

## **Rehabilitation perspectives for irregular migrants: Belgium, England & Wales, Greece and the Netherlands.**

Miranda Boone  
The Guest Editor

### Editorial

This special issue is born out of outrage. Outrage with the fact that irregular migrants are almost totally excluded from the regular rehabilitation opportunities in the Netherlands. That's why the authors of the Dutch contribution of this special issue took the initiative to launch a call and invite other authors to write about the elaboration of the rehabilitation principle for irregular migrants during the implementation of a criminal sanction in their country. In our call we included the following research questions.

- Can you describe the number of irregular migrants and their share in the crime and conviction rates?
- How is the rehabilitation principle for irregular migrants elaborated in national law, policy and case law in your particular country and what are the arguments for the elaboration of the rehabilitation principle for irregular migrants in this way, regarding:
  - o Custodial sanctions;
  - o Sanctions for mentally ill offenders;
  - o Sanctions for addicted offenders;
  - o And non-custodial sanctions;
- If any empirical data are available: what does this way of elaboration of the rehabilitation principle for irregular migrants during a criminal sanction mean for their preparation on their return to society?
- How does the elaboration of the rehabilitation principle for irregular migrants during a criminal sanction relate to the elaboration of the rehabilitation principle for other offenders?

Although seven countries were interested at first instance, three had to redraw as a result of the extreme difficulties in gathering the relevant information. The contributors to this special issue more or less kept themselves to the outline. This does not mean, however, that the contributions are very much alike. A first problem we all faced was that we had to decide whom we considered to be irregular migrants. Canton and Hammond correctly point at the stigmatizing character of the term connected as it is to the possibility of expulsion and forced return. Besides, the term is often wrongly used, for example in the sense that citizens of the European Economic Area (EEA) are sometimes classified as such, even though freedom of movement is a fundamental right in the EEA. And even if used in its most objective meaning

to refer to a person without a valid status of residence, this status is still very flexible and open to interpretation. A residence status can change as a result of the passage of time, a court decision or a policy measure. Because of these problems both Canton and Hammond and Pitsela and Antonopoulou decided to start their research from the broader concept of foreign nationals or aliens respectively and from there pay specific attention to the position of offenders who do not have a legal entitlement to residence. This is also the consequence of the fact that problems concerning the accessibility of rehabilitation facilities for this group of offenders is in Greece and in England & Wales, more than in the other two countries, connected to the foreign status of the offenders as much as to their irregular status, a finding I will describe in more detail below.

A second problem we had to overcome was related to the content of the rehabilitation concept. Rehabilitation has many substitutes and similar terms, each with its own specific meaning (see the Belgian contribution for an overview). Besides, the principle is elaborated in the national legislations in different ways. All authors choose their own interpretation, sometimes more connected to the theoretical debate on rehabilitation, sometimes based merely on the legal definition of the principle in national or international legislation. But whatever definition we choose, we all came to the conclusion that the application of the rehabilitation principle on a category of offenders that (possibly) won't return to the country they are imprisoned encounters fundamental problems that are hardly thought of by policymakers and penologists. To give two examples. Canton and Hammond prefer the French-orientated concept of rehabilitation of restoration of the individual to their own rights. But that immediately raises the question what rights irregular migrants should be restored to given their predicament and their fluid and uncertain legal status. In the Netherlands the re-socialisation principle, together with the principle of minimal restrictions, forms the heart of the Dutch penitentiary law. The literal meaning of the re-socialisation principle that can be found in the law is 'preparing for the return to society', but since it is often uncertain to what society irregular migrants will return, the question arises: for what society should they be prepared? And even if that last question can be answered, the question remains *how* they should be prepared given the fact that there is hardly any empirical information available concerning the specific needs of former immigrants, refugees or asylum seekers in their rehabilitation and the gap in the existing literature on rehabilitation.

A general conclusion that can be drawn from the different contributions is that the rehabilitation concept is totally underdeveloped for this category of offenders. The problems that irregular migrants face are sometimes more related to *de jure* sometimes more related to *de facto* limitations. The first limitations often have their basis in the lack of a valid permit of residence. In Greece the majority of foreign prisoners are forced to leave the country on an administrative basis without any preparation on their release at all. In the Netherlands irregular migrants are excluded from most rehabilitative instruments on the basis of the (often incorrect) argument that they will leave the Dutch country after their release, despite the Dutch highest legal court stated back in 1987 that the significance of the re-socialisation principle is *not* restricted to those who return to *Dutch* society. At first glance, it seems peculiar that in Belgium irregular migrants sometimes have better opportunities to be granted early release because they don't have to fulfil the strict conditions that Belgian nationals have to. At the same time it testifies to a stunning indifference towards the individuals involved and disrespect towards non-European countries when the high principles that underlie the Belgian early release system suddenly lose their value if non-nationals are subject of it.

The *de facto* limitations irregular migrants are confronted with are often similar to those of other foreign national prisoners, which is one of the reasons why some authors preferred a broader scope for their contribution. We only know little about them, however, due to the lack of empirical information on the rehabilitation process of foreign nationals or irregular migrants. Even though the legal status of the offender is not a formal criterion to exclude them from work and education in prison (in the Netherlands), language problems often stand in the way. The distance away from their partners, families and friends or their lack of an entitlement to reside makes it difficult for this category of offenders to receive visits, an important condition for a successful return. Also probation services and non-custodial sanctions are less accessible for this category of offenders due to various reasons. In cases where sanctions have a non-custodial component, for example the Dutch custodial measure for mentally ill offenders, irregular migrants are for that reason not eligible for that sanction and their mental problems remain unresolved, at least until their expulsion from the country.

Four contributions is too few to make a comparison. It is obvious, however, that the rehabilitation of irregular migrants who are convicted for a criminal offence is a neglected issue in all four countries. As far as the exclusion from rehabilitation instruments and perspectives is grounded in the status of residence, it can be seriously discussed if these situations are defensible under national and international law. As far as practical problems lie behind it, these problems should be detected and solved as far as possible. If we take rehabilitation seriously, as most readers of this journal seem to do, we have to pay attention to the rehabilitation processes of this specific group that form a considerable part of the prison population and offender population in all countries discussed in this special issue.