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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Co-operation
(PC-CP)

DRAFT RECOMMENDATION
CONCERNING FOREIGN PRISONERS

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The Committee of Ministers, under the terms of Article 15. b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, in particular through harmonising laws on matters of common interest;

Considering the large number of foreign prisoners detained in the prisons in its member states;

Recognising the difficulties which these prisoners may face on account of such factors as differences in language, culture, customs and religion, and lack of family ties and contact with the outside world;

Desirous of alleviating any possible isolation of foreign prisoners and of facilitating their treatment with a view to their social reintegration;

Considering that such treatment should take into account the special needs of foreign prisoners and ensure that it provides them with opportunities equal to those accorded to other prisoners;

Taking into consideration:

- the European Convention for the Protection of Human Rights and Fundamental Freedoms (ETC No. 5);
- Convention on the Transfer of Sentenced Persons (1983) (ETS No. 112);
- Additional Protocol to the Convention on the Transfer of Sentenced Persons (1997) (ETS No. 167);
- Recommendation No. R (92) 16 on European rules on community sanctions and measures;
- Recommendation R(92)17 concerning consistency in sentencing;
- Recommendation No. R(93)6 concerning prison and criminological aspects of the control of transmissible diseases including AIDS and related health problems in prison;
- Recommendation No. R(97) on staff concerned with the implementation of sanctions and measures;
- Recommendation No. R(98)7 concerning the ethical and organisational aspects of health care in prison;
- Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation;
- Rec(2003)22 on conditional release (parole);
- Recommendation (2006) 2 European Prison Rules;
- Recommendation (2006) 13 on the use of remand custody, the conditions in which it takes place and the provision of safeguards against abuse;
- Recommendation CM/Rec (2010) 1 Council of Europe Probation Rules

Bearing in mind:

The UN Model Agreement on the Transfer of Foreign Prisoners and recommendations on the Transfer of Foreign Prisoners (1985);

The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules, 2010);

The EU FD 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union;

The EU FD 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions;

The EU FD 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention;

Considering that Recommendation No. R(84) 12 of the Committee of Ministers to member states concerning foreign prisoners needs to be replaced by a new recommendation reflecting the developments which have occurred meanwhile in penal policy, sentencing practice and the overall management of prisons in Europe,

Recommends that governments of member states:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation, which replaces Recommendation No. R(84) 12 of the Committee of Ministers to member states concerning foreign prisoners;
- ensure that this recommendation and the accompanying commentary to its text are translated and disseminated as widely as possible and more specifically to all relevant authorities, agencies, professionals and associations which deal with foreign offenders, as well as to the offenders themselves.

ANNEX I

I. Scope and basic principles

Scope

1.1 This Recommendation applies to foreign offenders who are, or may be, remanded in custody by a judicial authority or who have been, or may be, deprived of their liberty following conviction and are detained in a prison.

1.2. This Recommendation also applies to foreign persons:

- a. who are detained for any other reason in a prison; or
- b. who have been remanded in custody by a judicial authority or deprived of their liberty following conviction and who may, for any reason, be detained elsewhere.

1.3. All foreign persons who are detained in a prison or who are detained in the manner referred in section 1.2.b. are regarded as prisoners for the purpose of this Recommendation.

1.4. This Recommendation does not apply to juveniles, that is, persons under the age of 18 years.

2. For the purpose of this Recommendation;

a. **an offender** means any person who is alleged to have or who has committed an infringement of the criminal law. For the purpose of this recommendation and without prejudice to the presumption of innocence and the establishment of guilt by a judicial decision, the term "offender" shall be understood to include anyone facing criminal proceedings.

b. **foreign offender** means:

- i) an offender, as defined in section 2a, who does not have the nationality of the state in which he or she is subject to criminal proceedings, sanctions or measures or is deprived of liberty; or,
- ii) an offender, as defined in section 2a, who has the nationality of the state in which he or she is subject to criminal proceedings, sanctions or measures or is deprived of liberty but who does not have close social ties with that state.

c. **foreign prisoner** means a foreign offender or other foreign person detained in a prison as defined in section 2e; and

d. **judicial authority** means a court, a judge or a prosecutor.

e. **prison** means an institution reserved primarily for detainees who have been remanded in custody by a judicial authority or have been deprived of their liberty following conviction.

Basic Principles

3. Foreign offenders shall be treated with respect for their human rights and with due regard for their particular situation and individual needs.

4. Foreign offenders shall be entitled to be considered for the same range of non-custodial sanctions and measures as other offenders and shall not be excluded from consideration on the grounds of their status.

5. Foreign offenders shall not be remanded in custody or sentenced to custodial sanctions on the grounds of their status, but, as for other offenders, only when strictly necessary and as a measure of last resort.
6. Foreign prisoners shall be entitled to full consideration for early release.
7. Positive steps shall be taken to avoid discrimination and to address specific problems that foreign offenders may face while subject to community sanctions or measures, in prison, on transfer, and after release.
8. Foreign offenders who so require shall be given access to interpretation and translation facilities, and where appropriate, provided with an opportunity to learn a language that will enable them to communicate more effectively.
9. The detention of foreign prisoners shall facilitate their preparation for release and social reintegration.
10. Foreign offenders shall be transferred to serve their sentences in a state with which they have links, when it is in the interests of social reintegration and justice, provided that their human rights will not be infringed by doing so.
11. Specialised training in dealing with foreign offenders shall be provided for the judiciary, prison, probation police staff and consular representatives, as well as all other relevant agencies, professionals and associations which have regular contact with such offenders.
12. Sufficient resources shall be allocated in order to deal effectively with the particular situation and specific needs of foreign prisoners.

II. Use of remand in custody

13.1. In order to ensure that remand in custody of foreign offenders is used only when strictly necessary and as a measure of last resort, it shall be governed by Recommendation Rec (2006) 13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.

13.2 In particular, foreign offenders:

- a. shall always be considered for alternatives to remand in custody;
- b. shall not be regarded as a flight risk and remanded in custody solely on the basis of their nationality or paucity of their ties with the state in which the offence is supposed to have been committed: and
- c. shall not be remanded in custody if they are the primary carers of young children, unless there are exceptional circumstances that make this unavoidable.

III. Sentencing

14.1. In order to ensure that custodial sanctions are imposed on foreign offenders only when strictly necessary and as a measure of last resort, sentencing shall be governed by Recommendation R(92)17 concerning consistency in sentencing. In particular, foreign offenders shall be considered for the same range of non-custodial sanctions or measures as national offenders.

14.2. The judicial authorities shall be provided with pre-sentence reports about the personal circumstances of foreign offenders and their families, the likely impact of various sanctions on them and the possibility and desirability of their being transferred after sentencing.

14.3. When imposing sentences, account shall be taken of the impact that different sentences may have on individual foreign offenders, so as to avoid disproportionate hardship and obstacles to social reintegration.

14.4. When imposing sentences, account shall be taken of their impact on young children who are in the primary care of foreign offenders.

IV. Conditions of imprisonment

Admission

15.1. At admission, foreign prisoners shall be provided with information, orally and in writing, in a language they understand about:

- a. their rights and duties as prisoners including regarding contacts with their consular representatives;
- b. the main features of the prison regime and the internal regulations;
- c. rules, regulations and procedures for making requests and complaints; and
- d. international transfer possibilities at different stages of the criminal process.

15.2. Prisoners shall be allowed to keep up-to-date versions of this information in their possession.

15.3. Immediately after admission, prison authorities shall assist foreign prisoners, who wish to do so, to inform their families, legal advisers, consular representatives and other persons or organisations competent to assist them, of their imprisonment.

15.4. Staff trained to deal with foreign prisoners shall be involved in their admission procedure.

Allocation

16.1. Decisions regarding the allocation of foreign prisoners shall take into account the views of such prisoners and the need to alleviate their potential isolation and facilitate their treatment and contact with the outside world.

16.2. Subject to the requirements of safety and security, and the individual needs of foreign prisoners, consideration shall be given to housing non-resident foreign prisoners in prisons close to diplomatic and consular missions and transport facilities that would enable their families to visit them.

16.3. Where appropriate, foreign prisoners should be allocated to prisons where there are others of their nationality, culture or religion.

Accommodation

17. Decisions on whether to accommodate foreign prisoners together, shall be based primarily on their individual needs and the facilitation of their social reintegration while bearing in mind the requirements of safety and security.

Hygiene

18.1. Facilities for sanitation and hygiene shall accommodate the cultural and religious preferences of foreign prisoners.

18.2. Rules that require prisoners to keep their appearance clean and tidy shall be interpreted in a manner that respects prisoners' cultural and religious preferences.

Clothing

19.1. Where prisoners are allowed to wear their own clothes and provided that such clothes are compatible with the requirements of safety and security, they may reflect the prisoners' cultural and religious traditions.

19.2. Where prisoners are required to wear clothes provided by prison authorities, such clothes shall not offend their cultural or religious traditions.

Nutrition

20.1. In addition to providing a nutritious diet that takes account of the cultural and religious requirements of prisoners, prison authorities shall, where possible, provide foreign prisoners with opportunities to purchase and cook food that make their diet more culturally appropriate.

20.2. The times at which meals are served shall be adjusted to meet the religious requirements of foreign prisoners.

Legal advice and assistance

21.1. Foreign prisoners shall be informed as soon as possible after admission, orally and in writing in a language they understand, about their right to legal advice in criminal proceedings against them and other legal matters, in particular those concerning their personal status while in prison and after release.

21.2. Foreign prisoners shall be informed about possible legal aid and, where necessary, assisted in accessing such legal aid.

21.3. Foreign prisoners who are not fluent in the language in which a judicial, administrative or disciplinary procedure involving them is conducted, shall be provided with a translation of the relevant documents and, if necessary, with an oral account of the contents of these documents in a language they understand.

21.4. An interpreter shall be provided to foreign prisoners who need one in order to communicate with their legal adviser.

21.5. Prison authorities shall facilitate the provision of administrative and legal assistance by outside agencies to foreign prisoners.

Contact with the outside world

22.1. To alleviate the potential isolation of foreign prisoners, special attention shall be paid to the maintenance and development of their relationships with the outside world, including contacts with family and friends, consular representatives, probation and community agencies and volunteers.

22.2. Foreign prisoners shall be allowed, as far as possible, to use a language of their choice during such contacts.

22.3. Rules for making and receiving telephone calls and other forms of communication shall be applied flexibly to ensure that foreign prisoners who are communicating with persons abroad have equivalent access to such forms of communication as other prisoners.

22.4. Indigent foreign prisoners shall be assisted with the costs of communicating with the outside world.

22.5. In order to optimise contact, visits to foreign prisoners from family members who live abroad shall be arranged in a flexible manner, which may include allowing prisoners to combine their visit entitlements.

22.6. Special measures shall be taken to enable foreign prisoners to maintain regular and meaningful contact with the children in their care.

22.7. Family members visiting from abroad shall be provided, in a language they understand, with the support and information to arrange visits and, as far as possible, a flexible approach shall be adopted to granting visas to family members of foreign prisoners.

22.8. In order that prison authorities are able to inform family members of foreign prisoners of the death, serious illness, injury or transfer of such prisoners to another prison or other facility, the authorities shall endeavour to keep up-to-date contact details of such family members.

22.9. Prison authorities shall endeavour to ensure that family members of foreign prisoners have up-to-date contact information about the prison or other facility in which such prisoners are held, unless the prisoner objects.

23.1. Foreign prisoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to newspapers, periodicals and other publications in a language they understand.

23.2. To the extent possible, foreign prisoners shall be given access to radio and television broadcasts and other forms of communication in a language they understand.

23.3. Probation agencies, approved associations and volunteers providing support to foreign prisoners shall be given access to such prisoners who wish to have contact with them.

Contact with consular representatives

24.1. Foreign prisoners have the right to regular contact with their consular representatives.

24.2. Foreign prisoners shall be given reasonable facilities to communicate with their consular representatives.

24.3. Foreign prisoners who are without consular representation in the country in which they are detained have the right to regular contact and to facilities to communicate with representatives of the state which takes charge of their interests.

24.4. Refugees and stateless prisoners, have the right to regular contact and be given the same facilities to communicate with representatives of the national or international authorities whose task it is to serve the interests of such prisoners.

25.1. Prison authorities shall inform foreign prisoners of the role of consular representatives and the actions that may be taken on their behalf by such representatives.

25.2. Prison authorities shall cooperate fully with consular representatives and national or international authorities whose task it is to serve the interests of foreign prisoners.

25.3. Prison authorities shall keep a list of:

- a. contacts between consular representatives and foreign prisoners; and
- b. where foreign prisoners waive their right to such contact.

26.1. Consular representatives shall assist foreign prisoners who are their nationals or for whom they are otherwise responsible, as soon as possible after their admission, including by cooperating with prison authorities where appropriate.

26.2. Consular representatives shall provide oral and written information for the foreign prisoners they represent which shall include relevant contact details and the forms of assistance they provide.

26.3. Consular representatives shall regularly visit foreign prisoners who are their nationals or for whom they are otherwise responsible, and who consent to such visits.

26.4. Consular representatives shall offer any assistance possible to further the social reintegration of foreign prisoners. This may include social, legal and financial support for foreign prisoners and their families, the facilitation of visits from and contacts with family members and the return of property or money due to be received by such prisoners at release.

26.5. Consular representatives shall contribute to the provision of literature and other reading materials in languages understood by the prisoners they represent.

26.6. In order to assist foreign prisoners, consular representatives shall keep themselves informed about the laws and regulations governing imprisonment in the state in which they are offering assistance, the services they are able to offer and the mechanisms for the international transfer of such prisoners.

Prison regime

27.1. In order to ensure that foreign prisoners have access to a balanced programme of activities additional positive measures shall be taken, where necessary. This may include assistance with interpretation and classes to learn the language in which the activities will be conducted.

27.2. Access to activities shall not be restricted because the prisoners concerned may be transferred, extradited or expelled.

27.3. The regime shall accommodate special welfare needs that foreign prisoners may have.

Work

28.1. Foreign prisoners shall have opportunities equal to those of other prisoners in respect of work and vocational training, including programmes outside prison.

28.2. Where necessary, special measures shall be taken to ensure that foreign prisoners have the same access as other prisoners to income-producing work.

28.3. Foreign prisoners may transfer at least a part of their earnings to family members who are resident abroad.

28.4. Foreign prisoners who work shall, as far as possible, be allowed to contribute to the social security system of the state in which they are imprisoned and to request transfer of such contributions to their state of nationality or another state.

Exercise and recreation

29.1. Foreign prisoners shall have access to exercise and recreational activities appropriate to their culture.

29.2. Prison authorities shall encourage activities that promote positive relations amongst prisoners from the same culture and between prisoners from different backgrounds.

Education and training

30.1. Foreign prisoners who are not fluent in the daily working languages of the prison shall be given the opportunity to learn them.

30.2. Foreign prisoners who are not fluent in the languages of the country to which they may be transferred, extradited or expelled, shall be given the opportunity to learn them.

30.3. To ensure that educational and vocational training is as effective as possible for foreign prisoners, prison authorities shall take account of their individual needs and aspirations, which may include working towards qualifications that are recognised and can be continued in the country in which they are likely to reside after release.

30.4. The prison library shall be stocked with books and other resources that reflect the linguistic needs and cultural preferences of the foreign prisoners in that prison.

Freedom of thought, conscience and religion

31.1. Prison authorities shall facilitate the exercise of religious and other beliefs by foreign prisoners but shall not compel such prisoners to profess any faith or participate in any practice or service.

31.2. Prison authorities shall keep a list of approved representatives of the full range of the religions and beliefs professed by foreign prisoners and, as far as it is practicable, grant prisoners access to these representatives.

Health

32.1. Foreign prisoners shall have access to the same health care and treatment programmes that are available to other prisoners.

32.2. Where necessary, additional resources shall be provided to deal with specific health problems faced by foreign prisoners.

32.3. Medical and health care staff shall be trained to interact with foreign prisoners and to deal with their individual problems and specific diseases.

32.4. To facilitate the health care of foreign prisoners, attention shall be paid to all aspects of communication. Such communication may require the use of an interpreter who is acceptable to the prisoner concerned and who shall respect medical confidentiality.

32.5. Health care shall be provided in a culturally appropriate manner and requests by foreign prisoners to be examined by a medical practitioner of the same gender shall be granted as far as possible.

32.6. Where possible, psychiatric and mental health care shall be provided by specialists who have expertise in dealing with persons from different religious, cultural and linguistic backgrounds.

32.7. Special attention shall be paid to preventing self-harm and suicide among foreign prisoners.

32.8. Consideration shall be given to the transfer of foreign prisoners, who are diagnosed with terminal illnesses and who wish to be transferred, to a country with which they have close social ties.

32.9. Steps shall be taken to facilitate the continuation of medical treatment of foreign prisoners who are to be transferred, extradited or expelled, which may include the transfer of medical records to the medical services of another state and the provision of medication for use during transportation to that state.

Good Order, Safety and Security

33.1. Prison staff shall ensure that good order, safety and security are maintained through a process of dynamic security and interaction with foreign prisoners.

33.2. Prison staff shall be alert to potential or actual conflicts between groups within the prison population that may arise due to cultural or religious differences and inter-ethnic tensions.

33.3. To ensure safety in prison, every effort shall be made to enhance mutual respect and tolerance and prevent conflict between prisoners, prison staff or other persons working or visiting the prison, who come from different backgrounds.

33.4. The nationality, culture or religion of a prisoner shall not be determinative factors in the assessment of the risk to safety and security posed by such prisoner.

33.5. Prison directors shall keep themselves informed of the cultural and religious backgrounds of the foreign prisoners in their institutions.

Women

34.1. Special measures shall be taken to combat the isolation of foreign women prisoners.

34.2. Special attention shall be paid to meeting the psychological and healthcare needs of foreign women prisoners, especially those who have children.

34.3. Arrangements and facilities for pre- and post-natal care shall respect cultural and religious diversity.

Children

35.1. Arrangements and facilities for the care of children who are in prison with their parent shall respect cultural and religious diversity.

35.2. Decisions on whether the child of a foreign prisoner may be removed from prison, shall be taken by an impartial authority that considers the best interests of the child in the light of the views of the parents and the availability of appropriate care arrangements in the state in which the parent is in prison and in the state to which the child may be sent.

35.3. Special arrangements shall be made to facilitate visits, correspondence and other forms of communication by children with their imprisoned parent, in particular when they live in a different state.

35.4. The legal status of any children in prison with their foreign parent shall be determined as early as possible during the sentence of that parent, with special care being taken to resolve cases where children born in prison have a different nationality to that of their parent.

V. Release

Preparation for Release

36.1. All foreign prisoners shall be prepared for release in a manner that facilitates their reintegration into society whether they are to remain in the state in which they are detained or are to be transferred, extradited or expelled.

36.2. In order to facilitate the reintegration of foreign prisoners into society:

- a. their legal status and their situation after release shall be determined as early as possible during their sentence;
- b. support and care shall be provided by probation and other agencies which specialise in assisting ex-prisoners to find employment and housing and in meeting their other needs;
- c. where appropriate, prison leave and other forms of temporary release shall be granted to them; and

d. they shall be assisted in making or re-establishing contact with family and friends.

36.3. Where foreign prisoners are to remain after release in the state in which they were detained, all necessary steps shall be taken to provide them with information about official and other forms of support and to assist them to communicate with the agencies that provide such support.

36.4. Where foreign prisoners are to be expelled from the state in which they are being detained and they will not be in custody after expulsion, contacts shall be established with the authorities in the state to which the prisoners are to be sent with a view to ensuring support both immediately upon their return and to facilitate their reintegration into society.

36.5. Where foreign prisoners are to be extradited to remand custody or transferred to another state to serve the remainder of their sentence the prison authorities shall provide the following information to the state to which the prisoners shall be sent:

- a. the treatment the prisoners have received
- b. the programmes in which they have participated
- c. medical records
- d. any other information that will facilitate continuity of treatment and care

36.6. Where foreign prisoners are to be extradited to remand custody or transferred to another state to serve the remainder of their sentence, the authorities of that state shall provide the prisoners with information on conditions of imprisonment, prison regime and possibilities for release.

Consideration for release

37.1. Foreign prisoners shall be considered for release as soon as they are eligible.

37.2. Particular consideration shall be given to the early release of foreign prisoners who have young children in their primary care.

37.3. Decisions on the release of foreign prisoners shall not be influenced negatively by their immigration status or by the possibility that they may be transferred, extradited or expelled at the end of their sentence.

Release from Prison

38.1. In order to assist foreign prisoners to return to society after release, practical measures shall be taken to provide appropriate documents and identification papers and assistance with travel.

38.2. Where foreign prisoners will return to a country with which they have links, the consular representatives shall assist them in this regard.

38.3. Where foreign prisoners are to return to another country, prison authorities shall ensure the return of any property or monies that may be owing to them at their release.

International Transfers

39.1. Prisoners shall be advised about the possibility of serving their sentence in a state with which they have links and of the steps that they need to take to initiate transfer to such a state.

39.2. The transfer of foreign prisoners to a country where their children are resident shall be considered as early as possible.

39.3. Where prisoners qualify for transfer to another state to serve their sentences, the prison authorities shall:

- a. advise prisoners about the possibility of transfer;
- b. advise prisoners about the consequences of such a transfer and assist them to seek independent advice about such consequences; and
- c. ensure steps are taken to determine the prisoners' views on such a transfer.

39.4. To ensure that transfers facilitate the social rehabilitation of foreign prisoners, and do not infringe upon their human rights, the prisoners' views, the prisoners' familial, linguistic, cultural, social and economic links

and the conditions of imprisonment in the proposed enforcing state shall be taken into account before the final decision is made.

39.5. States shall be encouraged to conclude agreements that facilitate transfers where they are in the interests of justice and social reintegration of the prisoners concerned.

VI. Persons who work with foreign offenders

Selection

40. Persons who work with foreign offenders shall be selected on the basis of their cultural sensitivity, interaction skills and linguistic abilities.

Training

41.1 Persons who work with foreign offenders shall receive training on:

- a. respect for cultural diversity, which should include information on the particular problems faced by foreign offenders;
- b. the languages spoken by the foreign offenders with whom they work; and
- c. international and regional human rights law and standards relating to the treatment of foreign offenders, including this Recommendation.

41.2 Such training shall be evaluated and revised regularly to ensure it reflects changing populations and social circumstances.

Specialisation

42.1. Appropriately trained persons shall be appointed to engage in specialised work with foreign offenders and to liaise with the relevant agencies, professionals and associations on matters related to such offenders.

42.2. Consular representatives shall be trained in legal measures and practical problems that affect such offenders and the provisions of this Recommendation.

VII. General provisions

43.1. The authorities shall be responsible for the collection of empirical data related to foreign offenders.

43.2. Such data shall be collected in a way that allows regional and other comparisons.

43.3. Any policies and practices related to foreign offenders shall be based on such data and research and their effectiveness and impact of shall be evaluated regularly.