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GOOD PRACTICES AND PROBLEMS WITH REGARD TO THE TRAINING OF PRISON WORKERS AND THE FOREIGN PRISON POPULATION IN SPAIN AND CATALONIA

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Introduction

This article is based on the preliminary results of the *B-ComPetent: Boosting Competences in Penitentiary Staff in Europe* project, concerning the good practices identified in different European countries with regard to the training of prison workers and the foreign prison population.

In this article we focus on the good practices and problems identified in the two penitentiary systems present in Spain (General State Administration and Catalan Administration), contextualising these results in the light of a more general problem related to the treatment of *irregular immigration* and how this also impacts and determines the capacity of these systems to work with foreign inmates.

In this sense, as will be seen, despite the fact that no specific training programmes for prison staff in order to work with foreign prisoners have been identified, the efforts made by both administrations to improve integration and a differentiated approach to this type of group due to their specific needs, cannot be duly developed due to the legal demands of immigration policy.

General Spanish State Administration

Likely, due to the context in which the General Penitentiary Law of 1979 was passed, with a negligible presence of foreign nationals in State prisons, the text makes no explicit reference

to the foreign prison population. However, its Article 3 introduces the general principle of equality and non-discrimination which will serve as the basis for subsequent regulations: “Prison activity will be carried out [...] without establishing any difference due to race, political opinions, religious beliefs, social status or any other circumstances of a similar nature”.

From the 1980s onwards, Spain began to experience a significant increase in the arrival of foreigners, which reached its peak in the 1990s. An increase that occurred in different social orders and which had a clear impact on the prison systems, with a very high over-representation of the foreign prison population at the end of the first decade of the 20th century (up to 45% in Catalonia). Faced with this increase in the presence of the foreign population in prisons, some rules began to be introduced in the 1996 Prison Regulations, through Instruction 14/2001 on general rules on foreign inmates, until the approval of the *Framework Plan for educational intervention with foreign inmates* in 2006. This Plan already includes extensive reference to the normative framework of the Council of Europe, in particular to the Recommendation 12 of 1984, which was then in force and which in its preamble stated that: “Considering the large number of foreign inmates and the difficulties they may encounter due to factors such as difference of language, culture, custom and religion. Expressing their desire to reduce the isolation that can feel and facilitate their treatment with a view to their social rehabilitation, recommends to the governments of the Member States that, in their law and in their practice, are based on the principles set out in the Annex to the this Recommendation”.

In this Plan of 2006, the prison administration regulated measures aimed at (1) reducing isolation and facilitating social rehabilitation, (2) reducing language barriers, (3) responding to special needs, (4) supporting with consular assistance, 5) and measures on training and service of prison staff. With regard to this last point, which is the most relevant for the purposes of this article, it was stated that:

(a) Staff training programmes should incorporate training for prison officers which may assist them in their work with foreign prisoners. The aim of such training should be to increase understanding of the difficulties and cultural background of foreign prisoners.

(b) Provision should be made for certain categories of staff to work more intensively with foreign prisoners by giving them more specialised or focused training, for example, on language learning or on specific difficulties encountered with certain categories of foreign prisoners.

The implementation of the above-mentioned Plan would be the responsibility of a multidisciplinary team, led by the Deputy Director of Treatment and composed of several professionals from the treatment boards, while at the same time opened the door to the collaboration of NGOs.

The reference to working with foreign nationals deprived of their liberty in prison is modified at the level of the Council of Europe with its Recommendation 12 of 2012, which replaces

the previous ones. It emphasises the need to provide adequate training for the authorities in dealing with these persons. It lays down specific rules on the selection of staff to work with them, emphasising cultural sensitivity, interaction, and language skills, and specifies training standards for selected staff. Thus, in paragraphs 39 to 41 the Recommendation states that such staff should be trained to respect cultural diversity and to understand the special problems faced by such prisoners, which may include learning the languages most commonly spoken by foreign prisoners, and on existing national law and practice and related international and regional human rights standards. Finally, the need for specialisation of professionals is noted, as is the need for periodic evaluation and review of training programmes to ensure that they reflect changing on populations and on social circumstances.

The latest regulation of the Spanish General Secretary of Penitentiary Institutions in relation to foreign prisoners, Instruction 13 of 2019, also points out that it takes into account this last Recommendation of the Council of Europe. However, what can be extracted from the reading of the same is that all this type of regulation by the prison administration focuses on the intervention *with foreign inmates*, but not on the training that professionals working with them should have. Thus, the regulations cover at length rules and guidelines for dealing with administrative procedures regarding administrative and consular status, specific entry requirements, permits, parole, transfer to the country of origin or another country, expulsion, international protection, and other issues, without emphasising the training of prison staff who work with them and who must follow these rules.

As will be seen below, the problem also lies in the fact that the regulations on working with foreign prisoners end up taking place under an immigration policy that promotes expulsions and, therefore, the effort dedicated by professionals to working with this population may diminish the impact. As Solar points out:

The latest penal reform does not give us much hope for a possible change in the direction we are calling for. The text resulting from it continues the path initiated by its predecessors, advocating more strongly for the execution of criminal expulsions at the expense of the punitive power of the State. To this end, it eliminates limits that until now were unquestionable, especially the one consisting of the administrative regularity of the convicted foreigner and insists on the denaturalisation of basic penitentiary institutions such as the third degree and conditional release (Solar, 2019: 442).

In this manner, it seems that the attention that the prison administration should pay to training its professionals to work with foreign prisoners is not sufficient. As pointed out in the research within the aforementioned European project, there is an effort on the part of the Administration to provide information to foreign prisoners in their own language, for example, with the publication of the *Prison Step by Step* Manual, which offers information to this group on different topics that are of interest to help them understand the rights and duties they will have in prison. However, this manual can in no way replace the important work that interpreters must carry out in the daily life of the prison, but no mention appears in this sense.

In general, there is little or no information (at least publicly) about training programmes for prison staff in their work with foreign prisoners. Among the latest courses offered by the

training area of the Spanish penitentiary administration is, for example, a course on *Social Skills, Personal Interaction and Peaceful Conflict Resolution*. The call for this course was published in September 2020, and its general objective was to provide knowledge and strategies that could help to learn the specific procedures designed for the prison environment in the peaceful resolution of conflicts and the exercise of assertive authority, without appearing to have a specific focus on issues of work with foreign prisoners. Although, one can observe the existence of training and specialisation courses provided in collaboration with third sector organisations (for example, the project promoted in June 2019 by the Cervantes Institute and the GSPI on the teaching of Spanish as a Foreign Language aimed at prison officers and NGO volunteers who teach Spanish to non-Spanish-speaking foreign inmates), these are voluntary courses. In no case does it seem that training in specific subjects on the rights of foreigners or in relation to their needs and specificities is required in the selection of staff by the prison administration.

In short, there is a clear deficit with respect to certain international recommendations in working with foreign national prisoners, despite the fact that Spanish rules include the need to train their prison staff in this regard. Most of the training focuses on strict parameters of security and management of the labyrinthine regulations and problems of the irregular administrative situation of foreigners, preventing a more focused work on specific treatment, education, employment or access to justice on an equal terms with national prisoners.

Catalan Penitentiary Administration

As has been explained above, the Spanish prison system has two different penitentiary administrations. It is important to highlight that the Catalan administration (which depends on Department of Justice of the Catalan Government) has the power to manage prisons but not to adopt rules with Law status, so the main regulations are the same that for the Spanish central administration. In any case, the daily life in prison is regulated by administrative orders and circulars approved by the Catalan administration (Secretary for Penal Measures, Rehabilitation and Victim Assistance -*SMPRAV in Catalan*).

The most relevant in the case of the Catalan administration with respect to the scope of this article is in a 2019 Circular from the SMPRAV. The Circular 2/19¹ on immigration and prisons in Catalonia, although it is the only one of the rest of the circulars and instructions of the SMPRAV on the subject, is relevant because its content is part of the study plans that applicants for prison workers must take to access this public job².

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http://justicia.gencat.cat/web/.content/home/ambits/reinsercio_i_serveis_peni/serveis_penitenciaris/instruccions_i_circulars/circulars/circular-2-2019.pdf

² Announcement of specific competitions for merits and training for the provision of various commandments and singulars in the area of internal regulation and administration of the penitentiary centres of Catalonia (2019) http://justicia.gencat.cat/web/.content/home/serveis/treballar_depart/concursos/llocs-comandament-jus014/jus014-llistesdef.pdf

This Circular of 2019 mainly aims to regulate in detail a series of procedures in which the execution of the sentence can be seen in the case of the foreign population (classification, exit permits, social integration, expulsion, return to the country of origin, suspensions and substitutions of sentence, and procedures for managing documentation for residence or work. It is not a training to learn to work with foreign prisoners, taking into account their cultural, language, and day-to-day needs, but rather aimed at formalizing the complex legal labyrinth in which foreigners tend to find themselves where the custodial sentence is mixed with the administrative measure of expulsion. However, the Circular is important because it takes into account international regulations and expressly includes Recommendation CM / Rec (2012) 12 of the Council of Europe. Together with it, it collects two other documents as a guide to work on this field: the *Handbook on inmates with special needs* of the United Nations Office against Drugs and Crime (2009), and *Life trajectories of imprisoned foreigners*, published by the Social and Criminological Research Area of CEJFE³ in 2011. The Circular, based on these texts “proposes the creation of specialized services, both at the central level and in penitentiary centres, [as well as] the deepening of the information and training of the personnel who serve the foreign population”. Based on the recommendations of the 2011 study, it indicates that since it is impossible for professionals to be constantly updated on the abundant legislation on the matter, specialized teams are created in each penitentiary centre to function as references.

For this reason, the Circular, although it explains that in Catalan prisons there are sufficient means to attend to the foreign population, it provides functional criteria to respond to this specialization: each centre will have an Orientation and Reception Service (SOA, in Catalan) to coordinate all the action and observe the objectives of the Circular, including advising multidisciplinary teams and other bodies with specialized information on foreigners and for the management of specific cases. To explore this further, the Circular has among its objectives "To improve the training and specialization of prison staff in this matter." Even though these purposes, it should be noted that although some isolated things have been done, it cannot be said that the SOAs have been set up as provided in the Circular. As is pointed out by the Administration, the work aimed at fulfilling this goal, has been interrupted due to the health crisis.

In any case, what is important about the Circular is that it recognizes the complexity of the legal and rooted situation of foreigners and looks for ways to help to reduce these difficulties: “Foreigners who enter prison face additional, specific difficulties. The deficiencies in the knowledge of the language, in addition to the immersion in a little-known cultural, social and legal context, often make them disadvantaged when accessing the resources of the prison context, to effectively exercise their rights and, in short, to access the mechanisms for rehabilitation” The Circular states that “In addition, the lack of family networks and support leads to conditions of social isolation and makes the reintegration process even more difficult. Finally, the limitations imposed by the regulatory framework on immigration matters to access regularization for work and residence intensify when the person has committed a crime”.

³ Centre for Legal Studies and Specialized Training (Catalan Justice Department)

That is why the Circular states that “for the purpose of assessing the expulsion provisions and the application of prison policies, it is insufficient to differentiate only between foreigners who have the possibility of regularization and those who do not. From the perspective of the inalienable purpose of social reintegration in prison, other assumptions must also be considered, in which the management of reintegration itineraries involves a special complexity and requires an individualized approach. This is the case when, for various reasons, the expulsion cannot be carried out. In these circumstances, the replacement of the penalty by expulsion cannot be applied and, consequently, the second paragraph of article 89.8 of the Penal Code indicates that the execution of the sentence or the part of the pending sentence will be carried out. With a high probability, these people will be released in a situation that will hardly allow them to return to their country of origin, but at the same time they will have little or no possibility of residing and working legally in the host country”

This recognition of the complex reality of foreign persons in prison leads to the recognition that “It is evident that the anticipation of the execution of an expulsion order in the short term against the will of the person significantly increases the risk of violation of the sentence, but, on the other hand, it is also true that the fulfilment of a custodial sentence cannot indirectly become a precautionary measure to ensure expulsion”. That is why it recognizes that denying access to exit permits and the open regime indiscriminately for those who have an expulsion order would mean, de facto, the elimination of the resocializing content of the sentence, explaining, in addition, that “the extension access to exit permits does not in itself lead to an increase in sentence violations. Thus, while between 2014 and 2018 the number of foreign inmates has increased for every 100 who have enjoyed permits (from 21 to 25.2), there has not been a parallel increase in the bankruptcy rate (from 4.7 to 4.5) ”

Based on European recommendations, the Circular of 2019 specifies that:

1. “The multidisciplinary teams have to ensure that foreigners obtain adequate information about their criminal and prison situation, their rights and obligations, the regulations of the centre and the unit, the procedures for accessing services and programs, and also other legal and administrative aspects that affect them”. That, if they do not have knowledge of Catalan or Spanish, the SOA must provide them with assistance in their own language, through professionals or collaborators, documents or adapted audio-visual media.
2. Social workers should know the external support network that the foreign has in Catalonia and in its country of origin. It is especially important that people who have ties in other countries can communicate regularly with their family and friends.
3. Prisons must facilitate the access of the foreign population to information on the social news of their countries and to their own cultural and religious practices. Multidisciplinary teams must take this objective into account in the planning of cultural and educational activities, in contact with cultural and religious representatives and with collaborating entities, and in accessing the media in libraries or other spaces, such as ICT classrooms.

Clear political commitment to expulsion/return

As has been highlighted, the specific context of the work with foreigners inside penitentiary institutions cannot be understood without pointing to the general migration policy which clearly commits with the expulsion of migrants.

This approach also affects the Criminal policy, especially since the entry into force on July 1, 2015 of the Law 1/2015 that reformed the Penal Code, affecting art. 89 by which any foreigner, regardless of their administrative status in Spain, can see its prison sentence replaced by the expulsion from the country. In any case, those foreigners that are not expelled or are waiting to be, and are in administrative irregular situation, are putted in a contradictory status: prison regime and treatment are aimed to normalize their social life, but they are in a "irregular" social administrative position. Thus, as stated by Solar: According to this diabolical logic, equal access to permissions exit and open regime is also very compromised. If these come to shape and give meaning to the right to treatment, what is the use of access to permits and open regime if the ultimate aim - social reintegration - is impossible from the outset? This creates *another status* within the inmates leads to material situations always or almost always unjust, since «despite the importance of the principle of non-discrimination (...) the vast majority of them are in a irregular situation and are often excluded from reintegration programs that are offered to the rest of the inmates»⁴.

Already in 2012, the Director of the Catalan Penitentiary Services, Ramón Parés, pointed out that "taboos must be broken and difficulties overcome because expulsion is the best option for this group, which has no possibility of reintegration. They are with us, but they have been told that they cannot work, that they have no papers or family, and therefore the risk of public safety, recidivism and the resumption of criminal proceedings is very high among people who have no choice to survive legally in our environment"⁵.

This position on the part of the head of the Catalan penitentiary administration clearly demonstrated what was going to be the approach to the foreign population in prison. It is true that with subsequent changes in the Directorate this position has changed and, as we have seen, the aim is to integrate foreigners in prison, at least while they can remain inside without being expelled. But, in the end, this intention clashes directly with this general policy that prioritises the expulsion of migrants.

CONCLUSIONS

In conclusion, in our prison systems, training for prison staff in the specific area of working with foreign inmates is practically nil. Despite this, both administrations have tried to establish some differentiating mechanisms to integrate this specific group.

In the area of the General Spanish Penitentiary Administration, it stands out the approval of the *Framework Plan for educational intervention with foreign inmates* in 2006. This Plan already includes extensive reference to the existing normative framework of the Council of Europe, in particular to the Recommendation 12 of 1984. With the modification in this issue

⁴ Vid Van Zyl Smit, D., Snacken, S., Principios de Derecho y Política Penitenciaria Europea, Tirant lo Blanch, Valencia, 2013 (in Solar, 2019: 395-396)

⁵ <https://www.cma.cat/324/una-quarta-part-dels-presos-estrangers-sense-papers-tornen-al-seu-pais/noticia/1924112/>

caused by the Cofe Recommendation 12 of 2012, it was the GSPI approved the Instruction 13 of 2019. However, what can be extracted from the reading of the same is that all this type of regulation by the prison administration focuses on the intervention *with foreign inmates*, but not on the training that professionals working with them should have.

As we have pointed out, the Catalan Penitentiary Administration has also made efforts to address the challenge in working with foreign inmates in an integrated way. The most relevant effort is the Circular 2/19 on immigration and prisons in Catalonia. Nonetheless, the content of the Circular it's not on training to work with foreign prisoners, taking into account their cultural, language, and day-to-day needs, but rather aimed at formalizing the complex legal labyrinth in which foreigners tend to find themselves where the custodial sentence is mixed with the administrative measure of expulsion.

It can be noted that this regulation creates the Orientation and Reception Service (SOA) to coordinate all the action and comply with the objectives of the Circular, including advising multidisciplinary teams and other bodies with specialized information on foreigners and for the management of specific cases, but it should be noted that although some isolated things have been done, it cannot be said that the SOAs (Orientation and Reception Service) have been set up as provided in the Circular, in part, due to the global health crises that stopped with it development.

Finally, as we try to show, the efforts made by both administrations to improve integration and a differentiated approach to this type of group due to their specific needs, cannot be duly developed due to the legal demands of immigration policy, and this policy also impacts and determines the capacity of these systems to work with foreign inmates.

And this contradiction between some political commitment and its almost non-existent impact in practice is due to the clear legislation option to expel *irregular* or *criminal* migrants. As Solar concludes, "the complete subordination of criminal and penitentiary policy to this area [migration policy] is not very wise, not only because of what it implies in terms of the respective purposes of the former (both criminal prosecution and the serving of sentences), but also because of the important endanger it implies for the basic principles of our legal system and the situations of material injustice it generates (Solar,2019: 439)

In any case, taking all this into account, it is also true that prison administrations do not devote clear efforts to the specific issue of training their staff to work with migrants. The subordination of the prison context to migration law may generate this dynamic of lack of interest in developing a policy which, as we have said, may prove to be inapplicable. The lack of resources is also not a factor that helps to think of this as a priority. Therefore, despite the difficulties and efforts made in terms of the integration of foreigners in prisons, it is more than necessary to train prison staff in their work with migrants, going beyond the bureaucratic issues of residence, migration and expulsion, and addressing their specific needs and social and cultural particularities.

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