

JUDIT STRÖMPL*

The rights and well-being of children of incarcerated parents in Estonia**

ABSTRACT: This article provides an overview of the situation of children of incarcerated parents (IP) in Estonia compared to the international situation from the perspective of the rights and well-being of the child. Studies published in recent years focus on the negative impact of parental imprisonment on the well-being of their children and on child resilience (i.e. how children cope with this difficult situation). Legal regulation seeks to provide a framework to safeguard the child's well-being considering the child's rights. Drawing on relational-culture theory, this article addresses the issue of parental imprisonment from the perspective of the relationships between the different actors involved – the child, the IP, other carers outside the prison, the community, and society. Legal regulation seeks to standardise these relationships at international and national levels. The international legislation (United Nations Convention on the Rights of the Child, Charter of Fundamental Rights of the European Union, Council of Europe on European Prison Rules) is designed to protect the rights and well-being of the child, and it must be considered in all situations worldwide, including when a parent is serving a prison sentence. The main question of this article is how does Estonian legislation, child protection policy, and practice meet international requirements for children of detained parents? Using a case-study method, the article introduces the current situation in the Estonian prison system in terms of conditions for communication between children with their IPs. The relevant Estonian laws (Constitution of the Estonian Republic, Family Law Act, Child Protection Act, Prison Act, Prison Rules) are analysed in the article in comparison to international legislation and their practical implementation.

KEYWORDS: child's rights; well-being; incarcerated parents; child-parent relations; international and national legislation, Estonia.

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1. Introduction

According to the Global Prison Trends 2023 report, there are 11.5 million people in prison worldwide. Almost 23 million children globally are affected by imprisonment, directly or indirectly. This is 1+ per cent of the world's child population. There are (estimated) 22.5 million children with at least one imprisoned parent and 19,000 children living in prison with their mother.¹ According to the Statista webpage, the leading countries in January 2024 are the US (1,767,000), China (1,690,000) and Brazil (840,000) – all outside Europe. Among European countries on the largest imprisoned populations are the Russian Federation (433,000) and Turkey (341,000).²

Children of incarcerated parents (IP) are spoken of as invisible, voiceless³ and disenfranchised orphans, unable to publicly mourn their missing parent(s).⁴ These children have to suffer not only the loss of a parent serving a prison sentence but also shame, stigma, and exclusion.⁵ They bear the punishment along with their parent, even though they did nothing wrong.⁶ Although it is commonly said that children are not responsible for their parent's actions, the actions of IP also leave a bad mark on their children. This is either in the figurative sense when the child is *de facto* at liberty, or directly when the young child is in prison with their mother.

Studies from all over the world speak of the risks of the negative impact on a child of the imprisonment of one or both of their parents.⁷ In the list of 10 adverse childhood experiences, one concerns the parent's

¹ Global Prison Trends, 2023, [Online]. Available at: <https://www.penalreform.org/global-prison-trends-2023/> (Accessed: 10 January 2024).

² Statista (2024) Countries with the largest number of prisoners as of December 2023, [Online]. Available at: <https://www.statista.com/statistics/262961/countries-with-the-most-prisoners/> (Accessed: 28 February 2024).

³ See, Krysik and Rodriguez, 2022, pp. vii-xi; Leeson and Morgan, 2022; Marshall, 2008; McGinley and Jones, 2018, pp. 342-344; Navrátilová et al., 2024; Žurakovskaja-Aru, 2015.

⁴ Doka, 1989.

⁵ Benninger et al., 2023; Bessemer et al., 2019, pp. 65–81; Hollins and Krupat, 2022.

⁶ The term "courtesy stigma" was developed by Erving Goffman in 1963 to refer to the stigma that is placed on individuals who are not deviant themselves.

⁷ Flaquer, 2014; Jones et al., 2024; Kjellstrand, Reinke and Eddy, 2018; Kerr et al., 2022; Lee et al., 2022; McGinley and Jones, 2018; Song et al., 2018.

imprisonment.⁸ Negative consequences can be connected to separation from the parent in cases where the relations between the child and the parents are good, or the shame and feeling of unjustness associated with the incarceration of a parent when the relations are not good.

Childhood studies around the world focus particularly on the environment in which the child grows up. This environment refers to relationships with parents and immediate carers. The importance of attachment relationships for the healthy development of the child is now proven.⁹ In this context, any breakdown between parents and caregivers has a negative impact on the child's well-being.¹⁰ At the same time, the child's connection to the wider social environment is also important and is linked to the family's status in the community and society.

Children's sense of belonging and identity is shaped by the relationship of their family of origin with the wider social environment.¹¹ Parental incarceration is a complex phenomenon that touches on a wide range of relations between the child and their family, the child and the wider environment, and the status of the family in the community. All these relationships have direct effects on the child's well-being.¹²

The legal basis for child well-being is set out in the UN Convention on the Rights of the Child (UNCRC). Accordingly, the assessment of the well-being of the children of IP must be guided by the rights of the child as formulated in the UNCRC articles. The concept of the best interests of the child is at the heart of the UNCRC and expresses its child-centred nature. Countries that joined the Convention on the Rights of the Child (CRC) are obliged to follow its ideas and requirements.

This article includes three sections. The first section provides an overview of international studies of the impact of parental imprisonment on children, while also highlighting different coping strategies among children. The second part of the article analyses the international legal regulation of the rights of children with IP and compares this with the relevant Estonian legal regulation. The third part describes the state of the Estonian prison system regarding communication between prisoners and their children. The

⁸ ACEs Aware, 2024, [Online]. Available at: <https://www.acesaware.org/learn-about-screening/screening-tools/> (Accessed: 22 February 2024).

⁹ Bowlby, 1953, 1988; Perry, 2009; Siegel, 2012; van der Kolk, 2015.

¹⁰ Ben-Arieh et al., 2014; Kerr et al., 2022; Turney and Haskins, 2019.

¹¹ Bourgeois et al., 2022.

¹² Goleman, 2006; Jordan, 2024.

article ends with a reflexive conclusion and some recommendations for improvements.

2. Children of IP

There is a large body of research worldwide that examines the impact of parental imprisonment on child well-being. Children of IP face shame, stigma, and exclusion. Studies have shown that children with IP are at risk of a range of negative outcomes in comparison to their peers.¹³ The next section takes a closer look at the risks identified by the research.

2.1. The negative consequences of the imprisonment of parent(s) on their children

It has been reported that children of IP have a double risk of developing various diseases such as asthma and other respiratory diseases in childhood, heart disease, high cholesterol, and diabetes in future life.¹⁴ There is also a risk of developing various mental health problems such as distress, anxiety and depression, learning disabilities, attention deficit hyperactivity disorder, etc.¹⁵ IP children are at higher risk of poverty, of living in a deprived area, of becoming victims of crime, and of externalising delinquent behaviour. These children suffer from adverse developmental outcomes, low school performance, becoming school dropouts, etc. All these characteristics place IP children at high risk of marginalisation, law-breaking, and antisocial behaviour.¹⁶

Jones et al.¹⁷ surveyed US families' perceptions of the support provided to families, particularly the children of prisoners, while the parent(s) are in prison. The study was based on interviews, and the results show that the imprisonment of parents imposes both financial and emotional burdens on the family that are not anticipated by the system. There is no compensation for the money spent on visits and keeping in touch, or for the emotional burden that the child and caregiver must experience in keeping in touch with the incarcerated parent. However, studies show that keeping in

¹³ Eddy and Poehlmann-Tynan, 2019, p. 3; Krysik and Rodriguez, 2022.

¹⁴ Shlafer, Davis and Dallaire, 2019, p. 103.

¹⁵ See, Benninger et al., 2023; Besemer et al., 2019; Eddy and Poehlmann-Tynan, 2019; Jones et al., 2024; Turney, 2018.

¹⁶ Kjellstrand et al., 2018; Luther, 2016; Nicols, Loper and Meyer, 2016.

¹⁷ Jones et al, 2024.

touch has a positive impact on both the child's development and, in particular, the parent's ability to avoid reoffending.¹⁸ What children expect most of all is to be treated humanely; for example, in terms of how they are searched during a prison visit, the language used to give instructions, and interactions through the glass window. There is a tendency to talk to children as if *they* are guilty of something. Children also expect a child-friendly explanation of parental detention. Another big issue is the shame and stigma children must bear because of their parents. The carers felt that children are not to blame for their parents' actions. Children talked about the burden that comes with either having to lie and hide the fact that their parent is in prison or suffer from stigma.¹⁹

Several studies have focused on how children cope with parental imprisonment as a traumatic event.²⁰ These studies use participatory methods with young people to investigate the impact of parental incarceration on children, how it harms their health and social well-being in the present, and the impact on their prospects. They were based on an analysis of young people's experiences and looked at services that work well and could improve the situation of IP children. As detention is a stressful event that has a traumatic effect and could be the social determinant of health in the present and in the future, it needs special attention by policymakers and practitioners in child welfare.²¹

2.2 Coping strategies and resilience among children

Leeson and Morgan²² examined a situation where children have taken on a caring role in relation to the imprisonment of their parent(s). This situation leads to age-inappropriate responsibilities for children and excessive emotional stress, which in turn can lead to mental health problems, educational deficits, etc.

At the same time, research also shows a high level of resilience among IP children.²³ Luther²⁴ for example, studied stigma management in college

¹⁸ Johnson and Arditti, 2022.

¹⁹ Several studies in other countries, including Estonia, report similar results (Aaslaid, 2022; Besemer et al., 2019; Kikerpill, 2021; Krysik and Rodriguez, 2022; Marshall, 2008; Navrátilová et al., 2024; Nicols, Loper and Meyer, 2016; Olesk, 2010; Song et al., 2018; Turney, 2018).

²⁰ Benninger et al., 2023; Berkel et al., 2023.

²¹ Coronado, 2022.

²² Leeson and Morgan, 2022, pp.198-199.

²³ Copp, et al., 2022; Luther, 2016.

students whose parent(s) were incarcerated during their childhood. The results show that these young people adopted a strategy of keeping a distance from their IP. They did not share information about the parent's incarceration with friends, schoolmates, or other close relationships. Separating from the IP and from the parent's criminal behaviour was a suitable way of coping for the young people who participated in the research. At the same time, hiding the truth from friends and peers causes enough stress to be difficult to bear. The research participants told stories about the sadness and regret they felt, for example, that their imprisoned fathers never fit the definition of a father. They could not call their fathers "dad" because they were never real fathers. Some held on to the insults longer, but did not let them go, while others did. They abandoned their parents. For example, they took their stepfather's surname. The parents of these young people were mostly drug offenders, which means that contact with the parent may have been interrupted earlier or may not have taken place at all due to the parent's continued use of drugs. Many of the participants valued their parents' behaviour as a role model against which they could compare their own behaviour and develop a pro-social role model for themselves. Therefore, the young participants in the study felt that their parents' criminal behaviour was beneficial in the sense that they did not want to be like their parents and that belief supported their pro-social behaviour and role model.²⁵

Similar research has been carried out in Scotland²⁶ with a focus on stigma management for adolescents and young adults with IPs. The authors found that a child with an IP can contrast themselves with a parent's imprisonment and find the motivation to develop pro-social behaviour. This research shows that children can cope and manage the challenges of stigma and shame, but the public needs more education on this issue and more services and support for children are needed.²⁷

The studies could be grouped thematically. Some focus on the difficult situation for children in relation to parental imprisonment. Others are interested in how children and families cope and how the well-being of the children can be supported, which is clearly based on putting the best

²⁴ Luther, 2016.

²⁵ See also, Thulstrup and Karlsson, 2017.

²⁶ McGinley and Jones, 2018.

²⁷ Axelson et al., 2020, pp. 1-10; Berkel et al., 2023; McLeod et al., 2021; Navrátilová et al., 2024.

interests of the child first. Others focus on the well-being of prisoners through their relationships with their children and pay little attention to the impact on the children of maintaining the relationships. There is no doubt that children can help their parents break away from a criminal lifestyle and become law-abiding citizens if the parents care for their children. Unfortunately, this is not always the case. Some parents do not care about their children whether they are free or in prison. There are parents who abuse their children and when they are in prison their attitude does not change. Therefore, in some cases, meetings between a child and his or her IP need to be carefully prepared by both the prison and the child's guardians.

One more study²⁸ needs to be mentioned, which looked at children's needs and the opportunities for meeting those needs. The children in this study talked about their needs: first, the need for love and care, without which the child could harm themselves. Second, to have enough information²⁹ about how the parent is doing in prison. This highlights the importance of contact with parents, so that "I can see how he looks." This could include personal meetings, listening to his voice, telephone and video conversations to know that he is alive. They also need attention from their parent, for example, in the form of birthday cards or Christmas cards sent by the parent from prison. Several examples of good practice and policy helping children of IPs implemented in the US are provided in the book edited by Krysik and Rodrigues.³⁰

3. National and international legislation³¹

Article 3(1) of the UNCRC reads: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.' The best interests of the child must guide every decision affecting the life of the child. For every child, the best environment to grow up in is a loving and caring family. The protection of the family is also supported by the CRC Preamble, CRC

²⁸ Navrátilová et al., 2024.

²⁹ Appropriate information for children is also highlighted by other authors, see for instance, Muentner and Eddy (2023), who point out that hiding the imprisonment of a parent from children also violates children's rights.

³⁰ Krysik and Rodrigues, 2022.

³¹ The analysis of the laws in this subchapter is partly based on an Estonian article by Žurakovskaja-Aru, 2015, pp. 407-409.

Article 8(1), Article 10 (1), and in national legislation. In the case of Estonia, these are the Constitution of the Republic of Estonia, the Family Law Act (FLA), and the Child Protection Act (CPA). On this basis, any decision that results in the separation of a child from their parent(s) may be detrimental to the child's well-being and best interests. A number of studies show the negative effects of separating a child from its parent(s), that are detrimental to the best interests of the child: for instance, neglect, sexual abuse, and other forms of maltreatment, including physical punishment and witnessing violence between parents.

In certain situations, it is in a child's best interests to be separated from their abusive birth family. Article 2(3) of the UNCRC describes the child's right to protection against all forms of discrimination and punishment, including an account of the status and activities of the parent, and art. 20 provides for special protection and assistance by the state in situations where the child cannot live with his or her parents. Article 20 of the UNCRC states: 'A child temporarily or permanently deprived of his or her family environment, or in whose own best interest cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.'

3.1. The legal basis of communication between children and their IP

If a parent commits a serious crime that requires a prison sentence, the best interests of the child to live with their criminal parent will not outweigh the best interests of the public, even if the relationship between parent and child is very good. Even then, the law prescribes establishing conditions to maintain the relationship between the child and the parent. In the case of an IP, one of the central issues is the right of the child to communicate with their parent in detention and vice versa, the right of the parent to communicate with their children. These are not just passive obligations, but a requirement for proactive action. In this context, the state must put in place services to support the protection of children from discrimination and to support their well-being while the parent is in prison. However, there are currently no statistics on the number of children in need of such services.³² There is also a lack of real knowledge about what specifically these children need. Among the needs and rights of the child are the right to maintain a

³² Chancellor of Justice, 2023, p.18.

relationship with the parent while the parent is in prison.³³ The UNCRC also prescribes the dignity of the visitor during prison visits, for example, the prohibition of search and seizure procedures.

Article 26 of the Bangkok Rules stipulates that contacts with the family and children of female prisoners must be encouraged. Article 28 of the Rules states that contacts with children must take place in an environment conducive to a positive experience of the visit. European Human Rights and Fundamental Freedoms, Article 8 provides for the right of everyone to respect for his or her private and family life. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) standards, Part II, point 51 states, *inter alia*, that it is essential for detainees to maintain contact with the outside world.

Article 24(4) of Recommendation (2006)2 of the Committee of Ministers of the Council of Europe on the European Prison Rules states that meetings with prisoners should be organised in such a way that they enable family relationships to be maintained and established as naturally as possible.

According to Article 24(3) of the Charter of Fundamental Rights of the European Union, every child has the right to maintain regular personal relations and direct contact with both their parents, unless this is contrary to the best interests of the child. This in turn is supported by Article 7 of the Charter, which reflects Article 8 of the European Convention on Human Rights.

Internally, the rights of the child (including the rights of a child with a parent in prison) are protected by para. 26 of the Constitution of the Republic of Estonia, the first sentence of which states that everyone has the right to the inviolability of family and private life. Para. 27(1) of the Constitution states that the family, as the basis of the survival and growth of the nation and of society, is under the protection of the state. While para. 26 of the Constitution obliges the state not to interfere in the life of the family, para. 27(1) concerns the external protection of family life and entitles a person to positive action by the state to help them to live a full family life.

According to para. 116(1) of the Estonian FLA, a child has the right to be with their parents in the family and the parent has the right and the duty to bring up and care for the child. FLA para. 143 (1) provides that a child

³³ UNCRC, Art. 9(3) reads: 'States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.'

has the right to communicate personally with both parents. According to FLA para 143(2), a parent must refrain from any action that is harmful to the child's relationship with the other parent or to make it more difficult for the parent to bring up the child.

Under section 143(3) of the FLA, the court (and not the prison, the other parent or the adult caring for the child) may restrict or terminate the right of contact. Therefore, in a situation where it is not in the best interests of the child for the parent to remain in custody, the child's right may override the parent's right to communicate with the child. Likewise, in a situation where communication with the IP is in the best interests of the child, the rights of the child may outweigh the interest of the other parent who objects to contact with the incarcerated parent.

The Prison Act (PA) of the Republic of Estonia allows prisoners to communicate with their family members, including children. PA para. 32 allows for correspondence and telephone calls, PA paras. 24 and 25 allows for short and long meetings, para. 54 allows a child up to the age of four to stay with the imprisoned mother if the mother applies for the child to stay with her in prison and the local authority agrees. Prisoners in open prisons can make short-term home visits or visit their children in a substitute home before their release.

Overall, it can be said that Estonian laws are in line with international regulations, so that the level of legislation is more or less in order. How the law is implemented in practice is the subject of the next chapter.

4. The case of Estonia

4.1. Methods of data collection for the case study

The following case study is based on a review of relevant Estonian publications, statistical data and publicly available policy documents, including prison regulations, reports, etc. In addition, I visited one of the three Estonian prisons, where I had the opportunity to conduct a brief observation and interview the prison staff concerned. After the interview, I asked some follow-up questions to which the prison officials kindly replied in writing.

I have not been able to meet a child with IP, but as I have been working for many years on the issue of childhood vulnerability (i.e. juvenile justice and substitute care), I have accumulated considerable material over these years, which I can now use.

4.2. Background information

In Estonia, the situation for incarcerated people is improving thanks to the reform of the prison system in recent years. The number of prisoners is decreasing every year. In January 2021, there were 2,341 prisoners in Estonia, or 176 people per 100,000 inhabitants.³⁴ In January 2023, there were 2,065 prisoners in Estonia, of whom 1,878 were serving their sentences in closed and 187 in open prisons.³⁵ This is 156 prisoners per 100,000 inhabitants or 0.15% of the Estonian population. In January 2024, this number was 151 per 100,000 of population. Thanks to the juvenile justice system reforms that started in January 2018, today, we have reached the point where there are no minors in Estonian prisons and the number of young adult prisoners (18+) is also decreasing.³⁶ Implementing alternative sanctions such as suspended sentences and electronic bracelets, among others also contributes to reducing the imprisonment of adult offenders.

While the overall direction of the prison system reforms is satisfactory, there is still much to be done. There is still considerable work to be done on the border between the criminal justice system and the social system. One area that needs urgent attention is the children of prisoners, identifying their needs and developing services for them. The work published so far in Estonia primarily focuses on managing the relationship between children and their IP. The Estonian state does not collect statistics on the children of parents serving prison sentences. Based on the Chancellor of Justice's calculations, this number could be around 3,000 children, but this is just an approximate calculation.³⁷

Very little research has been done on the well-being of IP children and their rights in Estonia. There are only a few student theses³⁸ and some review articles by employees of the Office of the Chancellor of Justice.³⁹ Existing studies also do not directly address the situation of the children of detained parents based on the children's own experiences, but either through

³⁴ Kuritegevus Eestis Vangistus – Kuritegevus, 2022, [Online]. Available at: kriminaalpoliitika.ee (Accessed: 12 December 2023).

³⁵ National Audit Office, 2023, p. 4.

³⁶ Ministry of Justice; Prison Service website, *Avaleht | Vanglad*, [Online]. Available at: vanglateenistus.ee (Accessed: 8 January 2024).

³⁷ Chancellor of Justice of Estonian Republic, 2023, p. 18.

³⁸ Aas, 2018; Aaslaid, 2022; Kikerpill, 2021; Olesk, 2010.

³⁹ Aru, 2016; Žurakovskaja-Aru, 2015.

child protection workers or other professionals,⁴⁰ or through a family member, such as a partner, spouse or adult sister or brother.⁴¹ Kikerpill⁴² examined the relationship between the incarcerated person and the child from the IP's perspective, a topic first studied 12 years earlier in a single master's thesis.⁴³

4.3. Communication rules between children and IP

As mentioned above, the few studies and analyses that have been carried out focus mainly on keeping prisoners in contact with the outside world, particularly with their families and children. However, relationships with children are the least researched. The issue of children in the prison system only arises when the mother of a young child, up to four-years old, is imprisoned.

Communication opportunities with the outside world in Estonian prisons include correspondence and phone calls (mobile phones are not allowed in prisons). Prisoners can also be visited by their relatives and friends, either for a short visit or for a longer stay with family members. All these forms of communication incur a financial cost. Sending letters requires the purchase of envelopes and stamps on both sides, and correspondence is relatively slow. If the child is not yet able to read and write well, written communication requires additional help, which already represents an indirect relationship between the child and parent. Letters are not read by the prison authorities, but they are tested using ultraviolet lamps and drug-sniffing dogs.

Telephone calls are also charged: each prisoner has their own phone card; if they have money on their card to make a call, they can communicate. Phone calls are allowed once a week in Estonia via a telephone in the hallway, with a 10-minute time limit. Newer forms of communication (e.g. video calls with a child) have been under discussion for years but are still not in use. There are computers in prisons, which could facilitate video calls with a child, however this is still at the planning stage. This, however, would solve several problems: video calls are free, and the child and parent can both hear and also see each other thereby reducing the need for short meetings, which are more costly and time-

⁴⁰ Aas, 2018.

⁴¹ Aaslaid, 2022.

⁴² Kikerpill, 2021.

⁴³ Olesk, 2010.

consuming, especially if the child lives far from the prison. When interviewed, the prison officials were rather enthusiastic about the implementation of video calls and could not explain the delay in their implementation.

At present, short and long meetings are the most common forms of communication between child and IP.⁴⁴

Short visits can last up to two hours. Family members of the detainee (spouse, father, mother, grandfather, grandmother, child, grandchild, adopted child, step or foster parent, step or foster grandchild, brother or sister) are allowed to come to a meeting that is divided by a glass window. Only family members of the detainee are allowed to attend the meeting without glass, and meetings are allowed once a month per detainee. Only family members of the prisoner are allowed to have a long meeting in a closed prison. The duration of a long meeting is one day, and the law requires the prison to provide a long meeting for a prisoner once every six months. People coming from abroad for a long meeting are allowed three days.

In an open prison, a short meeting without a glass barrier is held for up to three hours, and the family members of the prisoner and others whose reputation is not in doubt are allowed to attend. In open prisons, prisoners can go on short trips lasting one or two days. There is no support to prepare a child to meet an IP in prison; the parent at home must prepare the child and do the groundwork. The waiting rooms are made as child friendly as possible so that the children have something to do while waiting for the meeting to start. Short encounters, with or without a glass barrier, take place under a CCTV camera. Long appointments take place in designated rooms without constant supervision, with no CCTV cameras in the rooms and no one permanently on site. A supervisor checks from time to time that the meeting is going smoothly, and there is an alarm button in the room and a security phone to call the main guard if needed.

All the expenses involved in short and long meetings, including hygiene products and food, must be purchased from the prison shop, where prices are higher than in the normal shops outside the prison.

Short visits shall not be granted to a prisoner held in disciplinary detention. Long visits are not allowed for a prisoner in the reception section of the prison, a prisoner in an open prison, or a prisoner held in a cell for

⁴⁴ PA para. 24 and 25.

disciplinary purposes. Disciplinary sanctions can include a ban on meetings, but this is very rarely used and is not a common method of punishment.

According to the prison staff, meeting the child has a positive effect on the prisoner and they look forward to the meeting. In addition to short and long meetings, the units also organise family days, where prisoners can meet their relatives in a more relaxed atmosphere, outdoors in summer when the weather is fine and in the sports hall in winter. The frequency of family days per year depends on the unit – either once every six months or once every quarter.

According to the prison staff in the prison I visited, children are not strip searched any more; however, until recently, some prisons have been violating the ban on child strip searching, as the Chancellor of Justice of the Republic writes in her report.⁴⁵

The biggest problem is the smuggling of drugs into the prison, which is what officials fear the most. This was the reason for the implementation of strip searches of children. Now, however, modern measures are in place and being used in prisons. I also had to meet the drug-sniffing dogs when I entered the prison. The strict prison environment and the clothes worn by prison staff can also be stressful for children. In Estonian prisons, social workers and other non-regime staff wear civilian clothes. Only the guards wear uniforms.

Subsection 24(1) of the PA provides the possibility for a detainee to meet under supervision at least once a month with members of his family and other persons whose reputation is not in reasonable doubt by the prison service.⁴⁶

4.4. Children living with their mother in prison

According to the second sentence of subsection 54 (1) of the PA, a mother and a child up to and including the age of three years shall be allowed to live together at the request of the mother and with the consent of the guardianship authority.⁴⁷ According to subsection (2) of the same provision, the prison service shall ensure that the mother maintains contact with a child over three years of age, provided that this does not interfere with the normal upbringing of the child or have a harmful effect on the child.

⁴⁵ Chancellor of Justice, 2023, pp. 18-19.

⁴⁶ Art. 25(1) of the Prisons Act in conjunction with para 45 of the Prison Rules shall allow a prisoner at least one long visit within six months.

⁴⁷ Aru, 2016, p. 39.

There can be different situations. One situation is when the mother already has a child under four or several small children, another is when the child is born in prison. A third situation is when the child's other parent cannot care for the child for whatever reason. In each case, the decision should be based on the best interests of the child. The UNCRC and the Estonian CPA place the best interests of the child at the centre of decision-making, but there is no specific definition of what this means or guidance on how to identify them. The best interest of the child is the child's best possible solution that considers all the rights of the child as set out in the UNCRC to the fullest extent possible. The decision must be based on an assessment of the child's rights and needs, and the mother's ability to meet those needs in prison. It would be possible to increase the mother's capacity within the prison environment, but this would require the recruitment of professional staff. Now we can only say that prison provides a relatively good material base for a prisoner with a child, but there is no data on whether and how the mother's parenting skills are supported.⁴⁸

5. Reflexive conclusion and recommendations

We started with the importance of relationships in a person's life, and to summarise the content of this study, we need to return to relationships. The well-being of any child depends on their relationships in their social environment. This is no different for children with an IP. The relationships between children and their parents can vary greatly, and it is no different for children of parents in prison. Despite having committed offences, a parent may be a good and caring parent. Or he or she may be a non-caring parent who is important and loved by the child. He or she may also be abusive, harmful, exploitative and toxic, and perhaps the child no longer wants to communicate with them. How the relationship between a child and his or her parent serving a prison sentence is to be organised must first be determined by ascertaining the views and wishes of the child. The child's right to communicate with both parents must also be critically examined, bearing in mind that a right is not an obligation. No one should force a child to communicate with a toxic parent simply because it is the child's right and may help the parent to be rehabilitated from criminal behaviour.

If the relationship between the child and his or her parent was not a good one but, on the contrary, was damaging to the child, for example,

⁴⁸ Aas, 2018.

because he or she had to experience parental abuse or had to witness parental violence, then one should be very careful about imposing the relationship on the parent during imprisonment. It is not in the best interests of a child to associate with a parent he or she fears. Such parents would have to go through a serious change before the child would be willing to interact with them. Even if a parent's rehabilitation depends on his or her contact with the child, this should not be allowed because it would be against the child's best interests.

Hence, the first requirement is as follows: children must be able to exercise their own free will in independently deciding whether to continue their relationship with their IP. The child must be free to decide for him or herself. The child does not have to be the *saviour* of the parent.

Obviously, mistakes can always be corrected. Restorative justice provides this quite successfully. It is also certainly helpful for a child to make peace with an abusive parent, although not to go on living as if nothing had happened, but so that the child can get on with their life. Restorative conflict resolution is already being used in Estonia and prisons are planning to introduce it. It would also be very useful to use this skill to improve the relationship between children and their IPs.

If the child has a good relationship with the parent serving a prison sentence, the child should be supported in every way possible to maintain this relationship and accompanying and low-cost measures should be introduced (e.g. online meetings, which could be more frequent than once a week).

Concerning the stigmatisation and exclusion of children with IP, it is first necessary to raise awareness among professionals working with children (teachers, nurses, child protection professionals, youth workers, trainers) of the negative consequences of stigma and exclusion. The public must also be educated that the wrongful acts of a parent are the responsibility of the wrongdoer and that it is not acceptable to any extent to pass the blame on to their children.

Special services need to be developed to help children recover from adverse childhood experiences. Here too, trauma awareness among professionals working with children needs to be emphasised and included in the professional training of prison staff. In Estonia, the issue of services for children with IP is virtually ignored. Children with IP have access to services when they must be placed in substitute care due to their parent's imprisonment. If custody with the other parent is maintained, the child does

not receive any services. There are also no specific support services for IP children in substitute care. Recent studies show that this group of children is completely invisible and voiceless. As the Chancellor of Justice has pointed out in her recent report, we cannot help these children if we know nothing about their needs. Thus, this is an issue that is waiting to be explored in Estonia.

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