

Justice

for Children of Prisoners

Special Edition Newsletter 1 of 4 - 2013

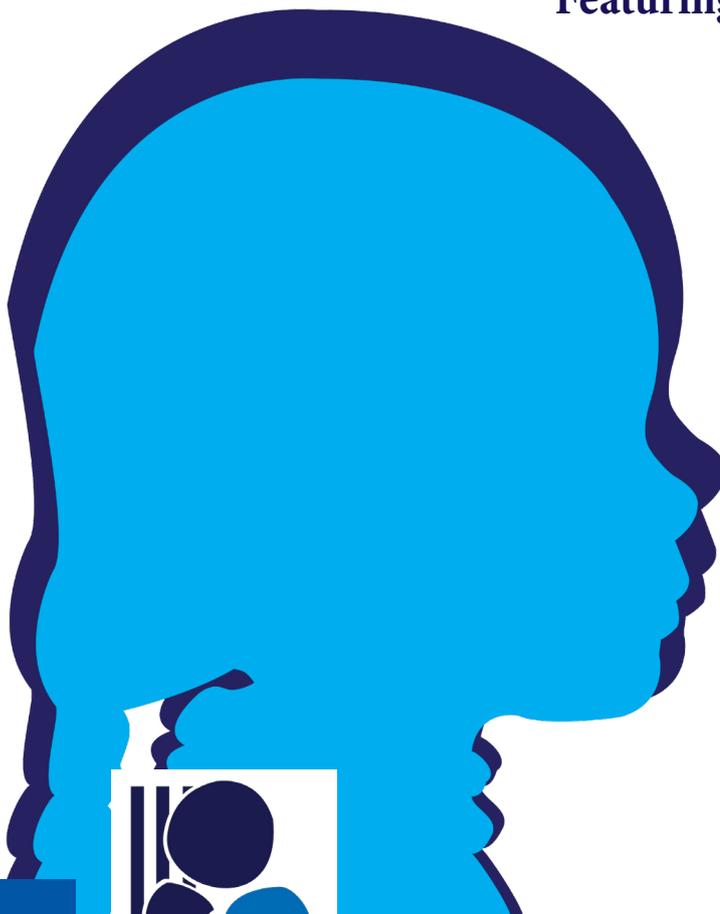
Prisons Across Europe

National focuses on protocols relating to children of prisoners

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Children of Prisoners Europe
formerly Eurochips

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This newsletter has been produced with the financial support from the Fundamental Rights and Citizenship programme of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Commission.

Foreword

“in serving the best interests of children, we serve the best interests of all humanity”

– Carol Bellamy¹

The work of Children of Prisoners Europe (COPE) naturally involves the sharing and comparing of good practices across the seventeen countries in which we have members, which is a primary aim of these research publications. These international comparisons of good practices and different approaches to the topic provide us with a rich and diverse perspective on an issue which receives varying amounts and kinds of attention across Europe. Indeed, it is this heterogeneity itself which provides the network's uniqueness and richness as it attempts to bridge linguistic and cultural gaps and open up new ways of acting and interacting with children of imprisoned parents. Whatever the differences in approach, COPE and its members have successfully forged a consensus on the best interests of these children. We share a common vision of how to best serve these interests – safeguarding family ties and helping the child feel an internal sense of what John Bowlby called a “secure base” in the world.²

COPE is a Europe-wide initiative whose mission is to safeguard the social, political and judicial inclusion of children of imprisoned parents and to bring this vulnerable and often overlooked group of children to the forefront of EU policy and legislation. The network is funded by the Bernard van Leer Foundation and the Directorate-General for Justice (European Commission), and, indeed, these newsletters have been commissioned as part of COPE's recently received DG Justice grant. Children of imprisoned parents were only recently added to the European Commission's list of vulnerable children, thanks largely to efforts by DG

Justice. As a result, children of imprisoned parents are gaining greater visibility on the EU level and we now really have a chance to affect the decisions of policy-makers in this respect.

Yet although our work is enhanced by the cultural, political and linguistic diversity both of our network and of Europe, it can, of course, also be a challenge to work with and within these different contexts. As a network with twenty-seven member organisations across Europe, the differences we encounter, be they cultural, political, financial, legal or circumstantial, offer multiple perspectives but also reveal gaps which need addressing. These gaps form one of the reasons why we feel a pan-European network is so crucial to a cause as frequently overlooked as ours: such a network enables us to help bridge these gaps through the sharing of practices, ideas and projects.

Where other countries across the world may rely solely on national approaches to children of imprisoned parents, we have the advantage of comparison. This is what binds us and makes us stand out as a network. We refer to the European Prison Rules, which are guidelines that member states are recommended to follow in their internal legislation and practice, with a view to their progressive implementation. Several of the European Prison Rules (established for the first time in 1973 and updated twice since, in 1987 and 2006) deal with or in some way affect children of imprisoned parents. We are also guided by the United Nations Convention on the Rights of the Child (which will be dealt with in greater detail in the final issue of this series) and the European Convention on Human Rights.

The articles in this first issue focus on the various judicial situations and contexts of six EU member states (Latvia, France, UK, Denmark, Estonia, Italy), as well as candidate country Serbia and non-member Ukraine. Our contributors include several Children's Rights Ombudsmen, a representative from the French section of a comparative prison studies project, a representative from a Danish prison, a British magistrate, a representa-

¹ Carol Bellamy is Chair of the International Baccalaureate Board of Governors and former Executive Director of UNICEF

² Bowlby, J. A secure base: Parent-child attachment and healthy human development. New York: Basic Books, 1973

Foreword

tive of the Chancellor of Justice in Estonia as well as COPE Network member organisation Bambinisenzasbarre. These country-focused features are preceded by the pan-European perspective of Belgium-based organisation Eurochild. As this first article highlights, the issue of children of imprisoned parents must be brought to the EU level in order for this vulnerable group of children to be granted a louder voice and an international lobbying platform.

*Hannah Lynn
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The role of the EU in defending the rights of prisoners' children

Children's rights and well-being have become increasingly visible in the EU's agenda over recent years. With the entry into force of the Lisbon Treaty in 2009, the protection and promotion of children's rights became an explicit objective of the EU. In 2011, the EU Agenda on the Rights of the Child requires that all EU action take a "child's rights perspective" and proposes several concrete actions where EU action can have added-value. More recently, the European Commission adopted a Recommendation on Investing in Children, which calls on Member States to take a holistic, integrated approach to tackling child poverty and promoting child well-being. There is growing recognition that investment in children is key to achieving the wider Europe 2020 targets of green, inclusive and smart growth. Hence, in 2013 some fourteen Member States received Country Specific Recommendations – the European Commission's governance tool used to steer and monitor implementation of Europe 2020 – related to children.

The question remains what this means to organisations working with children and young people and how greater visibility of children at the EU level can support improvements in policy and practice. Eurochild believes that such recognition at the EU level can contribute on three levels.

Firstly, it helps secure political commitment. It can be argued that several EU Member States only identified child poverty as a major challenge once it had become an EU priority. Some countries have used the Recommendation to set their own agenda – for example, the Belgian national action plan to fight child poverty reflects the content of the Recommendation. Another area where Eurochild members are active is in promoting the transition from institutional to community- and family-based care. The EU has played a critical role by calling for reforms and encouraging Member States to prioritise the use of structural funds for this purpose.

Secondly, EU attention enables better policy reforms. Although the EU has no legal competence in social policy, there are many opportunities for

exchange, learning and benchmarking. The "Social Open Method of Coordination" provides a framework for inter-governmental cooperation on social protection and social inclusion. It includes setting and monitoring social indicators, comparative research studies and peer reviews. EU funding programmes are also designed to support transnational exchange.

“children of prisoners are particularly vulnerable and largely invisible at the EU level”

Finally, EU involvement can help strengthen civil dialogue. As a European network, Eurochild is committed to supporting the capacity of civil society organisations to participate in policy-making at national and regional levels. This is an important principle of the EU and can be used to enforce more dialogue at national level – particularly with regards to EU processes such as programming of the structural funds or implementation of the Europe 2020 strategy.

Children of prisoners are a particularly vulnerable group and largely invisible at the EU level despite their significant numbers. Many EU countries face similar challenges in how to minimise the psycho-social and emotional damage inflicted on children through imprisonment of family members. There is much to be gained through bringing this to the attention of EU leaders, as well as through the facilitation of exchange and learning. Finally, it is key that civil society actors play a leading role, bringing their expertise and knowledge of what works and ensuring that the rights of the children themselves take centre stage.

Jana Hainsworth
Secretary General, Eurochild



The European Prison Observatory project (French section)

The work of the Observatoire International des Prisons (OIP) is based on “observatory work” and witness reports, delivered either in writing or by phone. Some reports come after the prisoner has left prison. Other sources of information are from intermediaries, such as the French association Relais Enfants-Parents (REP), or from any other staff or volunteers working in prison (medical officers, teachers, lawyers, etc.). Much of OIP’s work involves analysing existing documentation. It is the role of the French section to inform the general public and policy makers about the conditions in which penal sentences are enforced, as well as to promote the development of alternative models, based on practices and research worldwide.

In France, the Contrôleur général des lieux de privation de liberté is an independent body which visits and inspects prisons (among other institutions) to ensure that the practices employed in such establishments respect the fundamental rights of the prisoners living there. In 2010, the Contrôleur général published a report on the importance of family ties. This is, of course, a great step forward but there is still a gap between theory and practice: a gap between the stated intention of maintaining ties and the actual application of good practice to meet this intention.

There has, however, been an effort in recent years to work to prevent the disruption of family ties (particularly with a view to reducing reoffending). This effort has been aimed at improving prison visiting conditions for children, for example. Approximately 60 of the 191 French penal institutions now have special parloirs designed with children in mind. While this can be seen as a positive development, this figure has not evolved over recent years and is still well under half of all prison establishments.

In remand prisons, a parloir lasts from 30 to 45 minutes. For children, this is quite obviously not long enough for them to feel comfortable and be able to settle and feel at ease. It is difficult to recreate any sort of “normal” relationship in half an hour. Paradoxically, when a visit is too long, it is really

necessary to provide some sort of outdoor space for the child to get some fresh air and a change of scenery. OIP is really lobbying for children to be allowed to leave the parloir and to re-enter again afterwards, should they need a break.

Some prisons organise special visit events for holidays like Mother’s Day. OIP is working to promote these kinds of special parloirs, as well as the right to home leave for prisoners, as it is believed that there is nothing better for all parties involved than a meeting outside of the prison. Home leave is believed to favour familial conditions and bonds and, in particular, the relationship between the imprisoned parent and the child. OIP concentrates less on improvements to the system that require money and more on encouraging magistrates to get prisoners out of the prison: this is a current priority. One example of an advance made in this area is in the creation of UVFs (Unités de vie familiale). This, Elsa believes, represents a true step forward. By 1st June 2013, 74 UVFs had been set up in 23 penal institutions in France. The UVFs are private, furnished apartments where a prisoner can spend time with his or her family for between 6 to 72 hours at a time, out of sight and hearing of prison staff.

“a lack of support from outside institutions”

In France, any visitor to a prison must obtain a visitor’s authorisation pass. Difficulties crop up, however, when the mother (if the father is in prison) does not have her own pass, which may occur if her right to a pass has been suspended, for example. In such a case, the child’s pass is also suspended and the impact this may have on the child is not taken into consideration. This is currently a very difficult issue as although there are organisations (such as REP) who have staff who accompany children into prisons, where very young infants are concerned, it is unlikely that the mother will agree to send her child off with a stranger. These are the sorts of reports the OIP receives from mothers who have had their visitor’s pass revoked. Another issue is that when a prison-

The European Prison Observatory project (French section)

er is in pre-trial detention, it is often difficult for the family to obtain a visitor's pass (for example if the mother is herself a suspect in the crime).

The UFRAMA report

The UFRAMA report is a study of how families are received in prisons. UFRAMA, which is a federation of charities working with families of prisoners, regularly carries out an investigation into whether or not children are informed of their parents' imprisonment and its results show that very often the children are not informed. Indeed, when Elsa speaks to families, she has noticed that many lie to their children, even though it is more often than not very clear to the children that they are being kept in the dark about something. In Elsa's opinion there is a lack of support from outside institutions for families in this situation, for example with regards how to inform their children about the parent's imprisonment. As it is a culturally taboo topic in France, outside institutions need to encourage and support families to talk more openly about the fact that a parent is in prison. In her view there is a general lack of help (financial and otherwise) for families in these situations.

When asked what the differences between the treatment of mothers and fathers in prison in France are, Elsa explained that this comes down to the way parenting is viewed in France. Even if it has evolved, the emphasis is very much on the maternal and therefore much more attention and sympathy is given to mothers in prison than fathers. For example, babies can sometimes stay in prison with their mothers up until the age of 18 months, whereas this would never be imagined with the father. There is a predominance of the maternal in society in general. This is, however, a cultural aspect and not particularly related to the penal system.

Interestingly, however, given the smaller number of mothers who are imprisoned compared with fathers, less importance is placed on the mother-child relationship than on the father-child relationship. Mothers tend to be more isolated from their children and receive fewer visits. They tend

to be less supported. One of the reasons for this is that the French, as a society, are less willing to accept a female delinquent than a male delinquent. Culturally, a woman who commits a crime is less accepted than a man.

“a culturally taboo topic in France”

On the other hand, OIP does favour alternative sentencing for mothers over fathers. Alternative sentencing for mothers (as head of the family and caregiver of the children) is considered more important than for fathers. These alternative sentences (only for sentences up to five years) might be a fine, community service or an electronic bracelet. There is also currently a penal reform project being carried out which looks into compulsory enforced measures such as rehabilitation classes for those with alcohol or drugs abuse problems.

In France, children are only present at their parents' trial if they are directly concerned, i.e., if the crime perpetrated was committed against them. Otherwise, they are taken into consideration but not present. The fact that a prisoner has children is taken into consideration in relation to the location of the prison the parent is to be sent to. Again, the UFRAMA report studied the effects of geographical distance on families of those imprisoned. However, this is by no means the main priority of the judge or jury when considering a case.

A law passed in 2009 sought to improve prison conditions (and therefore of family-prisoner links). Unfortunately it has meant that the governor of each prison now has his or her own power to make decisions with respect to visits, visiting times, visit lengths, etc. The national legal framework is not specific or protective enough to circumvent this, and ultimately it is down to the individual governor to make decisions on these matters. In practice, therefore, the application of policies and recommendations varies from prison to prison.

*Hannah Lynn
based on an interview with Ms. Elsa Dujourdy
Observatoire International des Prisons*

Justice for children of prisoners - Latvia

This article provides information about the legal regulations of the Republic of Latvia and the situation of children whose parents are imprisoned in Latvia.

In accordance with Article 45 of the Law on the Sentence Execution Code of Latvia¹, convicted persons shall be permitted to have short-duration visits (one to two hours; long-duration visits are six to forty-eight hours). Short-duration visits shall be permitted with relatives or other persons in the presence of a prison representative. During long-duration visits, the prisoner shall be permitted to spend extended periods of time with close relatives (parents, children, siblings, grandparents, grandchildren, spouse).

Short-duration visits take place simultaneously for a number of prisoners; are conducted through glass partitions; conversations take place with the help of telephones. Overall, visiting conditions are not child-friendly² and do not ensure mutual enjoyment by parents and children of each other's company.



Visiting Area

During long-duration visits' two adults and two minors are authorised to remain with the prisoner at the same time. Meetings are private and take

1 Law on the Sentence Execution Code of Latvia (Latvijas Sodū izpildes kodekss) [1997] Reporter (Ziņotājs)

2 See picture above - not child-friendly

place in long-stay meeting rooms which are similar to service hotels. Rooms are separated, with all necessary facilities. Child-friendly rooms (with toys, play corners, cots, etc.) tend to be an exception rather than a common practice³.

It is crucial to provide child-specific training for prison officers. However, there is a lack of this specialised knowledge among the prison officers in male establishments. The prison officers do not work directly with children, but their actions may affect a child's rights.

The fact that a person has children does not affect the number of meetings authorised. However, depending on the prison governor's awareness about the rights of the child to contact with his/her convicted parents, the duration of the meeting may be longer. There is no legal regulation defining the exact duration of meetings. Each meeting is considered by the individual prison governor on a case by case basis and its duration is chosen from a range of times (from x hours to y hours).

“there is a lack of child-specific training among the prison officers in male establishments”

In accordance with part 9 of Article 50.4 of the Law on the Sentence Execution Code of Latvia, convicted persons serving sentences at the lowest level of the sentence-serving regime in a closed prison have the right to three long-duration visits of six to twelve hours, and four short-duration visits of one to two hours per year; at the medium level - four long-duration visits of eight to sixteen hours and six short-duration visits of one to two hours per year (part 8); at the highest level - six long-duration visits of twelve to twenty-four hours and six short-duration visits of one to two hours per year (part 7); serving sentence at the highest level of the sentence-serving regime in a partly closed prison - eight long-duration visits of twenty-four to forty-eight hours and eight short-duration visits of one and a half to

3 See picture with toys on next page

Justice for children of prisoners - Latvia

two hours per year (part 7 of Article 50.5); in open prisons – no restriction (part 6 of Article 50.6).

On the basis of a request from a convicted mother and with the consent of the Orphans' Court, a child of up to four years of age may reside with the mother in the mother and children division of the prison, fully maintained by the State (part 5 of Article 77).



Shelves of toys

Only one female prison exists in Latvia⁴. Each woman with a child has a separate room and the facilities of this room are closed or private. Conditions in the division are very good and suitable for the child's full development.

After the end of the time period during which the child may reside together with the mother (when the child turns four years old), the Orphans' Court shall transfer the child to the care of the father, or if this is not possible, shall ensure out-of-family care for the child. In choosing the child's future place of residence, the Orphans' Court takes into account the point of view of the

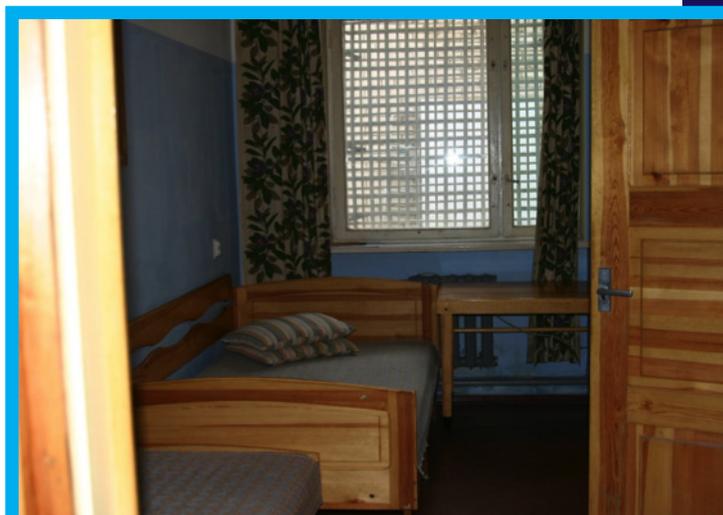
mother of the child. Furthermore, a child can visit their mother either in short- or long-duration visits.

Unfortunately, the legal regulation of Latvia does not permit a child up to four years of age to reside with the father in prison.

“this mechanism is ineffective and imprisoned parents have limited opportunities to influence the situation”

The Ombudsman of the Republic of Latvia has indicated that if the child is placed in out-of-family care, a child's visits with a parent depend on the will of the lawful representative. If the lawful representative does not take a child to prison for a meeting with the mother or father, the parents have a right to go to the Orphans' Court, which has a competence in out-of-family care supervision. However, this mechanism is ineffective and imprisoned parents have limited opportunities to influence the situation.

Laila Grāvere
Head of Children's Rights Division
Office of the Latvian Ombudsman



Mother & child unit

⁴ See picture on bottom right

Monitoring the welfare of prisoners and their families

The following is a question and answer session with Ian Rufus, magistrate and Probation Trust Advisor. Mr Rufus is a Member of the Independent Monitoring Board for HM Prison Hewell

What exactly does an Independent Monitoring Board do?

An Independent Monitoring Board (IMB) monitors the day-to-day life of prisoners in the prison it works with, to ensure that proper standards of care and decency are maintained. The IMB has complete and unrestricted 24-hour access, and meetings with the prisoners can be completely out of sight and hearing of prison staff if requested. One of the important roles we carry out is attending Rule 45 reviews three times a week. Rule 45 reviews are for any prisoner who has been in serious breach of prison rules (for example due to fights, drugs) and who has been placed in a segregation unit (solitary confinement). Our role in these reviews is to ensure that the review is carried out fairly and in accordance with prison protocol.

How do children's prison visits take place at HMP Hewell?

One of the roles of the IMB is to deal with prisoner complaints. If the prisoner files a complaint, this gives us the right to investigate the issue. We don't get a huge number of complaints related to visits, but occasionally prisoners will claim to have been refused a visit or to have been put on "closed visits", which I will come back to.

The prison service generally feels it is incredibly important to try to maintain prisoners' links to their families because the main causes of reoffending on release from prison are not having a job, not having a roof over your head and not having any family ties. As a general tenet within the justice system, we feel it is important to maintain family ties as strongly as possible. Prisoners are actively encouraged to maintain contact with their families. Convicted prisoners are entitled to at least two 60-minute vis-

its every four weeks. Prisoners on remand are entitled to three 60-minute visits a week.

"as a general tenet, we feel it is important to maintain family ties as strongly as possible"

At HMP Hewell, the prison visiting area is a big, very light and airy, brightly decorated and quite nicely furnished space. It is very family-friendly and fitted out with soft furnishings and there is a children's play corner with soft toys and games. There is also a refreshment area for coffee and sandwiches.

Are children entitled to private visits with their imprisoned parent?

Not until the age of 18. Before that age, all children must be accompanied by an adult. All visits take place in the general visiting hall: there are no private visits.

What about "closed" visits? Are these behind a glass screen?

If a prisoner has, for example, passed or accepted contraband material he may be confined to having "closed" visits for a certain length of time, which do take place across a Perspex screen. These visits are obviously more daunting for the children. The children still do have access to all the same materials as in normal visits, such as toys, games and colouring pads, however.

Are prison officers specifically trained on how to deal with children visiting their parents in prison? If so, in what capacity? For example, is there a child-friendly protocol in place for the searching of children who visit their parents in prison?

The prison staff who carry out the searches are very well-trained and try to make the whole search process as child-friendly and unthreatening as possible. There are drug dogs but they are not vicious, and the staff try to make the whole process into a sort of game where the children meet the dogs. The

Monitoring the welfare of prisoners and their families

thing that always strikes me, is that in my experience, most children don't seem in the slightest bit intimidated by the visiting process. This presumably depends on how used to the prison experience they are, however. The prison staff are very good with them.

Does HMP Hewell have a protocol for asking prisoners whether they have children when they arrive at the prison?

Not to my knowledge. Prisoners are asked to fill in a form upon arrival which asks if they have a spouse or partner, but to my knowledge there is not a section pertaining to children. However, this sort of information often naturally becomes apparent when talking to the prisoners.

Do prisoners have the chance to use the prison phone or mobile phones to contact their families?

Yes, they do. Prisoners pay to use the phone and all calls, except legal calls, can be monitored. Mobile phones, on the other hand, are forbidden and children cannot call the prison. If there is an emergency, prisoners' families can call and leave a message with prison staff, who would then pass this on. Prisoners have Internet access (in education areas and in the library). However, access to websites is restricted and video calls, such as through Skype, are not permitted.

Has your prison direction made any moves to set up any family-based/children-focused initiatives?

A recent initiative has been set up called email-prisoner.co.uk which operates at HMP Hewell. There has also been a really good initiative called Storybook Dads, where prisoners record bedtime stories which are then sent to their children. This is a fantastic scheme for the prisoners.

At certain times of year, for example on Father's Day, the open prison at HMP Hewell organises family fun days, which is essentially a children's

party with games for the children. There's always a great atmosphere on these days.

To your knowledge, are police officers trained to deal with the children of those arrested, at the time of arrest? Is there a special protocol in place for dealing with children present at the time of arrest (e.g., time allowed to find alternate care before the arrested parent is taken away)?

As a magistrate, police have to come to us for search warrants, and among the questions we ask them one is, "will there be vulnerable adults or children in the building when the search is conducted?" If this is the case, then we ask them what their protocol is and who will deal with such individuals. Their response usually is that they will have a female officer present who will look after the children during the search. The courts do take great care to protect children who come into contact with the justice system. For example, if the child witnessed the crime and is required to give evidence in court, this is carried out via video link, in order to reduce the trauma caused by going into court.

At the time of sentencing, are the children taken into account and does this affect the location of the chosen prison?

As magistrates, it is not our job to decide which prison a prisoner is sent to. As a matter of general policy, the Prison Service does try to place prisoners in a prison as close to their home as possible. Due to prison overcrowding this is not always feasible, of course, and sometimes families do have to travel long distances to visit their family member in prison.

**Interview conducted by
Hannah Lynn
Project Coordinator
Children of Prisoners Europe**



Children of prisoners and the Danish penitentiary system

The following is a question and answer session with Lisbeth Feldballe Hansen, Head of Special Social Knowledge and Treatment at the Østjylland state prison in Denmark.

At Østjylland prison, do you keep logs of which prisoners have children? If not, what are the reasons for this?

Prisons in Denmark do not currently keep logs of the numbers of prisoners who have children. The Danish Prison and Probation Service is considering making it compulsory for prisoners to disclose whether or not they have children and if so, how many. We don't know when this will happen. So for the time being, even if we always ask the inmates if they have children, they have a right to withhold this information.

However, only last week we have received instructions that from January 2014 for a trial period of six months, we must log all children who visit the prison. A specially-trained expert has been employed to put this project into action in all prisons in Denmark. What will not be noted is whether the same child visits more than once, or whether the children who visit are the children of the prisoners or the nieces, nephews, grandchildren or children of friends. Hopefully this system will become more precise soon: for now it's a positive start.

“we try to talk about their role as a father and try to encourage them to have visits from their family”

All Danish citizens are registered in a CPR (Central Personal Registration) database. We do look up an inmate when they arrive at our prison and so we can see if they are married or have children. However, here at Østjylland we talk informally to all the inmates about any children they might have and about their general social situation and whether or not they are in contact with their families. We make a plan for them, recommending how they should

use their time. We try to talk about their role as a father and try to encourage them to have visits from their family. We are currently working on the issue of family visits.

A lot of inmates do not have any contact with their children. In many older prisons in Denmark, where conditions are not conducive to a child-friendly visit, there are inmates who refuse visits from their families. Østjylland is a relatively new prison (it was finished in 2006), which means that visiting conditions are favourable and so our inmates accept visits more frequently than they used to.

“a lot of inmates do not have any contact with their children”

Do police receive child-specific training to be implemented during arrests?

It is the responsibility of the police to support the families from the beginning of the arrest process. The police are responsible for the whole pre-trial detention period, even when the remand prisoner is in our institution. Prior to the trial, the prisoner is in the care of the police. It is therefore the duty of the police to be in contact with the families.

Having spoken to a colleague who is a police officer, I have learnt that there is no specific child-friendly training: officers are expected to use their common sense. When a father or mother is arrested, police officers are always aware of the children involved. In most cases, police officers know in advance if the person to be arrested is a parent and in these cases, they always bring specially trained social workers with them.

“there is no manual or protocol specifically on how to deal with children”

Are families informed of where the prisoner is being taken and updated on the progress of that individual's situation before trial or on how long the pre-trial detention period may last?

Children of prisoners and the Danish penitentiary system

Again this is up to the police officers involved. There is no manual or protocol specifically on how to deal with children. Some police officers are very aware of the needs of children, others are less so. When prisoners come to the prison, most have letter and visiting restrictions, meaning they must acquire police permission before receiving letters or visits. Everything goes through the police at this stage. It takes a while before everything is settled. We at Østjylland Prison tend to ask the police if the prisoner can call his family to tell them where he is. Most of the time this is permitted. If it is not allowed, the police will phone for them. This whole process takes a long time.

How are the prison conditions during the pre-trial detention period with respect to the children of the prisoners?

Due to a lack of prison cells, the remand prisoners are often moved from prison to prison. Most prisoners will be moved at some point during this period, which can be very frustrating for both prisoner and family. You might have just planned a visit and then you find out you have to be moved to a different prison. It is down to the police and defence attorney to inform the family if the prisoner has been moved to another prison.

We try to take into consideration the fact that a prisoner has family living close to the prison. This is not systematized, however: there are no rules in place and sometimes it is difficult as we might not know where the children are living.

Does a convicted person's status as a parent affect the trial and/or sentencing procedure? Does it affect the location of the prison where the sentence is to be served?

The distance from the family is one of the aspects we look at, but there are other things we have to take into consideration. The Danish Prison and Probation Service does try to place prisoners in prisons close to their family.

Østjylland Prison is slightly unusual in that it is a maximum security prison which houses gang members, members of the Hell's Angels, drug dealers, etc. Denmark is a country which likes to categorize everything: everything becomes very specialized. For example, if you are a gang member, there are only a few places where you can be imprisoned. Due to the nature of the prison, it can be difficult for us to take the family into consideration.

We also have a special unit for those inmates who are to be deported. These inmates are not entitled to prison leave to see their family. They can receive visits from their family but cannot leave the prison. To the best of my knowledge, the fact that they might have children living in Denmark has no real impact on whether or not they are deported, unlike in Sweden¹. The law is much stricter than it used to be. In general, in my opinion, the fact that you have children does not really affect the sentence or the way a judge looks at a case. That being said, when they receive the sentence and are sent to prison, we do very much try to plan their time with the children in mind.

At Østjylland Prison we don't have a mothers and babies unit. In other prisons which do the child may stay with the mother until the age of two. After that the child must leave the prison. We do have a prison rehabilitation centre where inmates can go after having been imprisoned. If a mother has a small child, she may be able to move into this centre but this really depends on the sentence.

*Interview conducted by
Hannah Lynn
Project Coordinator
Children of Prisoners Europe*



¹ See Martin Weyler's article in 3rd edition

Children of prisoners in Serbia

Contact between a child and their parent, the child's best interests during sentencing and staff training: a brief overview of the conditions in Serbia.

Children of prisoners are not paid due attention in Serbia, neither in the legal framework, nor in practice. The only circumstance where a parent-child relationship is clearly recognized is in cases when a child is a victim of their parent's offence. But this is the issue of the child-victim and child-witness position and the child's right to be protected from any kind of violence, abuse and neglect, rather than the issue of child's rights deriving from their relationship with parent, including an imprisoned or detained parent.

“there are some provisions in the law and prison rules regarding family visits, but they are very restrictive”

Concerning the situation where a child is not a victim of parent's offence, there are actually very few provisions regarding the relationship between the child and their detained or imprisoned parent. Many issues are not (sufficiently) regulated: the way the imprisoned parent continues to execute parental rights and obligations; the way they continue to participate in their child's everyday life; how the imprisoned parent executes their right to

reach important decisions concerning their child (Family Law stipulates that the following issues have to be decided upon by both parents unless one or both are deprived of parental rights: education; substantial medical interventions; change of the child's residence; disposal of the child's assets); maintaining the quality of the relationship between a child and their imprisoned or detained parent (frequency of visits; visiting hours; length of visits; visiting conditions; etc.); assessment of the child's best interests; the role of the social services in this matter; child's participation, etc.

There are some provisions in the law and prison rules regarding family visits, but they are very restrictive. Visits of family members, including children, strongly depend on the categorisation of the imprisoned parent and assessment of their behaviour and impact of “privileges” (visits) on their socialisation and correction. The child's best interest and the child's right to maintain quality relations with their parent are not of crucial importance in the regulations or practice.

One specific situation has been a subject of the Ombudsman's inquiry. This was the case of a child born in prison, whose mother is serving a sentence of longer than one year. Legal provisions stipulate that when an imprisoned woman gives birth in prison, her child can stay with her up to one year, after which a child shall be taken care of by the other parent, or a family member or a foster family. So, during their first year, a child can live with a mother in prison or at the detention facility. Specific conditions for an infant shall be met, bearing in mind the child's best interests. At the same time, however, conditions for a child's everyday life should not have an adverse effect on execution of prison rules.

The core of the complaint in this case was that the child did not have sufficient contact with her father; only during visiting hours with his wife, as defined by the Prison Rules. The Serbian Ombudsman issued a recommendation that prison authorities, when organizing contacts between a child and a father, should not be guided by the



Serbian Flag

Children of prisoners in Serbia

Law on Execution of Criminal Sentences and by the Prison Rules, but by the Family Law which guarantees a right of the child to maintain a quality relationship with a parent with whom the child does not live. The second recommendation was that the prison should extensively communicate with the social services in every case regarding the right of the child born in a prison or detention facility to maintain a close relationship with both parents.

In Serbia, the fact that a defendant is a parent can be used by the court as an extenuating circumstance, which could lead to the mitigation of the penalty. The word “can” here means that parenthood is not explicitly defined as an extenuating circumstance as is the case with, “the degree of culpability, the motives for committing the offence, the degree of endangering or damaging protected goods, the circumstances under which the offence was committed, the past life of the offender, his personal situation, his behaviour after the commission of the criminal offence and particularly his attitude towards the victim of the criminal offence”, all of which are explicitly stipulated as being extenuating circumstances. Therefore, it is at the court’s discretion whether the parenthood of the defendant and indirectly the defendant’s child’s best interests shall or shall not have an impact on the sentencing.

“it is at the court’s discretion whether the parenthood of the defendant and indirectly the defendant’s child’s best interests shall or shall not have an impact on the sentencing.”

Training on the rights of the child in criminal law and procedure targets two issues: a) juvenile delinquency and the rights of the child defendant in police, prosecution and court procedures and during execution of sentences; b) the position of the child victim of certain offences. The parent-child relationship is recognized only in cases where a child is a victim of an offence committed by the parent (i.e., domestic violence, abuse and neglect of the child, etc.). None of these regular training programmes (mandatory for judges, prosecutors, police officers, attorneys, social workers) deal with the large scale of dilemmas and questions regarding the position, rights and interests of children of a detained or imprisoned parent, whose (alleged) criminal act is not committed against the child.

Natasa Jovic
Head of Department for the Rights of the Child
Office of the Serbian Ombudsman



Map of Serbia

Ukraine: Conditions of detention of women with children in prison

One of the most vulnerable groups of sentenced women is that of mothers living with children in prison.

Pregnant and nursing women in places of detention face particular problems because a penitentiary institution is not an ideal place for raising a child, while the separation of a small child from their mother is also not a suitable solution.

The sentencing of pregnant women, nursing mothers and women with children under the age of three is regulated by Article 141 of the Criminal Executive Code of Ukraine.

Taking into consideration the particular vulnerability of female prisoners, the Criminal Executive Code of Ukraine foresees certain features of serving sentences of imprisonment, which is to improve the rights of pregnant women, nursing mothers and women with children under age three.

Sentenced women who are at least four months pregnant, or women with children under age three are sent to serve their sentence in a correctional prison, where there is a childcare centre. These child care centres were created for two correctional prisons: Chornomorsk correctional prison in the Odessa Region (№ 74), if this is the woman's

first sentence and Chernihiv correctional prison in the Chernihiv Region (№ 44), if she has already served a sentence prior to this one. In childcare centres the necessary conditions for a relatively normal life and for the development of the child are ensured.

Additional rights are granted for female prisoners with children in these childcare centres. In particular, such prisoners are allowed to work if they request as such, and with the consent of the medical staff at the prison, and are allowed to make a brief visit out of the prison (within Ukraine) to leave children with relatives. They cannot be placed in a disciplinary cell or cell-type room (separate cell), and separate, higher nutritional standards are established for them. However, the above categories of female prisoners must strictly comply with the established order of the sentence. The prison has an additional duty to execute: ensuring that the child's upbringing is treated with the necessary comprehension and consideration.

The mother of the child can live with her children in the children centre. If the convicted woman did not express a desire to live in the centre with her child, she is given the opportunity to communicate with her child based on the internal regulations of the childcare centre.

There are also conditions for the child's communication with close relatives while inside the prison. Official documents are required which confirm the relationship between the relative and the child. Such communication is not limited in time nor in frequency, and is carried out on special premises for these purposes.

Children of convicted women can stay in the childcare centres up to the age of three. Thereafter, they can be transferred to live with relatives or

Ukraine: Conditions of detention of women with children in prison

others, with the consent of their mother or guardian. If this is not possible, the child is sent to the appropriate child care institutions.

“children who live with their mothers in prison are limited in communication with other family members”

If the mother of a child who has reached the age of three has less than a year of sentence left to serve and she has been seen to conscientiously perform her maternal duties, the child’s time in the centre may be extended by the prison administration until the mother’s release.

At the beginning of 2013, there were 94 children under age three in such institutions. However, until this year, the childcare centre in prison did not have official status of a childcare facility where children can permanently stay. Thanks to the intervention of the Ukraine Ombudsman, the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine issued a joint order of 21.03.2013 № 500/5/219 which approves, “the standard statute of childcare centres in prison”. This defined the organisational and legal basis of the childcare centre in prison.

Accounting for children in childcare centres in detention centres is solely carried out within the State Penitentiary Service. The abovementioned statistics are not publicly available, including for employees of the Ministry of Social Affairs and the Ministry of Health of Ukraine.

Children who live with their mothers in prison are limited in communication with other family members, including with the other parent.

For a long time, the issue regarding the appointment and payment of social assistance to this category of children was not solved. Only in April of this year did the Government of Ukraine determine the regulations regarding the appointment and payment of public assistance at childbirth for those cases where the mother and child are in pre-trial detention centres or penitentiary institutions.

Aksana Filipishyna
Office of the Ukrainian Commissioner
for Human Rights



Map of the Ukraine

Children's connections with imprisoned parents in Estonia

Due to the nature of imprisonment, it is inevitable that the prisoner's cohabitation and communication with his or her family and children is limited. However, notwithstanding the type of crime the parent has committed, as long as parental rights¹ to a child have not been restricted, the parent in detention has the right to maintain personal contact with his or her children. It is also the fundamental right of the child to be able to communicate and maintain a relationship with his or her imprisoned parent.

“the Imprisonment Act (IA) of Estonia does not treat children differently to other family members in terms of communication with the prisoner.”

External interaction is what should uphold family connections². The Imprisonment Act (IA) of Estonia does not treat children differently to other family members in terms of communication with the prisoner. General provisions regarding a prisoner's communication with the outside world apply to parent-child connections too³.

In addition to the right of correspondence and the use of telephones (art 28(1) of IA), face-to-face visits are especially important for maintaining family ties. Visits can help both the child and the imprisoned parent to deal with changes: support attachment, dispel fears and in some cases even create an opportunity for building a better and healthier relationship.

In Estonia, an inmate housed in a closed prison⁴ has the right to receive short-duration and

long-duration visits. According to art 24(1) of IA, a prisoner has the right to receive at least one supervised visit per month from their family members and other people. Such short-duration visits take place on prison grounds (art 31(1) of Internal Prison Rules) and can last up to three hours (art 24 (2) of IA).

Art 25(1) of IA stipulates that a prisoner is allowed to receive long-duration visits from a child, among other close family members (also adoptive, step or foster child). A prisoner is entitled to at least one long-duration visit every six months. A long-duration visit means that a prisoner and a visitor are allowed to be together without constant supervision on prison premises designated for such purpose during a period ranging from twenty-four hours to three days (art 25(2) of IA). Such premises usually consist of one- or two-room hostel-type apartments, which must be paid for by the visitor or the prisoner. Any food and hygiene supplies or equipment used during the visit must also be paid for.

In theory, long-duration visits seem to be a good opportunity for the child to see his or her parent. However, this right is often left unexercised due to the obstacles the prisoner's family may face. Often an imprisoned parent is serving his or her sentence in another city and the family does not have financial resources to reach the prison, not to mention paying for the room, food and hygiene supplies used during long-duration visits. Also, scheduled visits often coincide with workdays. This makes it hard or even impossible for the child to visit the parent in prison, as it might not be possible for the child to miss school or for the person accompanying the child to get off work. Another obstacle is that the family or the child may feel stigmatised, ashamed, or looked down on by society and for that reason they want to stay away from the prison.

A prisoner in a closed establishment may also be granted permission for prison leave. Such leave can be for an overall duration of twenty one calendar days annually if a prisoner has served at least one year of their sentence (art 32(1) of IA). In ad-

1 See Art 143 of Estonian Family Law Act

2 The Supreme Court of Estonia has emphasized the great importance of a prisoner's communication with family members. Estonia Supreme Court decision of 26 May 2005, nr. 3-3-1-21-05, p.14.

3 See chapter 2 section 3 of Imprisonment Act (see 2)

4 Open prison prisoners (art 20(1) of IA) enjoy largely the same standards of external communication as closed prison prisoners, but with some differences stipulated in art. 22(3) and art. 32(3) of IA (see 2)

Children's connections with imprisoned parents in Estonia

dition, a prisoner may be granted unsupervised leave for family reasons too. It should be noted that such leave is authorised only after a very thorough analysis of different risks and only when prison authorities have built up a certain level of trust in a prisoner. An imprisoned parent's wish to attend a child's birthday or school graduation party as a reason for a leave is usually not enough.

“visits can help support attachment, dispel fears and in some cases even create an opportunity for building a better and healthier relationship”

An important exception is made for female prisoners regarding their right to maintain connections with their children while in detention. A mother and her child of up to three years of age (inclusive) may live together at the request of the mother if the guardianship authority grants consent (art 54(2) of IA). It should be noted, however, that this option is not authorised very frequently. The prison where female prisoners are housed is one of the oldest prisons in Estonia and its premises are far from child- and mother-friendly. In addition, although the guardianship authority should consider all different aspects when deciding on a mother's request, a common rationale for refusing to allow the child to stay with his or her mother is simply “a child is not a prisoner and his or her place is not in prison”.

The Chancellor of Justice of Estonia has raised an issue regarding art 54(2) of IA: it speaks only about mothers having the right to cohabitation with a child in prison; fathers are not granted the opportunity to file such a request. In 2011, the Chancellor of Justice drew

the attention of the Ministry of Justice to the fact that the perception of women being a primary child-carer is nowadays an insufficient justification⁵ for a difference in treatment of parents, and requested that the law be modified so that both mothers and fathers would be treated equally. However, the law has not yet been changed.

We should bear in mind that an Imprisonment Act establishes a minimum standard with respect to parent-child communication; if justified, the prison authorities may make exceptions and allow more visits. It is also important to note that besides the obstacles which the child and the family may face when planning a visit or coming to the prison, there can also be cases when authorisation for a visit is refused (e.g., the visit may endanger the health and well-being of the visitor or the prisoner) and even the minimum amount of visits are left unexercised.

Ksenia Žurakovskaja-Aru
Adviser to the
Chancellor of Justice of Estonia



Estonian Flag

⁵ See also 07.10.2010 ECHR judgement in case of Konstantin Markin v. Russia.

Prisons and children in Italy: laws and regulations

In Italy today, increased attention is being paid to the issue of prisons and it is therefore a very important and interesting time for this topic, even if it is still very much in evolution.

The existing Italian laws are considered well-advanced and well-constructed for the protection of detained people's dignity and rights, as well as for the direct or indirect support of parenting, despite the EU's recent concerns about prison overcrowding.

The 2011 European Research "*When the innocent are punished: children of imprisoned parents. A vulnerable group*", carried out in Italy by the organisation Bambinisenzasbarre, under the coordination of the Danish Institute of Human Rights, and the new 2013 Italian edition "*White book: prisons coping with children*", demonstrated that Italian prisons have neither enough spaces devoted to welcoming children, nor special protocols put in place for them or visiting times compatible with school schedules. Some years ago, Bambinisenzasbarre "created" the welcome area "*Yellow Space*": an integrated socio-educational space, inside the prison, for children who are preparing to meet their detained parent, where, with the help of psychologists and pedagogues, the experience of the prison becomes "*understandable*", through dialogue and interaction with the child. The project is going to be extended from Milan to the whole of Lombardy (Northern Italy) and to other Italian regions.

On 24 October 2013, the Italian Minister for Justice reported to the Commission of Human Rights of the Italian Parliament, declaring the need to: "*give particular attention to the conditions and way a child is received when visiting his/her parent in prison, to how the meeting happens, to the possibility of spending a playful time with the parent in a proper space. This area, which is going to be set up in all prisons, is generally called 'Yellow Space.'*" In this way, the Minister mentioned Bambinisenzasbarre's Yellow Space as a model.

Italian legislation currently in force

Laws for the protection of detained people's dignity, and therefore for the direct or indirect support of parenting, are currently in force in Italy.

The path towards this implementation began in 1975 with the reform of the penitentiary system (Law n. 354 of 26 of July 1975), which aligns the treatment of detained people in Italian prisons with the principles governing the protection of a person deprived of personal freedom, respecting totally the UN and Council of Europe rules. This path has definitely established a changeover from a repressive system, inspired by the retribution principle, to the principle of the use of punishment as a tool for rehabilitation and re-socialization (as already provided for by art. 27 of the Constitution).

As regards family relationships, the system has accepted the principle that penitentiary treatment "should facilitate appropriate contact with the external world and the relationship with the family" (art. 15), providing for the possibility of work outside the prison (art. 21).

The Gozzini Law (n. 663 of 10 October 1986) was an important step towards the protection of family relationships for detained people, thanks to the introduction of alter-



Children in playground through a Bambinisenzasbarre program

Prisons and children in Italy: laws and regulations

native measures to detention, accessible even to people who are not yet in custody, avoiding the disruption of parental-child relationships.

The Simeone-Saraceni Law (n. 165 of 27 May 1998) has made this possibility automatic for prison sentences of a duration of less than four years. The *Simeone-Saraceni Law* also introduced the possibility of home detention for health or family reasons for pregnant women or women with children under ten years of age. The subsequent regulation of the prison system has also established the essential criteria for nurseries in prisons or in women's sections. But the fundamental milestone has been the *Finocchiaro Law* (n. 40 of 8 March 2001), which introduced "special home detention" for mothers of children under ten years of age, even for prison sentences longer than four years, as long as there is no possibility of relapse, if one-third of the sentence has been served and if the mother has a domicile.

The *Finocchiaro Law* also provides for the extension of art. 21 of the Italian prison rules, allowing detainees to leave the prison to go to work during the day and to return to prison in the evening but also the possibility to leave the prison to support any under-children, even if they do not have a job. This means that detainees can leave the prison for the sole purpose of taking care of their children. Law n. 62 of 21 April 2011 was eagerly anticipated, hoping it would amend the restrictions of the *Finocchiaro Law*, but it has actually contributed to reducing the law's effect on the protection of parenting. This law establishes the principle according to which a mother with a child under six years of age does not have to go to prison, with the exception for crimes that are considered very serious. In these cases the new law introduces ICAM (Istituto Carcere Attenuato per Madri), Attenuated Prison Institute for Mothers (the first one has been operating in Milan since 2007) as a pilot model in cases when alternative measures are not possible. The law calls for Protected Family Homes which are considered the best solution to keep children of imprisoned parents out of prison.

This law, which comes into force in January 2014, should allow more access to alternative measures even during the pre-trial phase, but there are many controversies on the interpretation about its application and the best possibilities for implementation.

Over the last few months, *Bambinisenzasbarre* has been working closely with the Italian Ministry of Justice and the National Ombudsman for Children for a "Landmark Document" that will be announced as soon as it is officially in place.

Lia Sacerdote
Bambinisenzasbarre



Lies, secrecy and stigma: the impact on the child

Some of the questions which present themselves when investigating the impact of parental imprisonment on a child include debating whether it is best for children to be told that their parent is in prison, whether the child should be told the details of the crime committed, and whether the child should be encouraged to speak about the situation with his classmates or teacher and at school.

Honesty, communication and sharing information

Children of imprisoned parents are sometimes not told that their parent is in prison. This may come from a desire to protect the child from a truth which can be traumatic and stressful for the child to learn about. Sometimes, however, the motivation may come from the imprisoned parent's desire to protect themselves rather than do what is in the best interests of the child. Sometimes the parent does not know that it is in the best interests of the child. On the whole, children find it much more difficult to cope with their parent's often sudden disappearance if the truth is kept from them: it can increase insecurity and erode trust between parents and children¹. As Alain Bouregba argues, if understanding and transparency form the basis of the separation, and the child includes himself in the situation, the child's subjective position is reaffirmed, whereas if the separation is premature and brusque, with no room for explanation, the child may well feel treated as an object². It is generally agreed that disclosure of the imprisonment of a child's parent (in an age-appropriate way) helps the children adjust to the separation and reduces feelings of anxiety and guilt. One of the conclusions of the COPING report deemed that children can be "more resilient and adaptable to adversity than adults often recognise"³. Furthermore, as

1 Jones, A. et al, 2013. 'The COPING Project: Children of prisoners: Interventions and mitigations to strengthen mental health'. University of Huddersfield

2 Bouregba, A. (1991) 'De la rupture au maintien des liens'. *Transitions* 31: Enfants-Parents-Lieux: 80-85. Cited in: Van Nijnatten, C. (1998) 'Detention and development: perspectives of children of prisoners' Mönchengladbach: Forum-Verl. Godesberg, p84.

3 Jones, A. et al, 2013, p.65-67

Carolus van Nijnatten argues, rather than hiding the facts of the parent's imprisonment from the child, the child should be informed, should be made part of the situation⁴. If the truth is hidden from the child, the child experiences feelings of exclusion from sharing his or her grief with the rest of the family.

Ambiguous loss

Children affected by parental imprisonment experience many emotions which are similar to those felt during bereavement, such as shock, grief, loss, sadness and fear. "Ambiguous loss" is a term used to describe the grief associated with a loss that is uncertain, due to, in the case of children of prisoners, the parent suddenly no longer being physically present but still being a part of the child's life. Ambiguous loss prevents the child's natural grieving process and he or she cannot find closure nor know how to deal with the unfamiliar situation in which he or she finds himself.

When a child is in mourning for the death of a family member, most schools have the resources and staff to support the former, and, as Kenneth J. Doka highlights, "empathy and help are readily on offer"⁵. On the other hand, as imprisonment is often viewed as a taboo topic, and "unacceptable", Doka claims this can cause the child to feel a sense of disenfranchised grief, similar to ambiguous loss. It is not hard to see how this could be psychologically damaging for children: "turning what is already a difficult situation into something that they feel must not be talked about, or worse, that they are somehow guilty by association."⁶

Stigmatisation and bullying

Many children experience stigmatisation following parental imprisonment. "Stigma and feelings

4 Van Nijnatten, C. (1998) 'Detention and development: perspectives of children of prisoners' Mönchengladbach: Forum-Verl. Godesberg, p80.

5 Doka, K. J. (1989) 'Disenfranchised grief: Recognizing hidden sorrow'. Lexington, MA: Lexington Books/D. C. Heath and Com, xvi, 3-11.

6 Doka, K.J. (1998)

Lies, secrecy and stigma: the impact on the child

of isolation associated with being the family of a prisoner, of being contaminated in some way by the deeds of the offender, [are] central to many of the difficulties that children and families face⁷.” There is also the category of children who fear stigmatisation to such an extent that they avoid telling friends and classmates to avoid bullying and ostracism. In some cases it has been noted that the child’s schoolteacher has advised the child not to talk about the situation to his or her classmates, for these reasons⁸. This often has negative effects on the child as the burden of hiding such a huge secret is heavy for a child to bear. It has been demonstrated that when a child shares his or her feelings with peers and friends it helps lighten this burden.

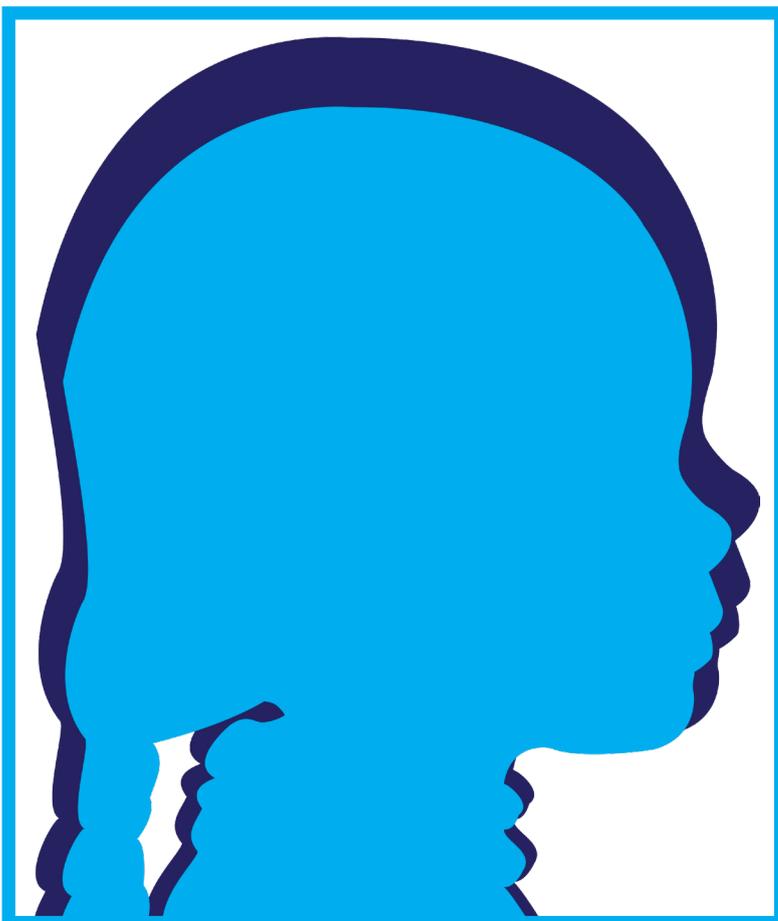
However, in the COPING Project country report focusing on Germany, it was observed that in almost all cases stigmatising behaviour was not experienced⁹. The comment was also made that the data suggest that in most cases, “the main problem is some kind of self-stigmatisation within the families”, associated with low self-esteem and self-efficacy¹⁰. This self-stigmatisation can mean that the family withdraws from social contact or even moves home to avoid potential stigmatisation. It is agreed that stakeholders, such as media bodies, local councils, NGOs and other agencies should work towards raising awareness of the issue in an attempt to change public attitudes towards children of prisoners. There have been some moves towards this more positive representation of the issue in the media, such as the addition of a new character, Alex, in the children’s television programme Sesame Street, whose father is in prison.

7 Cunningham, A. (2001) ‘Forgotten Families – the impacts of imprisonment’ Family Matters No. 59 pp. 36-37

8 Jones, A. et al, 2013. ‘The COPING Project: Children of prisoners: Interventions and mitigations to strengthen mental health. Country Report: Germany’. University of Huddersfield.

9 Jones, A. et al, 2013, p.65-67

10 Jones, A. et al, 2013.



On the programme’s website a toolkit is provided to support parents in guiding their children through the process of parental incarceration, which deals with the various topics relating to the problems this issue causes. It is awareness-raising initiatives such as this which remind us that these children are above all just that: children, who have a right to be heard, listened to and included in the decisions which affect them.

*Hannah Lynn
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Children of Prisoners Europe*