

**RE-SOCIALISATION OF OFFENDERS IN THE EU: ENHANCING THE ROLE
OF THE CIVIL SOCIETY (RE-SOC)**

Workstream 3: Vulnerable groups of inmates

COUNTRY REPORT – SPAIN

Authors:

Alejandro Forero Cuéllar

María Celeste Tortosa

Iñaki Rivera Beiras

Josep M. García-Borés

Date: 17 June 2014



Contents

Abbreviations	3
Introduction	4
Prisoners with mental health care needs	5
Prisoners with disabilities.....	8
Ethnic and racial minorities and indigenous peoples.....	10
Foreign national prisoners.....	11
Lesbian, gay, bisexual and transgender (LGBT) prisoners.....	16
Older prisoners	16
Prisoners with serious and terminal illness	17
Drug Users.....	19
Women	26
Life Sentence (Penal excepcionalism & Permanent Reviewable Sentence).....	31
Self-harm and suicide risk.....	34
Juvenile	36
Sex offenders	37
List of References	40

Abbreviations

APM: Alternative Penal Measures

CEJFE: Centre of Legal Studies and Specialized Training (CAT)

CIRSO: Inter- institutional Commission for Social Reintegration

CoE: Council of Europe

CPT: The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CoE) (1987)

CS: Community Service

DU: Dependent Unit (SGA)

ECHR: European Court of Human Rights

GAD: Group of Attention to Drug Addicts

GDPS: General Directorate of Penitentiary Services (Catalonia)

GSPI: General Secretariat of Penitentiary Institutions (SGA)

HPSN: Handbook on Prisoners with Special Needs (from United Nations, 2009)

MEU: Mother External Units.

NSI: National Statistical Institute

OL: Organic Law

OLF: Organic Law for Foreigners (Lo 4/ 2000 of 11 January)

OLPS: Organic Law of the Penitentiary System (1/1979, 26 of September)

PC: Penal Code (LO 10/1995, 23 of November)

PR: Penitentiary Rules (RD 190/1996, 9 of February)

RD: Royal Decree

SAD: Special Attention Department (Cat)

SGA: State General Administration (State prison administration excluding Catalonia)

SIP Syringes Interchange Programme

Introduction

This report on vulnerable groups of prisoners in Spain is based on the classification provided by the **UN Handbook on Prisoners with Special Needs**.¹

Nevertheless, the report also includes other vulnerable groups of prisoners, which are not listed in the UN handbook but are particularly relevant for the penitentiary Spanish context. These groups are: people with drug related problems, women, people in close regime, inmates with self-harm and suicide risk, and juveniles.

More than talking about vulnerable “groups” this report focuses its attention in “situations of vulnerability.” For example, it does not consider “national foreigners” or “women” as vulnerable groups themselves, but circumstances like the risk of foreigner to be deported or the problematic of following the pregnancy during imprisonment and the care of a child within prison for a woman.

For each group, the report identifies where the vulnerability situations come from and makes a review on the institutional approach to deal with these special needs as well as include the measures and programmes in which the civil society is involved.

Some groups of inmates can present several situations of vulnerability (v.g a foreigner with no access to a translator and with a risk of being deported) and there are some vulnerabilities which are transversal as the own HPSN recognises (pp. 5-6): for example in the case of women, for whom, due to the structural nature of prison system, every vulnerability situation can be more harmful.

Potential vulnerabilities for prisoners in Spain and Catalonia:

In Spain and Catalonia, some groups are regarded as for special care. Both administrations develop specific plans and programs to address them. These groups tend to be: women, foreigners, people with physical, sensory or intellectual disability, drug addicts, young people and inmates in closed regime.

¹ http://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf

Prisoners with mental health care needs

Introduction

The issue of mental health and its relationship with imprisonment is one of the greatest concerns to the administration but also to the prisoners themselves and their families, and those who work with them. As González points "The high prevalence of mental illness in prisoners (four times higher than in the general population for severe mental disorders, fifteen times for mental problems related to drugs), make it an issue of particular apprehension" (2012: 376)

The magnitude of the problem led the own GSPI to carry out studies on the subject in 2006 and 2009, after which developed a specific program: PAIEM (Framework Program of Comprehensive Care for Mentally Ill in Prisons). As González indicates, studies showed that "roughly one in four prisoners suffer psychiatric disorders, and, overall, between 40% and 50% of the prison population studied has some kind of medical history related to mental disorders (if we add the ones from the use and abuse of drugs). For these studies we also know that about a third of the prisoners used psychoactive drugs (figure that rises to nearly 50% if methadone is included), and almost 2% (i.e., more than 1000 people) of prisoners have a proven mental disability".²

Vulnerability situations.

As it is outlined in the Standard Minimum Rules for the Treatment of Prisoners in its article 82.1, *persons who are found to be insane shall not be detained in prisons (..)*³, Due to the lack of external resources that cannot ensure the treatment under security measures, many people with mental illness in Spanish system are found under ordinary imprisonment.

About prisoners that suffer mental diseases or abnormalities, it is expected to be under specialised medical management. As the HPSN recognized imprisonment environment for itself poses a risk to the development mental disorders or even the worsening of the already existing ones. Not only because of its lack of medical assistance but also from

² González 2012: 377-378 using data from Arroyo 2011, Gallego (et al) 2011, and DGIP [GSPI] 2007.

³ Available at https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf

the major problems of coexistence that they can pose between prisoners and of them with workers.

While the same framework establishes that during their stay in prison such prisoners shall be placed under the special supervision of a medical offer (82.3), the lack of resources and specialists in Spanish penitentiary centres makes treatment quite improper for these matters. It is expressed in Article 37 OLPS that "for the provision of healthcare, establishments shall be equipped with special units intended for psychiatric observation". However, there is a deficiency of means and the usual absence of psychiatrists in prisons, (where exist only general practitioners) push in best case scenarios, the involvement of psychiatrists from outside to the treatment of some cases (Gallego, et al, 2010: 110)

Official recognition and measures adopted

The GSPI recognizes that "the concern about the high incidence of mental health problems among the prison population has led to the Prison Administration devote great efforts to assist and ensure that the proper enforcement of the sentence imposed is incardinated with the adequate health and psychological care in prison"⁴

As mentioned, the GSPI developed the PAIEM, a specific program of comprehensive care to mentally ill which is being progressively implemented in all prisons making an emphasis on the practice of specific therapeutic and occupational activities.⁵

The framework program PAIEM allows the participation and collaboration from many third sector organizations providing services and supportive staff. For instance, this is the case of the Iris project within the Program for Psychosocial Rehabilitation from *Intress* (Institute of Social Work and Social Services), developed together with the GSPI in Madrid IV Prison.

For cases of people with severe psychiatric disorders who received a sentence of security measure, the GSPI has two Penitentiary Psychiatric Hospitals (Seville and Alicante). Article 101 PC allows the judges to decree the inclusion in these centres of

4

<http://www.institucionpenitenciaria.es/web/portal/Reeducacion/ProgramasEspecificos/enfermosMentales.html> (Access 20 May 2014)

5

<http://www.institucionpenitenciaria.es/web/portal/Reeducacion/ProgramasEspecificos/enfermosMentales.html> (Access 20 May 2014)

those who have been declared exempt from criminal liability. According to the GSPI “in these centres health care is the primary function and it is coordinated by a qualified multidisciplinary team of psychiatrists, psychologists, general practitioners, nurses, social workers, educators and occupational therapists, who are responsible for ensuring the offender’s rehabilitation process under the bio-psychosocial model of intervention.” (2011: 26). It also points out that “the permanence of a patient in the Penitentiary Psychiatric Hospital cannot exceed, in any case, the maximum penalty established by the sentence” (GSPI 2011: 27). The elimination of this limit is one of the most important changes proposed in the PC draft reform from 2013.

Meanwhile, the GDPS provides three different levels of treatment of people with mental health problems:⁶

- First level: support to primary health care carried out by the prison team and outpatient psychiatric care that perform diagnosis, case monitoring and pharmacological and psychotherapeutic treatment.

- Second level: centres with psychiatric nursing unit or multi-purpose unit where specialized care is performed (emergency, intensive treatment, hospital stays of varying lengths)

- Third level: includes the most complex care cases that are performed in the Prison Psychiatric Hospitalization Unit of Catalonia (located inside the prison Brians I).

Moreover, the CAT has a Community Rehabilitation Service which aims to ensure adequate continuity of care of patients at the time of release, facilitating their links with the Mental Health Public Network.

In 2009 CEJFE published a study titled *Confinement security measures in psychiatric centres in Catalonia* in which they conclude that “This research demonstrates that anyone subject to a security measure in a psychiatric centre suitably serves the sentence given. The centre where the security measure has been fulfilled contributes to a favourable development whenever psychiatric intervention prevails over health or prison contexts. The health environment is more encouraging than a prison environment

⁶ Vid El model de rehabilitació a les presons catalanes, GDPS 2011, pp. 124 et seq.

when it comes to relations with the community and continuation of treatment based on community resources.”⁷

Although the GSPI collect this measure of internment in a Penitentiary Psychiatric Hospital and as the CEJFE regards it as positive, the World Health Organization and the International Committee of the Red Cross discourage their existence as well as the Units psychiatric (HPSN, p. 28).

Furthermore, the GSPI acknowledges in its 2012 report that "There is still a need for more and better services to our mentally disabled and mentally ill inmates" (p. 91)

Prisoners with disabilities

Introduction

Physical and mental disabilities can suppose a special situation of vulnerability in a hostile and close environment like the prison. There are no official statistics on how many prisoners have some degree of disability, whether physical or mental. We have a study that has shown that approximately 2% (i.e., more than 1000 people) of prisoners have a mental disability accredited⁸. According *Dincat* (association that handles the specialized program in this area in Catalonia) the percentage is around 1% of the prison population (which in relation to this population in Catalonia in 2012 means around 100 prisoners), while accepting that there are missing steps to diagnose more cases⁹. According to FEAPS, an association that works with disabled in a Madrid prison, the number of people diagnosed with an intellectual disability in prison could reach 6.5%¹⁰.

Vulnerability situations

⁷ The report is only accessible in Catalan at: <http://www20.gencat.cat/portal/site/Justicia/menuitem.6a30b1b2421bb1b6bd6b6410b0c0e1a0/?vgnextoid=ef5117ce9f3a0210VgnVCM1000008d0c1e0aRCRD&vgnextchannel=ef5117ce9f3a0210VgnVCM1000008d0c1e0aRCRD&vgnextfmt=default> (Access: 23 April 2014)

⁸ Data for GSPI 2009 (Gallego et al 2010)

⁹ http://www.dincat.cat/ca/en-marxa-el-departament-d-atenci%C3%B3-especialitzada-per-a-reclusos-amb-discapacitat-intel-lectual-a-la-pres%C3%B3-de-quatrecamins_178975 (Access 30 May 2014)

¹⁰ http://www.feapsmadrid.org/not/2014_04_FEAPSBarrerasJusticia (Access 3 April 2014)

Prison environment can encompass a greater harm to people with any disability from the high levels of control, restrictions and limitations that it represents. On one hand, architectural barriers are more stressed and are harder to modify. On the other hand, the lower level of autonomy makes life in prison harder, either by a subjective experience of more restriction or because their particular situation can lead to abuses by other prisoners or workers, situations that can increase maladjustment. Also, for some cases of intellectual disabilities, the less capacity of understanding can result in defencelessness by not being aware of rights and mechanisms that can be exercised.

Furthermore, a localized problem is also the lack of diagnosis. According to the Organizations for Persons with Intellectual Disabilities (FEAPS), 69% of people with intellectual disabilities serving sentences have not been recognized as such in the criminal process¹¹. This also could mean that the trial did not take into account any mitigating circumstance of criminal responsibility.

Official recognition and measures adopted

To face this issue, the GSPI has an intervention program which main objective is the "early identification of those inmates with disabilities."¹² By this institutional recognition, is thought that can be reached a suitable internal separation to avoid potential hazardous conditions.¹³ Nevertheless it is still a pending task.

The program aims to adopt the "necessary measures to facilitate the mobility and the participation in everyday life"¹⁴, including early detection of cases, allocation to departments or centres without architectural constraints and the processing of official certificates" (GSPI 2011: 34)

In the case of mentally handicapped inmates the intervention is aimed to basic skills training to achieve autonomy. This program, although working from 1995, since 2006 is

¹¹ http://www.feapsmadrid.org/not/2014_04_FEAPSBarrerasJusticia (Access 3 April 2014)

¹²

<http://www.institucionpenitenciaria.es/web/portal/Reeducacion/ProgramasEspecificos/discapacitados.html> (Access 20 April 2014)

¹³ ABC Journal, <file:///C:/Users/Eleonora/Downloads/ABC%20CORDOBA-18.02.2006-pagina%20049.pdf>

¹⁴

<http://www.institucionpenitenciaria.es/web/portal/Reeducacion/ProgramasEspecificos/discapacitados.html> (Access 20 April 2014)

jointly performed in collaboration with FEAPS, currently existing in 39 prisons (GSPI 2011: 34, 2012: 42)

Some inmates with intellectual disabilities also participate in the CAAT program (Companion Animals Assisted Therapy)

From the GDPS, there is also a plan for the intellectually disabled. The Justice Department together with the *Dinca*t federation "runs a program to prevent hazardous situations and abuse of persons with disabilities in Catalan prisons"¹⁵

In Quatre Camins prison is already enabled a Special Department (SAD) in which 12 prisoners with intellectual disabilities live with other prisoners who are under drug treatment programs.¹⁶

Ethnic and racial minorities and indigenous peoples

Introduction

Prison administrations do not collect official data on ethnic minorities. Despite the high number of foreign prisoners, there seems not to be special situations of vulnerability for ethnic minorities. Historically, in Spanish prisons the most represented ethnic group that has suffered major vulnerabilities is the Gypsy.

In 2001 a study has been made on this topic. The Barañi Report analysed the Roma collective of important historically social exclusion in Spain, focusing on Roma women prisoners. With the study demonstrated the high rate of over-representation of Roma in prison, particularly of women (25% of the Spanish women prisoners were gypsies) which was supposed to be 20 times more than in freedom.

Vulnerability situations

The Barañi Report reveals the consequences of a triply criminalized collective (by poverty, ethnicity and gender) and exposed the problems of Roma women prisoners.

¹⁵ <http://www.elpuntavui.cat/noticia/article/2-societat/5-societat/690379-nou-pla-per-als-reclusos-amb-discapacitat-intel·lectual.html> (Access 7 February 2014)

¹⁶ About the Special Attention Departments (SAD), normally thought to drug users therapy vid drug users section.

Firstly, its adaptation to the prison environment may be more difficult because of the stigma that the gypsy group has, leading generally to processes of social exclusion and labour more pronounced.

On the other hand, the high number of Roma prisoners for crimes related to drug trafficking has meant that they serve very long sentences.

Official recognition and measures adopted

The only mention the GSPI makes, recognizing the overrepresentation (jointly with foreign women) is to adopt programs of cultural integration and language acquisition.

The GSPI has worked together since 1995 with the Roma Secretariat Foundation to carry out social integration in Soto Real Madrid prison; and has signed a collaboration agreement with this organisation to comply with penalties of community services in Asturias in 2012.

From the Catalan prison administration, there are some agreements signed with the Federation of Gypsy Associations in Catalonia for the realization of community services (2011). This Federation performs also health programs for Roma women in two Catalan prisons.

Despite these agreements, there are no studies, standards, measures or programs by none of the prison administrations in relation to ethnic minorities.

Foreign national prisoners

Introduction

The presence of foreigners in the Spanish prisons is one of the most important phenomena in the system. The steady increase in the percentage of non-national prisoners has meant one of the most important challenges the prison administration has had to take. As González suggests, the increase was "as much in absolute numbers (from 8,990 in the year 2000 to 27,162 in 2009), as in relative weight of the total prison population (from 19'94% of all prisoners in 2000 to 35'71% in 2009)" (2012: 387).

Although the foreign population was mildly reduced from 2009 to 2012, reaching the 33%, in Catalonia has continued to increase to over 45%.¹⁷

Vulnerability situations

Lack of knowledge of the local language: not only represents a difficulty for everyday living and life in prison, but in general can be a situation of defencelessness before the recognition of the rights and how to exercise them. Not knowing the language also hinders their participation in training and educational activities.

Expulsion: From Gallego (et al) research is seen that half of the foreigners interviewed¹⁸ were illegally residing in the country (therefore half of them were under the risk of being expelled) (2010: 77). Although this data cannot be generalized, we can deduce that a great number of the current approximately 22,000 foreign prisoners who are under substitution of penalty for expulsion (Article 89 PC) could be subject to this measure. According to same study (p. 80) the notification of the initiation of the expulsion proceeding is mostly given to the inmate without the presence of a lawyer. This is clearly a breach of its right of defence, creating a situation of vulnerability. By the date of the survey (2007), 28% of foreigners stated they had been intended to be expelled.

In those cases when the proposal for expulsion is taken during the last part of the imprisonment period, because initially was inapplicable by the seriousness of the offence or the longer term of the sentence imposed (Circular 5/2011:103), the precondition to fall now under expulsion is to be classified in open regime or with the third part of the sentence already served. A discriminatory treatment should be highlighted here, about the fact that the fulfilment of these requirements should actually be the requirement to obtain the conditional release. So while is shown as a substitution, the real essence captured here is the restriction of rights to a certain group (Monclús, 2001) becoming so the expulsion a cumulative measure (García, Aller. 2013).

¹⁷ In 2008, with the increase of the foreign population in Catalan prisons, the own GDPS commissioned the CEJFE to do studies on the topic: "Foreigners in Catalan prisons" (2010) and "Paths of life of foreigners in prison" (2011)

¹⁸ From those who reply to the questionnaire, in Spanish. Data for 2007 and for the GSPI.

Foreigners spend more time in prison than nationals: foreigners in prison have fewer exit permits, fewer open regimes and less alternative penal measures.¹⁹ Since the objective of penitentiary benefits is the preparation for the life in freedom, prisoners with structured family, better education, possibilities to find a job, etc. would be more likely to get an exit permit. On the contrary, foreign prisoners without roots in our country, without work permit, without family here, etc., will find much more difficulties to get one of these penitentiary benefits. This was the typical case for the so called “*Mules*”: women who brings drugs into Spain inside their bodies and who are detained just at the airport, when they arrive in Europe. The sentences of prison were very long and their requests of penitentiary benefits to go out prison are denied because of the length of the sentence and the risk of jailbreak.

In the same way, foreigners tend to have higher rates of preventive detention and fewer paroles. For GSPI, the percentage of Spanish remand fell from 21% to 12% between 2008 and 2012 while in the case of foreigners, even it also reduced, the numbers are much higher: 57% in 2008 to approximately 35% in 2012²⁰. In the case of Catalonia, while among Spanish preventive prisoners represent between 11% and 15% between 2004 and 2013, in the case of foreigners, those numbers are between 20% and 35% at different times the same period.²¹

For foreign prisoners, working outside prison is a hard challenge. In compliance with the regulations in force, if they do not have working permit they cannot go out prison and work. This matter goes further with community sentences and illegally residents in Spain. When a condemned person serves community service as a penal alternative measure, he/she has to be registered in the Social Security. Undocumented migrants or not legally residents in Europe cannot be registered.

Legal defencelessness: besides language and the absence of counsel in the notice of deportation proceedings, the 79.2% of the foreign respondents in the study of Gallego

¹⁹ For example, according to the GDPS, about 23% of people under AMP are foreigners (when in prison they are about 40%) http://www.gencat.cat/justicia/estadistiques_mpa/2_pag_MPA.html

²⁰ Vid GSPI 2012 Annual Report, p. 52

²¹ Vid http://www.gencat.cat/justicia/estadistiques_serveis_penitenciaris/8_pob.html (Access 30 April 2014)

(et al, 2010: 83-84), said that they were not supported from their embassy or consulate of their home countries²²

Other situations highlighted by the foreigners themselves concerned to the distance and difficulty of communication with their families, meals, rejection and racism from part of the other inmates and prison workers (Gallego et al 2010: 78).

Official recognition and measures adopted

The Penitentiary Rules (1996) establishes some specific guidelines for migrants in prison providing information about rights and obligations, given in their own language; Spanish learning courses, links with their diplomatic representatives, priority in basic education; encouraging the collaboration of third sector associations, etc. Measures that, as have been seen, are not fully applied in the Spanish context.

The GSPI recognizes that "with the rapid increase of the population of foreign inmates in our prisons, it has become necessary to develop a specific intervention model to facilitate their integration into prison environment and finally in society. All of this keeping with the Prison Administration duty of not making differences based on race, nationality or beliefs in the development of the activity entrusted"²³ The GSPI says this *Framework Programme for Intervention with Foreign Inmates* collects various recommendations of the Council of Europe and aims to serve as a comprehensive approach to intervene through the following principles: reducing isolation, overcoming language barriers, comprehensive education, legal information and democratic values, and open intercultural activities.

For his part, the GDPS recalled the mandate in Article 62.4RP which states that "The Penitentiary Administration will encourage especially the participation of institutions and associations dedicated to the re-socialization and support of foreign prisoners, facilitating cooperation of social institutions of the prisoner's home country, through relevant consular authorities". Since this mandate, several educational activities have

²² Article 15.5 PR recognizes the right to inform the situation to the diplomatic representation, also in cases of prison transfer (art 41.3 PR), and also recognizes that within 5 days of admission, there must be communicated the possibility of requesting the application of international treaties affecting their procedural and prison conditions.

²³ <http://www.institucionpenitenciaria.es/web/portal/Reeducacion/ProgramasEspecificos/extranjeros.html> (Access 20 May 2014)

been developed, such as the Framework Programme of Education for Coexistence in Diversity; the Intercultural Mediation Program; the Instruction for Religious Assistance; the Legal Advisory Services; the Pilot Microenterprise Partnership Program; the Program for Young Companion; the Immigration Subcommittee of the Interagency Commission for Social Reinsertion (CIRSO); programs aimed to help inmates and their families, and subsidized resources by the GDPS to offer for foreigners in exit permits, parole or final freedom in cases of lack of family or relational network (2011: 118).

On the other hand GDPS collects that is necessary to update assistance processes focus on the foreign population according to the principles of Circular 1/2011: reintegration as main objective either in Catalonia or in their country of origin. Education in gender and equality, official languages of Catalonia, civic norms, respect for diversity; information on documentation, administrative situation, etc. (2011: 118-19).

The results of the 2010 study made necessary some proposals

- Trying the voluntary return of those cases of aliens with “worse reintegration prognoses” (20%) (administrative irregularity, lack of social networks);
- Ensuring the expelled mechanisms for those who already have the expulsion order, before the total serving of the sentence is fulfilled (on the contrary, according to GDPS, people could stay in illegal situation condemning them to social exclusion).
- Encouraging the use of expulsion as a replacement of imprisonment of Article 27 of the RP (2011: 119)

For those who want to return home: Microenterprise Program and the Ulysses Project of assisted return. (2011: 120)

For other situations pointed above:

The inability to work outside with none work permit, has been relaxed by the Royal Decree 2393/2004, 30th December. It authorizes to work during the open regime and parole when: at the moment of the sentence the person was legally living in Spain (although he/she did not have authorization to work) or in cases of labour, family or social roots, situation of international protection (political asylum), humanitarian reasons, foreigners who collaborate with police, judges, etc. In the case of community

services as APM, sometimes they get a Foreigner Identification Number from the Police, and they can serve a community sentence, but succeeding is difficult.

Foreign women transporting drugs (*mules*) and long sentences: Although the reduction of the penalty coming from the 2010 amendment of PC, it cannot be considered sufficient in view to lower the harmful effects of prison for foreign persons, especially women.

Lesbian, gay, bisexual and transgender (LGBT) prisoners

There is neither special national regulation addressed to the Lesbian, gay, bisexual and transgender (LGBT) prisoners, nor studies and statistics regarding this group.

For transsexual prisoners, we can address special administrative regulations.

Instruction 7/2006 GSPI on "Integration of transsexuals in prison" gives the possibility to request a different psycho-social gender identity for the purposes of classification within Article 16 of the OLPS (separation of male and female prisoners). The recognition of their identity has implications in the treatment concerned, in the activities developed in the common areas, in the methods of caching, etc.

There is a cooperation agreement between the GSPI and third sector organizations working with the LGBT community as GEHITU Association (LGBT Basque Country) in 2010 to comply with Community Services.

In the case of Catalonia, there are also specific rules on gender identity change: Instruction 3/2009 on the inner separation and peculiarities of the system of life of transgender people in prisons of Catalonia. Similarly, the method includes the possibility a person could have to apply for the recognition of a specific gender identity and then, according to this, proceed to the appropriate prison classification.

Older prisoners

Introduction and vulnerability situations

For the Spanish penitentiary system, people over 70 years old are considered older prisoners

In 2012 there was an average of 326 people over 70 years in Spanish prisons.

Prisons, due to its characteristics and the negative effects on the physical and mental health of the persons it can be more harmful to people with advanced age.

Official recognition and measures adopted

Spanish law recognizes some benefits for old prisoners. Article 92PC recognises the possibility of an earlier parole for persons 70 who fulfil the other criteria (being in third grade and have a favourable prognosis reintegration). The exception is to comply with $\frac{3}{4}$ of the sentence or $\frac{2}{3}$ (in cases where the same conditions also have continuously developed labour, cultural or occupational activities).

Furthermore, the GSPI has a Programme of Comprehensive Care for Elderly in Prison. It is developed by Instruction 8/2011 implementing the protocol of an integrated care for this group. In 2012, 113 people were involved.

Prisoners with serious and terminal illness

Introduction

At this point the categories offered by HPSN had to be changed facing the importance people with terminal illnesses addressed in the Spanish system, where there is a high number of cases of serious diseases such as HIV or Hepatitis C. Although these diseases are no longer terminals in Spain, pose a significant health problem for the sick person as well as a public health problem because of the risk of contagion.

As it will be seen in the drug users section, the strong presence of heroin in Spanish prisons during the 80's and the high intravenous consumption in a shared and unhealthy way made HIV spread in Spanish prisons that is accompanied by an alarming number of deaths. As Gonzalez points out, "only in 1995, 683 people died during the imprisonment period or just after granting parole on humanitarian grounds (401 cases). Most of these cases are attributed to AIDS or HIV (unfortunately, there is not an exact number available). In fact, it is estimated that in that decade more than 2,000 people died from these causes" (2012: 372).

Some authors have directly blamed the prison administration about this rise of deaths and the spread of HIV (as well as the indiscriminate entry of heroin in prison) and for the inhuman treatment given to this group in the 1980-90 years.²⁴

Although the number of people infected with hepatitis C remains very high the total amount currently infected with HIV and its related deaths has significantly reduced. In 2004, in prisons depending on the GSPI the 11.2% of prisoners were infected with HIV, a figure that has declined each year till reach 6% in 2012. In the case of hepatitis C, the percentage has also been reduced but still being alarming: from 36.2% in 2004 to 22% in 2012²⁵. In Catalonia, in 2006 about 13% of people were infected with HIV, reducing to 7.1% in 2012²⁶, while the percentage with hepatitis C has declined from about 26% in 2006 to 16% in 2012.

Vulnerability situations

As it was indicated in sections above, prison environment turns out to be detrimental to the physical and mental health of inmates, which effects can have even more impact in the cases of people with a serious or terminal disease such as HIV or Hepatitis C. It is not just for the ease to catch a disease in prison but also because the risk of their spread is higher than in freedom. It is important to note here that despite the severity of hepatitis C, budget cuts have affected penitentiary health by limiting the possibility for inmates to have the most advanced medicines for this disease, reducing success rates in treating; what has been reported as a possible inhumane treatment.²⁷

Official recognition and measures adopted

In the case of inmates with serious or incurable diseases, the Penal Code recognizes the possibility of allowing parole if they are in open regime and have a favourable prognosis for reintegration (which can be seen as an inappropriate requirement for people who may be about to die).

²⁴ Tarrío 1997, Manzanos 2007.

²⁵ GSPI 2012 Annual Report

²⁶ Catalan Justice Department Reports 2009, 2012

²⁷ This was denounced by the Human Rights Association of Andalusia (APDHA) in 2013 <http://asscat-hepatitis.org/blog/apdha-denuncia-trato-inhumano-a-las-personas-presas-por-los-recortes-sanitarios/> (Access 20 May 2014)

One of the most popular programs to prevent infection is needle exchange programs, which lends both prison administrations. Prior to this, around 80% of the infections were parenterally²⁸. The GSPI program definitively establishes in 2002. According to the Ministry of Health, one in three injecting drug users are HIV positive and three out of four users of injected drugs are positive for hepatitis C.²⁹

Another program developed by the GSPI is the Highly Active Antiretroviral Therapy (HAART), which aims to reduce deaths from HIV turning into a chronic disease.

From the Catalan prison administration other programs were developed to prevent diseases such as hepatitis B, Tuberculosis, and cervical or breast cancer.

As Gonzalez points out "the GSPI has received congratulations on prison policy for the prevention of infectious diseases" (2012: 373). Likewise "despite the shortcomings, the Committee for the Prevention of Torture considers that the medical services provided in prison have an acceptable quality" (González 2012: 371). Although the author points out less optimistic studies and reports on the health system in prison (vid Manzanos 2007: 143-150; Ombudsman of Catalonia, 2007: 325)

Drug Users

Introduction

The profiles of drug user have change both outside and inside prisons. Regarding inmates, in the eighties and nineties there was a much extended use of heroine. Many drug users from the eighties and nineties have died inside and outside prison. Nowadays, other drugs are widely used, like cocaine and psychiatric pills. Prison and its drug problems have changed a lot during the last decade.

According to a report of UNAD during the year 2008 -a federation of more than 250 Spanish (and Catalan) NGOs working in the field of drug addiction-, drug users are generally addicted to more than one substance, being cocaine the most used one (around 35%). One tenth still uses intravenous way to consume, above all heroin.

According to the Catalan Government (2004), 44 % of prisoners admitted habitual use of cocaine before entering into prison; 36.3 % declared habitual use of heroine before

²⁸ Vid Drug Users section

²⁹ <http://www.msssi.gob.es/gabinete/notasPrensa.do?id=2671> (Access 9 May 2014)

entering to prison; 23 % confessed intravenous use of drugs before entering to prison. Therefore, the Catalan Government estimates that between 50 and 60 % of inmates have problems related to drug use.

On the one side it should be noted that the consumption of drugs is not a problem by itself, nor should be understood that the consume means necessarily addiction. But anyway, that does not mean that problems related to drug use in prison are not higher and generate more vulnerable situations, particularly in conflicts with other inmates and workers, and in health matters. Despite the efforts at present, 22% of deaths in prison are due to over dose.

Moreover, in recent years there has been a strong medicalization of life in prison³⁰, and a high percentage of prisoners have legal psychoactive drugs prescribed (González 2012: 376)

Vulnerability situations

The GSPI considers this issue particularly worrying: "Among all the people entering prison drug addiction is one of the most important problems on them, because of the number affected and the severity of complications associated with its consumption: health problems, disintegration of personality, difficult family life, education and employment gaps, in addition to legal and criminal problems"³¹

Official recognition and measures adopted

Art 37 OLPS sets the liability of the inclusion of a special unit in the caring of drug addictions as part of the provision of healthcare in all the establishments.

Article 116 of the PR notes:

1. Any inmate with dependence on psychoactive substances must have the chance to follow addiction treatment and detoxification programs, regardless of their legal, criminal and penal situation.

³⁰ Gallego Pérez, J. M "Nuevos controles sociales ante un caso de exclusión social extremo: el control de la población drogodependiente en prisión», Documentación Socia-l, 161 (abril-junio), 2011. Pp. 115-132

³¹

<http://www.institucionpenitenciaria.es/web/portal/Reeducacion/ProgramasEspecificos/drogodependencia.html> (Access 20 April 2014)

2. Within the framework set out in the National Plan on Drugs, the Prison Service, in coordination with other government agencies or with other duly accredited institutions will carry out specialised care programs in drug addiction which are required voluntarily by inmates.

3. To achieve permanent programs for drug addiction, the Penitentiary Services may have specific departments located in different geographical areas to avoid, where possible, the social uprooting of inmates who are following these programmes.

The GSPI recognizes the problems related to drug use, running various intervention programs that are structured around three key interrelated areas: prevention, care and social reintegration.³²

In 2012 the Ministries of Health and Interior signed an agreement to strengthen collaboration of both ministries in the prevention of drug abuse in prisons.

In 2002 the Framework Programme for Addictions in the Catalan prison system was created, proposing as main objectives: optimize correctional care resources in drug addiction; adjust intervention strategies according to the profile of each drug addict; increase internal motivation of drug addict inmates towards change; improve the socio-health care quality; optimize the use of resources from the external network for drug addiction; and improve drug prevention in prisons.

Something important to note is that both administrations focused programs from the health paradigm and, most especially, from the therapeutic model. In this sense, many drug programs are usually carried out in specific "units" in prison. They are designed to prevent initial use, prevent and reduce risks and damages associated to consumption, get periods of abstinence, and optimize social inclusion.

The **GSPI** carries out preventive actions aimed at the entire population as well as activities of therapeutic and rehabilitation for those who are active consumers or are in recovery process:

32

<http://www.institucionpenitenciaria.es/web/portal/Reeducacion/ProgramasEspecificos/drogodependencia.html> (Access 20 April 2014)

1. Programme for Health Prevention and Education

2 Harm and risk reduction Programmes:

(A) Syringes Interchange Programme (SIP).

Though it has come to be applied late (since 1997), when the number of parenterally consumers had fallen, and had some problems in its implementation because inmates do not believe in confidentiality (users of this Programme have to sign a contract affirming that they will not hide the syringe -to avoid that guards can stuck- and being a drug consumer can mean the impossibility to get benefits), it has an important impact. "11.7% of the people who enters to prison were drug injectors, of which 27.5% had used drugs with syringes already used by others, in the previous month to imprisonment. About 50% of injecting drug users entering prison is infected with HIV and more than 80% for hepatitis C. This means that the risk of acquiring and transmitting these diseases in prison is very high if drugs are consumed with used syringes" (GSPI Annual Report 2012: 182)

Despite the negative remarks, the needle exchange program taking place in prisons has received the First European award for good health practices in prisons, granted by the European Network on Prison and Health from the World Health Organization (WHO).

There is also an "Aluminium foil distribution programme" to encourage the reduction in the use of the parenteral way.

(B) Methadone Treatment Programme

It consists on substituting heroin by methadone, a legal drug that is supposed to reduce harm on users. Since the program began in 1994 the number of inmates under treatment grew exponentially from 696 the first year to exceed twenty thousand (20214) in 2000.³³ Since 2005 the number of users starts to drop until 11,637 in 2012. These data should be understood in the context of the reduction of heroin use in the last decade. In percentages, in 2001 were under the program the 21.4% of the prison population and in 2012 the 7.9%.³⁴

³³ vid graphic at GSPI 2012 Annual Report: 199

³⁴ *Ibid.* p. 188

3. Detoxification Programme. It consists of two processes: physical detoxification (pharmacologic treatment with support for withdrawal symptoms) and actual cessation, based in the elimination of the psychological dependence. It can be performed on an outpatient basis, in a day care centre or in a therapeutic unit.

4. Social Reincorporation Programme. It can suppose different activities: daily departures for work or treatment, preparation programs for exit permits and for freedom, referral for compliance in external therapeutic units, and classification in open regime and fulfilment in open centres. It is supported by professional and extra-penitentiary existing resources, both therapeutic and social network resources to achieve comprehensiveness in the proceeding.

There is also the possibility to receive external treatment for inmate classified in common regime, with low risk profile (art. 117 RP).

Alternatively, under authorization of the Penitentiary Services reporting to the Penitentiary Surveillance Judge, there can be the fulfilling in external units for inmates classified in open regimen that need specific treatment for addiction, drug dependence and other addictions. For these cases, a commitment should be taken place by the external institution with whom the agreement was celebrated (whether public or private) that notice the reception of the inmate and a duty of sending reports to the prison administration. From the inmate's side, he/she must make clear him/her commitment to follow the treatment and comply with the rules of the institution.

Specific Units

There are various forms of Therapeutic Units depending on the composition of the Intervention Team and the population characteristics of the unit (GSPI 2012: 191 ff)

(a) TEU. Therapeutic and Educational Unit based on therapeutic groups of inmates and in a multidisciplinary team of professionals. This model is considered by the administration as a success and has brought to be implemented from its pilot experience in 1992 in Villavona Prison up to other 17 prisons.³⁵

³⁵ Explained as a successful model in Gallego (et, al, 2010: 108-09) suggest that the next step should be the treatment outside prison. There are also several studies form critical positions: Garreaud & Malventi 2008; Malventi & Garreaud 2009)

(b) "Therapeutic Drug Addicts Unit. Specific unit in a prison run by a team of professionals and NGO staff. During 2012 this intervention model has been developed in 9 prisons.

(c) "Internal Therapeutic Community. Therapeutic drug addicts unit ruled by Article 115 of the PR³⁶ which means that it has its own Treatment Board that also acts as Management and Disciplinary Committee" In 2012 there were six prisons with this Communities.

In 2006 the Internal Therapeutic Community of Valencia led a study after 4 years of operation. According to this document, which emphasizes the importance of such initiatives to reduce the vulnerability of these groups of prisoners, "in four years there have been numerous referrals to programs outside through open regime (art 182) with 16% relapse regressions and with 0% recidivism. These figures speak for themselves"³⁷

(d) Therapeutic Mixed Unit. In these units inmates with drug addiction problems co-exist and carry activities together with other internal profiles: mentally ill, disabled, etc.

There are three teams that specially develop drug programmes: The Commission DAG (Drug Addict Attention Group), the Sanitary Team and the DAG Technical Team. The first one has directive and coordinative functions to approve, coordinate, execute and evaluate programmes related to drug use. It is formed by the directive personnel of the prison. The Sanitary Team is in charge of preventing illnesses, promoting health and the execution of sanitary programmes, such as the Syringes Interchange Programme and the Methadone Treatment Programme. Finally, the DAG Technical Team is the multidisciplinary group which is in charge of the implementation and monitoring of the psycho-social programmes in prison.

By the **Catalan Prison Administration** there are also offered many different programmes

³⁶ Which provides the possibility that "for certain groups of inmates whose treatment requires, may be organized in the prisons programmes based on the principle of therapeutic community"

³⁷ The Report can be consulted at: http://www.institucionpenitenciaria.es/web/export/sites/default/datos/descargables/publicaciones/Documento_Penitenciario_completo_6.pdf

1) Inside prison regarding Health Attention Programme and motivational programmes:

- a) PITD: Drug Dependence Individual Treatment Programme.
- b) Relapse Prevention Programme.
- c) Informative and Promotion Programmes: Free Drugs Programme and Informative and Motivating Grupal Programme.
- d) Prevention of contagious and control of AIDS
- e) Programme Prevention of contagious and control of Hepatitis B Programme.

2) Intensive Programmes

(a) Internal Group programme: separate “live units” in which the intervention focus around the drug related intervention.

(b) Special Attention Department (SAD): they are separated units, drugs free where inmates must follow a very hard discipline regime but where life turns around drugs addiction therapy. In 2013 there were two SAD working: one for men with 35 places and one for women with 18 places.

(c) Care and Monitoring Drug Addiction Centre. It consists of an outpatient treatment which can be within prison or external. Drug dependence is addresses from a bio-psycho-socio-educational perspective, regardless of the criminal aspects or prison regime of inmates.

In these programmes are involved numerous professionals from various civil society organizations.

(d) Harm Reduction Programmes

- Syringes Interchange Programme: since 2003 in Catalonia
- Methadone harm reduction Programme: since 1993 in Catalonia

In both administrations security measures related to drug addiction can also be adopted.
(art. 96, 102, 104 PC)

If the sentenced person is a drug addict declared exempted of penal responsibility (art. 20.2 PC), the judge can establish a security measure instead of imprisonment or as an addition to it.

- Replacement of prison: internment in a therapeutic community

The time inside a detoxification centre finishes when the sentence of prison does, what means that the period inside this kind of institution cannot be longer than the prison penalty. On the other hand, if the sentence of prison is longer than the time needed in the detoxification treatment, the condemned person must finish its sentence inside prison. However, if the judge considers that this completing the punishment inside prison would be prejudicial for the person, it can decide the suspension of the punishment and set the person free (the period of suspension cannot be more than the time of the sentence remaining).

Here the role of civil society must be highlighted. Most of the services related to drug treatment are strictly managed by NGOs. In Catalonia, all the agencies either public and private offering all kind of treatments for drug dependency are organised through the Network for Care and Monitoring of Drug Addiction (a public network of specialized services to the attention of problems related to drug use)

Women

Introduction

In the last decade, women have represent around the 7,5% of the Spanish penitentiary population, one of the highest percentages in Europe (the median is of 4,9%³⁸)³⁹

Although the percentage is high, women represent a minority within the prison system and, as in other countries; this means greater burdens in the serving of the sentence. Following is a recount of the situations that generate greater vulnerability.

Vulnerability situations

³⁸ SPACE I 2011: 80.

³⁹ Although the percentage of women was reduced in recent years in Catalonia (in 2012 it was 6.6%) there are lack of studies to verify whether this reduction is due to the release that caused the 2010 reform of the PC. Prisons dependent on the GSPI does not present a significant reduction in the percentage of women.

In the case women share prisons with men, common spaces are further used by the last. With fewer facilities and spaces dedicated to women, they are usually grouped unclassified (youth and adults, preventive and sentenced). The fact of the existence of few prisons exclusively for women, supposes their dispersion over the territory, producing greater uprooting.⁴⁰

To the fact of lack of appropriate infrastructures there is also a lack of staff, programmes, and specific treatment.

On the other hand, women have less flexible penitentiary regimes, get less APM⁴¹ (except in the case of expulsions - GDPS 2011: 113) and represent higher remand percentage. By contrast, according to the GDPS, they have more permits, parole and open regimes than men because they "adapt better to prisons" (2011: 113).

One of the specific situations of vulnerability is the case of pregnancy and motherhood. According to the GSPI "more than 200 children live in prisons with their mothers while they are serving their sentence" (GSPI 2011, p. 24).

The issue of pregnancy links with other health matters. For instance, women have higher rates of HIV infection (GDPS 2011: 113). Furthermore, they are often over-medicated, particularly with psychiatric drugs.

Official recognition and measures adopted

Both the GSPI and the GDPS recognize the special problems of imprisonment for women. The GSPI is aware of the "masculine" nature of the prison system and has developed a specific plan for women: "In the prisons of our country run by and for men, incarcerated women have always occupied a secondary position due to their lower numeric entity and lack of conflict".⁴² The Catalan GDPS also recognizes that women prisoners have added suffering than men and that is necessary to create specific rules and intervention systems to treat these different situations. It recognizes that the

⁴⁰ Vid González 2012: 390-91. From the GSPI depends three women prisons but only the 20% of the women are there. That means that the 80% are in women units in type prisons around the country.

⁴¹ Almeda, 2003: 42, 32 cit González 2012: 391

⁴²

<http://www.institucionpenitenciaria.es/web/portal/idioma/ca/Reeducacion/ProgramasEspecificos/mujeres.html> (Access 4 May 2014)

women's prison is outdated and that in the women units of the type prisons there is no way to classify and separate them (2011: 114)

As for the problems of infrastructure, the OLPS states that "In the absence of preventive establishments for women and youth, they will occupy departments that constitute absolute separation, organization and own regime in men prisons." (Article 8.3) As seen, be separated from men does not mean there is separation by regimen or age.

For its part, Article 38.4 OLPS stresses that "In women establishments, inmates will be provided with the necessary items intimate hygiene." Beyond these terms, there does not exist in the most important laws allusions to the specificities of the women, except for the issue of women pregnancy and motherhood.

In this sense, the OLPS regulates that "In establishments or departments for women there will be a room provided with the necessary material for obstetrics for the treatment of pregnant inmates and those who have just given birth and are nursing, as well as to meet those whose urgency not allow deliveries to be made in civilian hospitals." (Article 38, 1). The possibility of establishing specific centres for mothers is regulated by Articles 165, 166.2, 167 i 180 RP. Its impact on the two administrations is detailed below.

More broadly, since 2009 the GSPI has been gradually implemented the "Program of Actions for Equality between Women and Men in prisons" with specific and cross-cutting actions, which mains aims are:

- Overcome the special vulnerability factors that have influenced the immersion of women in criminal activity
- Eradicate gender-based factors of discrimination within the prisons.
- Take a comprehensive care for the needs of women prisoners
- Encourage the eradication of gender violence especially its psychological, medical effects... related to the high prevalence of episodes of abuse and maltreatment in the personal history of many of them.

The GSPI itself has created a Technical Joint Commission and Monitoring to assess the impact of the program, as well as monitoring the actions implemented in the field of gender equality.

In the education field the administration highlights that “since there is an overrepresentation of Roma and foreign women, the administration should work with cultural integration and Spanish programmes”⁴³

On the other hand, understanding that gender violence is a complex structural phenomenon that goes beyond the strict partner relationship, the GSPI has developed specific programs for women prisoners to treat and prevent such violence. In 2011 a program called "*ser mujeres.es*" grounded in the idea that more than the 80% of women in prison have experienced domestic violence.⁴⁴ The program is developed in 13 prisons and guided by a multidisciplinary team where, in some cases, collaboration with NGOs is essential. The program not only seeks to empower women to their life in prison but the high levels of violence inflicted on women prisoners in their family and relational circle, makes the programme focusses in finding ways to prevent such violence when they return to these circles.⁴⁵

Mothers in prison:

The GSPI itself recognizes that mothers with children are "the most vulnerable segment. Therefore, efforts must be renewed to improve their situation"⁴⁶

Article 38.2 OLPS allows mothers to stay with their children under three years in prison. Depending on the system of classification in which the mother is, she can move with her child to one of these three specific units: Mothers Unit; External Mother Units; and Dependant Units.

On the other hand, it also recognizes a "specific regime of visiting for children not exceeding ten years and not living with the mother in prison. These visits will not have any restrictions in terms of frequency and intimacy, and the duration and time shall conform to the regimental organization of establishments" (Article 38.3 OLPS)

⁴³

<http://www.institucionpenitenciaria.es/web/portal/idioma/ca/Reeducacion/ProgramasEspecificos/mujeres.html> (Access 4 May 2014)

⁴⁴ Study made together with SURT (Labour integration women association).

⁴⁵ More info in http://www.institucionpenitenciaria.es/web/portal/Noticias/Noticias/noticia_0196.html?fototeca=n. El Handbook can be downloaded at: http://www.institucionpenitenciaria.es/web/export/sites/default/datos/descargables/publicaciones/Documento_Penitenciario_9_Ser_Mujer_profesionales.pdf

⁴⁶ Ministry of Interior (ed) s/f “Unidades Externas de Madres” p. 6 Document can be downloaded at: http://www.institucionpenitenciaria.es/web/export/sites/default/datos/descargables/publicaciones/Unidades_Externas_de_Madres_accesible.pdf

(a) Mother Units are special units within a prison for women with children under three years classified in ordinary regime.

(b) External Mother Units: before the recognition of the vulnerability of imprisoned mothers by the GSPI, since 2004 the creation of these units was definitely looking to separate mothers and children from the prison environment. They are units that are outside prisons which offer a better environment for children and enhance the re-socializing effects for mothers. EMUs would be structures that are built from the beginning to cover the specific needs of mothers and children.⁴⁷ In these centres a system of wide visits and with minimal restrictions for children is strengthened, having an intensive training and education programme.

(c) Dependent Units: for mothers with children less than three years classified in open regimen or under "relaxation" (Article 100.2 PR). According to the GSPI "these are penitentiary units situated outside prisons, often in ordinary flats or houses without any outward sign that identifies them. [...] in these units reside men and women classified in open regime and usually collaborate associations from the third sector"⁴⁸

The GDPS also includes specific regulations and schemes for women. the Catalan Penitentiary Rules states in it Articles 4.2 that "Notwithstanding the generally established for all prisons, the system and the configuration of all institutions devoted exclusively to women, young people, preventive and sentenced, must observe the singularities and adaptations required to enable better meet the purposes of the criminal law enforcement"

The GDPS also acknowledges the need for a gender specialized training for professionals working with women. For this purpose has been created in each prison a figure responsible for gender, speaking also with men educating them in gender perspective. Moreover, the GDPS reinforces specific health programs such as gynaecology, family planning care or mothers. (GDPS 2011 114-16)

⁴⁷ MI, "Unidades Externas de Madres" p. 7

⁴⁸ <http://www.institucionpenitenciaria.es/centrosPenitenciarios/otrasUnidades.html>

In the New Equipment Plan is projected that the existing women centre (Wad Ras) would be remodelled to be preventive for women, and includes the creation of an open prison for women and a penitentiary centre for mothers.

The DJ made a study on the topic of women in prison and their children (“Mothers in prison. The relationship with the children of imprisoned women” in which studies “relationships that women have with their children before entering into prison and how the mother-child relationship is maintained once the mother has been imprisoned. In addition, the resources offered by the government in order to maintain or recuperate relationships, both inside and outside prison, are analysed. The situation and particularities of foreign women are also explored.”⁴⁹

According to a 2013 study, in Catalonia there are 11 Dependent Units of which three are for women.⁵⁰

Participation of civil society is also important through Article 38.2 OLPS which states that "The prison administration will held agreements with public and private entities in order to maximize the development of the mother-child relationship and the formation of the personality of the child in the special circumstances determined by the imprisonment of the mother”

Life Sentence (Penal excepcionalism & Permanent Reviewable Sentence)

Introduction

Although life imprisonment does not exist in Spain and in theory, would be unconstitutional regarding Article 25.2 SC (noting the rehabilitation of the offender as the purpose of punishment) there must be noted that certain situations are very similar to that form of punishment.

Most of these measures are related to the anti-terrorist penal policy.

⁴⁹ The study, of 2012 can be reached in Catalan at <http://www20.gencat.cat/portal/site/Justicia/menuitem.6a30b1b2421bb1b6bd6b6410b0c0e1a0/?vgnextoid=3528027b6a6f5310VgnVCM1000008d0c1e0aRCRD&vgnnextchannel=3528027b6a6f5310VgnVCM1000008d0c1e0aRCRD&vgnnextfmt=default> Sida. Ver Informe GSPI 2012 p. 161 estadística desde los 90's. Cómo en los 90's se morían 400 presos al año...

⁵⁰ http://www20.gencat.cat/docs/Justicia/Home/recerca/catalog/2012/mares_preso2.pdf

First, we must consider the closed regime. Even though both governments recognize the closed regime as a particularly vulnerable place, different situations should be distinguished within this regime.

Being isolated can be a disciplinary measure for a specific period of time (Articles 45 and 72 OLPS RP) or a penitentiary regime itself (Article 102 PR).

It is important to distinguish what kind of people can be in solitary confinement, as not all persons subject thereto are in the same situation of vulnerability. This especially concerns to the FIES system. The Special Monitoring Inmates Files means the classification in specific groups of people.⁵¹ The system in Catalonia is called DERT. As seen below, only some of these groups present situations that should be under special care and risk of violation of human rights.

Vulnerability situations

In this case the ‘vulnerability’ of this group is not because of their personal situation but because of their condition of confinement.

As has been indicating, a distinction between different FIES should be made. One thing is for example being in FIES-4 regime dedicated to former police officers, prison workers, prosecutors, judges, etc. in order to protect them especially from other inmates. Quite another thing is to be under FIES 1- Direct Control where are those considered as dangerous or disruptive by the Prison Service or FIES 3- Armed Bands with inmates convicted for terrorism. For these last groups more comprehensive control measures are applied: higher daily body searches, lack of privacy in communications with the outside, more consistent cell reviews, fewer hours of access to patio (sometimes leading to being only an hour and alone), etc. As the OPSHR has denounced, also collecting reports from international bodies such as the UN Special Rapporteur on Torture or the CPT from the CofE, these circumstances determine that "the proper way of life in these departments is a situation of abuse in itself. However, it has also been reporting that it is in these departments where higher situations of rights violations and abuse occur, due to strong mantle of impunity surrounding them" (OPSHR 2012)

⁵¹ The FIES, due to its regulation by Circulars modifying the regime and limiting prisoners' rights was declared illegal by a Supreme Court Sentence in May 2009). Although after that it was regulated again in RD 419/2011.

Official recognition and measures adopted

The GSPI specific programme for people in closed regime "has stabilized in 21 prisons during 2012 [...] which involved a total of 619 inmates (586 men and 33 women). Moreover, this area is involved in a working group composed of professionals from the General Department Treatment planning of actions and individual monitoring of all internal ranked first degree and qualified as FIES (Direct Control)." (GSPI 2012: 41-42)

The recognition by prison administrations of attention to this system is, at least ambivalent. On the one hand the measures are aimed at reducing the harmful effects of isolation, but as we have seen, the regime in itself and especially those prisoners being under FIES represent an increase of risk situations for fundamental rights which means an increase of vulnerability.

Secondly, there should be noted the especial regulation of the length of sentences and the reduction of possibilities for penitentiary benefits for people convicted for terrorism.

By different modifications in 2003 of the PC it was established:

- The maximum penalty was increased from 30 to 40 years of imprisonment (Article 76 PC), what in some cases can suppose the facto life imprisonment

- New harsher conditions and the new form of computing the time required (taking into account the total years of all crimes imposed and not the legal time individualized in the sentence) to get exit permits, open regime and parole makes this penitentiary regimes and progression almost impossible in practice. (Articles 72.6 OLPS, 78 & 90 PC)

Third: The Popular Party has brought a bill to the Parliament in which proposes the introduction in the PC of the "Permanent Reviewable Sentence". This measure conceived in principle for the most serious cases, supposes an indeterminate sentence that may be reviewable after serving a minimum of time. Restrictions can mean the impossibility of accessing to better regime, permits, etc. until after 32 years in prison.

Is evident that the measure itself is against article 25 SC and means a veiled way to introduce the life imprisonment.

At October 2014 the law hasn't been approved.

Self-harm and suicide risk

Introduction

According to the GSPI, in 2012 the suicide rate per thousand people in prison was 0.41, while in freedom the rate is 0.075. This means that for every person who commits suicide in freedom nearly 6 do it in prison.⁵² This figure appeared even higher when the study by Gallego (et al 2010) showed the suicide rate in prison was 11 times higher than in the wild (p. 111)

In the 2004-2012 period in the GSPI prisons have committed suicide a total of 235 people (the year with the lowest number of suicides was 2011 with 15 cases, while 2004 was the most with 40 deaths). In the case of the Catalan prisons the total number in those years is 56. In 2011 was also the year with fewer cases (2) while 2007 presented the highest rate (9).⁵³ Numbers in the GSPI may be higher because the statistics only include suicides in prisons or hospitals but not furloughs, parole, etc..., as the GDPS does.

As Gonzalez points out, according to the Ombudsman in its 2007 report "The environment can influence the determination of ending with its own life, as evidenced by the fact that suicides are not allocated randomly by the various prisons. Specifically, at least during 2005, nearly 40% of registered suicides occurred in four prisons, which points to a more oppressive atmosphere for inmates (either by increased crowding, or dealing with guards or other prisoners) or a dubious way to compute deaths" (2012:. 382)

Vulnerability situations

The ordeal it means to be imprisoned and all individual and social consequences involve situations of hopelessness in prisoners. The physical and especially psychological

⁵² Vid GSPI 2012: 9 and statistics from the NSI in: <http://www.ine.es/jaxi/menu.do?type=pcaxis&path=/t15/p417&file=inebase&L=0> (Access 4 June 2014)

⁵³ All data from GSPI and DJ Annual Reports and official web sites.

harmful effects of being locked up, along with the vision of long years remaining, the failure to obtain prison benefits or the powerlessness of being imprisoned before situations that happen in the outside in the personal or family environment can pose extreme situations.

Not only suicide is a concern but also self-harm. Catalonia offers data on self-harm that are troubling. Between 2005 and 2007 the number was less than 100 per year, but since 2008 have continued to grow to exceed 300 in 2012 (308). If we consider that from 2010 to 2012 the population has fallen, the percentage increase is higher. Similarly, between 2008 and 2012 injuries committed between inmates have doubled (555 and 1087) which may mean that in recent years the climate of coexistence in prisons has worsened

Official recognition and measures adopted

Since it is an obligation for the Penitentiary Services to "safeguard the life, integrity and health of the inmates" (Article 3.4 of the Prison Act) the Spanish Prison Administration, for years, has been developing in its prisons individualized programs of detection and prevention of suicidal behaviour".⁵⁴

The Suicide Prevention Programme (SPP) "tries to prevent suicidal attempts. The program is a comprehensive protocol used by technicians to identify the social or personal situations that may pose a high risk of suicide. It is complemented with the figure of "assigned inmate support". This is a prisoner, who previously received special training through a training course, and who accompanies the partner under treatment in his daily activities. This programme is implemented in all prisons." (GSPI 2011: 34). The proceeding is rules by Instruction 14/2005.

In 2007 the Ombudsman congratulated the GSPI for the development and implementation of specific programs for suicide prevention (González 2012: 382). The number of "support inmates" undoubtedly central key for the proper functioning of this tool of intervention amounts to 895. This aggregate data prevents to assess how much the target of a 2% of inmates trained to develop these tasks in each prison has been reached (p. 331 Report 2007). In any case it should be noted that the toughest regimes

54

<http://www.institucionpenitenciaria.es/web/portal/Reeducacion/ProgramasEspecificos/prevencionSuicidio.s.html> (Access 20 May 2014)

of isolation there is little alternative and the program has little influence. If we consider that it is in such circumstances where more suicides are committed, it is conceivable that the protocol is insufficient.

In Topas prison (Salamanca) exists an observation cell in the infirmary for Suicide Prevention (Gallego et al, 2010: 110)

Juvenile

Introduction

In Spain, the penal system is separated for adult over 18 years. However, among the adults there is a certain age range that has special consideration: young prisoners, between 18 and 21 years (sometimes even up to 25)

According to the Catalan administration, juveniles commit more violent crimes, are more in preventive prison, there are more non-nationals, and have less open regimen (14% versus 24% of adults) (GDPS 2001: 110-11)

Vulnerability situations

Prison administrations understand that young people should be a group of special attention. Because of its age it is supposed that the educational component must be strengthened and that juvenile should be separated from the influence of adult prisoners.

Official recognition and measures adopted

Article 9.2 OLPS addresses "Youth must serve separately from adults in separate institutions or, in any event, in separate departments. For the purposes of this Act, the term young people of either sex are does who has not attained the age of twenty one. Exceptionally, and taking into account the personality of the inmate, may remain in centres for young people who if already reached twenty one, are under twenty-five."

Articles 173 to 177 RP set out the principles governing the execution in youth departments.

The GDPS also recognizes that young people are a group of special attention. Citing UN Standard Minimum Rules 1955 records that juvenile must be kept separate from adults. Citing Recommendation R (87) 3 of the CofE says that young inmates should be kept in conditions in which they can't have bad influence and may have proper education with special attention to those with special needs by ethnicity or foreign origin. (GDPS 2011: 110)

Both the GSPI as the GDPS develop specific programs for this group. The GSPI says his Integral Youth Intervention Program "is characterized by an intense educational activity which aims to curb the development of a criminal career and achieve social integration after release."

Sex offenders

Situations of vulnerability

The social rejection generated around sexual violence is clear. This rejection is translated into a high level of stigmatization that is expressed in life in prison on, at least, three levels: a) the treatment these offender receive from prison staff may be degradation and harassment, b) due to the declared dangerousness they often have separated places for living and less opportunities to get exit permits or better regimes c) coexistence in prison with other inmates is equally marked by rejection and exclusion, in addition to degradation are exposed to higher risk of verbal and physical abuse.

In August 2014 persons convicted of crimes against sexual freedom in prison represented 5.6% (31.25 people) of all state prisoners. In Catalonia, in December 2013, the number was 6.4% (625 prisoners).

Official recognition and measures adopted

Article 116.4 of the Prison Rules states that "the Prison Administration may conduct specific treatment programs for inmates convicted of crimes against sexual freedom." It also adds that the monitoring of these programs is voluntary in all cases and may not include the marginalization of affected inmates in correctional centres. The GIPS states that the gravity of the crimes of sexual assault and high rates of recidivism by

themselves justify the need to develop a specific intervention for inmates convicted of such crimes.⁵⁵

The first program for sex offenders (Sexual Assault Control Programme -SAC) was adopted in 1998 in two prisons in Barcelona. By 1994 there were about "5,500 sex offenders of a total of 43,000 inmates. Over 60% were convicted of assaults on adult women, followed by 35% for sexual abuse of minors" (GSPI 2013, p. 17). The SAC treatment is articulated from two fundamental axes. An individual evaluation of each subject, wherein investigates factors of the aggression, and group assessment of all cognitive and emotional changes that sex offenders must internalize and change (Redondo, 2006, p. 6-7).

In Catalonia, the SAC program allows further treatment outside prison, even when it has served the sentence, as it is considered that continuity of assistance is critical to proper treatment and rehabilitation of sex offenders. Since 2009, this program is being supplemented with other pharmacological treatment, which must be voluntarily accepted by the offender and allows to inhibit sexual desire of the individual (Catalan Office of Health and Rehabilitation Programs, 2011).

As can be seen, intervention programs focus on the behaviour or personality of the offender, not on their vulnerability in prison. The strong stigma placed on sex offenders and the alarm created around the idea of their incurability, determine the existence of highly intensive treatment programs and increased penalties. In Spain, the alarm on the supposedly high recidivism of such offenders, and in particular, the existence of very popular media cases of sexual assault and disappearance of children, led in 2010 (OL 5/2010 of 22 of June) to introduce a new security measure in the Penal Code: the "monitored freedom". Measure which confuses the fundamental separation imposed by the principles of liberal criminal law between guilt and dangerousness. In this sense, a person may be subjected to a penalty of imprisonment for his guilt and also to a security measure due to the continued danger demonstrated. Thus, sex offenders can continue with some type of control (for example, telematic by a GPS bracelet), until 10 years after serving his sentence.

55

<http://www.institucionpenitenciaria.es/web/portal/Reeducacion/ProgramasEspecificos/agresoresSexuales.html> (10.09.14)

In this sense a gap is evident with this group: specific programs are aimed at rehabilitation, with heavy load of guilt and stigma. Programs do not have to do with the vulnerability that they suffer in prison that has been previously reported.

List of References

- Alemda, Elisabet (2003), Mujeres encarceladas, Barcelona: Ariel.
- Arroyo Cobo, José Manuel (2011), «Estrategias asistenciales de los problemas de salud mental en el medio penitenciario, el caso español en el contexto europeo», Revista Española de Sanidad Penitenciaria, vol. 13, nº 3. Pp. 100-111
- General Secretariat of Penitentiary Institutions. The Spanish Prison System. 2010.
- General Secretariat of Penitentiary Institutions. El control de la agresión sexual. Doc. Penitenciario 3. Madrid. 2006
- Dirección General de Instituciones Penitenciarias (2007), Estrategia global de actuación en salud mental, Madrid: DGIP
- Direcció General de Serveis Penitenciaris. El model de rehabilitació a les presons catalanes, GDPS, 2011.
- Equipo Barañí, Mujeres gitanas y sistema penal. Madrid, Editorial Metyel, 2001
- Gallego Manuel, P. Cabrera., J C. Ríos., y J. L. Segovia Andar 1 km en línea recta: la cárcel del siglo XXI que vive el preso. Madrid: Universidad Pontificia Comillas, 2010.
- Garreaud, A. & Malventi, D. “Manifiesto sobre el poder terapéutico. El advenimiento de la Gubernamentalidad Terapéutica en las prisiones, y no sólo”. Oficina Social de Antropología y Prisión. Viscera. 2008.
- González, Ignacio. „La Carcel en España. mediciones siglo XXI“, Revista de Derecho Penal y Criminología, 3.a Época, n.o 8 (julio de 2012), págs. 351-402.
- Malventi, D & Garreaud, A. “Curar y reinsertar. El fenómeno de la deslocalización terapéutica en el engranaje penitenciario”. In Españ en Blanc. 2009
- Manzanos Bilbao, César (2007), «Violencia, salud y drogas en prisión», en Ana Isabel Cerezo Domínguez y Elisa García España (coords.), La prisión en España: una perspectiva criminológica, Granada: Comares. Pp. 135-155
- Monclús Masó, M. “La expulsión del extranjero como sanción penal encubierta”. III Coloquio Internacional de Geocritica. Scripta Nova. Revista Electrónica de Geografía y Ciencias Sociales Nº 94 (34), 1 de agosto de 2001
- Observatory of the Penal System and Human Rights, “Criminalización de la disidencia, expansión del sistema penal y situaciones de abuso policial como respuestas ante la

situación de crisis económica en Cataluña” Informe dirigido al comité europeo para la prevención de la tortura y otros tratos o penas inhumanos o degradantes. 2012

Redondo, S. ¿Sirve el tratamiento para rehabilitar a los delincuentes sexuales? En: Revista Española de Investigación Criminológica, Número 4. 2006.

Tarrío González, Xosé (1997), Huye, hombre, huye. Diario de un preso FIES, Barcelona: Virus

Síndic de Greuges de Catalunya, Annual Report, 2007

UNAD Drogedependencia y prisión, situación de las cárceles españolas. 2008