

Reintegration of convicts

Class 9

Foreigners in Prison



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KATEDRA PRAWA KARNEGO WYKONAWCZEGO

Foreigners

- * In prisons all around the world a huge range of nationalities and languages can be found alongside cultural and religious diversity.
- * Foreign national prisoners are detained in relatively large numbers.
- * This is particularly true for countries in the European Union (EU), where on average nearly one in every five prisoners is a foreigner.
- * Foreign national prisoners are persons who are detained in relation to a criminal offence in a country of which they are neither a national nor a resident and to whom another country is entitled to provide consular assistance.



Foreigners

- * Worldwide the prison population consists of over 10 million prisoners.
- * There are nearly half a million foreigners detained abroad.
- * This is on average 5% of the total prison population.
- * The highest percentage of foreigners can be found in the Middle East, where more than one in three prisoners is a foreigner.

Why?

- * There are various explanations for the relatively high number of foreigners.
- * Globalisation has contributed to increased mobility.
- * This is due to their foreign appearance, the fact that they do not speak the national language, their limited awareness of their legal rights, reduced access to legal support, and because foreigners are generally excluded from non-custodial sentences and measures.
- * Their over-representation during pre-trial detention is demonstrated in figures provided by the Council of Europe.

Foreigners

Difficulties

- ▶ In daily prison life Foreign national prisoners encounter many difficulties as a result of their foreign status, language difficulties and distance from their families.
- ▶ In practice, prison authorities are often not fully aware of the problems Foreign national prisoners face and they do not address their special needs.
- ▶ As a result Foreign national prisoners often feel socially excluded and are unable to exercise their rights.
- ▶ One of their rights is to receive consular assistance from consular staff from their country of origin.



Foreigners

Number of incarcerated foreigners in Poland: 840

- * Data collected by the Police shows that before the accession to the EU, the level of crimes by foreigners was much higher than after accession and the vast majority were carried out by citizens from neighbouring countries
- * The number of foreign criminals currently in prisons in Poland is less than 2% of all inmate
- * Foreign national prisoners can benefit from legal assistance on every stage of criminal proceedings (*e.g. n pre-trial detention, audiences in the court (if requested)*)



Foreigners

- * Foreign national prisoners, as well as Polish national inmates, are not assisted by a lawyer when a disciplinary sanction is reviewed by the officer.
- * Foreigners can be assisted by an interpreter for audiences in the court.
- * They can not be assisted by an interpreter in custody and for a disciplinary commission. A person deprived of liberty has the right to use an interpreter for procedural acts, at any stage of the criminal proceedings. Foreigners do not have access to interpreters in prison.
- * Prisons are progressively being equipped with translation devices - translators.
- * In recent years, 160 devices have been purchased

Foreigners

Foreigners can not be imprisoned for illegal residency.
Illegal stay of a foreigner in Poland is an administrative offense.
They can be detained at the Guarded Centres for Foreigners

Foreigners are not placed in special cells or units.

A fine may be imposed by a court and an administrative procedure is initiated to oblige the foreigner to return to his home country. Together with the decision on the obligation to return, the judge must also specify for how long the person will be banned from reentering Poland.
This prohibition may apply for a period of six months to three years

Foreigners can be deported from the country after their liberation.
A foreigner must execute his sentence according to the Executive Penal Code before being handed over to a foreign State.

To be transferred to another State, the consent of the sentenced person is necessary when a measure including deprivation of liberty is involved (art 611b, paragraph 2, subparagraph 2 of the Code of Criminal Procedure).

The majority of foreigners sentenced in Poland are executing their sentence in Poland.
Inmates have the possibility to apply for a residence permit if they feel that their life is in danger in their home country.

Foreigners

Foreigners have the right to work.

The regulations of the right to work are the same for Polish and foreigners. English speaking inmates may be asked to give lessons of their language.

The most numerous group of foreigners are Ukrainians (325 persons), followed by Russians (64 persons), Vietnamese (61 persons), Romanians (57 persons) and Bulgarians (54 persons).

According to the information obtained from the Commissioner for Human Rights, discrimination based on nationality mainly concerns prisoners of Roma origin. There were no complaints about discrimination against Muslim.

Foreigners are allowed to make a phone call abroad. The costs are borne by the detainee.

The regime of execution of penalties is the same for Polish citizens and foreigners. The administration of the unit can make some facilitations such as prolonging the visit of relatives or phone calls.

The procedure

- ▶ When a foreigner is arrested or detained in Poland, the Polish authorities inform the relevant Embassy immediately.
- ▶ The Police send a faxed notification and the Prosecutor an official notification in writing.
- ▶ As soon as Embassy has been notified, they try to contact the Police or a Prosecutor handling the case to ask if detained foreigner wish anyone to be informed.
- ▶ If he/she wish family or friends to be informed the Embassy will do it as quickly as possible. They will also apply for a visiting permit for the consular staff.

Consular Assistance

- ▶ Consul contact detained foreigner after being notified of his/her arrest by local authorities. (It is prisoner's right that the consul is notified).
- ▶ As soon as Embassy have been notified (whether officially, by family or friends) they apply for a visiting permit and the detained foreigner will be visited by Consul as soon as Embassy receive a permit.

Consular Assistance

What consul can do:

- ▶ Consul will provide the detained foreigner with a list of local lawyers (speaking in certain language) and translators/interpreters (if required)
- ▶ Consul also explains about the prison system, visiting arrangements, mail and censorship, privileges, work possibilities and social and welfare services.
- ▶ Consul checks foreigner's welfare- that any medical problems she/he might have are brought to the attention of the prison doctor. The Consul may ask for independent medical advice if necessary.
- ▶ Consul can pass on a message to detained foreigner family.
- ▶ Consul can also take up any justified complaint about ill treatment or discrimination with the police or prison authorities.

Consular Assistance

What consul can't do:

- ▶ Intervene in court cases.
- ▶ Get detained foreigner of prison or pay his/her fines.
- ▶ Give or pay for legal advice, start court proceedings on your behalf or interfere in local judicial procedures to get detained foreigner out of prison.
- ▶ Investigate a crime.
- ▶ Forward parcels to detained foreigner on behalf of other people.

Visits

- ▶ Relatives or friends wishing to visit should first obtain a visit permit either from a Prosecutor or the Court. In case of sentenced persons – from a prison director.
- ▶ Arrangements to travel to Poland to make a prison visit should be made when a permit is given.
- ▶ Visiting days and times and booking arrangements differ from prison to prison.
- ▶ If help required with arranging the visit, consular staff are prepared to help to do this.
- ▶ The number of visits is always determined by the authorities and it depends on the type of offence (and therefore on type of prison). So, it also depends on whether foreigner is temporary detained and case is still under investigation or he/she is a sentenced person.

Prison conditions

- ▶ All prisoners/temporarily detained (foreigners and Polish citizens) are subject to medical check-ups before being admitted to prisons/detention centres. All prisoners can work and study.
- ▶ The individual preferences are respected in case of vegetarians or religiously restricted diets. Any complaints should be raised immediately with a caseworker (wychowawca). This should also be brought to the attention of consular staff during visits.
- ▶ Prisoners can send and receive letters on the same grounds.
- ▶ Depending on the type of unit and stage of proceedings letters can be screened and censored by the prosecutor/ or prison officers. Letters in different languages are translated by authorised translators before screening which may cause delays.

Booklet

- ▶ It is prisoner's right to receive from the prison's authorities a booklet in understandable language giving all the regulations and organisation for execution of temporary arrest/imprisonment issues.

- ▶ The booklet should give information on:
 - ▶ How the detention centre/prison is organised.
 - ▶ Receiving of mail, parcels and visiting rules.
 - ▶ Healthcare and living conditions.
 - ▶ Principals of employment, education, cultural and sports activities.

Criminal Record

- ▶ In case of serious offences, such as sexual assault or drugs crimes, the Embassy must inform other relevant national authorities. It is possible that the information about this offence may appear for example if criminal records checks were carried out by a prospective employer.

Transfer

Can detained foreigner be transferred to the country they come from to serve sentence there?

- ▶ If all parties agree. This is possible under the “Council of Europe Convention on the Transfer of Sentenced Prisoners”.
- ▶ Under certain conditions, the Convention allows people who have been given a custodial sentence in a country other than their own to be transferred to their home country and to serve their sentence there.

A transfer requires:

- 1.The consent of the person concerned (detainee/prisoner) or that of legal representative, where applicable;
- 2.The consent of the State where person was sentenced;
- 3.The consent of the country to which person wish to be transferred.

➡ In Poland, there are 836 polish inmates transferred from other European countries.

Assistance of an advocate

- ▶ Polish criminal law and proceedings are very complex and complicated and the assistance of a lawyer is highly recommended at every stage of the proceedings.
- ▶ Under Polish law only lawyers qualified as advocates (adwokat) or trainee advocates (aplikant adwokacki) (as well as radca prawny or trainee radca prawny) can represent a person in criminal cases.
- ▶ A person has the right to an advocate, from the time he or she becomes a suspect.



Criminal proceedings are divided into three (to four) stages:

1. Preparatory proceedings- is the initial stage. An accusation statement is issued during the Preparatory proceedings by the Police or the Public Prosecutor's Office to the suspect. From that moment criminal proceedings against the suspect officially begin.
 2. Another stage is called "first-instant hearing" in court. After pressing charges -and sending the indictment (*akt oskarżenia*) by prosecutor's office, the trial before court has begun.
 3. Second instance court - the judgement can be appealed to a higher instance court and such appeal should be send within 14 days from the day of the first-instance court's verdict.
 4. The third (or fourth) stage is called "enforcement of the penalty imposed" - which is the enforcement of the sentence in fact
- **First stage:** The police authorities have the power to identify and arrest perpetrators of criminal offences, the public prosecutors decide whether or not to prosecute individuals and the courts have jurisdiction to rule on whether the accused are guilty and then sentence them to criminal sanctions.
 - The first stage of polish criminal proceedings is called „preparatory proceedings”.
 - Preparatory proceedings are always conducted or supervised by a prosecutor.
 - The prosecutor is so-called “host” of this stage and is entitled to decide on many important issues (whether to press charges or not, which evidence should be secure, or how high the caution should be).

Assistance of an advocate

- ▶ Representation by a lawyer is not compulsory. There are however, circumstances when the participation of an advocate is obligatory and the court (during initial proceedings and the trial) is under a duty to appoint an advocate if the person or his or her family has not appointed one.
- ▶ This applies to the following:
 - juvenile (under 17 years of age);
 - mute, deaf or blind person;
 - person of questionable mental health ;
 - person facing a trial in a regional court, as the court of first instance and is either charged with a serious crime (zbrodnia) or remains in custody (e.g. is temporarily arrested or imprisoned for a different crime).
- ▶ If a person shows that he or she cannot afford an advocate (i.e. the court must be convinced that the person has no financial means to retain an advocate and can request specific evidence to that effect, such as statements of earnings) but nevertheless would wish to be represented by a lawyer, the court – on an application – will appoint an advocate for him or her.

Detention

▶ Grounds for detention

Police can detain a person if they strongly suspect that the person may have committed a crime and that:

- such person may flee or hide; or
- proceeds of the crime may be removed; or,
- the identity of a person cannot be established.

Period of detention: the detention can last up to 48 hours, but if the Prosecutor files a motion to the court for temporary arrest, it can last up to 72 hours.

- ▶ Upon lapse of 72 hours, the detained person has to be either released or temporary arrested. Where the court does not issue an order for a temporary arrest the suspect has to be released from detention.

Period of temporary arrest (pre-trial detention)— During initial proceedings, temporary arrest should not be longer than **3 months**, but that can be **extended to 2 years**, including period of arrest during trial.

- ▶ After 2 years of temporary arrest, only an appellate court can extend the detention. Temporary arrest can last up to the beginning of a prison term or till the end of the 2 year of the term.
- ▶ If a person, who was subject to temporary arrest, is sentenced to imprisonment, the period of temporary arrest counts towards the sentence. If however, after the lapse of the term of the temporary arrest the suspect has not been sentenced to imprisonment the suspect or offender is free to go.

British Nationals Imprisoned in Poland

Poland has seven British Consulates headed by the British Honorary Consuls (Gdańsk, Poznań, Kraków, Szczecin, Łódź Lublin, Wrocław):

- ▶ The consular officers provide help and advice to any British National who gets into difficulty in a foreign country.
- ▶ The Honorary Consuls have limited powers.
- ▶ In cases when one of British Consulates is located closer to a prison/detention centre where a British citizen is detained, he/she will be visited by a British Honorary Consul.
- ▶ In Warsaw there is British Embassy with Consular Section

Polish people imprisoned abroad

Most Polish prisoners are in European prisons: in Germany (1,328 inmates), the UK (711 inmates) and France (433 inmates), the Netherlands and Norway.

- ▶ The problem is when Polish prisoners end up in prisons in countries such as Latin America (Bolivia, Ecuador, Colombia, Venezuela, Peru, Mexico)
- ▶ Long-term sentences (from 5 to 18 years) are being served by 30 Polish prisoners in Peru, 28 in Brazil, 14 in Venezuela and 8 in Ecuador.
- ▶ It is hard to transfer them to Poland. The cells in those countries are overcrowded and lack adequate living conditions.
- ▶ Basic needs of prisoners are not being met, not even the number of beds corresponding to the number of prisoners.

