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Workshop No. 1

Speech on Rec(2012)12 – the Danish experience in dealing with foreign prisoners

Introduction - General rules on nationality

I have been looking very much forward to today's workshop and to discussing one of the subjects that we are all very taken up with at the moment. Because foreign prisoners present major challenges to our respective prison systems, both in terms of social reintegration and for our staff in their day-to-day work.

Before I proceed to the rules of Rec(2012)12 and the Danish experience, I would like to give a brief outline of some of the other instruments that guide us on how to deal with foreign prisoners in our prisons.

First of all, of course, the rules of the United Nations conventions and the European Convention on Human Rights specify that nobody may be discriminated against on grounds of national origin. I will just mention:

Article 14 of the ECHR, which reads:

'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

This is further supported by Article 1 of Protocol No. 12 to the UN Convention for the Protection of Human Rights and Fundamental Freedoms, which expressly prohibits discrimination in general:

'1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.'

But also Article 13 of the European Prison Rules reads as follows:

'These rules shall be applied impartially, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

However, I would like to observe that the protection does not directly comprise 'nationality'. Depending on circumstances, nationality may come under the omnibus provision of 'other status', but it is in fact not 'prohibited' to treat one's own nationals and foreign nationals differently in certain specific situations. On the other hand, there is no *carte blanche* to discriminate on grounds of nationality.

The new Recommendation 2012 (12) expresses as a basic principle that positive steps shall be taken to avoid discrimination of foreign prisoners.

In other words, the individual enjoys quite considerable protection in addition to the rules now given to us in Recommendation Rec(2012)12 of October this year. We will discuss those rules in more detail during this conference.

The scope of this new recommendation is to provide foreigners with opportunities equal to those of other prisoners. This does not necessarily mean identical opportunities, but as it says "equal" opportunities.

Let's look closer into what that means in day to day prison practice.

Problems

As I started out by saying, foreign prisoners present a major challenge to our systems for several reasons. First of all, there are practical barriers of language and cultural differences; secondly there are the actual activities during the imprisonment, and thirdly there are the practical aspects

of release – it is our experience up to now that coordination of pre- and post-release measures with authorities or others in the prisoners' own countries has met with very limited success.

From a Danish perspective, my task is to focus on certain issues during the imprisonment, more precisely rule 15-24 of the new recommendation.

Like most other European countries, Denmark also sees an increasing political interest in transferring foreigners to their own countries to serve their sentences there. In my opinion, there could be several good reasons for this – and some not-so-good reasons!

Most important is, of course, the regard for social reintegration, a successful return to society. For this group of prisoners, the crucial point is that some of them are not to be reintegrated into the society in which they are serving their prison sentences. Moreover, both research and experience show that factors like language, culture, family contact and a network outside the prison walls are deciding factors for the individual prisoner's prospects after release.

But naturally we should not be blind to the fact that one of the reasons for the political focus on transfers is economic considerations. Budget reductions and cutbacks are required everywhere, and the transfer of foreign prisoners provides politicians with an obvious retrenchment opportunity. In Denmark certain politicians are even arguing that we should not have 'convenience criminals' in our expensive Danish prisons, and that we should not spend our limited resources on attempting to reintegrate people who are to be expelled anyway after their imprisonment.

By law, all prisoners in Denmark have a right and a duty to be occupied by work, education, training or other approved activities. This right and duty also applies to foreign prisoners, whether or not they are sentenced to expulsion. The choice of occupation is made on the basis of an overall assessment of the individual prisoner's situation, and the prisoner's possibilities of obtaining employment after his release must be taken into consideration. Prisoners who are sentenced to expulsion or who themselves want to leave Denmark after their release therefore present a particular challenge in terms of reintegrating them into another society than the Danish society.

The current situation in Denmark

As you all know Denmark is a small country with small problems compared with many other countries. But relatively the problems are the same. Right now, the Danish prisons hold about 4,100 prisoners. About 3,000 are Danish nationals. About 1,100, or 27 per cent, are not Danish nationals; 700 of them are remand prisoners. Just over half of the about 400 convicted foreigners are to be expelled from Denmark according to their sentences.

The prisoners represented some 100 different nationalities. Of the 1,100 foreign nationals, just under 400 were Scandinavians or EU nationals. Just over 400 came from Africa and the Middle East, and about 120 came from the Balkans and East-European non-EU Member States. The rest were from other parts of the world.

Information on transfer

Article 15(3) of Rec(2012)12 deals with information on transfer possibilities:

'As soon as possible after admission, foreign prisoners shall be provided with information, in a language they understand, orally or in writing, of international transfer possibilities.'

Here, as well, the language barrier may present a challenge. The possibility of serving sentences in the prisoners' own countries is mentioned in Danish guidelines which are aimed specifically at persons sentenced to expulsion and have been translated into six languages, namely Serbo-Croat, Farsi, Turkish, Somali, English and Arabic.

Of course, it is also important to ensure continued training of our staff so that they know the rules and are aware of their guidance obligation towards this special group of prisoners. A transfer may be effected either at a prisoner's own request, or against the prisoner's wish pursuant to international agreements, such as the EU Framework Decision of 2011. In certain cases, transfers may also be effected pursuant to specific bilateral agreements.

For several of those sentenced to expulsion, the expulsion decision could also be considered an empty gesture: There is no country to expel the prisoners to because they belong to a persecuted

population group in their own countries, and it is likely that they will be tortured or killed by the authorities of their own countries. Prisoners who are sentenced to expulsion, but risk torture if they are expelled, will therefore be granted exceptional permission to remain in Denmark.

Allocation and treatment of foreign prisoners

Article 16 of Rec(2012)12 deals with the allocation of foreign prisoners:

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

The principles for determining the prison to which a convicted offender will be allocated are the same for Danish nationals and others. In Denmark, it is decided already at the sentencing whether a prisoner is to be expelled after serving the sentence. This is of importance to the allocation of foreign prisoners as the principle of allocation to an open prison is typically derogated from for security reasons in such cases. Prisoners who are to be expelled will typically present an escape risk and will therefore be allocated to a closed prison. It might not be a determinative factor as mentioned in Article 32.4, but there is a presumption that the risk of escape is pretty high. The expulsion decision is also of importance to the social reintegration efforts made during imprisonment. If it is clear right from the start that a prisoner is not going to be released to the Danish society, but to another country, the activities during imprisonment can be planned accordingly from the very beginning. In some countries, expulsion decisions are made as independent administrative decisions and, in some cases, not until a long time after sentencing, and therefore it may be necessary to change the social reintegration activities for the prisoner fairly late in the process so as to adjust them to the new situation.

Foreigners who are not to be expelled are generally allocated and treated like Danish nationals.

In Denmark, it has just been decided to introduce reception units in all prisons, which are to allocate prisoners according to both security and treatment considerations. This will make it possible to allocate the prisoners to the most appropriate unit in the prison.

As I mentioned earlier, Danish prisons hold prisoners of many nationalities. According to the fundamental principle of normalisation, a prisoner enjoys the same rights as any other citizen, and the term of imprisonment must reflect this principle and be planned accordingly. Normally, nationality is not in itself an issue when prisoners are allocated to specific units, but it may become so – I will revert to this matter. What is interesting in terms of allocation and social reintegration is the individual prisoner's situation. Social reintegration, life in prison and the approach to both Danish and foreign prisoners rest on the concept of inclusion into society and not exclusion from it.

In recent years we have established several special units in Danish prisons. They form two main groups that are not based on nationality.

One group consists of units for negatively dominant prisoners, outlaw motorcycle gang members and other gang members, who assert oppressive dominance over others by virtue of their group organisation. The purpose of these units is to safeguard other prisoners and staff against assault, that is, segregation for safety reasons.

The other group consists of treatment units for drug and alcohol addicts, sexual offenders, gamblers, young offenders, vulnerable prisoners and so on.

Moreover, we have launched various programmes, such as the 'Back on Track' project for deradicalisation of prisoners. This project is targeted at all prisoners, and some of the participants may therefore be foreigners.

The driving force behind these special units has been our desire to target initiatives at groups with a common need. This also makes it possible to professionalise and upgrade staff and treatment in a wider sense.

The same idea is behind the 2008 decision to set up a special unit in one of our closed prisons (Nyborg) intended mainly for prisoners who are to be expelled from Denmark after their imprisonment. The unit was set up on the basis of a desire to enable prisoners sentenced to expulsion to serve their sentences together with other prisoners in the same situation. Another contributory factor was a desire to give staff a wider knowledge of the situation of prisoners

sentenced to expulsion so that the staff may give the prisoners the best possible treatment and guidance in view of their situation, developments during their imprisonment and their subsequent expulsion from Denmark. As far as circumstances will allow, prisoners in the unit are occupied in fields that will be useful to them after their expulsion. The prison practically always grants the prisoners' requests for occupation within the options available in the prison. The prison also liaises with the police, who keep the staff informed about how the removal arrangements are proceeding up to the time of expulsion. Armed with this knowledge, it is easier for the staff to guide the prisoners and answer their questions. The staff have also attended courses that focus on cultural understanding. These courses are intended to give staff a good knowledge of the prisoners' customs and patterns of reaction from a cultural angle. The prison management generally finds this unit a peaceful unit. A fact supporting this view is that there are few inter-prisoner or staff-prisoner conflicts. It has therefore been a positive experience for the prison to assemble prisoners sentenced to expulsion in one unit. It has also made everyday life in the other units of the prison more peaceful because the staff have more time for the prisoners when they do not have to spend much time on prisoners facing expulsion, who are often very worried about their future.

In connection with a brand new political four-year agreement on the Danish Prison and Probation Service, it has been decided to set up two more units in closed prisons according to the same principles as those that apply to the unit described before. When a political decision is made to set up such special expulsion units, a political debate on the regime, occupational programme and other issues in such a unit will typically start, too. The views of politicians may range from offering nothing to the prisoners in such units to giving them exactly the same options as in the ordinary prison units. I find it important to offer the prisoners meaningful occupation that takes into account that they are to be expelled from Denmark – what we might call 'expulsion science'. This means that the subjects taught should not necessarily include Danish and Danish civics, but rather subjects and fields that may be useful after expulsion, such as vocational skills, English and other suitable subjects. Learning English for instance will enable prisoners to communicate with other prisoners and staff in accordance with one of the basic principles of Recommendation 2912 (12) and will typically be of more use to the prisoner after his return than the Danish language would be. Another aspect is that meaningful activities and offers of occupation have a positive effect on

the prison environment, which affects security and safety in the prison in general, for prisoners as well as prison officers.

Sweden also has a prison unit exclusively for foreign prisoners, and I am aware that Norway has decided to establish an actual foreigners' prison which will solely hold prisoners who are not to return to the Norwegian society after their imprisonment. The prisoners in this prison are to be offered occupation, education and training aimed at their return to their own countries, and focus will be on languages other than Norwegian.

I believe that the distribution and allocation of prisoners sentenced to expulsion is a decisive factor in the successful implementation of all the other provisions of the Recommendation. It is therefore incredibly important to prevent the setting up of special units for foreigners sentenced to expulsion from becoming an alibi for failing to explore the possibilities of implementing the provisions of Rec (2012)¹² concerning the actual prison regime.

Imprisonment should be governed by the principles of normalisation and openness

Irrespective of whether we choose to segregate this group of prisoners, we have to maintain the principles of normalisation and openness, which include respect for their human rights. It is vital to maintain the principle of non-discrimination and not establish some sort of discount units or prisons.

We know the principle of normalisation from the European Prison Rules, which state that '[I]f life in prison shall approximate as closely as possible the positive aspects of life in the community', a principle also reflected in Rec(2012)¹² in the rules on clothing and nutrition, according to which the foreigners' cultural and religious traditions must be taken into account, but of course, subject to the requirements of safety and security. In Denmark, one implication of this is that a prisoner's face may not be hidden by clothing because the staff must be able to identify the prisoner and observe the prisoner's mental state in order to prevent suicide and other self-destructive behaviour.

Foreigners who may remain in Denmark after their imprisonment do not present any major problems with regard to the general principle of openness. They normally have the same

opportunities as Danish nationals for contact with the outside world. However, foreigners who are to be expelled are subject to various derogations from the principle of openness. As an example, in practice, they are not allowed to go on unescorted leave as there is a presumption that they will escape and evade enforcement of the sentence. To compensate for this, prisoners who are to be expelled are generally released when they have served half of their sentences, whereas the main rule for everybody else is release on parole after having served two thirds of the sentence.

We fully comply with all other provisions of Articles 22 and 23 of the Recommendation concerning visits, telephone calls, correspondence, television and newspapers.

In prisons with visiting flats where prisoners and their relatives can spend time together for several days, we even give priority to prisoners whose families live abroad and therefore find it particularly difficult to keep in contact. This applies especially if a prisoner has children who come to visit.

It is always a focus area for the independent prison inspections regularly conducted by the Parliamentary Ombudsman that foreign prisoners are able to keep up to date with the situation in their own countries and life in their communities in general by means of newspapers, television and radio in their own languages.

The speed by which communication technology develops makes it necessary for us regularly to consider whether we can make use of new methods of information to facilitate the prisoners', and especially the foreign prisoners', opportunities for maintaining positive contact with their families, friends and communities outside the prison. For this purpose, access to the Internet and to inexpensive telephony via Skype or the like will become particularly important, but, of course, always weighing the benefits against the security and safety risks.

So to conclude, as a point of departure, foreign nationals should be treated like the nationals of the sentencing country except on grounds of security and order or if it is deemed not to be in the best interests of the individual prisoner with a view to his chances of social reintegration in his or her own country.