

COUNCIL OF EUROPE



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Revision of CM Recommendation CM/Rec (2012)12 concerning foreign prisoners and its Explanatory memorandum



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Foreign Nationals in Prison & Probation Expert Group



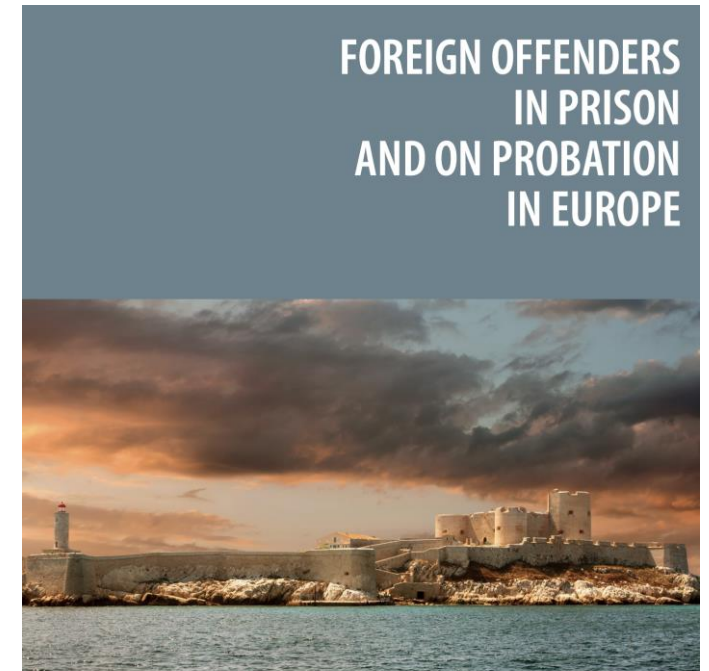
- Promotion of CoE Recommendations on Foreign Prisoners 2012(12)
- Collecting promising practice from across European prisons
- FNPP Workshops
 - 2014 London
 - 2016 Bruges
 - 2018 The Hague
 - 2023 Ter Apoel
 - 2024 Vienna
 - Special Edition FNP Newsletters

Trends Report 2005-2015

2005: Central and Eastern Europe < 5% FNP while in Western Europe
– FNP are overrepresented.

2015: Central and Eastern Europe – still less than 5% while %
remained high (and had become higher) in Western Europe

Probation: number of foreigners under supervision of probation
agencies far lower than number of foreign inmates placed in penal
institutions



Trends from 2005 to 2015
(inmates) and situation in 2015
(inmates and probationers)

Prison Populations

SPACE I - 2023

Marcelo F. Aebi
Edoardo Cocco

Median 16.1%

Average 26.8%

The percentage of foreign prisoners
varies significantly from State to State
(1.1-88.5%)

27% from EU MS (average)

34.5% Legally Resident

Figure 4.1. Percentage of foreign inmates in the prison population on 31 January 2023 (N=46 PA)

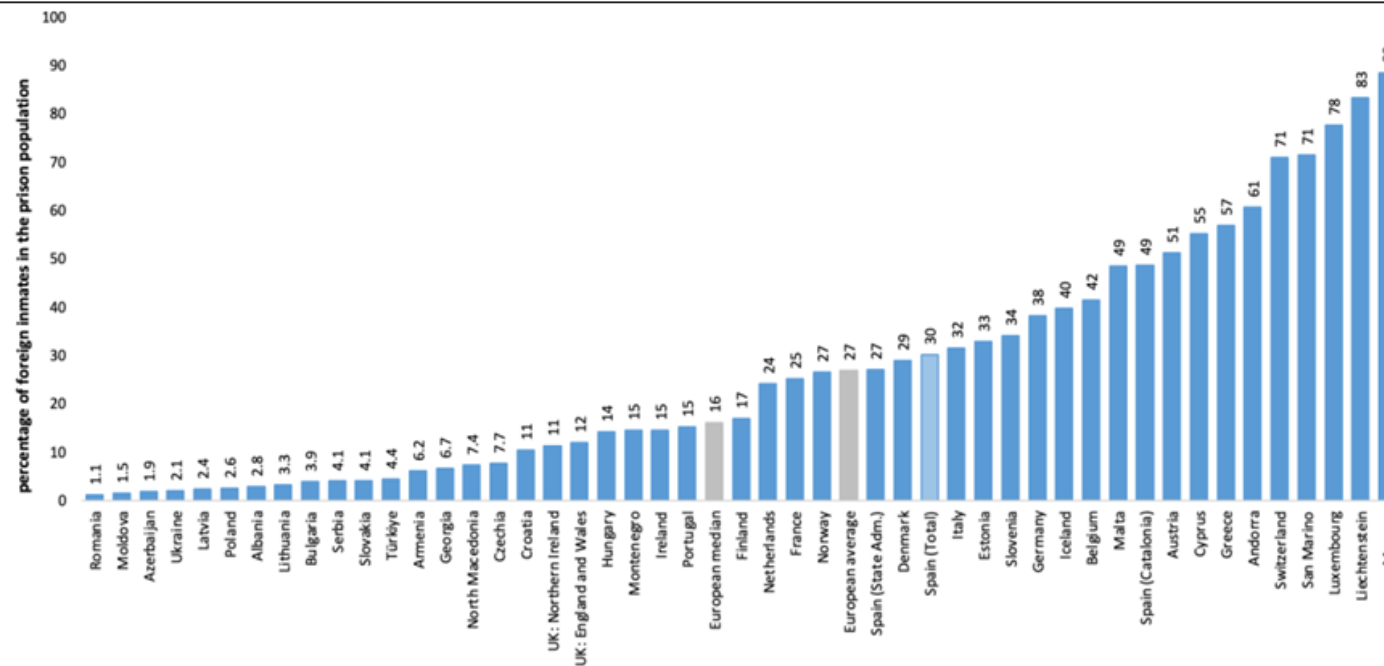
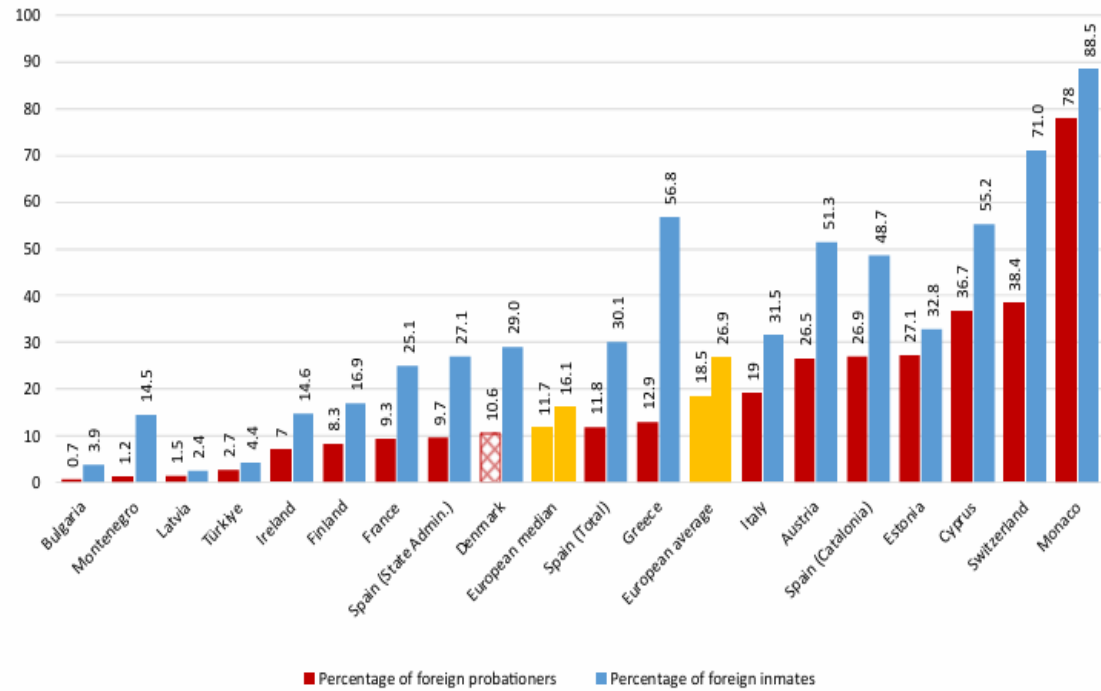


Figure 9. Percentage of foreign probationers in the probation population and percentage of foreign inmates in the prison population on 31 January 2023 (N=17)



2012 Recommendation: Terms of Reference

Revise or replace **1984 Recommendation**

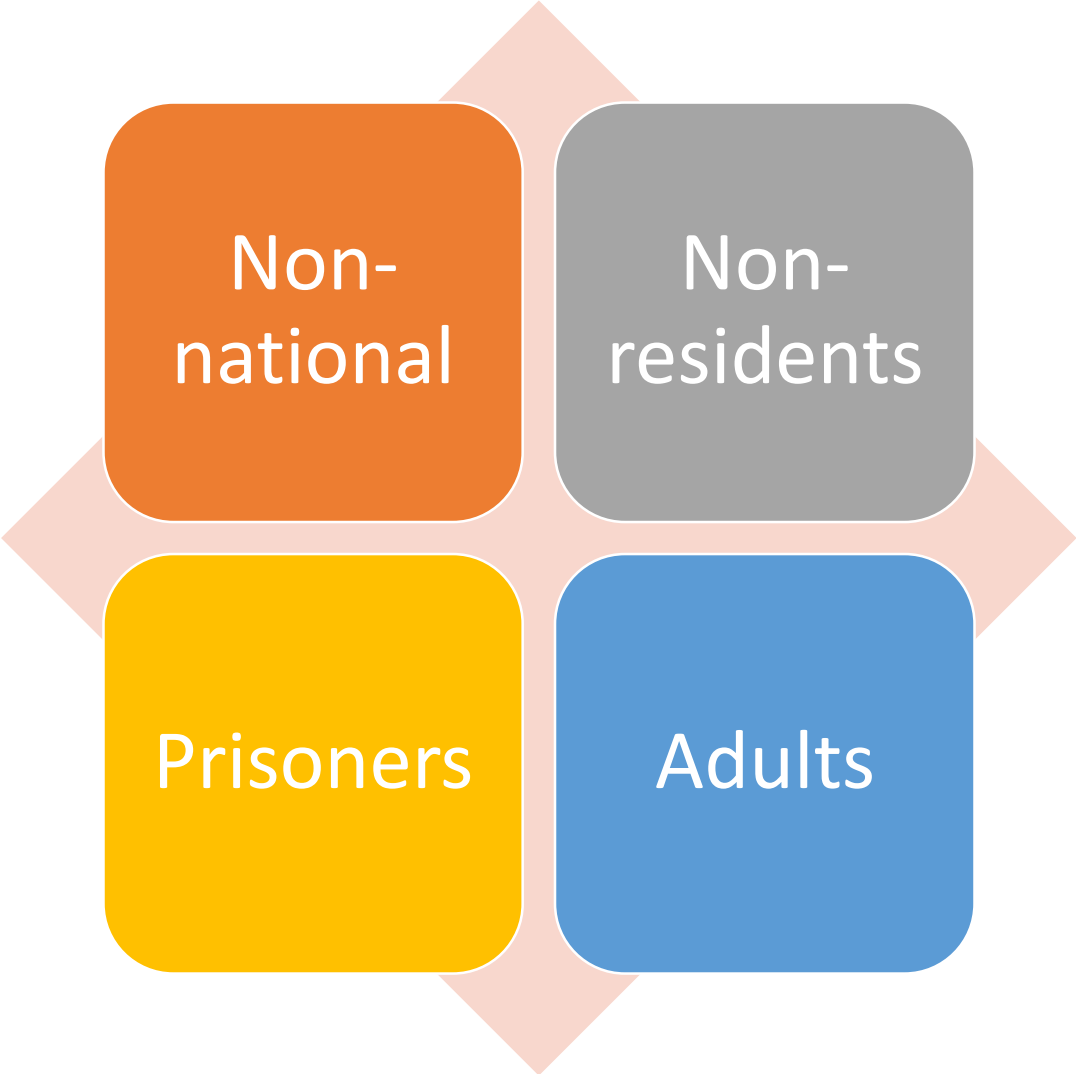
Focus on

- Numbers in detention
- Treatment
- Release and reintegration
- Training of staff
- Social, legal and consulate support

**2012
Recommendation:
Terms of Reference**

**‘Humane and tangible long-term
solutions based on European best
practice’**

Scope of the Recommendation



Legal Context: Preamble

- Council of Europe treaty law on human rights and the transfer of sentenced persons
- 11 Committee of Ministers' recommendations on penological matters including the 2006 European Prison Rules
- UN Model Agreement on Transfer and the Bangkok Rules
- EU Framework Decisions 909, 947 and 829

Basic Principles

Respect for rights,
situation and needs

Consideration for non-
custodial sanctions and
measures, and early
release

Positive action to avoid
discrimination

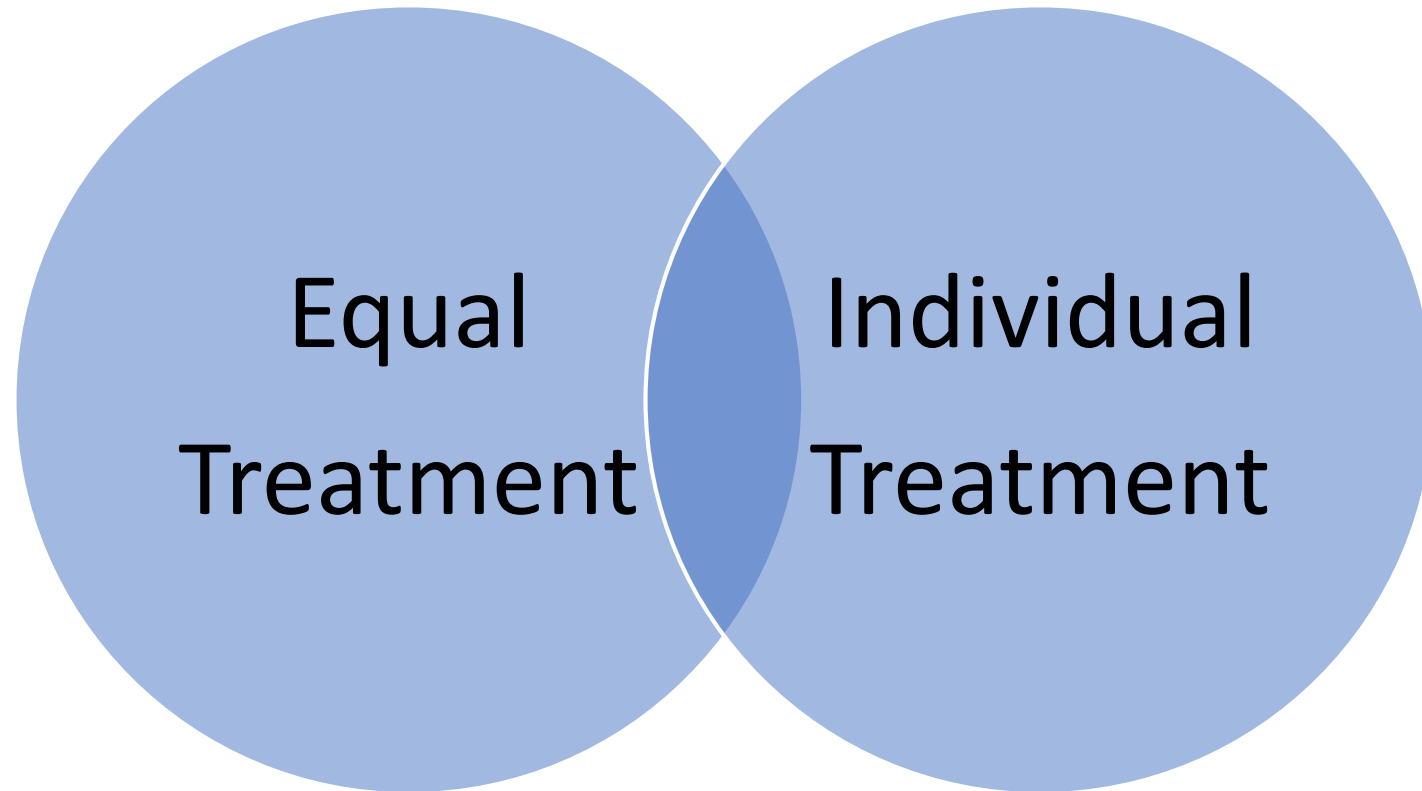
Access to interpretation
and translation

Regime to
accommodate special
needs and prepare for
release and
reintegration

Allocation of resources

Training of persons
working with FNP

Key Principles



Gaps and limitations

1

Stay aligned with changing legal framework

2

Support and supervise FNP released from prisons for public safety

3

Support the development of services for FNP imprisoned abroad

Gaps and limitations

4

**Address complex framework:
Immigration VS Prison & Probation**

5

Embrace new technologies

6

Address staff/defense lawyer training

Basic principles - suggestions

- 6. Foreign offenders sentenced to imprisonment shall be entitled to full consideration for early release.

Firstly, the term "early release" is an indeterminate legal concept; if this term is intended to refer to the possibility of accessing conditional release or other types of non-custodial measures, then the above recommendations already establish a principle of non-discrimination that requires States to apply the same regulations - in relation to the progressive process of integration - to nationals and foreigners.

- 9. The prison regime shall accommodate the special welfare needs of foreign prisoners and prepare them for release and social reintegration.

In this regard, depending on the administrative situation of the foreigner and his life plan, the necessary actions must be taken in order to prepare his release and social reintegration in his home country.

The fact that the foreign person is going to be relocated to his or her home country should not prevent that person from accessing all educational resources and resources that can facilitate his or her reintegration, regardless of where this occurs.

Basic principles

- 12. Appropriate training in dealing with foreign suspects and offenders shall be provided for the relevant authorities, agencies, professionals and associations which have regular contact with such persons.

Particular attention should be paid to the training of professional groups in direct contact with foreign inmates. In this regard, it is recommended that training be provided not only for the competent authorities but also for lawyers, especially public defenders, and prison staff, so that they can provide the inmate with the necessary information to decide on his/her possibilities of reintegration in the country of execution or in the home country.

- 13.2. In particular:
 - a. alternatives to remand in custody shall always be considered for a foreign suspect; and

(in this respect, in the case of citizens of the European Union, account should be taken of the possible application of Council Framework Decision 2009/829/JHA of 23 October 2009 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)

- b. the fact that such a suspect is neither a national nor a resident of the State or has no other links with that State shall not, ~~in itself~~, be sufficient to conclude that there is a risk of flight.

Basic principles

- 14.2. The judicial authorities shall be provided, where possible and appropriate, 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.

In this regard, it should be promoted that the decision-making regarding the possible transfer or expulsion of the convicted foreign person takes place in court, that is, as soon as possible, in order not to delay - if reintegration in the sentencing State is not possible - the possible process of social reintegration of the convicted person in the home country.

Conditions of imprisonment

- 25.4. Prison authorities shall keep a record of instances where foreign prisoners waive their right to contact their consular representatives and of visits by consular representatives to foreign prisoners.

Since many FNOs do not always want to contact their embassy/consulate during pre-trial detention, for example because they often hope to be released from custody, they should be asked to contact the embassy again after the conviction. Appropriate forms should be provided in the relevant foreign languages.

The current residence status should already be available at the time of detention in order to be able to provide targeted and appropriate information for the prisoners