

**DISPARITIES AND PENAL POLICY CHALLENGES:
THE TREATMENT OF FOREIGN NATIONALS
IN EUROPEAN PENAL SYSTEMS*****

Summary

The treatment of foreign nationals within European penal systems reveals significant challenges and injustices. This article analyzes how different countries manage foreign prisoners, focusing on issues such as extended pretrial detention, harsher sentencing, and limited access to rehabilitation. Additionally, it examines broader negative trends in European criminal policy, including the tightening of punitive policy and violations of fundamental principles of criminal law. Contributing factors include perceived flight risk and systemic biases. While the 2012 Council of Europe Recommendation provides guidelines for fair treatment, its implementation remains inconsistent across jurisdictions. The article advocates for policy reforms and improved coordination to ensure equitable treatment of foreign nationals across all European penal systems.

Keywords: foreign nationals, European penal systems, pretrial detention disparities, penal policy, rehabilitation and reintegration

* Research Fellow, Institute of Criminological and Sociological Research, Belgrade, Serbia.
E-mail: otolgates@gmail.com
ORCID: <https://orcid.org/0009-0005-3121-8752>

** Associate Professor of Criminal Law, University of Criminal Investigation and Police Studies, Belgrade.
E-mail: ivana.bodrozic@kpu.edu.rs
ORCID: <https://orcid.org/0000-0001-5010-7832>

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NEJEDNAKOSTI I IZAZOVI PENALNE POLITIKE: TRETMAN STRANIH DRŽAVLJANA U EVROPSKIM KAZNENIM SISTEMIMA

Sažetak

Postupanje prema stranim državljanima u evropskim zatvorskim sistemima otkriva značajne izazove i nepravde. U ovom članku analizirano je kako različite zemlje tretiraju strane zatvorenike, s fokusom na probleme kao što su produženi pritvor pre suđenja, strože kazne i ograničen pristup rehabilitaciji, i istovremeno ukazano na neke od načelnih, negativnih kriminalnopolitičkih tendencija zaoštavanja punitivne politike na evropskom planu i kršenja nekih od osnovnih krivičnopravnih principa. Faktori koji doprinose ovim problemima uključuju percepciju rizika od bekstva i systemske pristrasnosti. Iako Preporuka Saveta Evrope iz 2012. godine sadrži smernice za pravedan tretman, njena primena u različitim jurisdikcijama nije dosledna. U članku se poziva na političke reforme i bolju koordinaciju kako bi se osigurao ravnopravan tretman stranih državljana u svim evropskim zatvorskim sistemima.

Ključne reči: strani državljanima, evropski kazneni sistemi, nejednakosti u pritvoru pre suđenja, penalna politika, rehabilitacija i reintegracija

1. Introduction

The presence of foreign nationals in European penal systems is becoming an increasingly significant issue in criminal justice. The number and proportion of foreigners in European prisons have been raising, with foreigners accounting for an average of 22.8% of the prison population within the Council of Europe in 2013 (Mulgrew, 2016, p. 162).

One country's foreign national prisoner is another country's citizen imprisoned abroad, highlighting a complex dynamic of justice and inequity. This dual perspective underscores the need to examine the treatment and challenges faced by foreign nationals within European penal institutions.

Foreign nationals frequently face injustices throughout the criminal process, from pretrial detention to sentencing. These may include higher likelihoods of pretrial detention due to perceived flight risk and reduced chances of receiving non-custodial

sentences. Additionally, variations in legislation and policies across European countries further complicate their treatment within the penal system.

A comparative analysis of different European countries highlights significant disparities in policies and practices concerning foreign inmates. While some countries implement inclusive and fair policies, others struggle to provide adequate conditions for foreign prisoners.

The 2012 Council of Europe Recommendation on the treatment of foreign prisoners marks a significant step towards improving conditions and reducing the number of foreign nationals in custody. However, its implementation varies across countries, exposing gaps and highlighting areas for improvement.

This article aims to analyze the treatment of foreign nationals in European penal systems, identify disparities and policy challenges, and provide recommendations for improving practices and policies. Understanding these complexities is essential for achieving a fair and effective criminal justice system that upholds the human rights of all individuals, regardless of their nationality.

2. Pretrial Detention and Sentencing Disparities: Unveiling the Inequities

The treatment of foreign nationals in European penal systems has become a pressing concern, particularly regarding pretrial detention and subsequent sentencing outcomes. This chapter examines the disparities faced by foreign nationals during pretrial detention and how these inequities persist throughout sentencing and incarceration outcomes. It also examines the mechanisms driving these disparities, such as perceptions of flight risk and the lack of non-prison sanctions, which contribute to the unequal treatment of foreign nationals in the justice system.

2.1. Analysis of Pretrial Detention Outcomes for Foreign Nationals

Pretrial detention is a critical stage in the criminal justice process, as it can have profound implications for the outcomes of a case. Research shows that foreign nationals are disproportionately affected by pretrial detention compared to local citizens in European countries. This disparity is evident across various European penal systems, where foreign nationals are more likely to be held in pretrial detention and for longer durations than their local counterparts. For example, a study in the Netherlands has found that foreign nationals are 1.7 to 2 times more likely to be detained pretrial than Dutch citizens, with pretrial detention significantly increasing the likelihood of eventual incarceration for foreign nationals (Wermink, Light & Krubnik, 2022, p. 373).

Although criminal sanctions must reflect, in terms of their type and severity, the harm caused by the violation and the damage to protected goods, they must also adhere to the standards established through the long-term development of humanistic principles in the field of criminal sanctions.

Unfortunately, there are troubling examples. Some USA states show serious systemic failures and illegalities in their actions at different stages of the criminal procedure. Instead of relying on the established first-line mechanisms for fighting serious forms of crime, these states resort to unlawful practices that violate the fundamental assumptions and principles of the rule of law, including the basic criminal law principles.

As a typical example of disregarding the principle of humanity of criminal law can be seen in the conditions prevailing in the Guantanamo Bay Detention Camp, where the United States of America (USA) holds suspects accused of terrorism-related crimes. These conditions deprive detainees of the basic human rights guaranteed by the Universal Declaration of Human Rights and The Convention for the Protection of Human Rights and Fundamental Freedoms. The inhumanity is evident in the violation of the prohibition against torture, humiliating punishment or treatment, which characterizes the conditions within this prison and detention facility.

This blatant violation of the principle of humanity, which is a constitutional cornerstone of all democratic states, serves as a stark example of the erosion of democracy in the face of terrorism. It represents the use of illegal mechanisms to combat crime, which are uncharacteristic for the democratic society, and which refute the basic postulates of the rule of law, upon which democracy is built. Upholding legal norms and values of the rule of law is the only way for democracy to prevail in the long-term struggle against terrorism, ensuring a balance between security and freedom, especially in the context of frequent terrorist attacks, such as those currently taking place.

The state's abandonment of legal protection mechanisms in favor of the "war on terrorism", where democracy is blindfolded and even the rules and customs of war, *ius in bello*, including the status of prisoners of war and other rights guaranteed by the Geneva Conventions are violated is unacceptable from the standpoint of democratic standards. This approach, characterized by extraordinary derogatory regulations, which the USA presents as a model in the fight against terrorism, sets a troubling precedent in modern constitutional history (Bodrožić, 2022, p. 145).

A high degree of danger and the fear of terrorism are often used as justifications for deviations from the established principles of modern criminal law, especially the principles of humanity. In this context, Klaus Roxin points out that "the ban on abuse is a well-established barrier. Its absoluteness is its strongest fortress. Whoever moves the fortifications must be prepared for the barrier to be breached.

One would start with exceptions in the most extraordinary circumstances, and one could quickly reach completely unacceptable abuse from the point of view of the rule of law. There are too many terrorists, insurgents and various forms of organized crime, that in the case of abuse in exceptional cases it could be a matter of ‘exceptionalism’” (Roxin, 2008, p. 24).

The importance of the predominance of criminal law over the war on terrorism prevention model is emphasized in the context of selected criminal law approaches to combating terrorism in Great Britain and Germany. This includes a review of modern legislation and a call for a selection of a rational criminal law response, one that is based not on fear but on a rational assessment of the social danger posed by terrorist offenses. It also stresses the need for any derogatory, special regulations on the suppression of terrorism to align with constitutional principles, as emphasized by Walker (2006, pp. 1138-1142) and Safferling (2006, p. 156).

In fact, several factors contribute to the above disparities in the treatment of foreign prisoners. One primary concern is the perceived flight risk associated with foreign nationals. Courts and law enforcement agencies often assume that foreign nationals are more likely to flee the jurisdiction, leading to a higher likelihood of pretrial detention. This assumption persists despite the availability of alternatives to detention, such as bail or supervised release, which are less frequently granted to foreign nationals (Martufi & Peristeridou, 2022, p. 359; Fair Trials, 2024).

Research indicates that the lack of local ties, including family, employment, and residence, further exacerbates this issue. These factors are often used to justify the necessity of pretrial detention for foreign nationals. For instance, a study in Germany found that judges frequently cited flight risk as the primary reason for pretrial detention, particularly when the accused lacked stable local connections, such as a fixed residence or steady employment (DW - Schacht, 2022).

Furthermore, the lack of clear communication and understanding of the legal process among foreign nationals can lead to unfavorable outcomes during pretrial detention hearings. Language barriers and unfamiliarity with the legal system may result in foreign nationals being unable to effectively advocate for their release, further contributing to the higher rates of pretrial detention (Penal Reform, 2020).

2.2. Impact of Disparities on Subsequent Sentencing and Incarceration Outcomes

The impact of pretrial detention disparities extends beyond the detention period, significantly influencing subsequent sentencing and incarceration outcomes. Research shows that individuals held in pretrial detention are more likely to receive harsher sentences compared to those released prior to trial. This trend is

particularly pronounced among foreign nationals, who often face longer sentences and higher incarceration rates. Studies in Europe have demonstrated that pretrial detention can increase the likelihood of incarceration by over 50%, with foreign nationals being disproportionately affected by these harsher outcomes (Wermink, Light & Krubnik, 2022, p. 376).

One contributing factor is the perception of guilt that may arise from being detained pretrial. Judges and prosecutors may subconsciously view pretrial detainees, including foreign nationals, as more culpable, leading to more severe sentencing decisions. Additionally, the lack of access to resources, such as legal representation and social support, during pretrial detention can hinder the ability of foreign nationals to mount a robust defense, further increasing the likelihood of harsher sentences (Wermink, Light & Krubnik, 2022, p. 376).

The intersection of pretrial detention with sentencing disparities also highlights broader issues of systemic bias within European penal systems. The overrepresentation of foreign nationals in pretrial detention perpetuates a cycle of disadvantage, where initial inequities compound over time, resulting in longer incarceration periods and fewer opportunities for rehabilitation and reintegration (Donnelly, 2021, p. 145).

2.3. Mechanisms Driving Disparities

Several mechanisms contribute to the disparities observed in the treatment of foreign nationals during pretrial detention and sentencing. These mechanisms include perceptions of flight risk, the lack of non-prison sanctions, and systemic biases within the justice system. Theoretical consideration on identifying effective mechanisms within the criminal law framework for responding to crime through the selection and application of criminal sanctions include considerations of potential alternatives to the basic repressive measure of imprisonment. Even through the view that the prison sentence has reached the limits of its effectiveness has led to the consideration and subsequent acceptance of modern international and European trends in the field of penal policy (Đorđević & Bodrožić, 2023, p. 586) a lot is disavowed in application, especially in relation to foreigners.

- **Perceptions of flight risk:** As previously mentioned, the perceived flight risk of foreign nationals plays a significant role in the decision to impose pretrial detention. This perception is often based on assumptions rather than evidence, with little regard for the individual circumstances of each case. The overreliance on pretrial detention as a preventive measure reflects a broader trend of punitive responses to perceived threats, which disproportionately affects foreign nationals.

- **Lack of non-prison sanctions:** The availability and use of non-prison sanctions, such as community service or electronic monitoring, are often limited for foreign nationals. This limitation is partly due to the lack of established residence or employment in the host country, which are typically required for non-prison sanctions. Additionally, there may be a reluctance to apply such measures to foreign nationals due to concerns about their ability to comply with the conditions of release, further contributing to the reliance on pretrial detention and subsequent incarceration. According to Aebi & Tiago (2021), foreign nationals represent a significant portion of the prison population across Europe, with many countries showing a high percentage of non-nationals among their inmates.
- **Systemic biases:** Systemic biases within the justice system also play a crucial role in driving disparities. These biases can manifest in various forms, including racial and ethnic profiling, discriminatory attitudes, and unequal access to legal resources. Foreign nationals, particularly those from marginalized communities, are more likely to encounter these biases, leading to differential treatment at various stages of the criminal justice process (Liberati, 2019).

3. Cross-National Comparisons: a Diverse Landscape

The treatment of foreign nationals within European penal systems varies considerably, reflecting differences in penal policies, legal frameworks, and cultural attitudes across countries. This chapter provides a comparative analysis of how European countries manage foreign inmates and probationers, examining regional variations.

3.1. Comparative Analysis of the Treatment of Foreign Inmates and Probationers

European countries exhibit a diverse range of approaches in their treatment of foreign nationals in prisons and on probation. The Netherlands, for example, provides a comprehensive support system through its International Office, which is part of the Dutch Probation Service, to assist Dutch citizens imprisoned abroad. This office works closely with Dutch embassies and consulates to coordinate sentence transfers, prepare inmates for reintegration, and reduce isolation by engaging volunteers to visit detainees. This approach highlights the effectiveness of cross-border cooperation and the importance of continuous support in reducing recidivism and aiding rehabilitation, even for those serving sentences outside their home country (Reclassering Nederland, 2016).

In contrast, Denmark has established specialized “departure wards” in prisons such as Nyborg and Vridsløselille for inmates awaiting deportation. These wards offer deportation instructions, language courses, and vocational training to ease their transition back home. This approach prioritizes creating a calm environment and ensuring a smooth, efficient deportation process. It demonstrates the benefits of targeted interventions for foreign nationals facing deportation (Kriminal Forsorgen, 2016).

Croatia provides another perspective, particularly in its treatment of foreign female prisoners. In Croatian facilities, such as the Požega Penitentiary, individualized sentence plans are developed, including psychosocial support and opportunities for vocational training. However, foreign female prisoners face significant challenges, including isolation due to limited family contact and restrictions on benefits like leaves from prison. The Croatian approach highlights the importance of addressing the specific needs of foreign prisoners, particularly in ensuring that their psychological and social needs are met during incarceration (Croatia Foreign Women Prisoners Report, 2016).

3.2. Examination of Regional Penal Policy and Practice Variations

The treatment of foreign nationals within European penal systems exhibits significant regional variations influenced by legal, cultural, and resource-based factors. Northern European countries, such as the Netherlands and Denmark, generally prioritize rehabilitation and reintegration, offering structured support systems tailored to the specific needs of foreign inmates. These countries have developed specialized programs to address challenges such as language barriers and cultural differences, while also providing comprehensive preparation for deportation or reintegration.

In contrast, Southern and Eastern European countries often face constraints that limit their ability to provide tailored support for foreign nationals. These regions typically have fewer resources available for rehabilitation programs, and the focus may be more on detention and deportation rather than reintegration. For instance, foreign prisoners in these regions often have limited access to educational and vocational training, and language barriers can significantly affect their prison experience. Additionally, the legal frameworks in these countries may not be as flexible in allowing non-custodial measures, which exacerbates the challenges faced by foreign nationals (Wermink, Light, & Krubnik, 2022; Martufi & Peristeridou, 2022).

The disparities in penal policies across Europe indicate the need for a more harmonized approach that takes into account the unique needs of foreign prisoners. The Council of Europe 2012 Recommendation concerning foreign prisoners provides a framework for Member States to adopt practices that ensure equitable

treatment and promote the rehabilitation of foreign nationals (Council of Europe, 2012). However, the implementation of these recommendations varies widely across the continent, reflecting diverse legal and cultural landscapes. For instance, while countries like the Netherlands have made significant strides in adopting these recommendations, other regions have been slower to implement changes due to resource constraints and differing legal traditions (Penal Reform, 2020).

Non-governmental organizations across Europe also play a crucial role in supporting foreign prisoners. For instance, organizations such as Hibiscus Initiatives in the UK and the International Office of the Dutch Probation Service provide essential services to foreign prisoners, including legal support, advice, and reintegration assistance. These organizations often collaborate closely with national governments and international bodies to ensure that foreign nationals receive fair treatment and that their rights are protected while incarcerated abroad (CEP-EuroPris Expert Group on Foreign Nationals in Prison and Probation, 2017; Mulgrew, 2016, p. 173). This collaborative approach is vital for addressing the complex needs of foreign prisoners and ensuring that they have access to the resources necessary for successful reintegration into society upon release.

4. Policy Implementation – The 2012 Council of Europe Recommendation

The treatment of foreign nationals in European penal systems has been a growing concern, prompting the Council of Europe to issue its Recommendation on Foreign Prisoners (Council of Europe, 2012). This chapter provides an overview of the Recommendation, highlighting the gaps, challenges, and areas for improvement.

4.1. Overview of the 2012 Council of Europe Recommendation on Foreign Prisoners

The 2012 Council of Europe Recommendation CM/Rec(2012)12 on foreign prisoners was established to address the specific needs and challenges faced by foreign nationals within European penal systems. This Recommendation underscores the principles of equality and non-discrimination, advocating that foreign prisoners receive the same rights and treatment as domestic prisoners. It stresses the importance of considering the particular circumstances of foreign prisoners, such as language barriers, lack of family contact, and cultural differences, which may influence their prison experience and rehabilitation prospects (Council of Europe, 2012).

Key elements of the Recommendation:

- **Non-Discrimination:** The Recommendation mandates that foreign prisoners be treated without any discrimination based on nationality or immigration status. This principle is central to ensuring fairness within penal systems and aligns with broader European human rights standards (Liberati, 2019).
- **Access to Rights:** It ensures that foreign prisoners have access to the same rights and privileges as national prisoners, including legal representation, educational programs, and rehabilitation services. This is crucial in addressing the systemic disadvantages that foreign prisoners often face (Wermink, Light, & Krubnik, 2022).
- **Communication and Language Support:** Recognizing the significant impact of language barriers, the Recommendation calls for the provision of necessary language support. This includes access to interpreters and translated materials to help foreign prisoners understand and engage with the prison system effectively (Mulgrew, 2016, p. 170).
- **Cultural Sensitivity:** The Recommendation stresses the need to recognize and accommodate the cultural and religious practices of foreign prisoners, provided these do not conflict with the security and order of the institution. This is vital for maintaining the dignity of foreign prisoners and promoting their rehabilitation (Aebi & Tiago, 2021).
- **Reintegration and Post-Release Support:** It advocates for facilitating the reintegration of foreign prisoners into their home countries upon release, including providing information and assistance for their return. This support is essential for reducing recidivism and aiding successful reintegration (Penal Reform, 2020).

The 2012 Recommendation aims to promote a more humane and equitable treatment of foreign prisoners, recognizing their unique needs and ensuring that they are not disadvantaged within the penal system. However, as noted in various reports and studies, the implementation of these recommendations has been inconsistent across Europe, reflecting the diverse legal and cultural landscapes within the continent (CEP-EuroPris Expert Group on Foreign Nationals in Prison and Probation, 2017; Martufi & Peristeridou, 2022). This variation in implementation indicates the need for continued efforts to harmonize practices across jurisdictions, ensuring that the principles of the Recommendation are universally upheld.

4.2. Gaps, Challenges and Areas for Improvement

Despite the progress made in some jurisdictions, significant gaps remain in implementing the 2012 Council of Europe Recommendation. One of the primary challenges is the variation in resources and infrastructure across European

countries, which affects the ability of some states to fully implement the Recommendation's principles. For instance, countries with limited resources may struggle to provide adequate language support, legal representation, and cultural sensitivity training for prison staff, leading to disparities in the treatment of foreign prisoners (Aebi *et al.*, 2019; van Kalmthout, Hofstee-van der Meulen & Dünkel, 2007).

Language barriers continue to be a significant challenge, as many foreign prisoners lack access to interpreters or translated materials, hampering their ability to understand legal proceedings, prison regulations, and available rehabilitation programs. This issue is particularly pronounced in countries with large populations of foreign prisoners from diverse linguistic backgrounds.

Another area of concern is the lack of consistent post-release support for foreign prisoners. While the Recommendation emphasizes the importance of facilitating reintegration and providing assistance for returning to their home countries, many jurisdictions lack the necessary programs and resources to effectively support foreign nationals after their release. This gap can lead to higher recidivism rates among foreign prisoners and difficulties in their reintegration into society (Aebi *et al.*, 2019).

Cultural sensitivity and non-discrimination are also areas where improvement is needed. Despite the Recommendation's emphasis on these principles, reports indicate that foreign prisoners often face discrimination and are not always allowed to practice their cultural or religious traditions freely. This can create an environment of exclusion and isolation, further hindering the rehabilitation process (van Kalmthout, Hofstee-van der Meulen & Dünkel, 2007).

To address these gaps, several areas for improvement can be identified:

- **Enhanced language support:** Increased provision of interpreters and translated materials to ensure that foreign prisoners can fully engage with the legal and prison systems.
- **Improved training for prison staff:** Training programs focused on cultural sensitivity and non-discrimination to ensure that prison staff are equipped to handle the diverse needs of foreign prisoners.
- **Strengthened post-release support:** Development of programs that provide comprehensive reintegration assistance for foreign prisoners, including legal advice, housing support, and employment services.
- **Greater coordination with NGOs:** Increased collaboration with NGOs and international organizations to supplement government efforts, and provide additional resources and support to foreign prisoners.

The 2012 Council of Europe Recommendation on Foreign Prisoners provides a vital framework for ensuring the equitable treatment of foreign nationals within

European penal systems. While there has been progress in implementing these guidelines across various jurisdictions, significant challenges and gaps remain. Addressing these issues requires a coordinated effort that includes increased resources, enhanced training, and stronger partnerships with probation agencies, consular representatives, NGOs, and volunteers who can also provide support (Mulgrew, 2016, p.173). By continuing to work towards the full implementation of the Recommendation, European countries can ensure that foreign prisoners receive the fair and humane treatment they deserve.

5. Beyond the Bars: Interpreting Findings, Policy Implications and Future Directions

5.1. Interpretation of Findings in the Context of Existing Literature and Theories

The treatment of foreign nationals within European penal systems reveals significant disparities that align with broader theories of structural inequality and systemic bias. These disparities are consistent with existing literature, which emphasizes the challenges faced by marginalized groups, particularly foreign nationals, in navigating legal systems that are often not designed to accommodate their specific needs. Research consistently shows that foreign prisoners are more likely to experience longer periods of pretrial detention, receive harsher sentencing outcomes, and have limited access to rehabilitative services compared to local nationals (van Kalmthout, Hofstee-van der Meulen, & Dünkel, 2007; Aebi & Tiago, 2021).

This study supports the concept of “othering” in criminology, where foreign nationals are often viewed and treated as outsiders, leading to biases that influence their experience in the justice system. Such biases are well-documented in the literature and are key to understanding the systemic issues that contribute to the unequal treatment of foreign nationals in penal systems (Bosworth, 2017, p. 381-382). Furthermore, the barriers faced by foreign nationals, such as language difficulties and limited understanding of legal processes, are compounded by a justice system that does not adequately accommodate their needs, leading to disproportionate outcomes (Liberati, 2019).

The issue of pretrial detention is particularly concerning, as foreign nationals often face prolonged detention due to perceived flight risks, as noted in several studies (DW - Schacht, 2022; Fair Trials, 2024). This prolonged detention exacerbates the systemic disadvantages that foreign prisoners experience, contributing to the broader inequalities within European penal systems.

5.2. Policy and Practice Implications

The findings from this research have significant implications for both policy and practice within European penal systems. One of the most pressing needs is that for a harmonized approach to the treatment of foreign nationals, as outlined in various international guidelines, including the 2012 Council of Europe Recommendation on Foreign Prisoners. However, the implementation of these recommendations has been inconsistent across different jurisdictions, reflecting varying levels of commitment and resource allocation.

For example, the Netherlands has made considerable progress by integrating these recommendations into its penal practices, particularly through specialized support services that cater to the needs of foreign prisoners. These services include language support, cultural sensitivity training for prison staff, and comprehensive post-release programs that aim to facilitate the reintegration of foreign nationals (Reclassering Nederland, 2016; Aebi & Tiago, 2021). Conversely, countries like Italy have struggled to fully implement these recommendations, often due to limited resources and insufficient infrastructure to support the specific needs of foreign prisoners (Penal Reform, 2020).

Practically, these findings suggest that improving access to language support services, enhancing cultural competency training for prison staff, and expanding post-release support programs are critical steps in addressing the disparities faced by foreign nationals. Moreover, there is a need for greater coordination between governments, NGOs, and international bodies is needed to ensure that foreign prisoners receive the comprehensive support necessary for their rehabilitation and reintegration. The work of non-governmental organizations, such as those documented by the CEP-EuroPris Expert Group (2017), plays a crucial role in bridging the gaps left by government services.

5.3. Study Limitations and Future Research Directions

While this study provides valuable insights into the treatment of foreign nationals in European penal systems, it is important to acknowledge its limitations. The research primarily relies on secondary data and case studies from a limited number of countries, which may not fully capture the diversity of experiences across Europe. Future research should aim to include a broader range of jurisdictions and explore the experiences of foreign nationals in different types of penal institutions, such as juvenile detention centers and immigration detention facilities (Martufi & Peristeridou, 2022).

Additionally, further research is needed to understand the long-term outcomes for foreign nationals who have been imprisoned, particularly regarding recidivism rates and their ability to reintegrate into society. The impact of emerging challenges, such as the criminalization of migration and the rise of populist sentiments across Europe, also warrants further investigation to understand how these factors influence the treatment of foreign nationals within the penal system (Donnelly, 2021).

Furthermore, the role of non-governmental organizations in supporting foreign nationals within the penal system deserves further attention. These organizations play a crucial role in providing legal support, advocacy, and post-release assistance, often filling gaps left by government services. Understanding their impact and exploring ways to better integrate them into the broader penal system is an important area for future research.

6. Conclusion: Charting the Path Ahead

This research highlights significant disparities in the treatment of foreign nationals within European penal systems, emphasizing the need for more equitable and humane policies. The inconsistent implementation of international recommendations across different jurisdictions underscores the challenges that many countries face in adapting their legal frameworks to address the needs of foreign prisoners. Key findings indicate that foreign nationals often experience longer pre-trial detention, harsher sentencing, and limited access to rehabilitative services, all of which are influenced by systemic biases and resource constraints (Wermink, Light, & Krubnik, 2022).

Addressing these disparities is not only a matter of justice but also essential for social cohesion and the protection of human rights. Policymakers must take immediate action to ensure the full implementation of international guidelines across all jurisdictions. This includes increasing resources for language support, providing cultural sensitivity training for prison staff, and developing comprehensive post-release support programs for foreign nationals.

Practitioners and NGOs play a vital role in this process and must be equipped with the tools and resources necessary to effectively support foreign prisoners. Finally, researchers should continue to explore this issue, focusing on the long-term impacts of penal policies on foreign nationals and the broader social implications of these disparities. By addressing these critical issues, European countries can move towards a more just and equitable penal system, ensuring that all individuals, regardless of their nationality, are treated with dignity and respect.

References

- Aebi, M. F. & Tiago, M. M. 2021. *SPACE I - 2020 – Council of Europe Annual Penal Statistics: Prison populations*. Strasbourg: Council of Europe. Available at: https://wp.unil.ch/space/files/2021/04/210330_FinalReport_SPACE_I_2020.pdf, 31. 8. 2024.
- Aebi, M. F., Berger-Kolopp, E., Burkhardt, C. & Chopin, J. 2019. *Foreign offenders in prison and on probation in Europe – Trends from 2005 to 2015 (inmates) and situation in 2015 (inmates and probationers)*. Strasbourg: Council of Europe. Available at: <https://wp.unil.ch/space/files/2019/12/Foreign-Offenders-in-Prison-and-on-Probation-in-Europe.pdf>, 31. 8. 2024.
- Bodrožić, I. 2022. *Terorizam kao kategorija nacionalnog i međunarodnog krivičnog prava*. Beograd: Kriminalističko-policijski univerzitet.
- Bosworth, M. 2017. Border Criminology and the Changing Nature of Penal Power. In: Liebling A., Maruna S., & Mcara L. (eds.). *The Oxford Handbook of Criminology*, sixth edition, Oxford University Press, pp. 373-390. <https://doi.org/10.1093/oxhb/9780198719441.003.0017>
- Council of Europe. 2012. *Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States concerning foreign prisoners*. Strasbourg: Council of Europe.
- Donnelly, E.A. 2021. Neighborhoods, Criminal Incidents, Race, and Sentencing: Exploring the Racial and Social Context of Disparities in Incarceration Sentences. *The British Journal of Criminology*, 62(1), pp. 145–164. <https://doi.org/10.1093/bjc/azab046>
- DW - Schacht, K. 2022. *Thousands detained for months pretrial in Germany and EU*. Available at: <https://www.dw.com/en/presumed-innocent-but-detained-for-months-pretrial-in-germany-and-eu/a-61983097>, 31. 8. 2024.
- Dorđević, Đ. & Bodrožić, I. 2023. The Community sentence in the Context of European standards and Serbian criminal legislation. *Strani pravni život*, 67(4), pp. 585-602. https://doi.org/10.56461/SPZ_23401KJ
- Martufi, A. & Peristeridou, C. 2022. Towards an Evidence-Based Approach to Pre-trial Detention in Europe. *European Journal on Criminal Policy and Research*, 28, pp. 357–365. <https://doi.org/10.1007/s10610-022-09526-6>
- Mulgrew, R. 2016. Foreign Prisoners in Europe: An Analysis of the 2012 Council of Europe Recommendation and Its Implications for International Penal Policy. *Review of International Law and Politics*, 12(4), pp. 161-200. Available at: <https://nottingham-repository.worktribe.com/output/977460>, 31. 8. 2024.
- Roxin, R. 2008. Zlostavljanje u pravnoj državi - Slučaj Dašner u Nemačkoj. *Strani pravni život*, 3, pp. 7-26.
- Safferling, Ch. 2006. Terror and Law: German Responses to 9/11. *Journal of International Criminal Justice*, 4(5), pp. 1152-1165. <https://doi.org/10.1093/jicj/mql073>
- Van Kalmthout, A. M., Hofstee-van der Meulen, F. B. A. M. & Dünkel, F. 2007. *Foreigners in European Prisons*. Wolf Legal Publishers.
- Walker, C. 2006. Clamping Down on Terrorism in The United Kingdom. *Journal of International Criminal Justice*, 4(5), pp. 1137-1151. Available at: <http://uniset.ca/terrorism3/4JIntlCrimJust.pdf>, 31. 8. 2024. <https://doi.org/10.1093/jicj/mql056>

Wermink, H., Light, M.T. & Krubnik, A.P. 2022. Pretrial Detention and Incarceration Decisions for Foreign Nationals: a Mixed-Methods Approach. *European Journal on Criminal Policy and Research*, 28, pp. 367–380. <https://doi.org/10.1007/s10610-022-09519-5>

Internet Sources

CEP-EuroPris Expert Group on Foreign Nationals in Prison and Probation. 2017. *European groups working with their nationals imprisoned abroad*. CEP Probation. Available at: <https://www.cep-probation.org/wp-content/uploads/2021/12/FNNP-5-22-1-a-European-Groups-working-with-prisoners-abroad-05-2017.pdf>, 31. 8. 2024.

Fair Trials. 2024. *Unravelling Flight Risk: Pre-trial Detention Trends Across Europe*. Available at: <https://www.fairtrials.org/articles/news/unravelling-flight-risk-pre-trial-detention-trends-across-europe/>, 31. 8. 2024.

Liberati, C. 2019. *Study Shows EU Justice Systems Discriminate Against Ethnic Minorities*. Available at: <https://www.liberties.eu/en/stories/disparity-against-foreigners-in-criminal-justice-systems-across-the-european-union/16684>, 31. 8. 2024.

Croatia Foreign Women Prisoners Report. 2016. *Issues particular to women foreign prisoners*. Ministry of Justice, Croatia. Available at: <https://www.cep-probation.org/wp-content/uploads/2021/12/FNPP5-33-1-a-Croatia-Foreign-Women-Prisoners-2016.pdf>, 31. 8. 2024.

Kriminal Forsorgen. 2016. *Annual report 2015: Departure wards*. Danish Prison and Probation Service. Available at: <https://www.cep-probation.org/wp-content/uploads/2021/12/FNNP5-27-4-a-Report-on-Nyborg-Prison-Denmark-2015-1.pdf>, 31. 8. 2024.

Reclassering Nederland. 2016. *About the work of the International Office*. Dutch Probation Service. Available at: <https://www.cep-probation.org/wp-content/uploads/2021/12/FNPPForeign-Office-information.pdf>, 31. 8. 2024.

Penal Reform. 2020. *The issue*. Available at: <https://www.penalreform.org/issues/foreign-nationals/the-issue/>, 31. 8. 2024.