

Foreigners in European Prisons
From “good practices” to “good policy”

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The subject:

Foreign prisoners and probation. To discriminate
or not to discriminate ?



General framework of the paper

Findings of two studies:

- van Kalmthout, A.M., van der Meulen, H., F.B.A.M. and Dunkel, F. (2007) *Foreigners in European Prisons. Nijmegen: Wolf Legal Publishers.*
- van Kalmthout, A.M. and Durnescu, I. (forthcoming) *Probation in Europe.*



The first study describes the vulnerabilities and the priorities of the foreign prisoners

The second provides some useful examples and some direction for further development of programs dealing with foreigners.

These two empiric studies are analyzed from the perspective of “race disproportionality” literature

Current situation of foreign prisoners

Not only worrying but dramatic

- TRENDS:

- Belgium: 1980 – 21% → 2004 – 44%
- Germany: 1985 – 14,5% → 1995 – 29,4%
- Italy: December 2005 – 33,3% → December 2007 – 37,4%

- Almost 2% increase per anum.



Percentages:

Luxembourg – 71,4%

Greece – 41,5%

Austria – 41,4%

Belgium – 44% (although non-nationals represent
10% of the total population of Belgium)



Explanations of over-representation

Four theories:

1. Different nationalities with different pattern and level of offending
2. Differential treatment within the criminal justice system
3. Socio-economic factors
4. Unfortunate interaction of socio-economic factors and criminal justice treatment.

Most of the studies including the ones included here confirmed the last two theories.

Socio-economic factors

- Massive immigration movement of the working class towards countries with strong economies:
 - Germany: '80 - 4,5 million immigrants → '90 - 6,7 million
 - Finland: 1990 - 25,000 immigrants → 2003 - 100,000 immigrants
- Some of them with no legal permit of residence or with no working permit.
 - Belgium: 76% of the foreign prisoners with no legal permit of residence
 - Study in Greece: *“others are incarcerated for property crimes which are often committed under the pressures created by their illegal status”*

Discriminatory practices within criminal justice system

Pre - trial stage

‘consists of unfavourable treatment based on a person’s sex, gender, race, ethnicity, culture, religion, language, class, sexual preference, age, physical disability or any other improper ground’ (Bowling, 2006, p.135).

Ex.: proactive policing, bail decision.

Evidence of discrimination in the first study:

1. Proportion of foreigners among pre-trial detention:

- Luxembourg – 55,2%
- Italy – 49,1%
- Poland – 55,2%

2. Causes identified: lack of legal residence (risk of absconding), absence of work permit, poor socio-economic resources, intercultural misunderstanding, lack of links with local community etc.

BUT ALSO:

Indirect discrimination

- ‘Indirect discrimination refers to a treatment that might be described as “equal” in a formal sense between different groups, but as discriminatory in its “actual effect” on a particular group’
- Ex. of indirect discrimination: bail decision taken on the ground like: to have stable home address, to have a job etc.
- They are not “neutral norms” but induce in the criminal justice system a biased practice.
- Foreigners might end up in pre-trial detention because they are more likely to be unemployed (consistent with Hood, Jehle etc.).



Indirect discrimination

- Another example is provided in a lot of jurisdictions where the law states that there is no different treatment for foreigners.
- Treating foreigners as nationals could be compared with treating mentally disturbed offenders as “ordinary”.
- Foreign offenders have special characteristics and particular needs (see language barriers, the level of information about the criminal justice system, community ties etc.)



ONCE THEY ARE ON REMAND A CUSTODIAL
SENTENCE IS MORE LIKELY



Trial stage

Ex. trial, length of custodial sentence, decision of early release

- Although most of foreigners are convicted for property crimes they tend to be sent to prison for the reasons described at the pre-trial stage: lack of residence permit, lack of job, no community ties, language difficulties etc.
- All these reasons convince the judge to impose a custodial sentence rather than an alternative.



Institutional discrimination

- Is a form of discrimination practiced by the law or a state institution.
- Ex.: the prosecutorial guidelines in the Netherlands (!): specific categories of foreigners are excluded from alternative sanctions or from task penalties (community service), electronic monitoring etc.
- They are irregular migrants and foreigners who are expected to lose their residence permit.

Probation and foreign offenders

General remarks:

1. Probation services are starting to work more and more with foreigners:
 - Germany: 2002 – 17% foreigners on probation
 - Italy: between 1st of January – 1st of June – 15% foreigners granted an alternative measure.
 - Catalonia – 26,8% foreigners on probation
2. With some exceptions (Norway, Switzerland) probation services are not involved in transfer, expulsion, extradition of foreigners.
3. Only foreigners with residential permit and not subject to expulsion are eligible for alternatives to custody.
4. Probation services with a dominant social work approach towards offender and / or working close to the prison system (Italy, Denmark) seem to be more aware and ready to treat foreign offenders as special group.




Good initiatives within probation services:

1. Understanding programs (ex. Foreign nationals and criminal justice – Canton Zurich) – meant to better understand different foreign groups,
2. Special training for probation officers dealing with foreigners (Italy),
3. Professional interpretation available for probation service (Finland),
4. Phone line for relatives (Denmark) – providing information and counseling for the relatives of those under a prison or probation sentence,

5. The Mentoring Programme Denmark

- is designated to support young offenders between 15 to 25 years old with another ethnic background to understand the criminal justice system and find their ways to reintegrate into society via 'intensified supervision'.
- The program was independently evaluated and the conclusions were very positive:
 - *'The mentoring programme is a successful way of finding an alternative to control and punishment*
 - *A mentor is in many situations the right help. In the majority of the relations the mentor has been instrumental for positive changes in the young person's life*
 - *The most important resources of the mentors are time, involvement and a positive, sympathetic and caring attitude towards the youngsters.'* (in press)



Some ways to strengthen the non-discriminatory practice within the criminal justice system via probation service:

- The first step toward an improved practice with foreign offenders would be **to recognize this group as special group** of clients, with special needs and particular characteristics.
- Probation services in Europe is currently dealing with special groups like drug addicts, drink driving clients, mentally disturbed clients and so on.
- The advantage of looking at a group of clients as to a special group is that specific priorities could be set and particular procedures could be employed.



Top priority: reduce the risk of remand

- to reduce the risk of pre-trial detention probation services across Europe could develop **bail hostels** (like approved premises in England and Wales) or **intensive forms of electronic monitoring** (like mobile electronic monitoring in France) using GPS technology (like in France and Austria).
- This forms of surveillance seems to be convincing for judges as an alternative to pre-trial detention.



Second priority: improve the supervision capacity of probation service

- In order to improve supervision of this group, probation services could train probation officers to be **more culturally sensitive** and enhance the **co-operation** between the adoption countries and the countries of origin (ex. Italy and Romania).
- In this context the **role of CEP** is crucial in my view for preparing the enforcement of the new Framework Decision of European Commission on transferring community sanctions and measures.
- For those foreigners who could not be transferred to the country of origin programs like **prisoners abroad** could be developed and probation officers from one country could be working with clients in another country. For instance justice assistants from Belgium could work with Belgian probationers in the Netherlands or the other way around.

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Thank you!