



## EVIDENCE-BASED RECOMMENDATIONS TO POLICYMAKERS FOR ENHANCING TRAINING PROGRAMMES OF CIVILIAN STAFF IN PRISONS (DELIVERABLE 2.3)

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RESPONSIBLE PARTNERS	ANTIGONE ONLUS
AUTHOR	ALESSIO SCANDURRA
CONTRIBUTORS	UNI-VAN, UB-OSPDH, FBG, AVOKATI I POPULLIT, FONDACIONI QENDRA EUROPIANE, PRODOS CONSULTING
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# 1. Foreign nationals in the European Prison Rules

Standards relating to prisoners that are foreign nationals are found in several key Council of Europe "soft law" documents, including European Prison Rules (rules 37.1-37.8) and the Committee of Ministers' Recommendation CM /Rec(2008)11 to member states on European Rules for juvenile offenders subject to sanctions or measures (§§ 104.1-105.4). The document with the most comprehensive set of standards in this regard is the Recommendation CM /Rec(2012)12 of the Committee of Ministers to member states on foreign prisoners of October 2012. In addition, several binding international treaties provide standards for the treatment of certain groups of foreign nationals that must also be applied in detention.

For the purposes of this short document, aimed at identifying some possible recommendations for policymakers in the member states and the European Union, we will start from the most recent of these documents, namely the revision and updating of the European Prison Rules by the Committee of Ministers on 1 July 2020 at the 1380th meeting of the Ministers' Deputies.

The European Prison Rules have been revised to ensure they reflect the most recent and highest protection availed to people in prison, as laid out in international and regional standards. From this point of view today the European Prison Rules, the best known and most relevant soft law instrument also for those who carry out monitoring activities in places of detention, incorporate part of the most advanced international standards mentioned above. They also reflect the CPT standards, judgments of the European Court of Human Rights, as well as other relevant Recommendations from the Council of Europe's Committee of Ministers, such as the one on foreign prisoners.

The issue of the detention of foreigners is one of those that were the subject of the revision, which made some significant changes to the old text of Article 37. The new version follows.

37.1 Positive measures shall be taken to meet the distinctive needs of prisoners who are foreign nationals.

37.2 Special attention shall be paid to the maintenance and development of the relationships of prisoners who are foreign nationals with the outside world, including regular contacts with family and friends, probation and community agencies and volunteers, and, subject to the prisoners' consent, diplomatic or consular representatives.

37.3 Prisoners, who are foreign nationals, shall be informed, without delay and in a language they understand, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their State.

37.4 Prisoners who are nationals of States without diplomatic or consular representation in the country, as well as refugees or stateless persons, shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or the national or international authority whose task it is to serve the interests of such persons.

37.5 In the interests of foreign nationals in prison who may have special needs, prison authorities shall co-operate fully with diplomatic or consular officials representing prisoners.

37.6 Specific information about legal assistance shall be provided to prisoners who are foreign nationals in a language they understand.

37.7 Prisoners who are foreign nationals shall be informed in a language they understand of the possibility of requesting that the execution of their sentence be transferred to another country.

37.8 Sentenced foreign prisoners shall be entitled, as with all other prisoners, to full consideration for early release as soon as they are eligible.



Much of the text of the new rule, in particular from 37.3 to 37.7, is almost identical to the previous version, differing only in the insistent call for all prisoners to be guaranteed the enjoyment of the rights enshrined in those articles in a language they understand. The point, as one can imagine, is extremely relevant, also in the light of the results of our research, and we will come back to it later.

Paragraphs 37.1 and 37.2, on the other hand, are new and very far-reaching. The former differs immediately and considerably from the old content of Article 37, which laid down very specific obligations for prison systems. The new 37.1, which calls for positive measures that shall be taken to meet the distinctive needs of prisoners who are foreign nationals, places a positive and open-ended obligation, for which specific knowledge of the characteristics and needs of the foreign prisoner population is indispensable. A substantially similar theme is also posed by the new 37.2, which promotes "the maintenance and development of the relationships of prisoners who are foreign nationals with the outside world". Also in this case, the respect of this rule requires that the prison staff knows and is able to support and promote the relationships of prisoners who are foreign nationals with their own social context, a job that goes well beyond the simple knowledge of the detained person and that is indispensable to understand and strengthen his social network.

From this point of view one can also read the last innovation contained in Article 37, that of 37.8, which states that "sentenced foreign prisoners shall be entitled, as with all other prisoners, to full consideration for early release as soon as they are eligible". The provision in question clearly implies an obligation of non-discrimination, an obligation that in any case was already enshrined in Article 13. But its explicit wording imposes something that goes well beyond that. It imposes a positive obligation to guarantee the conditions that make access to early release measures possible, which again recalls the need to know in depth the characteristics and the context of origin of prisoners who are foreign nationals.

The possible lesser familiarity with the persons who are foreign nationals, and therefore the possible lesser predictability of their conduct once released, are not sufficient justification for excluding them from early release measures and impose on the contrary an obligation to know them more thoroughly.

## 2. From theory to practice

In light of the above, three seem to be the most pressing recommendations that can be derived from this new legislation regarding the detention of foreigners. Firstly, the obligation to ensure that the information essential to enjoy the rights guaranteed by the European Prison Rules is provided in a language that the person can understand. Secondly, the need for in-depth knowledge of foreign detainees and their culture in order to be able to meet their specific needs, as provided for in Article 37.1. Thirdly, the need for this knowledge not to be limited to the detained person, but also to encompass the culture and characteristics of their community of reference, in order to be able to accompany them in their contacts with the outside world (37.2) and in that gradual approach to freedom which is indispensable to ensure their reintegration into society (37.8).

All prison activities should be oriented towards these three goals, but for this to be possible it is necessary that the criteria for selecting prison staff, and the training they undergo before starting work and throughout their entire professional career, include all the necessary skills. With reference to the detention of foreigners the European Prison Rules, both in their old and new wording, are particularly explicit: "Staff who are to work with specific groups of prisoners - foreign nationals, women, juveniles or mentally ill prisoners, etc. - shall be given specific training for



their specialised work". But does all this happen? The recommendations contained in this document derive from the answers to these questions given by the investigations carried out within the framework of this project.

## 2.1 Speak the language

As we have already said, this right can be derived from several amendments made in the European Prison Rules. But is this norm usually respected? From the investigations carried out within the framework of this research the answer is unfortunately negative, without ambiguity. As can be deduced from the report "D2.1 - Training needs report of civilian prison staff in 6 EU countries", with the sole exception of Catalonia, in every country surveyed there is a serious lack of translation and interpretation services, as well as staff training in foreign languages. This is particularly serious if one considers that in some of the six countries surveyed, such as Greece, France or Italy, the average percentage of foreigners among the prison population is much higher than the European average.

In view of this situation, several measures are recommended in light of the experience gained during this project.

- **Get more staff.** In many European countries, there is a clear need to recruit more staff to provide mediation and interpretation services. But this alone is probably not enough. In countries where there are over 60% foreigners in prisons, it has become indispensable to make the knowledge of foreign languages one of the criteria for selecting new staff.
- **Train your staff.** For the same reasons mentioned above, it is now essential that the continuous training offered to staff, both civilian and police, includes the study of foreign languages.
- **Get help.** Not everything can be done with prison staff and this is often not the best solution. In Austria for instance, where foreigners make up 54% of the prison population, a private company provides a remote interpreting service via videoconferencing, which guarantees quick and effective access even for less widely spoken foreign languages.

## 2.2 Get to know foreign inmates

The need to understand the foreign national prisoners, an indispensable step in order to be able to adopt those "positive measures to meet the distinctive needs of prisoners who are foreign nationals" is not only hindered by the language barrier, but also by the difficulty of understanding the needs and expectations of people belonging to a different culture.

- **Not only language.** The presence of cultural mediation services in prisons is indispensable, but those are almost unavailable, as is to be expected in contexts where not even language mediation services are often present. However, this is a pressing issue and it should be addressed both in the planning of future investments and in the definition of staff selection criteria.
- **Multicultural awareness.** The topic is now very important for our societies, but surprisingly our research shows that even today it has a very limited space in the training of personnel. It is necessary to change this. Even with the help of external experts. In this sense, we would like to mention, for example, the agreement signed in 2007 between the French penitentiary administration and the association La Cimade, which supports the former both in training its staff and in providing assistance and support to prisoners that are foreign nationals.



### 2.3 Get to know foreign communities

Article 6 of the European prison Rules states that “all detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty”. Article 7 requires that “co-operation with outside social services and, as far as possible, the involvement of civil society in prison life shall be encouraged”.

For prisoners that are foreign nationals this inevitably implies to understand and to engage with the foreign communities outside the prison, where foreign detainees are more likely to reintegrate.

- **Ask the prisoners.** To prevent passivity and infantilisation, it is important to involve all prisoners in the life of the prison community. A better understanding of the culture and characteristics of the foreign communities in the area can also be achieved with the cooperation of the foreign prisoners themselves, who can be invited to share aspects of their culture with other prisoners and staff.

- **Ask their communities.** In the life of a prison, there are countless inputs from civil society. It would be important for communities of foreign nationals in the prison area to be involved in this process. They could be invited to bring their own contribution to the prison, collaborating in some of the internal activities. This exchange would inevitably lead to a better understanding by the prison of the foreign nationals communities in its **territory**.