that changes in legislation are considered with regard to this point, it should be ensured that the individual imposing punishment has sufficient distance to guarantee objectivity as well as having the required expertise. At the same time, the legal rights of prisoners should be preserved.