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Consultation of prisoners on the reform of the Imprisonment Act

Stakeholder cooperation and consultation with citizens are the cornerstones of high-quality legislative drafting. However, studies have found that sufficiently wide-ranging involvement of stakeholders is not always implemented in law drafting processes.

Funded by the Strategic Research Council, the SILE project (Silent agents affected by legislation: from an insufficient knowledge base to inclusive solutions) aims to promote silent agents' ability to make their voices heard in drafting laws that concern them. By silent agents, we mean people who, due to their social status, life situation or various constraints, have fewer opportunities to participate in the decision-making that affects them. Prisoners are one of the target groups of the SILE project.

In autumn 2021, the Ministry of Justice launched a project to reform the Imprisonment Act, which aims to develop legislation that takes better into account, for example, changes in society, recommendations from international human rights bodies and issues with the application of current legislation.

At the beginning of the legislative project, we launched a pilot project with the law drafters responsible for preparing the reform of the Imprisonment Act. The aim of this pilot project was to prepare and conduct hearings for prisoners. The project was named 'Vankusu', from the Finnish words for a 'prisoner consultation plan'. Together with the law drafters, we developed a model for hearing prisoners. At the same time, we collected data for research purposes. The practical arrangements for the hearings and the recruitment of the participants were prepared with the Prison and Probation Service employees and the organisations representing the prisoners.

Silent prisoners

Historically, prisoners have not been consulted in the law drafting process. A key reason for this is the established consultation practices in law drafting. In the written consultation procedure, it has been customary to consult organisations and other stakeholders representing those subject to regulation. Although citizens could comment on draft laws using an online consultation service, the procedure is too demanding for many.

The tight schedules and limited human resources for drafting legislation also reduce the likelihood that lawmakers will consult the individuals subject to the legislation. In addition, law drafters do not always have sufficient competence to consult silent agents.

In addition to established consultation practices, many other factors also limit prisoners' ability to participate in decision-making that concerns them. Understanding and considering such factors are vital in promoting prisoners' ability to make their voices heard in law drafting processes.

Firstly, prisoners have fewer opportunities to participate in decision-making than other citizens because imprisonment isolates them from society in many ways. Participation requires the chance to obtain information about decision-making processes and share with decision-makers views on matters that are important to one.

An individual's ability to participate in decision-making is also influenced by various factors related to their life situation and individual capabilities. Imprisonment and prison conditions are likely to cause mental strain and stress, which may impair the prisoner's functional abilities. Substance abuse, mental health problems and debt problems are also quite common among prisoners. For a person struggling with difficulties in life management, participating in decision-making can seem distant even when the decisions have significant and far-reaching effects on their lives.

Right to participate

According to the Constitution of Finland, the task of public authorities is to promote opportunities for the individual to participate in societal activities and to influence the decisions that concern them. The rights laid down in the Constitution also apply to prisoners. The Imprisonment Act states that imprisonment may not give rise to any restrictions on rights other than those necessarily resulting from the sentence itself.

The prisoners themselves have the best expertise in what life is like inside the prison walls. Therefore, they are also in the best position to assess the impact of legal reforms on their lives. However, imprisonment significantly limits prisoners' ability to make their voices heard in drafting laws that apply to them, even if the law reform would substantially impact their lives and rights. That is why it is vital to develop practices that make prisoners' experiential knowledge part of the knowledge base of law drafting.

"For once, someone is listening to us"

At the beginning of the Vankusu project, prisoners were given access to an online consultation service where citizens could comment on draft laws. However, other forms of consultation are also needed, as most prisoners do not have sufficient capacity or practical opportunities to comment on draft laws in writing. The law drafters considered it essential to consult the prisoners orally so that their views could be considered at a sufficiently early stage when assessing the impacts of the various regulatory options. The starting point was that the hearings would take the form of colloquiums in prisons. The lawmakers considered it vital that they are responsible for conducting the hearings and recording the discussions.

The hearings took place in the autumn of 2022 in three closed and one open prison. In addition, one event was organised for the released prisoners in cooperation with the Finnish Foundation for Supporting Ex-offenders. After the hearings, we interviewed the prisoners who took part in the hearings. The interviews highlighted the prisoners' experience that the law drafters were genuinely interested in their views. The experience of being heard was new and significant to many. The topics of the consultation, such as the use of the Internet and e-mail, as well as free telephone calls, were considered essential for prisoners' everyday lives. The materials prepared in plain language by the law drafters helped to prepare for the hearing.

Some inmates who signed up for the hearing said they thought the atmosphere of the hearing would be formal and stiff. However, they were positively surprised when the atmosphere of the conversation was informal and relaxed. The prisoners also felt that everyone could express their

views on the topics under discussion. Many prisoners said they decided to participate in the hearing because they wanted to influence, above all, the conditions of future inmates. The interviews showed that participation in the consultation could also promote active citizenship. One prisoner said that attending the hearing had aroused interest in law drafting and, therefore, they had decided to vote in the next parliamentary elections for the first time.

The preparation and execution of the consultations required a great deal of the law drafters' time and resources. However, they found that the outcome was worth the effort. The hearings produced important information for law drafting. The results of the consultations will continue to be discussed in the Ministry's working group. The shortcomings raised during the hearings have also been brought to the attention of those responsible for implementing the legislation. The law drafters found the prisoners' feedback on the hearings very rewarding.

Preparation for the reform of the Imprisonment Act will continue in a working group of the Ministry of Justice.