

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Co-operation
(PC-CP)

**DRAFT OUTLINE STRUCTURE OF THE RECOMMENDATION
CONCERNING FOREIGN PRISONERS**

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Preamble

[In order assist countries in dealing with the specific problems of foreign offenders ...]

To be completed**I. Basic Principles and Scope****Basic Principles**

1. Foreign offenders shall be treated with respect for their human rights and with due regard for their particular situation and specific needs.
2. Foreign offenders shall be entitled to be considered for the same non-custodial sanctions and measures as other offenders and shall not be excluded from consideration solely on the grounds of their status.
3. Foreign offenders shall not be remanded in custody or sentenced to custodial sanctions solely on the grounds of their status, but only when strictly necessary and as a measure of last resort.
4. Foreign offenders shall be entitled to be considered for release on the same grounds and subject to the same conditions of release as other prisoners.
5. Positive steps shall be taken to avoid discrimination and to address specific problems that foreign offenders may face while in prison, on transfer, and after release.
6. The detention of foreign offenders shall facilitate their preparation for release and social reintegration.
7. Where it is in the interest of foreign offenders, national authorities shall use instruments governing the transfer of such persons between states to return them to an appropriate state.
8. Specialised training in dealing with foreign offenders shall be provided for the judiciary, lawyers, police, border agencies, medical practitioners, social workers, psychologists and psychiatrists, prison and probation staff.
9. Sufficient resources shall be allocated in order to deal effectively with the particular situation and specific needs of foreign prisoners.

Scope

X. 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.

X. 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.

X. All foreign persons who are detained in a prison or who are detained in the manner referred in para. (X)(b) above, are regarded as prisoners for the purpose of this Recommendation.

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

X. For the purpose of this Recommendation, persons are regarded as being foreign if:

- a) they do not have the nationality of the state in which they are subject to criminal proceedings, sanctions or measures or are deprived of their liberty; or,
- b) they have the nationality of the state in which they are subject to criminal proceedings, sanctions or measures or are deprived of their liberty but who do not have close social ties with that state.

X. For the purpose of this Recommendation:

- a) an offender is a person who is alleged to have, or who has, committed an offence; and
- b) an offence is any act or omission which infringes criminal law.

I. Use of Remand Custody

X. The use of remand custody for foreign offenders shall, subject to the rules set out below, be governed by Recommendation (2006) 13 on the use of remand custody.

[more to be added]

II. Sentencing of Foreign Offenders

X. The sentencing of foreign offenders shall, subject to the rules set out below, be governed by Recommendation R(92)17 concerning consistency in sentencing.

[more to be added]

III. Conditions of Imprisonment

X. The conditions of imprisonment for foreign prisoners shall, subject to the rules set out below, be governed by the European Prison Rules.

Admission

X. At admission, foreign prisoners shall be informed, orally and in writing, in a language which they understand, of their rights and duties as prisoners and of the main features of the prison regime, including relevant rules, regulations and procedures for making requests and complaints.

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

X. Prison and medical staff who are trained to deal with foreign prisoners in relation to rule x below, shall be involved in the reception process of foreign prisoners.

Allocation

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

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

Accommodation

X. Decisions on whether to accommodate foreign prisoners together, or in different parts of a prison, shall be based primarily on the need to facilitate the social reintegration of such prisoners, while bearing in mind the requirements of safety and security.

Hygiene

X. Facilities for sanitation and hygiene shall accommodate the cultural and religious needs of foreign prisoners.

X. Rules that require prisoners to keep their appearance clean and tidy shall be interpreted in a manner that is sensitive to prisoners' cultural and religious needs.

Clothing

X Where prisoners are allowed to wear their own clothes, such clothes may reflect their cultural and religious traditions.

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

Nutrition

X. 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.

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

Legal Advice

X. 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.

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

X. Foreign prisoners who are not fluent in the language in which any judicial, administrative or disciplinary procedure involving them is conducted, shall be provided with a translation of the relevant documents.

X. Foreign prisoners who require an interpreter to communicate with their legal adviser shall be provided with one.

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

Contact with the outside world

X. 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 and diplomatic representatives, community agencies and volunteers.

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

X. Rules governing procedures for making and receiving telephone calls shall be applied flexibly to ensure that foreign prisoners who are communicating with persons abroad have the same access to this form of communication as other prisoners.

X. Indigent foreign prisoners shall be assisted with the costs of sending letters and making calls abroad.

X. 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.

X. 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.

X (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.

X (2) To the extent possible, foreign prisoners shall be given access to radio and television broadcasts in a language they understand.

X. In order to ensure 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 need to keep up-to-date contact details of such family members.

X. Prison authorities shall ensure that family members of foreign prisoners have up-to-date contact information for the prison or other facility in which such prisoners are held.

X. Community agencies and non-governmental organisations which can provide support to foreign prisoners shall be given access, wherever practicable, to such prisoners who wish to have contact with them.

Contact with diplomatic and consular representatives

X (1) Foreign prisoners shall have the right to regular contact with their diplomatic and consular representatives.

X (2) Foreign prisoners shall be given reasonable facilities to communicate with their diplomatic and consular representatives.

X (3) Foreign prisoners who are without diplomatic and consular representation in the country in which they are detained and refugees or stateless prisoners, shall have the right to regular contact and be given the same facilities to communicate with representatives of the state which takes charge of their interests or the national or international authorities whose task it is to serve the interests of such prisoners.

X (1) Prison authorities shall inform foreign prisoners of the role of diplomatic and consular representatives and the actions that may be taken on their behalf by such representatives.

X (2) Prison authorities shall cooperate fully with diplomatic and consular representatives and national or international authorities whose task it is to serve the interests of foreign prisoners.

X (1) Diplomatic and consular representatives shall cooperate fully with prison authorities and assist foreign prisoners who are their nationals or for whom they are otherwise responsible, as soon as possible after their admission.

X (2) Diplomatic and consular representatives shall provide oral and written information for the foreign prisoners they represent which shall include their contact details and the forms of assistance they provide.

X (3) Diplomatic and consular representatives shall regularly visit foreign prisoners who are their nationals or for whom they are otherwise responsible.

X (4)(a) Diplomatic and consular representatives shall offer any assistance possible to further the social reintegration of foreign prisoners.

X(5)(b) Such assistance 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 not received by such prisoners on release.

X (6) Diplomatic and consular representatives shall contribute to the provision of literature and other reading materials in languages understood by the foreign prisoners they represent.

X(7) In order to assist foreign prisoners, diplomatic and 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

X. (1) In order to ensure that foreign prisoners have access to a balanced programme of activities additional positive measures shall be taken, where necessary.

X (2) Such measures may include interpretation and classes in the language in which the activities will be conducted.

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

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

Work

X. Foreign prisoners shall have rights equal to other prisoners in respect to work and vocational training, including programmes outside prison.

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

X. Provision shall be made to enable foreign prisoners to transfer a proportion of their earnings to family members who are resident abroad.

X. Foreign prisoners who work shall be able to contribute to the social security system of the state in which they are imprisoned and may be allowed to transfer such contributions to their state of nationality or another state.

Exercise and recreation

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

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

Education

X. Foreign prisoners who are not fluent in the daily working language of the prison shall be given the opportunity to learn it.

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

X. To ensure that educational programmes are 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.

X. 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 thought, conscience and religion

X. Prison authorities shall facilitate the exercise of religious and other beliefs by foreign prisoners.

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

Women

X. Special measures shall be taken to combat the isolation of foreign women prisoners, including measures designed to facilitate contact with their children.

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

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

Infants

X. Arrangements and facilities for the care of infants who remain in prison with their parent shall respect cultural and religious diversity.

X. Decisions on whether an infant of a foreign prisoner is to be removed from prison, shall be taken by an impartial authority that considers the best interests of the infant 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 infant may be sent.

Health

X. Foreign prisoners shall have the same access to the health care available to other prisoners.

X (1) Access to health care for foreign prisoners shall be ensured by facilitating communication.

X (2) Such communication may include the use of interpreters who are acceptable to the prisoner concerned and who shall respect medical confidentiality.

X. Health care shall be provided in a culturally appropriate manner.

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

X. Medical and health care personnel shall be trained to interact with foreign prisoners and to deal with their specific problems.

X. 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.

X. 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 another state and the provision of medication for use during the transfer.

Security and Safety

X. Prison staff shall be alert to cultural differences when interacting with foreign prisoners so that good order is maintained through a process of dynamic security.

X. The nationality of a prisoner shall not be the determinative factor in the assessment of risk to security and safety posed by such prisoner.

X. To ensure safety in prison, every effort shall be made to avoid conflict between prisoners, prison staff or other persons working or visiting the prison, who come from different backgrounds.

TO BE COMPLETED...**Untried Prisoners****Sentenced Prisoners****Preparation for Reintegration****(Expulsion and Repatriation)****V. Release of Sentenced Prisoners**

X. The consideration of release of foreign prisoners and the conditions to which they are subject shall, subject to the rules set out below, be governed by Recommendation (2003) 22 on conditional release (parole).

[further paragraphs to be added]

VI. Selection and Training

Selection

X. Persons selected to work with foreign offenders shall be

a) free from racial, religious and cultural prejudice; and

b) capable of interacting with offenders from a range of different backgrounds in manner that respects their inherent dignity and human rights.

Training

X. Persons who work with foreign offenders shall receive cultural awareness, diversity and sensitivity training and information on the particular problems faced by foreign offenders.

X. To enhance respect for the human rights of foreign offenders, training shall include international standards relating to imprisonment and in particular this Recommendation.

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

Specialisation

[Dedicated/expert officials/professionals]

VII. Transfer to State of Origin

[more to be added]

VIII. General Provisions

[more to be added]

X. The effectiveness and impact of policies and practices designed to address the specific problems faced by foreign prisoners shall be evaluated regularly.

X. National authorities shall collect, analyse and share information on foreign prisoners detained in their countries.