

Religion in the Norwegian Prison System

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Abstract

This chapter provides a basic overview of the regulation of religion in the Norwegian prison system. After a brief introduction, the chapter maps the role of religion in Norwegian correctional facilities from a historical perspective, and examines the changing demography of the prisoner population. In the main section of the chapter, the legal and institutional framework for the management of religion in Norwegian correctional facilities is examined in some detail, with a particular emphasis on how the regulation of religion during imprisonment interacts with other regulations of religion in Norway, what specific international and domestic provisions regulate religion during incarceration, the role of clergy and other religious leaders, and the management of religion as an operational issue for prison staff, including the growing concern with prisons as hotbeds of radical and violent extremism

Introduction

The regulation of religion in Norwegian prisons must be considered against the paradoxical background of a gradually diminishing role for religious institutions in public life, significant drops in church attendance and the belief in God among the majority publication, combined with growing religious diversity and the increased political salience of religion in late modernity (Furseth 2015). Managing religion within the confines of correctional institutions has to take into account all these changes, accommodating the equal access of religious clergy to inmates and safeguarding their rights to manifest their religion or belief, while also monitoring the spread of religious doctrines and perceptions that can inspire violent and radical extremism. Moreover, this management must always take into account the specific security challenges represented by forced incarceration, while also attending to the often complicated behavioural, social and psychological challenges facing the majority of the prisoner population.

Although Norway has recently experienced an increase in the regulation and litigation of religion, from the legal regulation of the ritual circumcision of baby boys and the conscientious objector status of medical doctors, to the denial of services based on religious adherence and a pending ban on the full-face veil in all educational institutions,¹ this trend has yet to reach the role of religion in correctional facilities, which has so far not been subject to litigation in the Norwegian legal system. In the absence of such litigation, this chapter primarily examines legislative changes and their rationale in preparatory works, seen in relation to international and domestic guidelines and circulars, to paint as complete a picture of the regulation of religion in Norwegian prisons as possible. After a brief historical introduction and a note on the demographic changes in the prisoner population, the chapter introduces the general legal framework on religion in Norway, preparing the ground for a more detailed assessment of the specific legal rules that govern religion during incarceration.

¹ For an overview of these and other recent regulations and litigations on religion in Norway, see EUREL. *Norway – Current debates*, <http://www.eurel.info/spip.php?rubrique962>, accessed 29.06.2017.

Historical backdrop

Antecedents to the current organizational structure and principles for punishment in the Norwegian correctional services can be traced back to the founding of the Oslo Penitentiary, the first purpose-built prison in Norway, in 1851 (Schaanning 2007: 272). Prior to this invention, imprisonment was mostly organized in fortresses, labour camps and other, more *ad hoc* arrangements. With the advent of organized incarceration, the institutional foundations of prisoner rehabilitation and criminological research developed within the confines of the Oslo Penitentiary as a collaboration between wardens, doctors and pastors, with the latter entrusted with the strongest obligation to turn the morally lost and depraved prisoners into well-functioning and moral members of society (*op.cit.*: 275). Over the course of the 20th century, the purpose of incarceration changed gradually into a medical approach that saw crime as a treatable disease, and over to a more socially oriented form of rehabilitation that emphasized work and education for the inmates in combination with a more comprehensive attention towards the psycho-social needs of each individual prisoner.

This latter perspective informed the 1958 *Prison Act*,² which paved the way for an “import model” for prisoner rehabilitation that invited specialized entities in the civil service to participate in educational and labour oriented services within the confines of correctional facilities. The influence of this model has turned prisoner rehabilitation services in Norway into a complex subfield where a variety of different ministries and other public bodies participate in providing the services offered in Norwegian prisons. Under this division of labour, prison chaplains are no longer appointed by prison management, but in cooperation with the Church of Norway, which remains the official employer of the chaplains. From the 1970s, the idea that rehabilitation could be achieved also through community service and other alternative forms of sentencing has gained a considerable foothold in Norway, sparking the creation of numerous facilities dedicated to rehabilitation outside the formal confines of the correctional service, including several religiously-oriented organizations that have developed extensive rehabilitation programmes. Since the passing of the current *Execution of Sentences Act* in 2001, these alternative correctional services have been conjoined with the regular prison system under the joint, co-ordinating Norwegian Correctional Service.

Religion in Norwegian Prisons

The interface between the Norwegian correctional system and religion is broad and growing, encompassing (a) the general legal framework and policy on religion in Norway, including the influence of international law, (b) specific regulations on the right to religious freedom and freedom from religious discrimination among the prisoner population, (c) the role of chaplains and other religious workers in the rehabilitation and care for inmates, and (d) the role of religion as an operational issue for prison staff, including the growing concern that religious radicalism may spread within correctional facilities. A key question for the following is the extent to which the approaches to “religion” under regulation in each of these aspects overlap and correspond with one another.

² Unfortunately, few Norwegian acts or preparatory works are available in English. For the sake of consistency, I have relied on the database of unofficial translations maintained by the Law Library at the University of Oslo, <http://app.uio.no/ub/ujur/oversatte-lover/>, accessed 29.06.2017. The majority of Norwegian legal materials cited in the text have been retrieved from <https://lovdata.no/>, accessed 29.06.2017.

Religious Demography of the Prisoner Population

Interactions between all of these aspects take place in relation to a prisoner population that is increasingly diverse, both in terms of nationality and in terms of religious convictions. The scope of these changes is hard to determine, as the *Personal Data Act* (2000) prohibits the registration of “sensitive” data, including religious affiliation, unless specifically required by law, or if the individuals under registration give their express consent. Due to this restrictive regulation, there is no official statistic on religious adherence among the Norwegian prison population, as also reported for other countries in this volume. Provisional numbers culled from personal estimates by prison chaplains suggest that the relative proportion of Norwegian inmates with a Muslim background amount to somewhere between 20 and 25% of the prison population (Furseth and Kühle 2011: 128), although these numbers are highly uncertain. No estimates are available for the remainder of the prison population, but from 2007 to 2017, the proportion of prisoners with Norwegian citizenship plummeted from 85% to 68% (Statistics Norway, 2017),³ with a sharp rise in inmates from other European countries, which currently make up more than 60% of the non-Norwegian prisoner population. Due to this development, paired with the general downturn in religious belief and adherence among the majority population, the religious diversity in Norwegian prisons, while not known, is likely to be considerable.

a. General Legal and Policy Framework on Religion

The Norwegian Constitution has guaranteed the freedom of religion since 1964, through an amendment that was adopted during the 150-year celebration of the 1814 constitution, while also fulfilling the international obligations incurred through the ratification of the 1950 European Convention on Human Rights. Following amendments in 2012 that separated the Church of Norway from the state, article 16 provides that

All inhabitants of the realm shall have the right to free exercise of their religion. The Church of Norway, an Evangelical-Lutheran church, will remain the Established Church of Norway and will as such be supported by the State. Detailed provisions as to its system will be laid down by law. All religious and belief communities should be supported on equal terms.

Article 2 of the amended Constitution also provides that “Our values will remain our [sic!] Christian and humanist heritage”. While this article is largely considered salutary and without influence on the erstwhile legal regulation of religion, the formulation of article 16 has led to some public debate due to the continued special treatment offered to the Church of Norway, both in financial terms, and in terms of the regulations within the specific *Church Law* (1996), governing everything from the structure of parishes to the procedure for building and maintaining church buildings.

Apart from the Constitutional guarantee of religious freedom, the principal legal instrument on religion in Norwegian law is the 1999 *Human Rights Act*, which incorporated the provisions of the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *European Convention on Human Rights* (ECHR) in domestic law.⁴ While the *Human Rights Act* does not formally rank as a Constitutional Bill of Rights, the amended

³ Statistisk sentralbyrå. *Fengslinger*, 2014. <https://www.ssb.no/sosiale-forhold-og-kriminalitet/statistikker/fengsling>, accessed 13.06.2017

⁴ Through later amendments, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) have also been included in the *Human Rights Act*.

article 92 of the Constitution provides that “The authorities of the State shall respect and ensure human rights as they are expressed in this Constitution and in the treaties concerning human rights that are binding for Norway”, effectively giving the provisions of these conventions constitutional authority. The principal legal rules on religion in the international instruments incorporated by the *Human Rights Act* are article 18 of the ICCPR and article 9 of the ECHR, both of which secure the freedom of religion or belief, including their “manifestation” through external worship, teaching, observance and practice. The scope of these norms for the regulation of religion in Norwegian prisons has so far not been addressed in Norwegian jurisprudence.

Norwegian policymaking has long been dominated by a welfarist approach that assumes organized religious communities to be beneficial to social wellbeing (Leirvik 2016). Since the adoption of the 1969 *Religious Communities Act*, registered religious communities have been financially supported by the state at a per capita rate similar to the public funds made available to finance the Church of Norway, a support that has also been made available to non-religious “lifestance” communities since 1981.⁵ The public funding of religious communities enjoys strong political support, although the conditions for funding have long been a subject of debate, partly fuelled by scepticism towards the role of mosques as hotbeds of fundamentalist Islam, but also by increasing criticism of the gender discrimination of the Catholic Church.

Although public support for organized religious activity has long been strong and vocal, the external “manifestations” of religious practice have increasingly become topics of public concern. Beginning in the late 1990s and up to the present, a broad number of different, but interrelated debates have erupted, on the acceptability of everything from the Islamic call to prayer, the wearing of the hijab and niqab in public, at work and in schools, and the foundation of religious private schools, to the accommodation of ritual slaughter, and the length of the beards of Muslim men working in security services. Among these debates, which have largely incorporated larger European worries of “creeping sharia”, the only issue directly relevant to the regulation of religion in prison is the provision of halal certified food to Muslim inmates, a form of accommodation that has been specifically derided by the populist right-wing Progress Party.

b. Specific regulations of religion in Norwegian correctional facilities

The regulation of religion in the Norwegian prison system has evolved from §20 of the *Prison Act* (1958), which mentioned nothing of the individual religious freedom of inmates, but provided that a chaplain should be hired at each facility, and to a more general assertion of the obligation of the Correctional Service to allow each inmate to “manifest religion or belief” in the current *Execution of Sentences Act* (2001) §23. According to the preparatory works to the bill, religious manifestations are expected to take place outside working hours and other organized activities, preferably during breaks and leisure time. While the guarantee does not explicitly invoke the freedom of religion as it is spelled out in the Constitution or the *Human Rights Act*, the use of the term “manifestation” suggests that these surrounding legal rules are relevant to the interpretation of the provision. The guarantee is conditional, and subject to the discretion of the prison warden, who is entitled to limit the manifestation of religion or belief for practical and security purposes, effectively granting wardens a considerable administrative discretion in the determination of what constitutes the threshold for “practical” or “security” purposes. Other provisions in surrounding legislation may also limit the access to religious manifestations within

⁵ This expansion took place with the adoption of the unfortunately translated *Act relating to allocations to religious communities*. Unregistered communities may also apply for support, but have to include virtually the same items of information as

correctional facilities.⁶ The interpretation of Norwegian legislation on religion in prison is also guided by the principles outlined in the Prison Recommendations (2006) issued by the Council of Europe (CoE), which secure not only the freedom of religion or belief and its manifestations, but also the rights of inmates to participate in religious services, to have access to religious literature, and to receive visits by religious leaders.⁷ Similar, even broader guarantees informing the interpretation of religious freedom of inmates in Norwegian prisons can be inferred from the UN Standard Minimum Rules for the Treatment of Prisoners (1955).⁸ The potential influence of the more recently adopted UN Nelson Mandela Prison Rules (2015) has yet to be addressed in official policy documents.⁹

Practical conditions for the recognition of the religious freedom of inmates in Norwegian prisons must be considered against the backdrop of the “normalcy principle” informing the purpose of imprisonment in the Norwegian correctional system. According to this principle, the terms of imprisonment should be based on three different, yet interrelated modes of normalcy – medical, statistical and cultural/moral (Vollan 2016: 448). Medical and statistical conditions refer to the complicated set of challenges facing inmates in terms of mental and physical health, behavioural problems, social and drug issues and educational troubles. Helping inmates with these conditions, which tend to be overrepresented among the prisoner population, is the province of health care and social workers who are responsible for the preparation of prisoners to a “normal” life after incarceration. While the purpose of securing medical and statistical “normalcy” refers to the correction of a certain set of static principles that will always be challenging in any society, the principle of cultural/moral normalcy is far more dynamic, fluid and uncertain, shifting in tandem with social changes.

While religion has always played a vital role in the fostering of cultural/moral normalcy, the shift from a legal framework that stressed the role of the prison chaplain to one emphasizing the individual rights of each inmate to religious “manifestation” indicates the gradual transformation of the role of religion, from key service provider to individual rights guarantee, reflecting the dynamic nature of “cultural/moral” normalcy. Hence, where the *Prison Act* secured access to prison chaplains so inmates could receive guidance on their path towards cultural/moral normalcy, the *Execution of Sentences Act* secures access to religious manifestations because this right is one among many basic conditions for the realization of cultural/moral normalcy in society. This is not to say that the role of prison chaplains and other religious leaders in guiding inmates has been disbanded, but rather that it has gone through a subtle shift, in which the role of individual choice and autonomy has been strengthened at the expense of formal religious authority, a shift which corresponds well with the erstwhile “juridification” of religion in society (Årsheim and Slotte 2017).

Importantly, the shift from religion as a resource towards rehabilitation to religion as a basic right for each inmate also corresponds to a gradual shift in the purpose of punishment, from the idea that incarceration in and of itself should foster *normalization* – that the Correctional Service should be obliged to change the attitudes and conceptions of each individual inmate, and towards *normalcy*, the idea that the primary task of the Correctional Service is to provide terms of imprisonment that do not

⁶ These conditions are listed in the *travaux préparatoires*, Ot.prp.nr.5 (2000-2001) *Om lov om gjennomføring av straff mv. (straffegjennomføringsloven)* at 13.1.

⁷ Council of Europe: *Recommendation Rec(2006) of the Committee of Ministers to member states on the European Prison Rules* (Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies), section 29.

⁸ *Standard Minimum Rules for the Treatment of Prisoners*. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, section 41-42.

⁹ For an introduction to how the Nelson Mandela rules approach religion, see Temperman 2017.

deviate too strongly from the conditions of life outside prison. This is a far cry from the early modern purpose of imprisonment, but corresponds well with the UN Standard Minimum Rules section 60(1), which prescribe that prison authorities “should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings”. The central idea behind this principle is derived from a human rights-based approach that considers inmates to have legitimately forfeited their rights to liberty, but should retain the full spectrum of their erstwhile rights as secured by human rights law (Vollan 2016: 458).

While there has been no jurisprudence on §23 of the *Execution of Sentences Act*, the equality and anti-discrimination ombudsman, which oversees the extensive legal framework on anti-discrimination,¹⁰ has issued its opinion in three cases of alleged religious discrimination among inmates. In a 2007 case (case no. 07/1598), the ombudsman criticised the practice at Ringerike prison for the refusal for Muslim inmates to bring food back to their cells in order to eat after sunset during Ramadan, a practice that was quickly abandoned following press reports. In two cases decided in 2016 (case no. 15/273 and 15/2355), the ombudsman concluded that neither the confiscation of newspaper clippings featuring the logo of Islamic State (IS), nor the confinement of inmates not participating in religious services to their cells during the service constituted religious discrimination, as both practices were motivated by security and/or staffing concerns.

Additional to the formal prison system, Norwegian authorities oversee a facility for the administrative detention of asylum seekers at Trandum, a former military base close to Oslo Airport, Gardermoen. The conditions at Trandum have been subject to extensive criticism for years, due to regular reports of harsh conditions that possibly violate the human rights of asylum seekers.¹¹ Detention at Trandum is regulated by the 2008 *Immigration Act* §107, which stipulates that detainees have the right to manifest religion or belief, but this right can be limited or revoked to maintain order or security. Unlike the regular prison system, detention at Trandum is not overseen by the Correctional Service, but by the Police Immigration Service, a separate branch of the Norwegian Police force set to deal with the management of immigration, from registration upon arrival and to the transportation of unsuccessful asylum seekers and other irregular migrants. Hence, circulars, regulations and guidelines governing incarceration in the regular Norwegian prison system are not in effect in Trandum.

c. Chaplains and other religious workers

Although access to chaplains and other religious workers is not explicitly laid out in the *Execution of Sentences Act*, this right can clearly be inferred from domestic and international law on the issue (see above). While prison clergy were formerly exclusively from the Church of Norway (CoN), the last decades have seen an expansion of other religion and worldview counsellors, particularly imams, although no exact figures exist due to the *ad-hoc* nature of the arrangements. There is no state funding or specific policy on the recruitment of these counsellors, whose access to the prisons are governed by the *Execution of Sentences Regulation* (see below). Despite this growth in counsellors from other traditions, the clear majority of chaplains are still ordained by the CoN. The duties and responsibilities

¹⁰ Anti-discrimination provisions have been scattered across a variety of different acts since the 1970s, partly as a consequence of the ratification of international instruments like the *Convention on the Elimination of Racial Discrimination* (CERD) and the *Convention on the Elimination of All forms of Discrimination against Women* (CEDAW), and partly as a response to homegrown legal activism. An anti-discrimination act that summarizes the provisions of all the other acts is currently under review by parliament, and will likely be adopted in 2017/2018.

¹¹ The Parliamentary ombudsman has expressed several concerns with the human rights conditions at Trandum after visits, see SOM-2012-2408, SOM-2008-1966 and case no. 2006/225, which resulted in an urgent message to parliament, Dok.nr. 4:01 (2006-2007).

of CoN chaplains are outlined in the *Prison Chaplain Regulation* (2016). While the earlier version of this regulation was overseen by the Ministry of Culture, the recent disestablishment of the CoN transferred the responsibility for this regulation to the General Synod of the CoN, effective as of January 1st, 2017. The regulation lays out the basic legal framework for prison chaplains hired by the CoN, including their duties to conduct religious services, provide counselling and other duties that are similar to those of parish priests. While prison chaplains from the CoN are formally bound to these rules, their role has also grown into one of gatekeepers and facilitators for the access of religious counsellors from other denominations, not least imams that have catered to the growing proportion of Muslims in Norwegian prisons (Furseth 2006).

In a report on the conditions of imprisonment from the equality and anti-discrimination ombudsman issued in 2017, the ombudsman expressed its concern with the lack of established structures and platforms of cooperation for the facilitation of religious services to the prisoner population. In order to rectify the situation, the ombudsman has recommended a model where chaplains from a variety of religious traditions should be hired by the Correctional Service, and not by the religious organizations themselves, modelled on similar arrangements in the health sector and the armed forces.¹²

The *Execution of Sentences Regulation* (2002) §6-5 provides that visits by religious leaders, counsellors or clergy should be conducted under the same control regime as other prison visits, subject to the wardens' discretion. To better facilitate access for representatives from other religious communities to an increasingly diverse prisoner population, the Ministry of Justice and the Ministry of Culture developed a set of guidelines for co-ordination on religion or belief in correctional facilities in 2009,¹³ in line with the ambitions for administrative cooperation outlined in The *Execution of Sentences Act* §4. The guidelines cite the importance of adhering to the international prison standards, while also clarifying the responsibilities of different public entities involved in the execution of sentences. The guidelines stress that the provision of religious services in prisons is primarily limited to organizations officially registered under the *Religious Communities Act* (1969), and conditional to provisions in general Norwegian legislation.

In addition to these formal, general criteria, the guidelines stress that the value basis of the Correctional Service is "humanist", working from the premise that humans are "unique and inviolable". This starting point entails that the provision of religion or belief services in prisons should be conducted with the "respect for individuals and human rights" regardless of the identity or background of each prisoner. The warden is entitled to bar access to prisons for representatives from religious or belief communities whose services do not conform to the "ethical values, purposes and rules" of the Correctional Service, effectively granting wardens extensive administrative discretion not only on the basis of security or other practical conditions, but also on the content and format of the services offered. Representatives are required to speak Norwegian or English, with the exception of personal conversations with individual inmates, and prayer, liturgical readings or other rituals, which can be conducted as the religious community in question sees fit.

Over the course of the last years, prison authorities have become more active in fighting violent radicalism in Norwegian prisons through increased recruitment of religion or belief counsellors. In the

¹² See 5.8 in Likestillings- og diskrimineringsombudet. *Innsatt og utsatt. Likestillings- og diskrimineringsombudets rapport om soningsforholdene til utsatte grupper i fengsel*. <http://www.ldo.no/nyheter-og-fag/brosjyrar-og-publikasjonar/rapporter/soningsrapport/>, retrieved 26.06.2017.

¹³ Justis- og politidepartement, Kultur- og kirke departementet. *Rundskriv: Samarbeid om tros- og livssynstjenester i fengsel*. (Ref. 200607578, 1.7.2009).

2014 “Action Plan to Counter Violent Extremism” issued by the Norwegian government, the Correctional Service was tasked with the responsibility of establishing a team of counsellors in Oslo and the surrounding area, citing successful experiences with cross-religious co-operation among religious leaders in fighting extremism. Since then, the Service has developed a circular that stresses the obligations of prison staff to “uncover” traces of violent extremism and communicate worrisome tendencies to other official entities in the security apparatus, and to better accommodate the needs of inmates to manifest their religion or belief. Significantly, the circular hypothesizes that the better accommodation of a plurality of religions or belief systems in prison may have a “balancing effect” among different worldviews in the prisoner population, which in turn may prevent the spread of violent extremism.

d. Religion as an operational issue

In addition to the regulations that specify the rights of inmates to receive visits from clergy and to manifest religious and other beliefs, the role of religion in Norwegian prisons has become a key concern as an operational issue among prison staff. As the prisoner population has become more diverse, the “governance” of religion has become a major theme for officers working in the Correctional Service.¹⁴ To guide officers in their management of religion, the Correctional Service regularly runs courses on cultural and religious sensibilities, and has issued a set of guidelines that seeks to pinpoint the major differences between Norwegian and “foreign” concepts of what religion is and what it entails to be religious in society.¹⁵ The guidelines stress the collective, external aspects of “other” religions, in contrast to Norwegian, privatized notions of religion that emphasize the internalization of beliefs. Prison officials are reminded of the strong internal differences among different denominations within the same faith, and the foundational nature of religion in the lives of many inmates.

Besides the religious differences among inmates, prison staff have increasingly also become acquainted with a diversity of organizations offering religious services and activities for prisoners, ranging from organized pilgrimages for both staff and inmates,¹⁶ via the facilitation of a festive evening meal during Ramadan sponsored by the Moroccan embassy,¹⁷ and to the organization of a spiritually laden “retreat” for inmates in co-operation with the Salvation Army,¹⁸ which runs a comprehensive prison outreach program. The retreat program, which is offered primarily for long-term prisoners in Halden prison, provides prisoners with a three-week period of silence, working with their own “lives, experiences and hopes”. This period of introspective reflection is followed up with collective worship services, counseling, communal meals and meditation, and has recently also been expanded to cover pilgrimages where inmates trek from Dovre to Trondheim and the medieval Nidaros cathedral.¹⁹ This program

¹⁴ By “governance” in this setting, I am referring to the key aspects of non-legal forms of steering exercised primarily (but not exclusively) by civil servants, including “...regulation or steering, guidance by a variety of means, not only by rules. It includes only those mechanisms of action-coordination that provide intentional capacities to regulate, including co- and self-regulation.” (Bader 2007: 873).

¹⁵ Kriminalomsorgen. *Utenlandske statsborgere i kriminalomsorgen. Håndbok for ansatte* (2015), see 5.3.4. “Kunnskap om religionens betydning i fengsel”.

¹⁶ Kriminalomsorgen. *I pilgrim for en bedre fremtid*. <http://www.kriminalomsorgen.no/i-pilegrim-for-en-bedre-fremtid.365962-237613.html>, accessed 28.06.2017.

¹⁷ Kriminalomsorgen. *Oppmuntring i fastetid*. <http://www.kriminalomsorgen.no/oppmuntring-i-fastetid.541270-237613.html>, accessed 28.06.2017

¹⁸ Kriminalomsorgen. *Stor interesse for retreat i Halden fengsel*. <http://www.kriminalomsorgen.no/stor-interesse-for-retreat-i-halden-fengsel.5303780-237613.html>, accessed 28.06.2017

¹⁹ Frelsesarmeen. *Retreat i Halden fengsel*. <http://www.frelsesarmeen.no/no/vart-arbeid/fengselsarbeidet/hoyre-kolonne/vare-tilbud/Retreat+i-Halden+fengsel.d25-SxdjK57.ips>, accessed 28.06.2017.

resonates well with a broader interest in Norway towards pilgrimages as a form of therapeutic, remedial practice typical of the “subjective turn” in modern culture (Mikaelsson 2012: 270).

Over the course of the last decade, the role of extremism and radicalization has come to the forefront of public debate in Norway, leading to the adoption of new guidelines on how to deal with this issue in the Norwegian prison system.²⁰ Although the guidelines take a “neutral” view of radicalism, they are still dedicated mainly to the fight against right-wing and Islamic extremism, as the two radical ideologies with the deepest footprint in the Norwegian prisoner population. The guidelines stress the inherent potential of poor prison conditions acting as independent “radicalizers”, triggering discontent and frustration that opens up inmates to extremist views that can evolve into radicalism in the longer term. To prevent this process from taking place, the guidelines emphasize the need for respect and accommodation of the religion or belief of inmates, to keep tensions and grievances at a minimum. This accommodation, however, can in no way encroach upon basic security concerns, although the latter should be sought by acting “flexibly” and reasonably with inmates who may react to prison officers of different ethnicities or gender identities.

In more concrete terms, the guidelines suggest prison officers pay close attention to behavioural change related to religion, vocal support for “final solutions” based on religion, verbally legitimating threats or violence in the name of religion, in addition to ten specific items related to the detection of “Islamism”.²¹ The guidelines recommend the establishment of contacts with clergy or others who may assist in developing alternative ideas, conceptions and modes of action, as an antidote to the radicalisation process. Significantly, however, the extensive guidelines provide no input on the formation of a “team of counsellors” on religion or belief, as requested by the Ministry of Justice in the action plan to fight terrorism adopted in 2014 (see above).

One of the more concrete outcomes of the new emphasis on radicalism is the establishment of *INFOflyt* (INFOflow), a system for the sharing of information on high-risk individuals among the Police, the Correctional Service and the Security Services. In *INFOflyt*, these entities can register “sensitive data” that would normally be off-limits in information sharing systems, including religious adherence. The condition for registration is that it fulfils the conditions in the *Execution of Sentences Act* §4f, which specifically lists the prevention of “violent extremism” as one of the legitimate reasons for the registration of sensitive information like religious adherence.

Taken together, the many different operational issues raised by religion illustrate the complexity of governing religion in prison: while the freedom to manifest religion through worship, teaching and observance and the right to meet with clergy and other counsellors is a fundamental principle of the “humanist” foundations of the Correctional Service, religion can also generate anything from joyful and

²⁰ Kriminalomsorgens Høgskole og utdanningscenter KRUS. *Radikalisering og voldelig ekstremisme. Håndbok for ansatte i Kriminalomsorgen med særskilt fokus på håndtering i fengsel.* (2016).

²¹ These items include “Ambition/wish to establish a new world order based on the Islamic Sharia, connected to the idea of an Islamic Caliphate; ‘Ummah thinking’ emphasizing brotherhood and mutual responsibilities; Increased emphasis on purity and purification and corresponding increased distance from or break with all Western influence and everything considered ‘un-Islamic’ in the religion; Doomsday/apocalyptic thinking; glorification of self-sacrifice, vengeance, martyrdom and jihad; extensive use of ‘da’wah’ (missionary work); Rhetoric focusing on the Western ‘war on Islam’ and on Jewish conspiracies; ‘Takfiri’ thinking, entailing that none other than your own group are worthy of life, including other branches of Islam; Resistance to Western democratic principles, modernity and economic systems; defense of IS, of al-Qaida and of terrorism in ‘the name of battle’”.

constructive experiences on the path to rehabilitation to a significant cultural obstacle, and, most dramatically, to a considerable security risk that merits exceptional and drastic measures.

Conclusion

The regulation of religion in Norwegian correctional facilities has travelled a long way from the first prison chaplains set out to rectify the ways of incorrigible inmates in the Oslo Penitentiary in the mid-1800s. Over the course of these 150+ years, the notion of “religion” and the regulatory challenges that come with its management have shifted decisively in nature and scope. Perhaps most significantly, there is no longer any unique, singular “sacred canopy” that can provide a coherent and steadfast measurement for “moral/cultural normalcy” in Norwegian society, nor is there a state-run church that can take part in the administrative cooperation among public entities in the correctional system. As the contents of “religion” have increasingly become a private, individual matter, prison wardens have increasingly seen the need to accommodate the rights to religious manifestations of each singular inmate. However, while the original sacred canopy offered by an excessively mono-cultural and mono-religious surrounding society may have ruptured, the rise of new and assertive forms of religious belonging and self-understandings have led both to the provision of religious programs for rehabilitation and introspection like the retreats in Halden prison, and to the need to manage and control the spread of extremist radicalism among prisoners.

In this management, prison wardens are granted exceptionally broad autonomy, with the authority to refuse virtually any aspect of religious manifestations, including the right to bar specific religious communities or their representatives from access to prisons on the basis of the contents of their message. Although the discretion granted to wardens for security purposes is a general feature of prison management, the possibility to curtail religious manifestations is particularly striking given the strong protection offered to the freedom of religion or belief in international instruments, which stress that this right cannot be set aside even in “time of public emergency which threatens the life of the nation”.²² How far this administrative discretion goes, however, is uncertain, as the scope of the *Execution of Sentences Act* §23 has yet to be tried before the courts. However, if the recent grievances brought before the anti-discrimination ombudsman and the gradual changes in the direction of increasingly specific and targeted means of control intimated in the guidelines to fight radical extremism are anything to go by, we are likely to see litigation on this right in the very near future.

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