

# DEVELOPING THE COUNCIL OF EUROPE RECOMMENDATION CONCERNING FOREIGN PRISONERS

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## BACKGROUND

The Penological Council of the Council of Europe (PCCP) is currently developing a new *Recommendation concerning Foreign Prisoners*. This presentation will outline the terms of reference for the new Recommendation so that participants in this conference may know what they may expect the recommendation to include. It will deal with exclusion by the European Committee on Crime Problems (CDPC) from the brief of the PCCP of the question of the consent of foreign prisoners to their transfer. It will also outline the process that is likely to be followed leading up to the adoption of the recommendation.

The presentation will explain the substantive general principles that are guiding the development of the Recommendation. It also gives an indication of key areas where the new Recommendation may go beyond the existing rules in recommendations that are applicable to foreign prisoners. *It is important to emphasise that neither the structure nor the draft text set out below has been approved by the PCCP or any other committee of the Council of Europe. At this stage it reflects merely the current opinions of the expert advisers to the PCCP and is reproduced here merely to assist this group in its deliberations*

## DRAFT STRUCTURE OF THE RECOMMENDATION

### I. Scope and Basic Principles

#### Scope

#### Basic Principles

1. Foreign offenders shall be treated with respect for their human rights and with due regard for their particular situation and individual needs.
2. Foreign offenders who require assistance with communicating 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 within the state they are in.
3. 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

4. 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.

5. Foreign prisoners shall be entitled to full consideration for early release.

6. 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.

7. The detention of foreign prisoners shall facilitate their preparation for release and social reintegration.

8. Foreign offenders shall be transferred to serve their sentences in a state with which they have links, when it is in the interests of justice and their social rehabilitation, provided that their human rights will not be infringed by doing so.

9. Specialised training in dealing with foreign offenders shall be provided for the judiciary, prison, probation and police staff, as well as all other relevant agencies, professionals and associations which have regular contact with such offenders.

10. 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**

11.1. 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.

11.2 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 links with the state in which the offence is supposed to have been committed.

## **III. Sentencing of Foreign Offenders**

12.1 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 as national offenders.

12.2 When imposing sentences, account should 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.

#### **IV. Conditions of Imprisonment**

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

##### **Admission**

##### **Allocation**

##### **Accommodation**

##### **Hygiene**

##### **Clothing**

##### **Nutrition**

##### **Legal advice and assistance**

##### **Contact with diplomatic and consular representatives**

##### **Prison regime**

##### **Work**

##### **Exercise and recreation**

##### **Education and training**

##### **Freedom of thought, conscience and religion**

##### **Women**

##### **Infants**

##### **Health**

##### **Good Order, Safety and Security**

## **V. Release**

### **Preparation for Release**

### **Release from Prison**

### **International Transfers**

## **VI. Persons who work with foreign offenders**

### **Selection**

### **Training**

### **Specialisation**

## **VII. General Provisions**