Schriften zum Strafvollzug, Jugendstrafrecht und zur Kriminologie

Herausgegeben von Prof. Dr. Frieder Dünkel
Lehrstuhl für Kriminologie an der
Ernst-Moritz-Arndt-Universität Greifswald

Band 56

Frieder Dünkel,
Jörg Jesse,
Ineke Pruin,
Moritz von der Wense
(Eds.)

European Treatment, Transition Management, and Re-Integration of High-Risk Offenders

Results of the Final Conference at Rostock-Warnemünde, 3-5 September 2014, and Final Evaluation Report of the Justice-Cooperation-Network (JCN)-Project "European treatment and transition management of high-risk offenders"

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1. Introduction

Frieder Dünkel, Jörg Jesse,
Ineke Pruin, Moritz von der Wense

All over Europe, the question of how best to manage and implement the resettle-ement and reintegration of released prisoners in society has become increasingly important. Transition management requires work in custody as well as cooperation and co-ordination between criminal justice agencies, statutory and voluntary providers and other partners involved in the offender's resettlement and re-integration.

Focusing on high-risk or dangerous offenders in particular, their resettlement and re-integration into society requires engagement, planning and work with the prisoner as well as close cooperation between the prison system, probation system and community partners. However, there are serious questions and challenges to be addressed.

- How to work best with this group of offenders during the assessment and sentence planning during imprisonment?
- Which treatment programmes and approaches produce the best results?
- What needs to be done in preparation for release from custody?
- Which are the best risk and need assessment instruments and what do they tell us?
- How close and clearly defined is collaboration between the prison with Probation Services, other services, communities and specialist NGOs?
- Are there examples of good practice in service provision and coordination, transition management and post-custody supervision?
- Are there examples of helpful legislation and court practices which make the resettlement and re-integration of high-risk offenders after prison better? Model aims to provide the basis for a "toolkit for the implementation of restorative practices" in the various countries of the European Union. The design of the toolkit includes methods to be used by restorative justice professionals as well as professionals in the field of criminal justice in order to implement and apply restorative practices more effectively in their countries.

The objective of the project "Justice Cooperation Network – European treatment and transition management of high-risk offenders" has been to address these questions and to develop effective and efficient management principles, processes and practices for high-risk offenders leaving custody that can be shared and used by the project partners and across Europe. The project team comprises the responsible bodies from four project partner states, Estonia, Finland, Ireland and Mecklenburg-Western Pomerania (Germany).[1] The Ministry of Justice and Prison Service of Belgium, the Ministry of Justice and Public Administration of the Republic of Slovenia, the Ministry of Justice of the Slovak Republic, the Confederation of European Probation (CEP) and the Federal Ministry of Justice and Consumer Protection in Germany are associated partners in the project.

This Final Report describes the progress of the project, from the four international workshops[2] which built a common understanding in the first place to a successful end in best practices available in modules for common use. With the final conference the project created a platform to transfer the results and to present the developed 4-phase model to a broad professional audience from all over Europe.

The following publication is structured according to the programme of the final conference in Warnemünde in September 2014. After the introductory addresses in chapter 2, the chapters 3 to 6 display presentations held in the plenary. In chapter 7.1-4 the contributions in the 4 forums are presented, the results of which are to be found in chapter 7.5. Chapter 8 summarizes some final reflections of the conference from professionals outside the justice system. The final evaluation report of the project by the researchers of the University of Greifswald forms the 9th and last chapter of this publication.

We want to take the opportunity to thank all authors and cooperation partners for their contributions at the conference and to the present publication. We also thank the European Commission for the financial support of this project.

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1 The fifth partner, Pixel, an International Education and Training Institution in Florence, Italy, was involved in the administrative organization of the project and did not contribute to the subject of the project. Pixel established the website of the JCN-project, see http://jcn.pixel-online.org.

2 The workshops have been held from 13-16 March 2013 in Tallinn (Estonia), from 13-15 June 2013 in Dublin (Ireland), from 30 October-2 November 2013 in Helsinki (Finland), from 2-5 April 2014 in Schwerin (Germany), and the final conference from 3-5 September 2014 in Rostock-Warnemünde (Germany). The results of the individual workshops of the project can be obtained from the website of the project under http://jcn.pixel-online.org/workshop.php. The project was funded by the European Commission in the framework of the Justice Cooperation Network-programme (JUST/2011/JPEN/AG2943).

2. Proceedings of the final conference – Welcome addresses and introduction to the course of the project

2.1 Welcome addresses

Uta-Maria Kuder[1]

Welcome to Mecklenburg-Vorpommern. It is a pleasure to welcome you to Rostock-Warnemünde.

We want to agree here and today on a common basis for a European treatment and transition management for high-risk offenders. Together we want to find the right course so that this group of offenders has a real chance of a life without crime after their release.

You may well be wondering, what development has resulted in such a small state as Mecklenburg-Vorpommern being involved in this project. I want to explain it to you:

For more than 10 years we have been dealing with mandatory standards both in the prison- and probation service. Standards for prison planning, diagnostics, preparation for release and for the planning and implementation of probation. These are used on one hand for quality assurance. On the other hand, these standards are to convey a sense of security to employees and the parties involved. They must be able to rely on the professional processes, both in the prison and probation service, being carried out to comparable quality criteria. It was logical to make these measures binding at the interface between the prison- and probation services. We asked ourselves, what can we do to make the transitions from "inside" to "outside" better? That was the beginning of the integral offenders' concept "InStar", as we called the interaction between probation and prison. With this close cooperation between prison and probation we were in Germany suddenly in the function of a pilot. The topic "enhanced

1 *Uta-Maria Kuder* is the Federal Minister of Justice of Mecklenburg-Western Pomerania/Germany.

cooperation in the reintegration of ex-offenders" was of interest to the entire specialist community. Therefore, in 2009 and 2011 we held on this topic two expert conferences in Binz. For the first time we brought both sides together in one boat – probation and voluntary organisations on the one hand and prison staff on the other. Both conferences were fully booked within a very short time. It was surprising and impressive that these events elicited this response at national and also international level.

It was not long before the wish was expressed to take up the special topic of the reintegration of high-risk offenders in the form of an EU project. The idea for this came our way in particular from colleagues in Europe. Together with the project partners from Estonia, Ireland, Finland, Italy and the University of Greifswald we presented the Directorate-General Justice of the Commission an application for funding. We were all motivated by the question, which common standards could be found by four countries with different jurisdictions, prison and probation systems in order to improve the reintegration of this difficult group? In September 2012, we finally were awarded the contract. All the project members have since spent a lot of time trying to understand each other and explain to each other the best of their own practical experience. Today, we are anxious to see what conclusions the European Commission will draw from the results of this project.

The successful reintegration of offenders into society is the primary goal of the prison system in all European countries. In our work, we must always repeatedly make the outside World aware that prison sentences are of a limited period. Even high-risk offenders are eventually released. The possibilities of the prison system usually end with the release of the offender at the gates of the prison. The former offender is then a citizen again. He is again part of the town and community in which he committed crimes, and in which he lived most of his life before his arrest.

If you ask ex-prisoners, the real punishment begins from their perspective often after release. Through social exclusion, lack of housing, or lack of work. But this is not just a problem for us in Germany. Across Europe, offenders often encounter rejection, suspicion and hostility. It's only human that as a result a sense of hopelessness and lack of opportunity arises. New offenses are then inevitable. This is particularly true for the group of high-risk offenders. In Germany approximately a quarter of released offenders are rearrested within three years after release from prison. In other European countries, this figure is even higher.

The chance of a crime-free life in liberty depends largely on the question of preparation for release. Therefore, all institutions involved, thus also the municipalities and local authorities must cooperate closely with each other long before the release of the prisoner. Departments such as work, social, educational, health and home affairs must be aware of their shared responsibility and also contribute. In other countries, reintegration involving all departments and the

support of the community is already living reality. The Norwegian Cabinet has recognised this joint responsibility for a successful reintegration of former offenders and has obligated all departments involved to cooperation. In some European countries there is even a legally established duty for local authorities to provide ex-offenders with accommodation. So far, we have unfortunately only managed in Mecklenburg-Vorpommern to develop a binding cooperation in the narrow or the immediate area of the judiciary. Lacking for us is a nationwide network of transition facilities and mandatory cooperation with municipalities and other ministries. The reintegration of ex-offenders is and remains a task for society. This cannot be done by the judiciary alone.

Therefore, we ask ourselves, how we can reverse this process. How can we get the other ministries, municipalities and local authorities as well as the residents on board and included in these integration responsibilities? Here is a current focus of our work in Mecklenburg-Vorpommern. We are therefore delighted to be able to benefit from the ideas and experience of other countries.

Allow me at the end of my welcoming speech, in view of our meeting place, a seafaring quote: "on a rolling ship it is the person who stands still that falls down, not the person who moves". (*Ludwig Borne*, German journalist, literary and theatre critic, born 06 May 1786 in Frankfurt/Main, died in Paris 12 February 1837). This in my view is the signal that should be going out from this conference. It is important to maintain the chosen course and to continue to exchange experiences. And it is important to seek new ideas and concepts with each other, to present and discuss them to a wide professional audience and to achieve as uniform as possible standards in Europe. Only together can we further advance the offender reintegration and fully exploit the existing potential in Europe.

Stefanie Hubig[2]

With the reintegration of high-risk offender you have chosen a topic that is being discussed in the broad public and touches us all. Moreover, the decision of the European Court of Human Rights of 17 December 2009 and the Federal Constitutional Court of 4 May 2011 on accommodating parolees has triggered here in Germany a broad public debate on dealing with high-risk offenders and has led to some changes in the law.

Our society is uneasy when offenders with a high-risk of relapse are released without being adequately prepared, monitored or supported. Therefore, on the one hand, it is important that work is already intensively carried out with this group of people in prison – this is the way the Federal Constitutional Court sees it. On the other hand, programmes and strategies for reintegration – particularly with high-risk of lapsed offenders – are of major importance. They are essential elements in the prevention crime and improvement of public safety. But they are also much more cost-effective than measures that are associated with continued delinquency.

I am therefore delighted that JCN has initiated an exchange to develop a strategy for transition management for high-risk offenders at European level. This is an ambitious project, because it is in essence about how to balance re-integration as the primary objective of the prison service on the one hand and to find a way to protect the public from further crimes on the other, especially by high-risk offenders. In doing so, it must also be in the interest of convicted offenders. As of a fundamental right they must be offered the chance to reintegrate into society after serving their sentence. This corresponds to – as the Federal Constitutional Court has pointed out elsewhere – the conception of a society which places human dignity in the center of its value system and is committed to the principle of social justice. The state's duty of care to the members of society, who are hindered in their personal and social development, extends to prisoners and ex-prisoners, even those who may pose a risk to others.

If reintegration is to succeed, prison time must be used constructively. The prisoners must learn to survive in the conditions of a free society without breaking the law, to perceive their chances, and correctly assess and master the risks. It is important to ensure that they are not only willing, but also able after release to live a crime-free life.

A likewise important stage of rehabilitation begins with the release from prison. We know that even prisoners who do not belong to the group of high-risk offenders are subjected to complex problems and resentments after release. Stigma in the family and society due to imprisonment impairs not only finding employment and housing, but also personal relationships. Prisioners' rehabilita-

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2 Dr. *Stefanie Hubig* is Secretary of State at the Federal Ministry of Justice and Consumer Protection, Berlin/Germany.

tion may therefore fail, even under favourable conditions, due to the exclusion and neglect which they encounter in their environment. If a real chance of rehabilitation is to exist for high-risk offenders, the willingness of society to also include high-risk offenders must be strengthened.

Here transition management is especially required. It is not enough just to take measures to ensure that the released offender finds accommodation and work. Rather, it must be ensured that social support exists for the prisoner after release, making reintegration possible. For this, a whole set of measures is required to facilitate the transition from prison to liberty. The social services of the judiciary, probation and offender support, forensic outpatient clinics and other institutions are already working together intensively and cross-linked to alleviate the problems of release from prison and sustainably prevent relapse. However, their close interaction can certainly be further improved and optimized.

According to our experience in Germany a helpful step toward reintegration – in addition to probation with a remainder of sentence suspended – is the so-called supervision of conduct. It enables released prisoners with poor legal prognosis to be accompanied for several years after completion of their sentence on their way to liberty and thus it effectively prevents new crimes. This means at the same time protecting victims. Various conditions, such as no drinking, avoidance of certain places or the wearing of an electronic ankle bracelet can minimize certain risks and change behaviours – perhaps permanently.

In Germany the supervision of conduct was reformed in 2007 and 2011 and essentially corresponds to the recommendations for the treatment of high-risk offenders, which the council of Europe passed a few months ago. The practical implementation of the supervision of conduct was recently evaluated by the German Federal Ministry of Justice. The aim was to obtain an overview of the operation of the supervision of conduct to determine any improvements necessary and to enable legal policy conclusions. In the study, the statistical data on the supervision of conduct were analyzed and the records of over 600 nationwide supervision of conduct cases in 2012 evaluated. In addition, over 1,000 questionnaires were sent out to those involved in the supervision of conduct.

The evaluation was completed in the first half of this year. It gives the supervision of conduct a by and large positive evaluation. The authors, the Tübingen criminologists Jörg Kinzig and Alexander Baur, emphasize the importance of good cooperation between the various actors involved in the supervision of conduct in the study. They see the supervision of conduct as an instrument of reintegration and at the same time as an important contribution to the protection of victims, but even if there is close supervision of conduct there is no guarantee against relapses.

JCN is a good example of a successful exchange on all these issues also across borders. Crime no longer stops at national borders. Modern means of communication and the opening of borders in Europe have brought us closer together and given us new opportunities and liberties – to learn each other's

ways. At JCN you have demonstrated that synergy can be achieved through the collaboration of practitioners from law enforcement agencies and social services at European level. For your important suggestions for improving the reintegration of high-risk offenders, on the prevention of relapse and at the same time protecting victims, I thank you very much.

Bärbel Heinkelmann[3]

I am very pleased to convey today – on behalf of the Commission – a message to the participants of this final conference of the Justice Cooperation Network's project on "European treatment and transition management of high-risk offenders".

The topic you have chosen for this conference – Reintegration of high-risk offenders – is both important and delicate. It touches upon themes such as the best way to reintegrate people coming out of prison where they may have spent many years of their lives, the protection of victims, but also fears, expectations – and misconceptions by civil society.

Every professional working in the field of Justice for a number of years knows how difficult the subject of reintegration of former prisoners is. The situation is even more difficult when it comes to the reintegration of high-risk offenders.

Prisoners who are foreigners or non-residents in the country where they have been detained may even face further difficulties. If the circumstances in terms of social contacts, employment possibilities, housing etc. are already extremely challenging for persons who have the passport of the country were they are detained and who lived there before they were imprisoned, the situation becomes much worse for those who do not have these ties.

These persons will get even less or possibly no visits in comparison with "national prisoners". They will face legal restrictions on language use for letters, telephone etc. Organising work, education and rehabilitation services is more difficult. Giving them legal, medical and social advice becomes a challenge.

The problem with foreigners is therefore that the social rehabilitation possibilities are more limited, which will in turn lead to an increased risk of re-offending.

Mainly with the aim to enhance the social rehabilitation of non-residents who are accused and/or detained abroad the European Union adopted in 2008 and 2009 three important instruments in the field of detention: (1) Framework Decision 2008/909/JHA adopted on 27 November 2008 on the Transfer of Prisoners; (2) Framework Decision 2008/947/JHA adopted on 27 November 2008 on Probation and Alternative Sanctions; and (3) Framework Decision 2009/829/JHA adopted on 23 October 2009 on European Supervision Order.

The Framework Decision on Probation and Alternative Sanctions and the Framework Decision on the Transfer of Prisoners are particularly relevant for the important topic which will be discussed during this conference.

The Framework Decision on the Transfer of Prisoners can be applied in two different ways. On the one hand, it allows a Member State to execute a prison

3 *Bärbel Heinkelmann* is the Team Leader of the Unit on Procedural Criminal Law, DG Justice, European Commission in Brussels/Belgium.

sentence issued by another Member State against a person who stays in the first Member State. On the other hand, it establishes a system for transferring convicted prisoners back to the Member State of nationality or habitual residence (or to another Member State with which they have close ties).

Even more relevant for our discussion is the Framework Decision on Probation and Alternative Sanctions, which applies to many alternatives to custody and to measures facilitating (early) release. The probation decision or other alternative sanction would be executed in a Member State other than the one in which the person was sentenced, and can be executed in any Member State as long as the person concerned has consented.

Both Framework Decisions were supposed to be implemented in December 2011, but while we note that Transfer of Prisoners starts more and more operating in practice (19 MS have transposed), Probation and Alternative Sanctions is still only transposed in 15 Member States.

Partial and incomplete transposition however hampers the full and effective application of these instruments including for those Member States which have already implemented the Framework Decisions.

Therefore already from the point of view of national legislation the situation is far from ideal, and the Commission has raised its concerns quite recently in a report on the implementation concerning the three Framework Decisions in the field of detention which was published in February this year (5 February 2014).

Of course as of 1 December, the European Court of Justice will have full jurisdiction in the area of police and judicial cooperation in criminal matters. And as of this date the Commission will be able to launch infringement proceedings against those Member States which have not implemented or not correctly implemented all these Framework Decisions.

But this will be not enough. These tools will need to be applied in practice.

We have already noted from a number of expert meetings, contacts with stake holders and NGOs active in this field, conferences and projects that good practices and cooperation will be key.

This is why project like this are so important. Especially in an area such as the one discussed today a good legal framework is not enough to make things function. Already on national level a multidisciplinary exchange and the establishment of good practices is essential.

Bringing this exchange on a transnational level is exactly what we need to make the implementation of the relevant Framework decisions finally a success and to reach their aim which is social rehabilitation.

I appreciate that the participants of this conference will look at this from a multidisciplinary angle and from very different points of view: the view of the academic and the view of the practitioner – the view of the offender and the view of the victim – the view of the lawyer and the view of the probation officer.

I hope that the discussion during these three days will provide precious input for the implementation process and to find solutions and practices which will be helpful in the delicate and essential area of reintegration of high-risk offenders. I wish you all constructive and fruitful discussions during the coming days.

Willem van der Brugge[4]

On behalf of CEP (the Confederation of European Probation) I would like to start by giving special thanks to the Ministry of Justice of Mecklenburg-Western Pomerania which have made this the Justice Cooperation Network event possible in collaboration with all project partners. I especially would like to thank Mr Jörg Jesse for his efforts as Director of the JCN project. CEP has been pleased to be associate partner to the project and of the Justice Cooperation Network.

The objective of the Justice Cooperation Network project was to develop a European network for best practices of transition management of prisoners leaving custody, with a focus on high-risk offenders.

For Probation Organisations in Europe the question of how to organise and execute transition management in daily practice is one of many important challenges which we need to address. In some countries nowadays the resettlement of a high-risk offender into the community can lead to exaggerated media attention, public indignation and even moral panic. More and more Probation professionals in Europe need to find a balance between the needs of their clients and the sensitivities of the community.

To underline the importance of the development of a European network for best practices in transition management I would like to mention the following points:

First

Common understanding of definitions in the field of high-risk offenders and transition management is crucial for professionals in the judicial field but perhaps also for all those engaged in criminal justice, either on a professional or on a voluntary basis.

The prison population across Europe consists largely of people who have been excluded from rather than included in society. In general ex-prisoners have poor formal educational qualifications and also have few job skills. Many of them have experienced long-term problems concerning housing, family and addiction. It is an understatement to say that people leaving prison are often not well enough equipped with sufficient social skills to make a successful transition from prison to society.

However the same is true vice-versa: often society is not well enough prepared to include ex-prisoners in the community. It is not uncommon that ex-offenders encounter suspicion, rejection and even hostility as they make the transition from prison to society.

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4 *Willem van der Brugge* is Secretary General of the Confederation of European Probation (CEP), The Netherlands.

As probation activities take place in the community, knowledge of effective resettlement and good practices are crucial for the 50,000 probation professionals in Europe. Knowledge that should be available for every professional in the judicial field and knowledge that needs to be updated frequently.

The development of a network for best practices of transition management of prisoners leaving custody is an important step in broadening judicial cooperation within Europe. Providing professional standards and evidenced based interventions on resettlement and transition management will help probation professionals to understand each other, to share knowledge and information.

Second

The number of foreign nationals in prison nowadays represents 120.000 persons; over 20% of the total prison population in Europe. They are adding a huge range of languages, cultures, religions and nationalities to our prison population. We all know these numbers are still growing due to greater mobility of people, including offenders.

It is widely recognised that resettlement work should be undertaken with foreign national prisoners both during sentence and following release to secure a successful reintegration in their country of origin and to reduce the risk of harm to others by re-offending.

Framework Decisions of the European Union provide opportunities for the transfer of custodial and alternative sanctions. Framework Decisions recognise that resettlement programs facilitate the social rehabilitation of sentenced persons and improve the protection of victims and the general public. However, these provisions will affect only a small part of the foreign national prisoners of European origin as many Foreign National Prisoners in the EU are in fact nationals from non- EU member States.

The problems of resettlement faced by ex-offenders returning from abroad to their home country are much bigger than those of persons imprisoned within their own country. The risks of re-offending are, it is argued, considerable but can be reduced by dedicated resettlement services.

There are few countries in Europe where services are provided to their nationals detained abroad with the aim to assist them with the resettlement in their home country. In some European countries local prison establishments took the initiative to hold regular meetings between staff and foreign national prisoners to discuss their particular needs and problems such as immigration status, staying in contact with family, language difficulties, access to programmes and facilities and of course resettlement.

We need also to exchange these best practices via the European network for best practice of transition management.

Third

We all know that for high-risk prisoners leaving custody the chance of re-offending is high. Up to 50% of those released have returned to prison within two years. Research shows that effective resettlement programmes can assist in the prevention of further offending, the reduction of victimisation and are in the best interests of the community in general. Across Europe there are good examples of effective resettlement initiatives and good practice. We all recognise the need to share, to learn and to develop best practices for better outcomes. Not only for the prisoners leaving custody but also for communities and the criminal justice systems.

This is also something that we need to explain to the general public. In many European countries, traditional media, sometimes covering events in a biased way, and social media, that by nature do not fall under the code of ethics of journalism, have created a growing anxiety among the public when it comes to high-risk offenders. Court decisions on the release of a high-profile offender, or on cases of re-offending are more and more often challenged by the public crying out for tougher punishment. In these circumstances a Director General must be able to explain to the media which measures a probation service takes to protect the community and all actors in the judicial field must be prepared to legitimize their 'resettlement' activities to society.

Finally

The JCN project may have come to an end; but it is clear to me that further steps need to be taken. In this sense I hope the project is a first step to our own transition management. Cross-border crime requires cross-border mechanisms to fight it. Judicial cooperation between the EU Member States can only function effectively and appropriately if procedures are in place and if the individual professional will recognise the need to cooperate. Focussing on dissemination of project results, knowledge of resettlement and expertise in transition management between professionals is of the utmost importance.

In my opinion the development of a network for best practice of transition management of prisoners leaving custody will help professionals in the judicial field in Europe to understand each other, to share knowledge and information.

Over the next two days this conference can make a major contribution to this goal. The conference programme offers an attractive mix of interesting, instructive and highly topical subjects regarding resettlement, treatment and transition management. As leading experts, you are no doubt eager to get started and meet other government, prison and probation representatives and researchers.

In conclusion, together we can find the best solutions. Solutions that offer maximum benefits in terms of cooperation in the criminal justice field, transition management and a safer Europe.

Karin Dotter-Schiller[5]

I am most grateful to Justice Cooperation Network for the opportunity to address you at this Final Conference of the EU Project "European treatment and transition management of high-risk offenders – Justice Cooperation Network JCN)", the organisers of which are to be congratulated.

From my basic profession I am from the Austrian Prison Service, working with the Federal Ministry of Justice as Deputy Head of the Prison Administration Department and actually the topic risk assessment and risk management of dangerous – especially violent and sexual offenders – is on top of the agenda of our Service. We are preparing a national-wide risk management regulation at present.

It is a real pleasure for me to share some thoughts with you – within the scope of a welcome address – in my function as Board Member and Vice President of EuroPris and in this role I would like to use this opportunity to present the European Organisation of Prison and Correctional Services to you.

To start with some facts on the history of the organization:

EuroPris was established in 2011 as an initiative of a number of Directors General of European Prison Administrations who had been meeting already for many years in the Framework of two Roundtables, the International Roundtable for Correctional Excellence of the Northern and some Western European countries and the Middle Europe Corrections Roundtble (MECR).

These international exchanges had been and are still very useful to them and they decided to open it up to a wider group of prison professionals. In this way the idea of EuroPris was born and finally EuroPris registered in The Hague at the end of 2011.

The European character of the organization is not only reflected by its international Board but also by its international staff that works from offices in The Hague, Brussels and London.

Concerning our Members, which are only national European Prison Administrations, we are really proud that – within this relatively short period of existence – already 18 Prison Services have joined EuroPris. And there are more that expressed their intention to join in 2015. So we are rapidly growing.

Existing for 2.5 years EuroPris is still a young organization. But we are convinced to play a crucial role in the field of prisons and corrections to promote ethical and rights based imprisonment.

There was a need in the European correctional arena for such an organization. Certainly a significant number of European initiatives are already working in the field of prisons and corrections but all of them are focused on specific

5 Dr. *Karin Dotter-Schiller* is Vice President of the European Organisation of Prison and Correctional Services (EuroPris) and Senior Public Prosecutor, Deputy Head of the Department for Prison Service in Vienna/Austria.

subjects rather than covering the whole spectrum of prison matters. That is why EuroPris is well on the way to become THE recognized authority on prison practice and expertise in Europe.

I'd like to refer to EuroPris as a "one-stop-shop" on prison matters in Europe.

Another relevant particular of EuroPris is the fact that we are an organization of practitioners. Our members are those persons responsible for the operation and delivery of prison services. Our task is to listen to them and serve their needs and to be their voice – the voice of the prison professionals.

EuroPris works jointly with other European organizations and prison administrations on reducing re-offending and improving public safety and security. This is of course a continuous process and can only be achieved by continuously working on improving the level of detention standards and practice and on advancing the professionalism of staff working in the correctional field.

You may wonder now what EuroPris is actually doing. EuroPris links up with organizations that are active in the field of prisons and corrections in order to prevent duplication, to strengthen their work and to give them the opportunity to share their activities and results with a broader audience via our website or the media.

The whole concept of encouraging prison administrations to network and establish mechanisms for the exchange of best practice is in line with the aspirations of the EU; such as the need for closer cooperation between judicial authorities in the EU, the need to strengthen the mutual knowledge about our systems and the need to reinforce mutual trust. The work and network of EuroPris supports this agenda; amongst others by close cooperation in the support of the implementation of EC legislation.

In cooperation with the Council of Europe we have a role to play in providing practical expertise to their work in developing standards for the prison sector.

Being a one-stop-shop on prison matters also means that individuals and institutions call upon EuroPris to obtain prison related information. In order to facilitate this we are building databases and we developed the European Prison Information System (EPIS) which is an online system on our website providing extensive European prison data and information that can easily be found and compared.

EuroPris is very much a network organization. Within this network we associate with and partly have institutionalized regular contact with other European organizations that operate in the criminal justice chain.

For example with CEP, the Confederation of European Probation, and the European Forum for Restorative Justice EuroPris has established the Criminal Justice Platform.

Listening and serving the needs of the Prison Administrations, learning from each other – rather than reinventing the wheel – are one of the most important

tasks of our organization. We do this in a very practical way. We organize expert groups and workshops as a means to address these needs. Bringing together experts on a specific topic and from different European countries has been proven a fruitful approach.

Lately we have been working on the following topics: transfer of prisoners under the EC Framework Decision 909, the use of digital technology in prisons, staff training and development, foreign nationals in prison, victim's issues and research and statistics for the development of the EPIS system.

The need for cooperation between European agencies is also very visible in the joint implementation of multilateral cooperation projects such as the Justice Cooperation Network on the Reintegration of High-risk Offenders.

Building an European network, developing common understanding, defining new work models and choosing best practice are key tasks in European cooperation. Doing all of this is essential for being able to increase the professionalism of our staff in their daily work and contact with prisoners.

The vast majority of persons in custody are there for only a limited amount of time and will return to society eventually. It is of common interest, not only to prison services, but to society as a whole that their return to this society is prepared in such a way that it does neither cause harm to the prisoner him- or herself, nor to the victim or any other member of society.

This is never a simple task and a specific challenge concerning High-risk Offenders. Prison services face this challenge in balancing the rights of dangerous offenders with the need to provide security in society. Therefore it is vital to develop methods and instruments enabling us to identify these groups of offenders; it is important to choose effective treatment methods and - last but even more important - to carefully prepare their transition into society and support them in living a life without crime once they have left prison.

On behalf of EuroPris I can assure you that we are excited to learn of the project results in the next two days and to share them with our stakeholders.

Finally let me thank all project partners for their work and efforts to make this project a success and I wish you – and all of us – a very fruitful conference.

Thank you for your attention!

2.2 Introduction to the course of the project – From Florence to Warnemünde: Two years of the JCN-Project

Jörg Jesse

We had already invested a lot of work when we submitted the application for this project to the Directorate-General for Justice of the EU 2 ½ years ago. Nevertheless, few of us believed that we would be awarded the project. And this for two reasons: why should the Commission award such an extensive project to our small organisation? And if this should succeed, would we be overwhelmed by the volume of work?

The scopes of work increased from month to month, but at the same time our confidence that we could meet the self-imposed requirements increased. We are proud to welcome today the approximately 400 participants from 34 countries, who obviously have a vital interest in the topic.

My job is to tell you the story of this project. In doing so I will not anticipate the presentation of the project results, but report on how we worked and how we came to our results. When we conducted preliminary discussions with our partner countries on the subject of reintegration of high-risk offenders, two things were quickly quite clear. The problems and the risks associated with release were the same in all countries, and no country had the ideal solution to the problems. All had specific difficulties meeting the challenge.

Now, it is not for me to assess the situation in the other partner countries. The colleagues had enough criticism for own their particular situation. To illustrate, however, some examples from Germany are helpful because everybody has to organize his own affairs first.

If prisons and probation are to operate smoothly, seamless collaboration and information are a prerequisite. Currently in Germany, data may be passed on release from the prison to the probation service. Nevertheless, the reverse, from the probation service to the prison, may occur only with the consent of the person concerned. So far, thanks to our federal structure, it has not been possible to fill this information gap by law. Thus, data protection is seen as perpetrator protection. However, after five years of unsuccessful initiatives, new legislation is now in view! Urgently needed legislation for the construction of transitional facilities specifically for high-risk offenders is still to come. Meanwhile, we are helpless observers when protests from sections of the population are held in front of the doors of released sex offenders and luridly presented in the media.

There is a well-functioning and collegial collaboration between me and my 15 colleagues who are responsible in the federal states for the prison service. We are in close contact and meet at least twice a year. If topics such as probation, transition management or reintegration are addressed, over 50 percent of the colleagues just shrug their shoulders. They are not responsible. The

responsibility for probation is in another department of their ministry. I would not know, for example, whom I should contact and suspect that there are heads of department in some ministries who are responsible for probation but have never spoken to a probation officer. Thus, it is difficult to develop concepts. Fragmented responsibilities also mean an uncoordinated approach.

The same is true with the Council of Europe: what does not succeed in Germany in 16 federal states is possible in 47 nations. There are no events held there anymore by the Director-General purely for prisons, but only joint annual meetings of the Directors General of Probation. It is understood, despite all the diversity in the countries of Europe that the goal of our work is the prevention of new crimes and new imprisonments, and this is only possible by co-operation. Contrary to popular prejudice, European institutions are not immovable and not inflexible!

A final example: the reintegration of prisoners seems to be the sole responsibility of the judiciary in the consciousness of other ministries and authorities in counties and municipalities. There nobody feels responsible for former imprisoned citizens, who always return home sometime. That is truly incomprehensible, because the risks of an unsuccessful reintegration are borne by the communities.

In the Ministry of Education, everybody prefers to care about schools, and in social ministries, everybody prefers to care about children in kindergardens. Nobody wants to contaminate himself or herself with the topic of criminality. However, the reintegration of ex-convicts is a task for society as a whole; the judiciary cannot solve it alone.

On the initiative of Mecklenburg-Vorpommern, this issue was brought up in the last Ministers of Justice conference. It is to be expected from there that other ministries take responsibility for the reintegration of ex-convicts. The initial situation in the partner countries was partly similar, partly different; but the problems were obvious. Our goal can be put in a few short words:

Is it possible that countries with different laws, prison and probation systems but with comparable target groups and degree of problems come to a common understanding on how to deal with high-risk offenders in prison, in transition to release and reintegration, and can these results form the basis for the development of standards in Europe?

Our project partners were very quickly clear: they included the Tallinn Prison, the Irish Government Department of Justice and Equality, the Finnish Ministry of Justice and the Agency for criminal penalties, Finland. The University of Greifswald with the chair of Prof. Dünkel serves as academic support and Pixel is the experienced administrator of European projects. In addition, the associated partners were the Federal Ministry of Justice and Consumer Protection, the European Probation Organisation (CEP), the Ministries of Justice of Belgium and Slovakia, and the Ministry of Justice and

Public Administration of the Republic of Slovenia providing assistance and support.

The project began at Pixel in Florence in December 2012. The project partners met each other and were trained by Pixel in order to comply with future invoicing practices. The structure and organization of the project was set and a basic structure of the website was decided on. After three days we had only learned a little about the organization of the prison and probation services in the partner countries. But we got an idea that would, over two years, cost us a lot of time and work on formal and administrative issues.

After starting in Florence, the JCN project was divided into four workshops. The substantive work took place here. Here the work – if you like, the homework – was distributed for the time between the workshops. In most cases, these orders were extensive questionnaires, which had to be filled in by each partner country – and by associated partners.

In addition, between the workshops, internal meetings were held in each country; internal and external newsletters, press articles, presentations were prepared; and the website tasks were completed. Each workshop itself was associated with significant organizational and substantial effort, which was carried out perfectly by all partners. Without this work and input from the associated partners, the success of the project was not conceivable. From the beginning, this was a field workers' project with academic support. From the beginning, it was a bottom-up and not top-down project.

For us, it was all about the question of what those who deal directly with offenders deem necessary and consider appropriate. Specific questions were discussed, such as: what are we going to do at what point with the offender? What has been proven, is evaluated, and should be continued? What can we learn from other countries because it's better than our own routines? I.e. at first it was not about bowing to the national boundaries and regulations and leading the discussion against their background.

Of course, we were not blind to the rules of the Council of Europe and the immutable national constraints. Our goal, however, remained getting beyond the diversity of national systems into four proposals considered by practitioners in all partner countries to be reasonable and necessary.

However, the challenges were evident only in the specific discussions. At the end of the first substantive workshops in Tallinn, we were supposed to come to a common definition of "high-risk offender". For this purpose, we first had to understand each other's systems and found that the same tasks and objectives in the four different countries were organized and managed completely differently. We learned how much we are stuck in our own thinking and evaluating our own systems and how hard it is to let go of these routines.

This can be illustrated by a few examples: In Estonia, the warden is also chief probation officer within his regional jurisdiction. Each inmate is assigned to a case manager. The imprisonment ratio is three to four times higher than in

the other partner countries.In Ireland it is not the warden, but the Directorate General of Prisons that decides on any form of prison relaxation. The court sentences to a prison term, but the prison administration decides whether anyone is released early. In Finland the idea of open prison as normal prison is clearly closer to reality as in all other partner countries. Here there is a landscape of transitional facilities that functions well. We were especially impressed by the widespread participation of NGOs. One example is the nationwide active self-help group of former prisoners (KRIS), who make a valuable contribution to reintegration. Finland has the lowest imprisonment ratio of the four partner countries. In other words, the rules and their implementation differ significantly between the participating countries.

In the first workshop in Tallinn, we worked for three days to understand, to comprehend and to learn, to escape from our own way of thinking – at least temporarily and to facilitate understanding for each other's systems. Nevertheless, we succeeded in formulating a definition at the end:

"*A high-risk offender is someone who presents a high probability to commit crimes which may cause very serious personal, physical or psychological harm*".

The next step was the identification and description of the similarities and differences between the systems. Until the workshop in Dublin, every country was to formulate exactly how it works with the quality standards in each stage of the process with the prisoners, systematically, from the intake and the prison planning up to integration into society. At the end of the Dublin workshop we had the process overview from which similarities and differences were clearly identifiable. This overview was the basis for the third workshop in Helsinki. The partners were now asked to nominate their opinion, the best solution from the practice of the four countries for each process step from all available information. This was developed so far in Helsinki that at the end of the workshop we had a common opinion of best practice models in all process steps. The best practice examples formulated in Helsinki were again subjected to intensive analysis with the goal in the fourth workshop in Schwerin of formulating standards from them, standards that were, in spite of all the differences among the countries, considered by the project partners to be useful for starting a pan-European professional discussion.

I would like to highlight some questions raised in the discussion as examples:

- Which standards should be formulated, minimum or maximum standards? Towards which countries should you orientate them?
- Can the minimum standard of Scandinavian countries be taken automatically e.g. as a minimum standard for EU accession countries?

- Should a social therapy for dangerous offenders - legal standard in Germany - be suggested for all countries in Europe?
- Are successful, but costly and labour-intensive treatment programs to be seriously suggested to countries plagued with massive overcrowding and in which the cells often accommodate 4 or more prisoners?

This is where the challenge of the project lies. Can countries that are so different from each other find joint suggestions, not only for themselves, but also for entering into a discussion with other European countries? Is it possible to get a common understanding with further countries via the project partner countries? We have the suggestions now and present them to the field workers, academics and responsible persons from more than 30 countries. What resonance will we encounter here? What reactions, proposals and criticism will we trigger here?

At the latest after the workshop in Helsinki we had the basic model of the JCN project, which we still have to this day.

Apart from the regulations of the Council of Europe, seen as overarching structure, and the existing national laws, the plan consisted of the modules of prison planning and management, transition management and reintegration. Basically, these are the processes that the convicted person passes through from imprisonment until his return to his place of residence. However, it became increasingly clear in the course of our work that suggestions for legislation should also result from the suggestions for the improvement of processes, and this for each module or process step. In a nutshell, we had finally formulated 3 x "best practice" and 1 x “best legislation”. As we saw the need for statutory regulation in all 3 process modules, it was clear at least since the discussion in the last workshop in Schwerin that the aspect of legislation would take a special position. In this respect, the legislation module is not in addition to the other three, but in an interaction with them and with the European standards.

In this conference, the persons responsible for the four forums “legislation”, “sentence planning and treatment”, “transition management and release” and “re-integration, aftercare and monitoring” will present the results of the their projects and then discuss them with you. If there is a broad consensus with regard to our results at the end of this conference, this project would be a complete success. Therefore, we are very interested to hear your opinions, your feedback, and your suggestions and hope that the debate, – as with us in the workshops – is not primarily about limitations and obstacles, but about necessities and possibilities.

At the heart of the workshops was always the work on the project goal, the professional exchanges. This was supplemented in all countries by expert input and a look at the practice. We went to a correctional facility in each country and had contact with probation officers. In addition, we were grateful for the

national input of probation officers and prison officers, criminologists, prosecutors, non-governmental organizations, police officers and responsible persons.

At this point I would like to say thank you very much to all contributors. They all worked hard, wrote hundreds of emails and kept in close contact for two years. We laughed, learned, argued, got on each other's nerves, and found our way out of impasses repeatedly, found detours and have experienced and enjoyed wonderful evenings of warm hospitality after work. We have experienced a charming and almost tourist-free Florence in December. At all other workshop locations it has either been raining, snowing, storming or freezing, but there were also sunny hours everywhere.

In two years, strangers have become colleagues and colleagues have become friends! Europe, what more could you want?

3. Rehabilitation of high-risk offenders needs courage – Balanced legislation and sentencing, preparation for early release, and concentrated transition management

Christoph Krehl

I am very pleased to be here today to speak to you at your final conference on the topic of "reintegration of high-risk offenders." I would like to thank the organizers for this opportunity and the invitation to be here today to exchange some thoughts on the subject that is so dear to you, with you.

Admittedly, I was a little surprised and sceptical. I did not participate in any of your four workshops, and am also not a professional specialist who could contribute anything further to the questions you have intensively discussed in the last two years.

But then any doubts I had as to whether I should accept the invitation or not quickly cleared away. I looked at the results you obtained and got a sense of the concept that you worked on. It struck me, it impressed me how you convincingly presented transnational joint solutions despite different conditions. And this has inspired me to take your ideas seriously and to ask whether and how your basic idea can or must also be applied to other areas dealing with high-risk offenders in the preliminary stages of the penal system and after the offender is released.

I.

At the center of your considerations is the "effective reintegration" of high-risk offenders. You describe a series of measures that are necessary or useful to achieve this goal. These begin with the intake of a high-risk offender in prison with a prison plan oriented toward risk and need for treatment. It involves numerous treatment measures and tests during the period of state incarnation, continues with preliminary reintegration support in the release phase and

extends – in the context of aftercare and monitoring – into the time when the convict has been released. Your compilation of possible measures – with regard to the individual steps as well as in terms of the entire process of dealing with the high-risk offenders – sounds so obvious that one wonders why they have not already been implemented long ago.

From a German perspective, there are certainly a number of legal foundations such as the Federal German Law of Supervision of Conduct or the respective Federal States Enforcement Act that on paper already enable "effective reintegration". That this does not work satisfactorily has a variety of reasons. These should not differ significantly from those in other countries with comparable deficits such as in Germany.

In the forefront is – in addition to financial constraints that limit spending on prisons and "criminals", and a shortage of skilled employees – still the conviction that prison is not primarily for rehabilitation, but to protect the public from further criminal acts. This is reflected in a series of penal laws of individual federal states in which – in clear demarcation to the previously applicable penal law of the federal state – this is held as an appropriate prison goal. The notable exception here is the Prison Act of Mecklenburg-Western Pomerania, where rehabilitation is the "primary motive", and is thus the priority goal of prison.

This is also clear at the institute of Supervision of Conduct. It takes over the aftercare services for clients with a poor legal prognosis in Germany. But they not only keep a track of reintegration functions, but largely also – like the former police surveillance – sustainable security functions. These may only be external indicators that suggest that the safety of society takes precedence over attempting a (possibly not successful) reintegration of the offender. But the entirety shows – especially with dangerous offenders – impressively how little confidence exists that the (necessary) protection of our society can be achieved by improving the conditions for reintegration. If the German legislature had really considered the setting up of forensic outpatient departments (as a necessary offer of therapeutic measures after release from prison) useful and necessary, it would have obligated the federal states to actually set up such departments. However, if it leaves the setting up of such clinics, as happened, at their discretion, it indicates that possibly one can't promise much from them. On the other hand, it also proves how much financial considerations can guide actions.

However, financial considerations, costly and time-consuming, for security measures for "high-risk offenders" in society seem to play no role in individual cases, such as when it comes to a round-the-clock surveillance of a released offender.

In addition, there is also a general (criminal-) political climate in which there is little or no room for the rehabilitation efforts of supposedly high-risk violent or sexual offenders. In the German media the impression is given of a large, immense threat presented by such offenders in public, without even an attempt being made to provide specific proof of this. Individual cases are always generalized and taken as an opportunity to draw attention to a serious risk to life, health or sexual self-determination. Not only in connection with the release of offenders classified as dangerous violent and sex offenders from preventive detention – which was required by the decision of the European Court of Human Rights in 2009 – have major news broadcasters extensively and quite sympathetically reported from communities in which dismissed offenders wanted to live and where opposition to it arose. Such reporting is an expression of a specific assessment in our society on the one hand, but on the other hand it creates constraints on those exposed to it, who are the main decision-makers at different locations for the prosecution of crime and dealing with offenders.

However, it is of course not only the media coverage; it is primarily a criminal-political bias that determines the handling of criminal behaviour. It is characterized by a retribution-oriented punishment of offences which tends to trigger a tightening of criminal law "hard" penalties. It is accompanied by a security thinking that unilaterally grants the protection of society precedence over the liberty of the individual. In the past, the protection against high-risk offenders in Germany led to the expansion of the institution of preventive detention, a measure which so far only pursued security purposes.

Given these conditions, it is not especially surprising that measures such as those proposed by you are neither laid down in a comprehensive way by law nor – as far as they are to be found individually in existing legislation – remotely implemented in practice. The general suppression of the open prison, the refusal of relaxations for offenders classified as dangerous offenders despite conflicting judicial assessment or neglect of possibilities of early release in Germany is based on the conviction that an as long as possible long-term imprisonment offers the best protection for our society.

The results of this project will certainly provide an important impulse to rethink the fundamental belief, or at least to review the proposals. This should therefore be particularly true because there is an overarching European impulse that may be more difficult to close down than national initiatives. But it is also true because your proposals do not affect all incarcerated offenders, but only a small section of prisoners. The basic system and its practical application does not have to be questioned; however, it has the chance to show good will to implement some of what has been proposed.

That this fundamental willingness exists has been shown in Germany, as the implementation of preventive detention was put on a new basis in accordance with the rulings of the European Court of Human Rights and the Federal Constitutional Court on the incompatibility of preventive detention with European and national constitutional law. In doing so, some things have been realised that are required in the present project under the (in my opinion quite comparable) label "high-risk offender". This was done probably less out of conviction but rather under the pressure of said court decisions.

However, I fear rather a fundamental reticence in the realization of possible proposals more than a risk-tolerant implementation. The risk is too big – from the perspective of those who have to decide – that this could lead to an increase of relapses of offenders, who have been granted early release or prison relaxations.

The general reference in the summary of the project results to academic studies showing that effective reintegration has a preventive effect on delinquency is certainly true. But it does not have in this form – these findings also are not new – the persuasiveness that is necessary to bring about changes in such far-reaching ways. Here certainly is room for improvement. In this respect the differentiated analysis in the evaluation report of the Greifswald researchers, and in particular in the paper by Ineke Pruin (see under *6.2.3.1*) is extremely helpful.

II.

The project's proposals received support from other sides. Two recent criminological studies from Germany do not deal with in details with the effects of rehabilitation measures on the recidivism of offenders, but in general with the question of recidivism of offenders who have been considered highly dangerous and from whom serious criminal offences would have been expected. Usually such academic insight is not popular because the assessment of offenders as dangerous regularly leads detention being extended. At least this is so where this extension is legally possible, in Germany with the imposition of a life sentence or preventive detention. In part, this is also true where in the case of longer prison sentences early release is not granted in view of the risk prognosis, and it remains largely untested whether the risk assessment of the prisoner was correct or not.

In Germany, there were, in the context of preventive detention, two situations in which there were legal grounds for the release of convicts who were considered dangerous.

The first concerned offenders who had applications for subsequent preventative detention pursuant to § 66b of the Criminal Code (old version) rejected due to a restrictive interpretation of the new regulation and were therefore released from prison in the period from January 2002 to 31 December 2006. These applications were possible in view of circumstances not known at the time of conviction, but which subsequently became known during the time in prison. This led to the assessment that the imprisoned convicts will with high probability commit crimes in which the victims are physically or mentally severely injured.

Secondly, it concerns the release at short notice of some detainees assessed as high risk of relapse, who were released pursuant to the judgment of the European Court of Human Rights on the human rights of the retroactive repeal of the 10-year limit on preventive detention. Both studies deal inter alia with the recidivism of these released prisoners and come to some amazing results that I unfortunately cannot present to you in detail. Just this:

A Bochum study, which has now been updated by *Alex* (Relapse incidence and long observation period, see *Neue Kriminalpolitik* 2013, p. 351), only concerns legal probation. There, after the release of 115 supposedly highly dangerous prisoners, the data (Federal Registry extract and enforcement documents) necessary for the assessment of legal parole of at least 77 released prisoners was evaluated at two different points in time. At the review on June 30, 2008, there were 50 parolees with no further record; ten had been sentenced to fines and five to imprisonment with probation. In 12 cases there was imprisonment without probation, five concerned rather petty offenses (three thefts, one assault, and one fraud). In the 7 serious relapse offenses there were prison sentences of over two years, in three cases additional preventive detention. There were 4 criminal offenses pursuant to § 66b of the Criminal Code (old version), thus achieving the required significance, of which only in three cases was there relevant relapse delinquency.

In view of this short time period – 34 of the released prisoners were less than 2.5 years in liberty – a further survey was made on June 30, 2013. Eight of the original 77 parolees had died, of whom three had previously been convicted with minor suspended prison sentences. The following picture was the result for the remaining 69 parolees in a review period from 6.5 to 13 years after release:

- 27 parolees without criminal record,
- 12 parolees with fines,
- 7 parolees with suspended sentences,
- 23 parolees with prison sentence without parole, of which 9 cases with preventive detention.

An increase in relapse delinquency is above all due to convictions with prison sentences; the number has almost doubled here. However, with 33% the percentage is not higher than regular releases from prison after a four year observation period. However, another relapse study published by the Federal Ministry of Justice must be taken into consideration, whereby only 23% of those who were released from a prison sentence returned there in 3 years, after 6 years it was 30%. Compared to the first survey in 2008, a further seven are added to the seven people with considerable relapse delinquency, but three of them with only property crimes. There remain 11 parolees who have been convicted of “catalogue deeds”, that is 16% (excluding the deceased).

By comparison: with regular release, according to *Jehle* (ibid., 2003), recidivism (sentenced to imprisonment without parole) was 26.9% after conviction for robbery offenses, 10.3% after homicides and 19.5% for sexual offenses (cf. also *Jehle et al.*, 2013, 232: only 3% of sexual violence perpetrators relapsed with rape or sexual assault).

Moreover, – as *Alex* established – with six of the released with considerable relapse delinquency, at least two experts had unanimously affirmed a high risk, but the same was also true for 26 parolees who did not attract serious attention again.

Also worth mentioning: 15 ex-prisoners who had been convicted of homicide are not at all evident with severe relapse delinquency.

And: included in the study were 45 persons convicted of sexual offenses. Five relevant relapses result in a relapse rate of 12%, so after an observation period of 6.5 years there can be no question of an increased threat of sexual offenses.

A supplement to the survey of 30 June 2013 recorded a further 54 cases of convicted persons, who were released from prison between 1 January 2007 and 31 December 2009. Here the picture was as follows:

- 31 parolees without criminal record,
- 4 parolees with fines,
- 2 parolees with suspended sentences,
- 13 parolees with prison sentence without parole, of which eight cases with preventive detention,
- 2 placements in a Psychiatric Hospital.

There were 8 cases of recidivism catalogue acts within the meaning of § 66b of the Criminal Code (old version) corresponding to a share of 15% in terms of assumed high risk. With 85% of the parolees still alive at the time of the survey, however, the original risk prognosis has not been reflected in serious violent or sexual delinquency.

A recent publication of the Institute of Criminology in Germany by *Anna Mandera* deals with the German supervision of former detainees. She outlines – for this project quite interesting – the package of measures taken in the respective cases to prepare for release, follow-up and control. She also includes among others the legal parole of detainees accommodated after release from preventive detention, in accordance with the aforementioned decision of the ECtHR.

These were – in contrast to the study by *Alex* – not evaluations of Central Federal Register Extracts, but interviews of the probation officer responsible using a comprehensive questionnaire. Of 261 detainees, who were normally affected by the abolition of the originally valid 10-year limit, at least 80 were in preventive detention on 31 May 2010 (legal effect of the decision of the ECHR) and were eventually released; of those, 68 parolees could be traced with the probation officers responsible for them for interviews. 59 usable questionnaires were returned.

At the time of the survey 52 parolees were at liberty, five in prison, two in detention awaiting trial, none in a forensic psychiatric hospital. The time of release was 33-15 months prior. There were no preliminary proceedings against 32 parolees – apart from violations of the instructions of § 145a Criminal Code. Preliminary proceedings were initiated against 18 parolees, the offenses from all sectors concerned (traffic offenses, property offenses, drug offenses, assault, sexual offenses of the less serious type, bodily harm, arson). Ten cases of conviction have been reported; fines were predominantly imposed, but also prison sentences, sometimes without parole. To the extent that it could be substantiated, the alleged crimes were limited almost exclusively to offenses of low and medium severity. The prognosis that the parolees would commit serious sexual and violent offenses has not materialized so far.

It should be noted, however, that the care of these former detainees was intensively planned, even though in some cases the release from prison was a surprise and it could not be adequately prepared for. It should be further emphasized that police monitoring measures have played a major role. All concerned were included in the police security concept of the respective federal state, 42 of them in the highest risk category. 18 covert observations, 19 open, numerous conversations with individuals posing threats and with persons being threatened, phone monitoring, and unannounced visits: the list of police measures is varied and long. Which circumstances have ultimately prevented a higher relapse delinquency, the intensive supervision by a probation officer or other aftercare institutions or preventative police security measures, remains an open question.

III.

To summarize, it can be stated that after Alex's certainly convincing study, supported by Manderra's results, the high rate of recidivism of supposedly dangerous violent and sex crime offenders is clearly below 20%. This shows that the risk associated with their release of committing serious crimes is significantly lower than expected. That should or must be, for all those who handle offenders regarded as highly dangerous, cause to show courage on one's own, to take a certain risk that is inevitably associated with the release of offenders seen as dangerous, because offenses occur and could occur, which would not happen without a release. This is of course more than balanced by the gain in liberty of numerous reintegrated persons into society; people, who otherwise will remain in state custody for as long as legally possible although they would not reoffend.

Why is such a handling only possible afterthe intervention by the courts and in Germany in particular the Federal Constitutional Court (Supreme Court)?

IV.

In the interplay between "risk of also committing serious crimes" on one hand and "safe realization of liberty" on the other hand, the pendulum should not always swing away from the liberty of few offenders, who have little or no supporters anyway.

All measures, even those which are useful only in the abstract, to reduce the risk of delinquency further are therefore to be taken. The realisation of concepts – as they have been developed in this project – is an expression of the constitutionally required obligation in Germany to give convicted persons a realistic chance to regain permanent liberty and become part of our society. This may not be achieved in all proposed cases, but in any case a fundamental legal specification must be required, which also clearly expresses the interest of offenders to rehabilitation.

And: An effective implementation of the proposed reintegration endeavours that is powerful in practice is also both necessary and constitutionally required. The fulfilment of this obligation to reintegration enshrined in the Basic Law of Germany requires not only legal lip service. "Forensic outpatient departments" as an essential part of a follow-up aftercare should not be neglected only for financial reasons, when they are basically considered necessary because otherwise therapeutic care is not guaranteed after long imprisonment.

Germany has more and more lost sight of the constitutionally based duty of the state to the reintegration of convicts in recent years. By contrast, the likewise constitutionally guaranteed obligation of the state to ensure the individual a life in security and liberty has gained in importance and has increasingly become the reference point for government action.

The constant tightening of penal provisions with new offenses and increasing penalties, the extension of preventive detention, which was prevented only by the European Court of Human Rights and the Constitutional Court, legislation adapted to this trend – even in the face of pressure from the media – nothing has opposed it: that is the sad reality. The same applies to prisons, peace of mind placed in the forefront by the ministries, and reintegration (by large scale reduction of open prison) put on hold.

Proposals on how they were developed in this project, or criminological findings – as shown – are potentially important impulses, which can lead to an outstanding shift in the necessary balancing of opposing constitutionally protected interests. What should otherwise change the reintegration-hostile, security-oriented practice?

Let me formulate some hypotheses at the end of my presentation:

First: possible changes should not be limited solely to improving the management of offenders in prison and after release. It is necessary to keep the offender constantly in view during the whole rehabilitation of relevant criminal events, naturally without neglecting other penal purposes or culpability.

Legislation that focuses on closing any actual or alleged punishment loopholes, increasing penalties and providing or expanding security measures shows clearly that the reintegration of offenders has no great significance. The possibility created in Germany in the ordinance for preventive detention (even if only in the form of reserved preventive detention. See §§ 7, para. 2, 106 para. 3 JGG) for adolescents and young adults is as an example of an area in which the educational theory is to be dominant, emphasises this development. The discussion about increasing the penalty provisions for the imposition of a youth sentence of 15 years for cases of murder with a special degree of fault is another recent instance. What is needed is more balanced legislation, as we can find – albeit with significant external influence – in the reorganization of preventive detention. work on the reform of the right of admission to a psychiatric hospital is to be tied to this, where both with the question of the ordinance conditions and in view of their duration as well as a periodic review of the measures that deeply encroach on the rights of the convicted, a stronger limitation is required on this decisive security-serving measure.

Second: The handling of the administration of justice with risk offenders belongs on the test bench. The media coverage has for a long time had an influence on the judiciary. There is also a social climate that attaches little value to the rights of an offender who has broken the law and has inflicted injury on (innocent) victims, and instead calls for security against such people. This has an effect, especially when it comes to assessing the risk posed by such offenders.

Future lawful behaviour is anyway difficult to predict for long periods of time. Crime prognoses also seem to be severely limited epistemologically and methodologically, probably because in addition to static factors from the past, variable circumstances also affect future behaviour. Despite an improvement in the diagnostic tools and the development of standards for an expert opinion, the experts have to contend with the seemingly unsolvable problem of the predictability of human behaviour. Otherwise there is no other way to explain why the judges and the experts – as *Alex*'s study proved – have seriously overestimated the extent of the risk posed by offenders released from prison after many years.

A side note: As for the judges, this not only lies in their own conviction of the risk posed by the person to be judged. What's missing is – as can be also found in deliberations of a supreme federal court – even the willingness to take a decision with a certain risk. "I don't want to take on the responsibility of releasing the accused" – this statement is connected with reference to a positive prognosis decision that has become known to the public and led to the release of an offender and has later been found to be false.

The experts are likely to have to contend with the same phenomenon, knowing that a positive prognosis can influence a judge whose decision is supported by the expert's opinion and thus shifts part of the responsibility onto the expert. With a negative prognosis one is always on the "safe" side.

This not only plays a role in the imposition of penalties or security measures where the initial course is set for "dangerous" risk offenders. It has effects after the conviction and the beginning of imprisonment on all decisions for which you need a positive prognosis. Prison relaxations, day-release, conditional release or even the relaxation of prison conditions in high-security units – a sufficiently positive prognosis is needed everywhere, which is an insurmountable hurdle in many cases: The negative initial assessment, which – if at all – can only be overcome after a considerable passage of time and good behaviour for many years.

Many expert opinions read like academic papers, abstract, distant and not really dealing with the person involved and his future prospects. Many decisions that follow these expert opinions, because the experts are seen as "experienced in forensics and generally recognized as a knowledgeable expert", give the impression of doing so for that reason alone, glad that academic expertise supports the decision in the meaning of security for our society.

Rehabilitation and reintegration are words that no longer occur in the vocabulary of decisions, but must occur so that an effective reintegration is possible sometimes.

So my second hypothesis is: Here we need bolder judges who are aware of the limits of academic prognoses and will force the experts to make more honest

statements in the assessment of future human behaviour. Judge with a sense of proportion instead of locking up without perspective.

Third, courage is ultimately necessary, if the subject – what your work has focused on – is preparation for early release and a concentrated transition management. All parties are required here, the judge who has to decide on easing or releasing; the people responsible for prisons, up to and including the probations service and supervision of conduct offices; social agencies; communal services; charities and even security authorities.

The lack of ability to pre-determine exactly how a person will behave in the future academically includes the possibility of being wrong. It needs courage and humanity, however to accept the risk associated with release, without seeing an immediate threat to the security of our society.

In doing so, the risk can indeed be limited – as has been demonstrated in detail in this project – so that it is kept manageable. But it cannot be ultimately ruled out that the risk is also realized.

Allow me a fourth conclusion and final remark: our society should learn that a release that is not seen as sufficiently successful is not to be regarded from the outset as an unacceptable infringement of our security. It should instead view it as a gain in liberty – which all offenders must have specific justified prospect to regain under constitutional law – for those whose reintegration succeeds. They would otherwise be excluded from society, living their lives in state custody, given the existing limits of state accommodation or prison where possibly one day they might able to live a life in liberty, even if they would not necessarily be able to get close to sustaining it after long-term imprisonment.

Until then it seems to me still to be a long way, even though the participants in this project have covered an important leg of the journey with their international efforts and practical proposals. Here I wish you continued success!

4. Victims of crime – the need of care, protection, and strengthening their position in criminal procedure

Jörg Ziercke

The purpose of this contribution to the project is to add another perspective: the one of the victims. The protection of victims and victims' rights in criminal proceedings require greater attention. The attention in the media today is usually on the offenders in the process, and I would like it also for the needs of the victims of crime.

Who helps the victims on the way back to the normality of everyday life? In general, victims are still the focus of social and political debates only in special cases.

The coming to terms with the racist murders of so-called "National Socialist Underground" (NSU) has triggered a debate on the treatment and the interaction between the security authorities and victims and victims' relatives in Germany. The families of those killed felt left alone and saw themselves confronted with the investigators' suspicions. In the ongoing trial before the Higher Regional Court in Munich against *Beate Zschäpe* and the supporters of the NSU, it is clear again and again how serious the injuries to the victims' families are.

What is the situation of victims in Germany? Who is the victim and what does a victim experience do to a person?

The police crime statistics give only a limited answer to this. With ca. 6 Million recorded crimes every year, about one million direct victims of selected offenses are recorded – without us being able to estimate the unreported cases closer. Specifically, this means there was a total of nearly 960,000 victims of ca. 840,000 offenses in 2013.

Depending on the crime, clear gender and age differences can be identified: with "robbery" and "bodily harm", predominantly male victims are registered. The majority of adult victims of "homicide" were between 30 and 60 years old.

There are no data on the families of the victims available. Young people were disproportionately affected, especially in "sexual offences", but also in "robberies" and "bodily harm". People aged 60 and over were relatively rarely recorded as victims.

Nearly one million victims annually in Germany, but this is only the number of recorded crimes. In order to expand the knowledge of victim prevalence, unrecorded crime research is essential. Therefore, the Federal Criminal Police Office (*Bundeskriminalamt*, BKA) has taken part in a research project financed by the Federal Ministry of Education and Research on (representative) unrecorded crime, together with, for example, the Max Planck Institute for Foreign and International Criminal Law in Freiburg as one of seven members of the consortium in the "barometer of security in Germany" (BaSiD).

The objective of the security barometer is to record and describe "security" in Germany, taking into account the phenomena of crime, terrorism, major technical accidents and natural disasters. From June 2010 to May 2013 a total of nine sub-projects were worked on in the network of research institutions involved.

In the unrecorded crime victim survey, more than 35,500 people were interviewed. It was the largest unrecorded crime victim survey ever conducted in Germany. Participants in the study were asked about their experiences as victims of crime in order to quantify the real crime rate, including unrecorded crimes, for selected offenses, thus to quantify the crimes where no charges were pressed. They were also questioned on the perception of fear of crime and attitudes towards the police and judiciary. The survey provided data on victim prevalence, that is, the proportion of persons or households who were victims of a criminal offense at least once within a defined period. There are certain restrictions with regard to the comparative analysis of police recorded crime and unrecorded crime research: the Federal Police Statistics (PKS) are established by the registration by trained police officers; in the victimization survey the offense category was determined by the individual assessment of the victim.

The findings: German households are most commonly victims of:

- malware (24% were affected at least once since the beginning of 2007),
- goods and services fraud (14% were victimized since 2007),
- bicycle theft (16.3% since 2007),
- personal theft (10.9% since 2007),
- bodily harm (9.2% since 2007).

There are clear parallels between recorded and unrecorded crime, but there are also significant regional differences. The major city-states of Hamburg and Berlin as well as the northern provinces have a higher rate, the provinces in the

southwest and east of the Federal Republic a lower rate. A higher rate in northern Germany had already been established in the 1990s in other unrecorded crime studies. This finding corresponds with the recorded crime data of the PKS. New is the observation of the low risk of being a victim in East-Germany. This seems very plausible as the social situation has changed and stabilized enormously compared to the 1990s. Repeat victimization, based on a twelve-month period, was reported by only a small group of the respondents. They were particularly victims of:

1. Bodily harm (40% of the victims of bodily harm were repeatedly victimised),
2. goods and services fraud (share of repeat victims: 26%) and
3. burglary (share of repeat victims: 20%).

The risk of becoming a victim of crime varies greatly and often depends on the behaviour of the individual victim. So the victim risk with attacks from the Internet, easy to understand, correlates with the frequency of Internet use. In general, the victim risk for younger people is much higher. But the reporting rate varies greatly depending on the offense. It ranges from 9% for goods and services fraud, 30% for robbery, only 32% for bodily harm to almost 100% for motor vehicle theft. The difference between recorded and unrecorded crime is sometimes significant. Hardly surprising: the reporting rate is particularly high for offenses for which reporting is a prerequisite for the settlement of an insurance claim.

In addition to these findings on victims' experiences, we were also interested in the survey regarding contacts the respondents had with the police and their confidence in the police in Germany. At least 80% were very or fairly satisfied with their last police contact. Younger persons and less-well formally educated persons tended to evaluate police contacts worse. Good news: in the evaluation of police contact, we found no significant differences between the statements of individuals with and without migration background. A clear majority of respondents have high confidence in the police in Germany. At least 87% of all people surveyed found the effectiveness of police work as good or very good. However, it was also found that people with victim experiences tend to have less confidence in the police.

The Max Planck Institute in Freiburg has also evaluated information on the fear of crime. According to this 17% of people in Germany feel unsafe at night alone outside their home. Only 5% of respondents believe it is likely that they could be victims of a burglary or a robbery within the next twelve months. Women have a higher general and crime-specific fear of crime than men and estimate the probability of becoming a victim of robbery or sexual harassment

higher. Overall, the general and crime-specific fear of crime is at a relatively low level. This result is consistent with an observed tendency in many studies of an improvement in the subjective security in Germany since the second half of the 1990s. The general fear of crime is more pronounced in younger and older people than in the middle-aged. A significant influence on the general and crime-specific fear of crime is victims' experience. Burglary victims are especially affected: they feel unsafe not only within but also outside their homes and often have fear of further crime if they have been victims. The fear of becoming a victim is felt by sufferers as a significant limitation of the quality of life.

Now for the protection of victims. How are victims protected in Germany? Victims of crime have been increasingly moving back into the attention of society, academia, the judiciary and police since with the entry into force of the first Victims Protection Act in 1986 and are no longer the neglected and forgotten part of an offence. Nevertheless, it should be noted that even today, comprehensive victim assistance is not sufficiently ensured. In particular, the state of academic knowledge on the victims of crime is not satisfactory. The characteristics of the offenders continue to prevail in crime statistics. Despite the increase in the rights of victims in criminal proceedings, complaints are still made about the high amount pressure placed on victims in criminal proceedings today: the keyword is "secondary victimization". There has been very little academic work on the situation of the victims and victims' families and their wishes and needs in the criminal proceedings. "Does the victim get adequate information on procedures, adequate compensation or appropriate care and treatment"? It should not be forgotten that due process leads to pressures, which cannot be avoided, on victims and victims' relatives as witnesses to certain crimes in criminal proceedings. Against this background, the Directive 2012/29/EU of the European Parliament and of the European Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime came into force at the end of 2012. It is another important milestone in victim support. It contains as a central requirement the appreciative and respectful treatment of victims. This policy must be implemented in Germany by 2015.

Irrespective of this, the protection of victims in the field of sexual offenses will be further expanded in Germany. To give an example: the raising of the statute of limitations for sexual offences: in future there is to be no criminal statute of limitations for sexual violence against children and adolescents before the age of 30 of the abused victim.

However, victim protection also means seeing a person as a victim and meeting him or her with empathy and sensitivity. Dealing with victims with a migrant background requires a special sensitivity. In addition to language barriers that must be overcome, especially fear of contact and stereotypes on all sides

must be overcome. Many immigrants bring with them negative experiences of security and law enforcement authorities from their countries of origin. This often means that they are willing to cooperate only to a small extent with the authorities in Germany. At the same time, uncertainty can arise on the part of police because culturally determined behaviour and reaction patterns are interpreted partially incorrectly and difficult communication problems arise.

What strategies have proven successful in dealing with victims? On the official side, great sensitivity is required. Young colleagues have to develop these key skills. The needs of the victim and the family must be considered. There must be no routine when dealing with victims of crime and their families. So-called "best practices" must not always apply to every situation and everyone. They cannot replace the communication with the other person, which must take into account the target group and different sensitivities. This also means that we refer victims of crime and their families to existing support services, such as the protection of victims' organization of the "White Ring" with its about 50,000 members in Germany.

The Investigative Committee of the German Bundestag into the NSU-affair – the racist series of ten murders in Germany – has made the following recommendations:

- The teaching of intercultural competence must be an integral and compulsory part of the police training. The goal is the ability to deal professionally with social diversity.
- Continuous communication with victims or victims' relatives is of high importance for the victims themselves and for the success of the investigation and the public's confidence in the rule of law.
- Victim witnesses need to be actively aware of their rights, for example, that in addition to an attorney, a trusted person may attend a hearing. This must also be documented.
- Victims of politically motivated violence must be made aware of specialized counselling and voluntary bodies, and of the right to compensation for such offences. This must also be documented.

Beyond these recommendations, it is necessary to transfer academic knowledge on victimization and victim protection into empirically robust practical recommendations and guidelines that enable everyday professional handling of victims and victims' families. In the BKA we are researching the topic of protection of victims further. The aim of a completed project was to promote the willingness of women who had become the victims of trafficking for sexual exploitation to testify.

The aim of the current project is the development of guidelines for dealing with victims of genocide witnesses in proceedings – a particularly sensitive issue for the employees of our war crime unit.

In our experience, broad interdisciplinary research projects seem particularly productive, since only these view the topic of victim protection in its entire complexity. Therefore, we are eager to establish research partnerships between police and non-police research institutions.

Specifically, we see the need for further research: are the existing victim characteristics in the police statistics (PKS) descriptive enough and sufficiently related to the particular offense? How can the willingness of victims to report to the police be increased? Are the victim protection regulations useful or only partially useful for encouraging victims to testify? The needs of victims and victim families during an investigation and criminal proceedings are poorly researched. We require a valid empirical basis for this issue. Stresses to which victims are exposed as witnesses in investigations and criminal proceedings must be examined in order to avoid or at least mitigate these burdens. Also: With regard to cooperation in connection with the conception and implementation of victim protection, the question arises of the interfaces between ministries, agencies, associations and private organizations. There is also still a lot of work to be done here. But most of all: How can proposals be brought together and jointly developed?

The *conclusion*: Unreported crime studies show that the rate of actually committed crime is often significantly higher than that of reported crime. This also applies to the number of actual victims. In particular, many victim experiences unsettle and traumatize people for a long time. Without taking into account the interests of victims, no real legal peace can be attained. Help and transparency create trust, such as the active support offered by the victim protection association of the “White Ring” or special counselling and the right to compensation. Crime victims who are exposed to the criminal proceedings against the offenders are often subject to special burdens. They are confronted with the offence again. When testifying before the court, they usually encounter the offender and experience that the offender and the defence put their testimony in doubt (sometimes associated with attacks on the moral integrity of the victim). Gradually it has internationally become accepted that the victims of crime require special protection in criminal proceedings. They must be equipped with procedural rights that allow them to express their point of view and their interests in criminal proceedings effectively, including implementing restorative justice procedures at all levels of the proceedings.

Judicial proceedings must establish justice and must not end with the punishment of the offender, but must extend to the victim.

1. In recognition that the victim has been wronged.
2. In the effective protection of the victim against repeated victim experiences.
3. In the support of the victim in managing the consequences of victimisation and getting his or her life back on track.

We are all challenged to develop common effective strategies to protect victims and implement those strategies.

5. The Long-Term Impacts of Probation Supervision

Stephen Farrall

1. Introduction

A key goal of this paper is to identify the role of probation supervision in changes that have taken place in offenders' lives. During the late 1990s there was a decline in the amount of 'relationship work' officers did with their supervisees (*Robinson* 2011). Particularly after the turn of the millennium, criminal justice policy and rhetoric emphasised monitoring offender behaviour and dealing with risk. Consequently 'advising, assisting and befriending' probationers, which was somewhat at odds with this more enforcement-focused case management role, declined in importance (*Robinson* and *Ugwudike* 2012). However, officers were somewhat slow to accept this case management approach, feeling that it frustrated their attempts to work with those being supervised (*Burnett* 1996). Some research would seem to legitimate their concerns. Probationers interviewed by *Rex* (1999) emphasised the importance of their officers demonstrating empathy, understanding their needs and listening to their points of view. They were also more likely to try to desist when they felt their officer was a participant in the process, this fostering a loyalty that encouraged their participation. *McCulloch* (2005) reiterated the importance of talking but also highlighted the need for staff to take action to encourage desistance, emphasising that probation can only have a limited effect and must support wider social processes. This emphasis on probation as just one of a variety of professional agencies that can help inculcate in offenders a belief they can change has become more broadly accepted in recent years: offenders might need support to maintain hope that they can desist, to take advantage of their strengths and to build relationships with others (*McNeill* and *Weaver* 2010: 20). However, probation officers are in a good position to balance an offender's motivation to change, opportunities to do so and the requisite skills to take advantage of them (*McNeill* 2009).

Our research makes contributions to understanding how criminal justice interventions should respect and act in sympathy with broader processes in offenders' lives that can lead to change. However, such work tends to assume the presence of a motivated probationer, one who is a ready and willing participant in his or her desistance. To an extent this assumption is reasonable. After all, for probation officers to support change they need to have an accurate knowledge of the obstacles a probationer faces, which is best conveyed by the probationer herself. However, some probationers are recalcitrant supervisees who may resent 'interference' in their lives (as indeed, some of *Rex*'s were, 1999). How then can staff work to support probationers who conceal information about relevant aspects of their lives? For those probationers who are very reluctant to engage, it may prove very difficult to facilitate desistance.

2. The impact of probation

The overriding message from our previous interviews with the cohort was that probation supervision had little direct impact on desistance (*Farrall* 2002; *Farrall* and *Calverley* 2006). No specific probation interventions were associated with the successful resolution of obstacles that prevented the development of positive personal and social relationships (*Farrall* 2002: 89). Although overcoming obstacles was an important element of desistance this was usually initiated by probationers rather than their officers (2002: 161). The role of probationers' motivation was an important mediating factor, particularly in overcoming barriers to desistance posed by poor social and personal contexts (*Farrall* 2002: 108-114). In the absence of motivation to change, such obstacles were far less likely to be resolved and desistance was far less likely.

The wider contexts of probationers' lives affected the work done by probation officers, often in ways officers could not control (*Farrall* 2002). Although probationers were able to overcome obstacles to desistance as often as not when acting without the help of their officer, when they did receive help they were far more likely to be successful (2002: 162). The chief importance of probation in facilitating desistance was therefore indirect and more geared towards aiding probationers' own efforts, bolstering more general life changes relating to employment, accommodation and personal relationships. These indirect benefits of probation supervision were identified by sample members some years after supervision had ended. We found an emerging (and previously undisclosed) recognition of the positive impact of probation supervision (*Farrall* and *Calverley* 2006). Specifically, probationers began to report instances of practical help and shifts in their attitudes that interactions with probation officers had engendered some years earlier (2006: 46-57). Take, for example, *Anthony*:

"*If I was in a club and I was pissed up I wouldn't think 'ummm, I'd better not get in a fight 'cos I'm on probation and I don't want to go to prison no more'. It wouldn't enter my head.*" (1998).

"*It* [anger management] *was a load of bollocks. You sit there with eight or nine other kiddies, just discussing stupid things, like I just said. Like stupid questions. Or like, they give you a form, you go there every week, they give you a form, you have to tick the box 'how you feel today' and all that kind of thing, 'what's wound you up that week' and stuff like that. Stupid things really.*" (1999).

"*I wouldn't say anything's [that probation officer said] stuck with me but it chipped away if you know what I mean, it sort of chips away at you. [Right]. They don't stick in your head but occasionally you'll get that little thought of 'maybe I shouldn't do this because I've…'. And maybe he told me about this or … you know what I mean? It chips away at you I suppose.*" (2004).

This suggests that probation can 'sow the seeds' of change in probationers' minds, but that it may be some time before change actually occurs. We also observed the somewhat ephemeral nature of the processes at work that prevent unambiguous identification of exactly which benefits accrued to probationers through the work of their officer; certain phrases or interactions had an impact on their attitudes or their ways of thinking some time after they occurred. Nevertheless, identifying which interventions resonated and why they were recalled when they were was rather harder. Such observations indicate that the impact of probation supervision, and, consequently, any assessment of whether or not probation 'works', may take some time to emerge.

Herein we explore the long-term impacts of probation supervision. This includes, but is not limited to, advice and help aimed at reducing offending. At each of the follow-ups, we have asked sample members the same three questions relating to their original probation order:

- Did you learn anything as a result of being on probation?
- Did your probation officer say or do anything that will help you stay out of trouble in the future?
- Did you get helpful advice from your probation officer?

These questions were designed to explore assistance from probation officers which went beyond the probationer's offending or offending-related issues, in an attempt to understand and assess the wider, perhaps less easily measured, impacts of probation on our interviewees' lives.

3. How does probation work?

One of the original aims of the study was to 'open the black box' of probation supervision (*Farrall* 2002a:3-4). Our aim here is to explore in more detail how probation operates long after orders are completed. How, for example, did probationers draw upon what they had been told by their officers or the experiences they had had whilst on probation? We begin our exploration by considering those in our sample who reported high levels of impact. The impact of probation work became apparent from the accounts of sample members who reported officers' provision of practical advice and support, but also their simply being someone to talk to. Such opportunities for talking changed how offenders came to see themselves.

3.1 Choosing who to Be(come)

For some their experiences of probation were characterised by realisations they came to about themselves whilst on probation. These realisations were presented as a dawning understanding of the position they were in at the time accompanied by a desire to change. Some realisations focused on the understanding that probationers had a choice about who they could be. Christopher described that he learnt that he needed to actively work on 'who' he was going to become:

> Christopher: *"Well, it gave me ... I'd say that there are choices. There are options.* [BH: *Okay*]. *You can either be a good boy or, don't.* [BH: *Okay, yeah*]. And I just wanted to be the good boy."
>
> BH: *What was it about probation, do you think, that highlighted that there were those choices?*
>
> Christopher: *"That whatever you think you're doing, you're on probation for a reason. You're not getting away with it. Nobody gets away with everything. Nobody. And that's when I realised. That's when I thought right, well, I'm not going to be one of those people".*

For Tom, a persister who had been a regular heroin user for sixteen years, probation supervision had evoked similar feelings:

> Tom: *"The main thing were just realising that obviously the path that I was going down then, just pinching, whatever it were that I could get my hands on, it was just a bad thing, wasn't it? Shouldn't be going and breaking into people's houses and that, you know."*

BH: *"And that's a realisation you came to while you were on probation?* [Tom: *Yeah*]. *What was it about probation that made you realise that then?"*

Tom: *"Well them explaining to you really that there's more to life than what you're doing, you know, drugs and pinching off people. It is possible to turn your life around and have the life that you want really. That a life of crime's just no good."*

As such, probation (and probably arrest, being charged and appearing in court) had a profound impact, and was presented as something of a "wake-up call". But such an impact did not make desistance inevitable. Indeed, whilst Tom has not been in trouble since 1998, he was still addicted to heroin in 2010, using it daily and buying it with the money he earns in his employment (despite stating that he wanted to stop using at each of the four interviews with him). While his heroin use precludes us identifying Tom as a desister, the choices he made as a result of his probation officer's intervention led to a partial move away from offending such that he stopped "…breaking into people's houses…" and "…pinching off people."

For others, the impact of probation was rather vaguer. 'Something' about probation had told them that change was needed. Although the specific role of probation was sometimes difficult for them to identify, the tone of respondents' interviews suggested a growing unease with their way of life. Accompanying this was an apparent 'choice' over what sort of a life they could lead. This comparison of 'good' and 'bad' lives was most obvious amongst those offenders who, rather than viewing probation as a punishment, understood that in being given probation they were being spared something far worse: prison. As Gavin described:

Gavin: *"I mean it was a bit strange, going [to probation] every week and stuff, which probably does keep you focused on the fact. Like I say, if you're on probation and you knew that if you got into any more trouble, then it's going to be pretty serious sort of thing. It does focus you I think, and going every, it was like every week, then every month, then every what have you. I mean it was, it was like, going there sometimes you saw some pretty wrong people, you know like, Jeez, freaked me out, problems, same situation, similar situations, where you thought "this isn't for me".*

BH: *And so did that help you stay out of trouble?*

Gavin: *"Yeah definitely, a little bit yeah. Definitely, I mean a lot of it I guess is down to yourself as well, but it does keep your mind focused on the fact that, hold on, it can get a lot worse than this."*

> BH: *Did [officer] say or do anything that would help you stay out of trouble?*
> Gavin: *"Yeah, I guess the situation is, 'next time, do it again, and you're probably going to be banged up'. So that's a big fear isn't it, you don't really want that."*
>
> When probed if probation's only impact was that he didn't go to prison he said: *"No there was more guidance from them. Like I say, you wouldn't get that, I mean I've no idea, I've not been, but I guess I don't see how just locking you up ... and then I guess it would have really impaired you, for getting jobs and stuff, because generally it would be a lot worse, wouldn't it, if you've actually spent time in prison".*

Elsayed identified his being given probation as 'lucky' because it meant he avoided prison, but also because of what he had learnt during his order: "I think [probation] makes you see life in a different way. They sort of like, whatever you talk about, or whatever information feedback they give you, it's up to individuals to take it back and put it in practical use. Yeah, cause they don't, they now tend to like, 'oh yeah you done a silly thing once, so like you can do it again'. So they sort of like put you on the right track so you don't offend again or harm anyone. So yeah. [BH: Did you learn anything as a result of being on probation?]. Well how to be a better person. Basically like, instead of thinking about myself, and don't feel sorry for yourself, yeah, basically. [BH: And what did, I'm wondering how did being on probation help you learn that?] It's rather than the hard way, done something silly. Because I'm always like, known that they'd like put you on the right path. […] Like, at that time I was fortunate, I just got probation, I could have got a prison sentence, which I don't think I would have been able to cope with anyway. It makes you realise, you know, like, the different kind of scenes, like what could have happened."

Elsayed's usage of the resources made available to him by probation was not always straightforward (see *Farrall* 2002a: 129-30). Nevertheless, the combination of having a young family at the time of his probation order, a persistent officer and a supportive wife appeared to have all played a part in helping him move away from crime. Probation therefore represented the 'last chance' for some of our interviewees. We do not suggest that the above realisations made desistance from crime inevitable. Indeed *Gavin* and *Elsayed* both received summary convictions after their 1998 orders while *Elsayed* started using heroin again for at least three years, before finally stopping in 2003. Nevertheless, some of those who identified an impact of probation characterised it as contributing to a 'self-awakening' and an understanding that other options were

available. Simply being sentenced to probation communicated the seriousness of their behaviour (*Rex* 1999).

3.2 Talking Therapies

What was the role of officers with regard to these changes in perspective that respondents reported? It seemed that they provided several services to probationers. They were sources of advice, but also provided practical help and a receptive ear. Data from the probationers collected during early sweeps of interviews had downplayed the role of talking (*Farrall* 2002:116-45). Whilst this was still largely the case when we interviewed people at sweep four (*Farrall* and *Calverley* 2006) what was starting to emerge was an acknowledgement on the part of some respondents that some of what had been said to them had subsequently impacted on them. Herein we report continued evidence that what was said to sample members did 'make a difference' – either because they started to use these insights later on, or because they only later started to realise that such advice had influenced them.

What sample members' descriptions of probation interaction make explicit is that, for those who asserted a high impact of probation, the time spent with their probation officer was as much about what they had the opportunity to say to their officer as what their officer said or did for them:

> Christopher: *"I mean just sat and talked a bit – a lot like what me and you are doing, really. I found it helped a bit, you know, obviously to get it out – it's like weight off your shoulders every week and to see how you're going on."*

> Elsayed: *"We'd just talk about things and that. Just life in general. I never missed my appointment with him. So yeah, it was something, like that I knew that I had to go and do. [...] But like I didn't have no reasons to miss probation, it was something to sort of look forward to going. [BH: Okay, you used to look forward to it.] Sort of like, get out and talk to someone. Cause like, alright fair enough, like you're married and you've got a partner and whatever, but you can talk to your partner about things and that. But like, sometimes [...] it doesn't sort of make sense to them, what you're trying to get out, you know what I mean? So I'd like talking to someone else. So that helped as well."*

Jason's experience with his probation officer showed him that help was available:

SF: *Would you say that you'd learnt anything as a result of being on probation with [PO] that time?*

Jason: *"Don't be scared to ask for help, no matter who it is. If you've got any worries, housing worries, talk to them, they can help. It might be a matter of recommendation and they can put you in touch with the right people, like Citizens Advice."*

SF: *Sure. And were there kind of particular problems that you shared with [PO] or at times with...*

Jason: *"Well, when I first met my girlfriend/wife I was drinking heavy still and I'd gone round to see her, worried about my drinking and things like that. And I was telling her, and [PO] was telling me 'come off the drink'. And I thought it would be like detox or something like that. She'd be giving me those sort of ideas like, but, in the end I didn't need it. I just, one day just woke up and I'd stopped, that was it. I was thinking about them, that's what [PO] was trying to drum into me, think about your family".*

So, amongst the practical assistance and 'normal-smithing', Jason's officer was repeatedly giving him the message that cutting down on his alcohol would be a big step forward. However, it took Jason some time to realise why this might be a good idea and how it could be achieved. Lessons in this context (an individual with housing needs who was drinking too much) are likely to be learnt slowly. Another interviewee (Nigel, desister, limited offending) makes the link between probation and therapy explicit:

SF: *What sorts of things did you get out of [probation]?*

Nigel: *"The only counselling I ever got was through probation. […] [PO] was fantastic for that."*

SF: *I was going to say, you had that direct from [PO1] or [PO1] set it up?*

Nigel: *"No, directly from [PO1]. Well it was [PO1], [another PO and another PO] ... were the three people I dealt with, but I dealt with them before my probation order started as well. [SF: Right]. But no, I got a lot of counselling from [PO1]. [PO1] was fantastic, I could never sing her praises high enough."*

SF: *So what sorts of things did she do, tell me about this counselling.*

Nigel: *"She just seemed to have the answers. [SF: Okay]. Time was never an issue with [her]. I mean I carried on seeing [her] for three months after my probation order ran out. [SF: Right]. You know, she, because of that she wanted to finish what she'd started, don't think she ever did. No she, I could just talk about things with her that I couldn't talk about with anyone else. [SF: Right, okay]. I don't know why. [SF: Such as?]. Things that happened during [my time in the army]. I could be honest with her, which obviously I wasn't with you. You know she, yeah I could tell her the truth and she was never, she never judged, which most people do. But no she was brilliant."*

Later he added: *"She could always tell me why I was feeling how I was feeling, and why things bothered me now and hadn't done before. […] I mean she'd just give no end of time. There was never a clock when you were with [her]. [SF: Right, okay]. You were always late getting to see her for a start, but you understood the reasons why when you were in there yourself and you were there an hour after you were supposed to have finished. [SF: Yeah, sure]. She was always at the end of a phone, as well".*

Two of the women in the sample (*Lucy* and *Kirsten*), valued having a (female) officer's "shoulder to cry on" when they were in violent relationships. As *Kirsten* explained:

"*I generally ended up just offloading on [PO] because I was in this violent relationship and I had no-one to talk to about it, you know, my mum and dad couldn't see why I hadn't just left him at the time, now why – I can see the point now but at the time I was blind, and you know so I had no-one to talk about it to and I generally – I don't know I'd have got through it without her in a way coz it was someone to talk to every week, like kind of just offloaded all my problems onto her".*

The value that probationers place on the relationship between themselves and their officer has been highlighted as an important aspect of probation work being 'successful' (*Rex* 1999; *McCulloch* 2005; *Healy* 2012). Our interviewees' probation experiences support previous research findings that the talking that takes place between the probationer and their officer is a vital building-block in establishing a working relationship that can lead to more practical interventions on the part of the officer (*Burnett* and *McNeill* 2005; *McNeill* 2006). However we suggest that such 'imprints' may take years to be recognised.

3.3 Probation Work: Giving and Receiving Advice

The above discussion illustrates some of the ways in which officers were able to touch probationers' lives. For example, in the case of Gavin it appears that his

officer explicitly drew attention to the possibility of his going to prison. As we have noted, identifying the direct role of probation with regards to these changes is not always easy. In an attempt to highlight more explicitly the role probation played in the lives of our respondents and, for some, in their desistance from crime, we now turn to consider the practical work of officers, which was recalled by interviewees years later. *Mohammed* recounted advice given to him by his officer which reassured him that he could be a 'normal' dad:

> *"I just always remember what he used to say to me and how to be and just look at what you have, pay your concentration to your baby and your wife. And that went on for a long – and then after that, you know, I was on my own two feet then, you know. Everything all went in my head and I knew what I had to do and I just did it. It was easy. It was just like a normal routine then, just carried on. Somebody just had to show me the right way of doing it and that was it."*

Gavin's officer attempted to help him understand the potential impact of alcohol on his life. Gavin had been drunk when he committed criminal damage, leading to his probation order:

> Gavin: [PO] went through what the units were, and how long your units would take to be out of you and stuff, like driving and stuff and things like that. So he kind of put a value on the drink, what you're drinking and stuff, how much it was and what have you. That was good.
>
> BH: *And was that stuff that you were able to, was that practical advice you were able to use then?*
>
> Gavin: *"Oh yeah, absolutely. You knew that if you were driving next morning, and you'd gone out and had four pints, then there was a fair chance you might be over the limit. But you could, if you lost a unit an hour, how to work it out, and he'd say how many units were in a strong lager and stuff like that. So yeah, it was useful."*

Probation officers also acted as an implicit 'last line of defence' for interviewees against potential problems. For *Sarah* this was when she faced a critical moment in coping with her alcohol addiction and her officer was available for an unscheduled meeting:

> *"I can remember, there was one occasion where I was very, very low and I was quite proud of myself, because I didn't want a drink. And I remember going up to probation, and although I didn't have an appointment, I just asked to see, [PO]. And she did, she had time to see me. So I was grateful*

for that, cos I could quite easily have just gone off on a ... so yeah, it was only 5, 10 minutes, but it just seemed like, that she was there. And I remember telling my mum, and she said "well at least you went, rather than doing what you would normally". So my thought process was changing then."

Probation officers practical support was valued by interviewees. Such practical help included referrals to drug and alcohol addiction support networks, but also more mundane inputs that helped improve probationers' quality of life:

Mohammed: *"I must have had about £700 worth of fines and I said to [PO], you know, life's hard as it is, you know, we've got a new baby, we can't afford to live on what we've got and I have to pay this fine," and he goes to me, "Well we can reduce that. Don't make any payments. When you go up to court for non-payment of fine, I'll put a statement in saying how good you've been changing things – he's having it hard", and we'll try and reduce that fine for you. And [he] actually reduced it down to £200."*

Kirsten: *"[She] helped me, you know. She helped to sort me bits out and I mean the CV that they wrote for me at probation, I still use it."*

Derek: *"She did help me, you know, in some ways, you know, if anything was messed up with my benefits or anything like that she'd be there for me."*

All of these interventions reflect a concern with overall improvements in probationers' lives and attempts to deal with the practical concerns they faced. Contrary to what some researchers have reported about the role of probation officers practical advice and support was welcomed by those in our sample.

3.4 Probation Officers as 'Normal-Smiths'

'Normal-smiths' (*Lofland* 1969) are those who, through word and deed, communicate to 'deviants' that they are capable of change. There are two important aspects of normal-smithing and the relationship normal-smiths have with deviants. First, normal-smiths typically require little in the way of proof of the essentially 'good character' of individuals, notwithstanding any aberrant behaviour (*Lofland* 1969: 212-213). Second, normal-smiths attest to deviant individuals' normality, giving evidence of their good character so that others can see and believe that change has taken place. In thinking about probation officers as normal-smiths many of the positive experiences that probationers reported came from their probation officer's investment in them:

John: *"It was just the way he spoke to me [...]. It was like he wanted to help, from what I remember of [him]. It was like I say, he tried to get on my level."*

Lewis: *"I mean [PO] was a nice girl. You'd go in and she didn't, you didn't feel like she was judging up. You didn't feel like she was trying to inflict a sentence. It was someone asking you, "Is there anything we can do to help you? Are things alright?" Which yeah, made a big difference, at the time."*

Lee: *"When I used to turn, she used to let me talk, let me express myself, find out who I was, rather than say to me, "No, you be this, you do that, you do this." I never felt like I was dictated to. It just made me believe that you've got a choice [...] "You're lucky you're not in prison now but you've still got a choice, you can still do something with yourself now, don't let like me intimidate you, you know, but you have a – you – you still have a choice, you have a chance".*

Therefore through their actions – but also by allowing probationers themselves to act – probation officers communicated the essential normality of probationers and tried to convey that they could change. Probationers thus felt accepted as people and officers persuaded them of the possibility of alternative lifestyles. For another sample member (*Leroy*), the knowledge that he was cared about increased his motivation to get something out of the probation order, which itself is strongly associated with the successful resolution of obstacles (*Farrall* 2002: 114). When it comes to the second aspect of the normal-smith role – that of attesting to the deviant's reformed character – we find less explicit evidence that probation officers undertook such duties. However, we can identify some ways in which their activities may be seen as championing probationers' ability to change. Although Sandra did not find probation helpful in general, the actions of her probation officer in writing a pre-sentence report were significant:

"I mean obviously the main thing she did for me was give me the probation report that she gave me in the first place, that made them, you know that influenced them to put me on probation rather than to send me to the nick. So that was a huge thing that she did. I didn't really connect with her, and because I had the counselling going on with [support group], I didn't feel that I had to open up to her that much. I only did it, minimal, just to kind of keep it sweet, to be honest with you".

Although we do not know the precise content of the report *Sandra*'s probation officer wrote, it is reasonable to infer that inasmuch as it was a large part of *Sandra* being sentenced to probation rather than prison it attested to her good

character, possibly contrasting the isolated nature of her offence against the rest of her life. We might infer similar normal-smithing activity from other work done by probation officers in referring probationers to a variety of other services, for example, treatment for drug and alcohol addiction. This is of course part of the probation officer's role, but in highlighting such work we see the potential for officers to act as normal-smiths, driving, as well as facilitating, change efforts.

We recognise, however, that probation officers spend a very limited amount of time with individual probationers. Their ability to convey a capacity for change is therefore limited when set against what might be a far more extensive network (of criminal peers, family members and also society more generally) that speak to a probationer's essential deviance and their inability to change (*Lofland* 1969: 226). We therefore want to highlight the normal-smithing role officers played as part of the wider a constellation of influences. Their affirmations that probationers can change is one of a series of incremental benefits they can provide. By itself a declaration – explicit or implied – from the probation officer that a probationer can change may not lead directly to desistance. Nevertheless it provides yet another example of the small but meaningful ways in which officers can shape probationers' lives and support their own change efforts.

3.5 The Interactions between 'Talking' and 'Doing'

Although we have thus far kept separate our analyses of the work of officers and the realisations probationers came to while on probation, we want to illustrate how the efforts of officers helped probationers to understand more about themselves and their lives, and how the awareness that probation represented a 'last chance' might make someone more receptive to advice and help. We have already identified Gavin as someone who received advice from his officer about his drinking as well as putting into practice what he had learnt about units of alcohol and driving the next day. These conversations and this advice, it appears, influenced *Gavin*'s attitude:

> BH: *"And it was, in terms of drinking, it was while you were on probation that you cut back and stuff?"*
>
> Gavin: *"Yeah. And then, but if you were going to get hammered do it in different places, which we all learn […]Had loads of friends, we all played football and everything, went and watched [football team] together, so yeah, just had a few, but I wouldn't really go into town and get wrecked. Really, to be honest with you, stopped going into town. And the only places that we would go really, is like the student places and stuff where you, cause we had*

> *friends who were students anyway, at Uni and stuff. I went to Uni for a bit, but quit. It was alright, went to places, cause students aren't as, they get pissed together and they don't fight do they, so it was ... so it was, yeah just stayed out of some of the places."*
>
> He went on:
> *"Probation made me look at things a bit more systematic, like your cause and effect. And obviously you drinking that has done that. So, you know what I mean, it's obvious isn't it? But maybe you don't, you know, you're a kid, you're young. I wasn't that young but ... bit daft aren't you, you might, but you think you know everything and your officer puts it down that for everything you do, you might not think about it now, but there is a big effect in your future life".*

Gavin's discussions with his officer and the work they did helped him to understand the role of alcohol in his life, the "cause and effect" of drinking and the particular locales within which trouble might occur. This work, combined perhaps with *Gavin*'s understanding that instead of being sentenced to probation he could have been given a prison sentence (see above) can be identified as contributing to a change in his behaviour. In addition, we see the impact of his growing older, and starting to feel less comfortable in and around the city centre when drinking. Equally, however, let us examine what did not change as a result of *Gavin*'s probation order. There was not a large shift in the way *Gavin* spent his time. Despite a new understanding of the role of alcohol in his life and the potential for it to cause trouble, he did not suddenly abstain from drinking, nor even, it seems, reduce his alcohol consumption. He still went drinking with his friends and he still got "hammered". However he did this in different places, where he thought it unlikely that trouble might begin. The work of his probation officer, although having an impact on his life, did not, in broad terms, change the way he lived it. Those changes occurred later as a result of meeting the woman he married and their starting a family.

3.6 From the Acorn of Probation to the Oak Tree of Desistance

From some of our respondents' accounts it is apparent that the impact of probation work can sometimes emerge slowly, over time. To illustrate this we want to consider in some detail *Bobby*. *Bobby* was interviewed three times in total; in 1997 and 1998 while on probation, and in 2010. His original order was for animal cruelty; while drunk, he had set fire to a cat for a dare. However it is clear that he was also regularly involved in fights with others people and drank heavily. With regards to these, whilst on probation (in 1997) *Bobby* said that he

was "unable to avoid getting into fights" and reported that he did not have an alcohol problem (a point he repeated in 1998). His probation officer, however, reported that they had talked about his alcohol consumption on both of the occasions she was interviewed. Our own interviewer felt that Bobby did not seem that interested in the purposes of probation during the first interview with him. In discussing (in 2010) his 1997 probation order *Bobby* was very positive, in part because of what he learnt from his officer about his consumption of alcohol:

> Bobby: *"Well [PO] just says, "You've got to can it, it's obvious that's the root, that is the be-all-and-end-all of what's happening [his offending, fighting], if that, you know, she put everything I'd done, "Were you drunk when you did this, were you drunk when you did that?" "yes, to every single thing, everything, there wasn't even one that it wasn't […] and so we worked on that…"*
>
> BH: *Did you learn anything while you were on probation?*
>
> Bobby: *"Yeah I did because also we – we went across what [alcohol] does to your body for one thing, and what units are and all that lot, you know, and how many and – and so on and so forth. So that side of things, yeah, I did learn – and I was quite surprised about how much of a poison it is really."*
>
> BH: *Yeah, did she give you any advice on managing the drinking?*
>
> Bobby: *"Yeah, I had a scale of what I drank, I had to write down what I drunk, how I felt, blah blah blah, which I lied about, I'll admit now [both laugh]. Yeah, but again she can only do so much, I mean I only saw her, what an hour or two every week, so that's not really going to solve much. It was good to have somebody to talk to though, about it."*

The impact of the work on alcohol, however, was rather limited (at least initially), since *Bobby* fully committed to tackling his drinking. Nevertheless, Bobby echoed what others said about the positive aspects of probation supervision and the impact it had, citing both talking to his officer, and the practical advice she gave him. It is apparent that his officer attempted to tackle what she (and he) identified as the cause of his offending: his excessive consumption of alcohol. As a result, *Bobby* came to understand that alcohol was a "poison". At the time of his interview in 2010 he was still drinking heavily on a regular basis, although this represented a decrease from the peak of his drinking. Between being interviewed in 1997 and 2010 Bobby had been convicted ten times, most recently in 2008, predominantly for theft and violence, but

also for driving while under the influence of alcohol. He admitted that "ninety-nine per cent of everything I've done, criminal wise or anything else, is drink related"

However, the advice from his officer was only part of *Bobby*'s desistance. *Bobby* cited his increased maturity and becoming a father as reasons for his desistance and the decline in his drinking that preceded it:

> *"When I started to see my son growing up, I thought, 'I don't want him to know' – I mean he's – chances are he'll find out about what I've done, what I've been – been doing, drinking wise and everything else, he'll hear it off, I don't know, off his mam probably because, you know [laughs], I'm not her best – best person in the world at the minute. But fair enough he'll find out, he'll – it's up to him how he deals with it. I'm – I won't deny things, I won't lie to him, but I thought 'I've got a little man here' and, you know, that's a big eye-opener."*

Identifying with others can be a powerful catalyst for change in one's own subjective sense of self (*Gadd* 2006). The birth of *Bobby*'s son was related to two cognitive shifts which he experienced. First, becoming a father awakened in him an awareness of his son's vulnerability, motivating him to want to change his potentially destructive drinking practices. Second, as his son grew older *Bobby* saw himself through his son's eyes and experienced something of how he was, or might be, perceived. However, we can still identify that the work done while he was on probation had some impact on his current thinking and attitude towards alcohol. Consider his response to being asked what might make it difficult to stay out of trouble:

> *"Well like I say alcohol is the root of everything, so continuing drinking would make it hard to stay out of trouble, although like I say now I've come to terms with, I like a drink, I'm going to – I am not going to stop drinking for nothing. So I've had to learn to – you know, not to do the things that I've done anymore. And I know that outcome now, I know where it's going to lead and how I'm going to feel and everything else and I don't like it, it's a dark place, don't want to go back there".*

Such changes, however, cannot be divorced from his age and the implications this has for where and when he drinks:

> BH: *Are there any places that you used to go that you now try and avoid?*

> Bobby: [Laughs] *Not really. Coz it's like now when I've got my – I've got a little routine going, drinking-wise, when I go out, certain pubs and I know*

everybody in there, and it's great, feel safe, all that. Now it's like when I – when I did offend, you see, I had a lot of younger mates who couldn't get in pubs then and plus the money was – money situation, so they did a lot of drinking on the streets. That was a bad thing, so obviously I'm not going to go [laughs] – I'm 31 now, you know. Knocking round street corners is well and truly gone […] I mean like it's like going – going into [town] centre, I would never do that, not because I'm scared or I think there's going to be any trouble or anything like that. It's just I don't. It's not my scene anymore, you know? I might have gone to nightclubs when I was younger. Nowadays I can't be bothered with it. I'd much rather sit down, few pints and go home, you know?

So whilst *Bobby* still drinks he also, it seems, has come to understand something of the relationship between drinking and getting into trouble. His acknowledgement that "alcohol is the root of everything" echoes his officer's observations twelve years before. Like *Gavin*, *Bobby* has not radically changed his behaviour. He still drinks rather heavily, but does so with an understanding of the potential dangers of doing so and plans his behaviour accordingly. There are undoubtedly other factors responsible for *Bobby*'s change in attitude towards drinking and, if he is correct, the effect this has had on his offending. *Bobby* himself identifies his relationship with his son, born in 2006 as well as becoming more mature as part of the change that has taken place. His last conviction was in 2008, when his son would have been about two years old, and when Bobby would have started to become aware of his son's own growing awareness of him as a father. *Bobby* reports some fights going into 2009, but also reports starting to walk away from fights in 2010 – evidence, perhaps, of a slow move away from offending. Nevertheless, the work done at probation in 1998 – in particular in drawing the link between his alcohol consumption and his offending – appears to have provided him with a way of identifying and responding to the problems presented by his offending and making sense of his behaviour. Based on the above we might conclude that the impact of his 1998 probation order has been to give Bobby a vocabulary to understand alcohol and its relationship to his offending.

Bobby's case demonstrates how the long-term impact of any link between probation work and desistance can be inferred. For others it is more explicit. Such is the case for *Peter* who recalled the thinking skills he learnt on probation, but which took some time to put into practice:

BH: *How do you think you're different now from when you started probation [1998]?*

Peter: *"I think my perspective's different, because I think, it's something else that I've realised, is you tend to reassess everything and it seems to me that it's every decade. Like when I was 20 I thought about things a certain way, and then I was 30 I think about them a certain way, now I'm nearly 40 I think about them a different way again. And I think it's just life and it's just all about just growing up isn't it and moving on and wising up."*

BH: *How did you think about things when you were ...*

Peter: *"I didn't, that's the thing, I just didn't, I just did things on a whim and... that's what I, I was saying to my dad, cause I try to talk to my dad cause I, I try all the time to get some resolution from the past. [...] And I was talking not long back about the criminal offences and a lot of the things I did, I didn't actually do it out of being calculated, I just did it because I did it, it was just spur of the moment, dependent on the particular scenario and who I was with, and I just did and I never really thought about the consequences of it and all the ins and outs, I just got on and did it. And in that sense I've changed a lot, because I do think a lot more about the consequences of things and how it affects other people. And funnily enough, the root of that started on probation. [BH: Yeah]. Because I had to do, I forgot what it were, enhanced thinking. [BH: Oh yeah]. Enhanced thinking skills and all these little acronyms that they've got like D.I.G. and drawbacks of instant gratification you know, and all these little things. And it kind of planted a seed, and it took a few years before I really started to act on it, but I think yeah, probation probably started all that off. Perspective and seeing things from a different angle, instead of thinking from my point of view or thinking it from somebody else's. So in that sense I think it did me good."*

When asked in 1998 *"Has anything that you've said or done been helpful in keeping [Peter] out of trouble?"* Peter's officer said:

"I doubt it. I don't think other than reminding him that he is on probation we achieved anything else. Sometimes when you say something that sticks in the mind [it] comes out only a long time after the event. Sometimes people remind you of something you said five years ago".

Looking back to that interview her words seem prophetic. For Peter, the benefits of probation and the work he did there are now obvious, although as he recognises, it took some time for these benefits to emerge. What *Peter*'s and *Bobby*'s cases indicate is that the impact of probation may emerge only over a period of several years. Consequently, there will not always be 'quick fixes' when it comes to probation interventions, nor will quick assessments of impact

(i. e. within two years) always capture either the processes or the causes of change.

3.7 Mundane Help

In discussing probation work it is worth highlighting that none of the interventions we have identified here strike us as particularly groundbreaking. Indeed, they have a rather mundane quality and it is perhaps difficult to get excited about probation work that consists of demonstrating to offenders the link between their alcohol consumption and their offending (e. g. *Bobby* and *Gavin*), making a phone call to help with their debts (*Mohammed*), or pointing out the benefits of delaying gratification (*Peter*). While we might agree that there is nothing revelatory about such work, it is no less important for that. When probationers can cite such specific examples of probation work twelve years after their order has ended, it is reasonable to think they have had some impact on them, even if it was slow to emerge.

Identifying in probation work an impact on offending that emerges only some time later situates our analysis within broader understandings of processes associated with desistance from crime. In particular, it has resonance with work identifying the importance of an offender being open to the possibility of change before opportunities to change present themselves. This proposition is a cornerstone of *Giordano et al.*'s (2002) theory of cognitive transformation, which posits that life events can only aid the cessation of offending if offenders are receptive to their desistance potential. By being open to change offenders can take advantage of particular 'hooks' that they may encounter that lead them away from offending. *LeBel et al.* (2008) argue that there is a similar relationship between "subjective" factors (such as hope, expectation, shame at past behaviour and openness to "alternative identities") and structural factors (employment, housing, relationships, and so on) in the desistance process. While acknowledging the interplay between subjective and structural desistance factors they also, like *Giordano* and colleagues, tentatively suggest that cognitive shifts take precedence over structural changes (see also *Maruna* 2001).

Implicit in such theories is that a desire, or at least openness, to change is required before any presenting opportunity to change can have any impact. Such an emphasis is also present in recent work on the role of probation supervision, which suggests that offenders are more likely to desist when supported by probation officers who help manage aspects of offenders' lives that can help promote desistance (*McCulloch* 2005; *McNeill* 2009; *Robinson* 2011). This implies, as we noted above, that the offender is a ready and willing participant in his/her supervision and the desistance it is intended to encourage. Consequently, a focus on offender motivation as an important dimension in probation has

become a focus of theory and practice in probation and beyond (*Ward* and *Maruna* 2007; *Robinson* and *Crow* 2009; *Canton* 2011). The more motivated the offender is to change the more likely it is that efforts to help them will be a success.

In correctional practice more broadly the necessity of a "quality" relationship between offender and practitioner, one built on mutual respect and "…characterized by open, warm, and enthusiastic communication" (*Dowden* and *Andrews* 2004: 205), is a key determinant of success (*Stone* 1998; *Dowden* and *Andrews* 2004; *Marshall* and *Serran* 2004). When it comes to therapy a lack of trust between offender and therapist is a major barrier to successful implementation of treatment programmes designed to prevent recidivism (*Marshall* and *Serran* 2004). Trust can take time to build, not least because offenders may be distrusting of, and antagonistic towards, figures of authority, with whom many have had negative experiences in the past. Trust may also be more difficult to build since probation is court-ordered, rather than voluntary (*Marshall* and *Serran* 2004; *Trotter* 2006).

In thinking about the impact of probation on our sample we wish to identify relevant aspects of probation supervision that can inform debates on both offender motivation and offender/practitioner relationships. To take the latter first, and in keeping with other work on the officer/probationer relationship, we highlight the importance of officers developing friendly, empathic relationships with their supervisees as a base from which to initiate attempts to help them change (*Rex* 1999; *McCulloch* 2005; *Canton* 2011). Although we do not wish to draw a hard and fast distinction between 'talking' and 'doing', we note the significance for our respondents of simple verbal interactions with their officers which demonstrate genuine concern about them, such as simply being asked how they are. Importantly, and with regard to motivation we must highlight that the fond memories some interviewees had of supervision were not mutually exclusive with disclosures that they were not perhaps fully ready to accept their probation officer's help. Consider *Bobby*'s admission that he lied to his officer about his alcohol intake. This did not prevent him recognising the help she tried to give him, nor does it appear to have stopped him taking it on board and drawing upon it when he later came to reflect upon his drinking. Equally, *Jay* recognised that his officer had tried to help him, while admitting he was not receptive to her efforts. *Jay* was a heavy user of "party drugs" (ecstasy, speed, cocaine) at the time of his 1998 probation order and until 2007, at which point he started to reduce his drug use, partly due to health concerns but also because he feared being sent to prison. Although the interventions of his officer did not prevent *Jay*'s drug use, he still recalled her efforts:

Jay: *"Yeah. She was quite a good probation officer."*

BH: *Did she give you any helpful advice?*

Jay: *"Yeah. Always. Yeah. Yeah. Always. Like drug clinics, stuff like that – you know.* [BH: Oh, yeah] *Yeah. Yeah. She – she did send me to a drug clinic and it didn't work."* [They both laugh].

BH: *Well at least she tried.*

Jay: *"Yeah. That's it mate, you know that. [...] She did – em – sort of advise me to do courses and stuff like that. Like – you know. Sort of anger management and stuff like that* [BH: Yeah] *you know. But, I never – never really done it."*

Much like *Bobby*, *Jay* recalled the work his officer had tried to do with him, even though he had not responded well to her efforts at the time. Although it is hard to argue that she had had a big impact on *Jay*'s reduction in his drug use his memories of her and the help she tried to provide him are positive. Jay described her as a "good probation officer" while simultaneously acknowledging there was no positive outcome of his probation order, based on his reluctance to engage with the treatment offered him.

What the above accounts add to this understanding of desistance is the recognition that opportunities for change can be presented before any desire to change has occurred and still have some impact. In effect, the ideas, techniques and understandings that help make a change in behaviour and thus desistance possible are 'stored' until such time as they can be accessed, when other processes that support change emerge. Such was the case for Peter, who was introduced to the enhanced thinking skills that he now credits with being a large part of his change and his desistance, but who took several years to employ such skills, years in which he continued to offend to support his addiction to heroin. This may be why the help given was important to probationers. They provide incremental improvements within offenders' lives that may permit access to other opportunities (as with the writing of a CV) or help them to understand something about their situation that they can draw upon at a later date (as with advice about alcohol consumption).

The above examples suggest that the impact of probation work can take several years to fully emerge. Another way of expressing this is to say that probation can provide a 'conceptual vocabulary' for probationers to understand their lives and their offending. Even if this vocabulary is not immediately utilised, it remains available, as *Peter* put it, as "a seed", which may later grow to support desistance. Work done by probation officers may therefore have a

"lagged" effect, supporting later processes of desistance even when it has no short-term effect.

3.8 Probation Impact and Desistance: A case study

To illustrate the importance of the relationship between probation supervision and desistance from crime over the long-term, we now consider the experiences of Brett, who was given probation for assault. Although he had several previous convictions for violence, this would be Brett's last sentence. We interviewed Brett in 1998 and again in 2010. In 1998 Brett was homeless, staying with a variety of friends. In 2010 he identified how he had changed since 1998:

> Brett: *"I think I'm more sensible, I'm not just like going at it, not thinking. I think now. Before, then, I didn't think. It was actions, then think afterwards. Now it's think first, then do the actions."*
>
> BH: *Can you give me an example of a situation you've been in that's been like that?*
>
> Brett: *"Well, I've been in a couple of situations. Like you've been out [with his child] somewhere and someone's effing and swearing, the first what I've done was, is grabbed them and gone like that [punching motion], bang, stop swearing in front of my kids. […] But now I start thinking, 'well you can't do that, not in society anymore', so like, you start thinking and just move like... if I had him [child] with me and someone's doing that, I'd walk away from the kid. Then, I wouldn't. My kids have seen me fight, I've been in pubs fighting with my kids […] but then, you think then, you know, 'I shouldn't have done that, with the kids there'. But you don't think then, do you? It's just... bang, goodbye […]. I do think a lot more now like, yeah, […]."*
>
> BH: *And this sort of different way of thinking, was that something you did deliberately or was it just that one day you realised, actually I'm doing this differently now to how I was?*
>
> Brett: *"I think it was just a brain thing […]. It was like, you just know 'you can't do that anymore', cause one you can't let your kids see you doing it, which they did, and another one is like, you know like I said to you, you're going to get into a lot of trouble. Cause then you start thinking, well you've done that to that person, but they've got a couple of friends round the back waiting for you to come out, and you've got your kids with you, like you can't defend yourself with your kids there, can you?"*

When asked about why he has been able to stay out of trouble *Brett* identified the threat of increasingly severe punishment and the realisation that there were better opportunities available to him:

Brett: *"I think psychological, just knowing not to bother anymore or you know, you're going to get a bigger sentence, for a start. […] Is it worth getting a year, two years, to do someone over? […] And it's like, no, just forget it all, don't bother. I'd rather be out, even the rain I'd rather be out in, than stuck indoors [i.e. in prison] all the time."*

BH: *Okay. Was that, again was that something that you consciously thought, is that I've got to stay out of trouble because otherwise I might go... or was that something that just sort of you came to?*

Brett: *"I think I consciously thought about it a lot. […] I think I did, thinking, 'well, if I did that next time, because of being on probation you're going to get, obviously I'm going to get put away', it's not going to be a couple of months, it's going to be a year, maybe plus. And you're thinking, 'well, is it worth it?' That's what's going through your head. 'Is it worth it?' And it's like, you start going like, no forget it."*

But what was the role of probation in *Brett*'s shift of attitude? *Brett*'s probation officer did several things to try to help him, from solving his accommodation problems to providing advice:

"I think while I was on probation, [PO] had, because I had an issue because I had nowhere to live and I explained to the probation about that and she helped me out a lot, she did help me out. Because she phoned up the housing and she made them give me somewhere. […] I think it was after the first few sessions we had and then she said to me, "you're still annoyed, aren't you?" Cause she could see it. I said, "yeah", and she said, "why?" I said, "I've got nowhere to live". And she goes, "you got your name down anywhere?" I says "yeah". She goes, "how long?" I said, "well I don't know, a year now and got nowhere". She goes, "that's wrong". And then I told her I've got two kids and I have them every weekend as well, and she goes "leave it with me". And I went to see her the following week, she goes, "I made a phone call. Leave it with me and come back in a couple of weeks", […] and after a month she goes "right, I've got somewhere for you". I says "where" and she goes "well you have to go and see the housing officer, I've made an appointment for you for Friday". […] So I think […] that calmed me down a bit more as well. Cause she helped me out more than society did when I was homeless, basically".

Through helping him find accommodation, *Brett*'s officer helped him "calm down", something to which he directly attributes his desistance and his desire to avoid physical confrontation. At first it appears that this, important as it was, was all that Brett gained from probation. But *Brett*'s officer also attempted more direct interventions to help him stop offending. The event described above, early in his probation order, may have helped *Brett*'s officer build a rapport with him and gain his trust, rendering their later anger management work more effective.

BH: *Did you learn anything as a result of being on probation?*

Brett: *"Not to get caught! […] Yeah, you could say you learnt something from her. She'd have a few words about the consequences of assaulting people blah, blah, and she did mention all that and you did listen to what she had to say. [BH: Okay, yeah]. And she did like an anger management thing as well with you and she said 'right is that part ... because you're angry with something ...' yeah? Could have been, a lot of it could have been through to that as well."*

BH: *Okay. So she sort of, she talked through the consequences of the violence […] Okay, and […] what did you learn from that?*

Brett: *"Well like she said, 'try and walk away from a lot of stuff'."*

BH: *Yeah. And were you able to put that into practice, this sort of ...* [Brett: *Yeah, yeah*]. *Okay, so you'd say that helped you stay out of trouble?*

Brett: *"Yeah, cause you did listen, well you did listen to her because she wasn't ... she was a nice lady actually, so you'd listen to what she was telling you, and it was like good advice. Even though she was helping you on her own to get somewhere to live, you had to listen to what she was telling you, about what to do, even when probation was finished. And I was like, just don't do that, do this, walk away, or stay out of the areas. […] You did start thinking. There's a few things she said, like family life, I remember her saying about the kids, 'you'll get your kids and all that, take them to court' and all that, 'you're entitled to it all', took my ex to court and all that, because [PO] were telling me all this, I wouldn't have known that otherwise. She used to explain all that to you."*

In a similar way to *Bobby*, an important feature of probation for *Brett* was the way in which the advice offered by his officer took some time to take effect. Although the benefits of having somewhere to live may have been immediate, the advice of his officer only emerged over time. *Brett* outlined the benefits of not offending, but also suggested that these benefits were not immediate. Instead

his time on probation influenced his thinking even after the order had ended, due in part to a gradual understanding of the positive aspects of staying out of fights, not least that life could be more peaceful:

> Brett: *"It's more relaxing, cause like I said, you haven't got, you know that door's, you know your front door's going to get knocked at fucking three in the morning, four in the morning by the police arresting you. […] I don't have to hide, I don't have to lie anymore about doing anything, to anyone because I'm being honest. I'm just getting on with my life and being honest."*
>
> BH: *Okay, yeah. […] How quickly did you sort of notice... did you start to relax, because you're talking about being more relaxed in some ways, aren't you?*
>
> Brett: *"Well, I don't know, I'd say, I'd say after probation and I started thinking more after probation. […] That's when you start thinking, well, yeah, do I want to be in prison next time?"*
>
> BH: *Alright. Did you find it hard to stay out of trouble?*
>
> Brett: *"A couple of issues, you wanted to hit some people but then, thought 'no, you just said no, walk away', or 'just ignore it', just ignore situations. I've had a couple of incidents where people know who you are, and they've tried it on and just gone... you know, just words, but nothing's happened after that."*

Brett recalled when he first started to refrain from fighting (around three years previously):

> *"Yeah, that was someone who pushed me, a boxer, he started mouthing it. […] Same age as me, but he's frustrated, and he was just like, trying it on with anyone. And I just said, he knew I used to be a boxer and he used to say to me, "come down to the ring and I'll sort you out". I always said "no, right?" And we're in the pub one day and he comes flying over, pushing past, starts pushing you, says "come on, me and you right now" blah, blah, "come on". I was just like "go away, go away". You know, I knew what would happen, you're in a pub, you start fighting you know everyone's going to join in, aren't they? It was like "go away". […] [BH: So you're in that situation then, so why did you not retaliate?] Couldn't be arsed, that's basically, couldn't be bothered. I knew... [BH: What with the hassle?] Well it was the hassle, it's not that, I just knew that if I decked him there and then*

yeah, the police station was only round the corner, I'd be first in that cell and that would be it, that's my night over and done with."

Despite *Brett*'s account of his desire to stay out of trouble, his ability to walk away from trouble and his officer's role in helping him with his anger he still found himself in situations where he "wanted to hit some people". Although he had no more convictions following his 1998 probation order, he explained that he still got into fights as recently as three years previously, which was the first time he recalls putting into practice what he discussed with his officer (and walking away). His officer, it appears, identified Brett's anger management issues as a key part of his offending and her interventions to target them were eventually successful, though not for around nine years. It was some time after his order that he began to use her advice. We should therefore identify wider changes in *Brett*'s life that may have supported the changes his officer had tried to help him make. *Brett* had met his current partner in 2006 and they subsequently had two children. The following demonstrates the impact of becoming a father (notwithstanding that *Brett* had two children from a previous relationship) on *Brett*:

BH: *Did that have any impact on you, becoming a dad [2007]?*

Brett: *"Not really ... I don't know ... because it just happens, and you just get on with life don't you basically, you just don't think about anything else. You start thinking about these more, don't you? What's happening like, she's pregnant, start buying this, do that, and you start thinking about your family again, don't you? So that's what's been happening really, just look after your family*. [BH: Yeah]. *It's been good."*

BH: *What are the good aspects of it?*

Brett: *"The good aspects, watching them grow up, watching them do different things, learning. Things like, it's very good, like cause you forget with your first two, being such a long time, and you remember now, like what he's doing, potty training, he's going to toilet now on his own, and that's only happened the past week. And it's like, I don't remember that with my other two, never remember that. But I'll remember this now. [...] 'Cause I was only young when I had my first two and you do a lot of stupid things and you forget a lot of things, but this, cause you're older now you're going to remember, aren't you?"*

BH: *So is this a different experience to the others?*

Brett: *"You're concentrating more aren't you, because you're not young. […] You're at home and you're watching and you're learning with the kids now, aren't you? I wasn't doing that with the other two, I was in and out, in and out, in and out, in and out, blah, blah."*

Although *Brett* spoke positively about the anger management work his officer did with him, it was nine years before he regularly began to put this advice into practice. That this occurred around the time that he met a new partner and become a father again is not, we think, a coincidence. These events in *Brett*'s life buttressed the work done by probation, providing an outlet through which the probation work could be re-evaluated. Despite the time it took for the benefits of probation to emerge, *Brett*'s officer appears to have provided him with insights that at particular times were of use to him, despite, or perhaps because of, the length of time that had passed since his probation order.

4. Limitations to probation

Up to this point we have outlined the experiences of those reporting a high impact of probation. But what of those who were less positive about their experiences? Those who could remember probation cited several different reasons for its lack of impact on their lives, including inadequate resources and support offered by staff, a perception of probation as hostile towards them, and a belief that probation had taken place at the 'wrong time'.

4.1 Probation as Inadequately Resourced

For some, probation lacked impact because probation officers, while well intentioned, were perceived to be unable to deliver the help probationers felt they needed. Notably, all five of the women whose past or current offending was the result of drug or alcohol addiction had negative or, at best, mixed views about probation, notably due to the inability, or lack of expertise, amongst officers to understand or address addiction. Susanne found appointments at the probation office particularly difficult, since there would usually be several other addicts and/or dealers in the waiting room trying to sell her drugs while they waited to see their officers. *Tracy* explained that probation:

"… doesn't help. It depends on the crime and the person. Cause probation didn't do anything, you just attend a meeting and that's it, and it doesn't help. They haven't got the powers to help you, not from my experience. You know you need someone, a specialist drug agency, they should be referred to somewhere where someone will sit them down and talk about their actual addiction or what's led them to do the crime. […] Cause at the time, you

know, I said I wanted to stop, but there was nothing, no-one ever showed me a way out of it, it was all rehab. Well I wasn't, that was later on, it came later on, too late, for me. I should have had that offered to me before. I didn't have anyone sit me down and talk me through my drug addiction and where I was with it."

Conversely, three women, including *Tracy*, stated that their GP had been very helpful, for example, by arranging bereavement counselling or helping them to come off methadone. *Jimmy* (who now works in drugs counselling) cited the organisational constraints and bureaucracy that impeded officers' work, but also emphasised the importance of the officer/probationer relationship and officers' (in)experience:

"I think they tried to do a wonderful job. However, they tried to connect with individuals, by doing different courses and different interventions. And trying to get alongside people. But then see I've got, my other bit of the perception is on that, it's fucking, it's paperwork, paperwork, you know? I have to fucking do the stuff as well. And they get caught up with a mountain of paperwork rather than doing actually the work that's needed to be done. I find that very sad actually, because it's not about fucking paperwork. Alright I understand why paperwork's there [...] I know it's important. But you know, yeah, some probation officers, what I'm seeing at the moment is, sadly, are very young, haven't had any experience of life; not that they have to be an alcoholic or drug addict or criminal, I'm not saying that. But you know, if you've got a young lady by say 22, 23, trying to connect with a guy who's 40, think there's a bit of a problem there straight away. And it's not necessarily her fault, she's trying to build a career for herself, isn't she?"

Jimmy's account reflects research attesting to a recent "feminisation" of probation in England and Wales (*Mawby* and *Worrall* 2013), but also raises another issue about the extent to which former-offenders are an under-utilised resource for promoting change.

4.2 Probation as an Adversary

Some, even desisters, accounted for probation's low impact in terms of belligerent or obstructive probation staff. *Douglas*' low opinion of probation was a result of what he saw as adversarial probation officers whose role was to monitor his behaviour, rather than help:

"I think, to tell you the truth, I think probation, they more hinder you than help you. They're there to get you back into prison I think. Not to help you stay out of prison, they're there to get you back into prison. And like you've

got to do your best, for them not to get you into prison. [BH: Right. In what sense do you think they're there to get you back into prison?] I think they do all they can to get you back into jail, I think that's their job, it's not there to help you. [BH: Okay]. *I think it's just, it's ... to do anything they can possibly to get you back into prison. And watch you, and as soon as you slip up that's it, back you go. So you've got to be careful round them. I mean you've got like, you've got to not give them that chance."*

Carl (also a desister) was similarly scathing about his interactions with his officer:

"I think probation was a load of bollocks. I would just go in there she would say, "hello how are you doing? Thank you very much, bye-bye". That was it, you know what I mean? That is what probation is. You can't go in there and say "look I have got this problem what can I do about it?", because they don't want to know".

Some persisters echoed these comments. *Tony* characterised his relationship with his officer as directly adversarial.

"I think probation's just there to, not for my sake, for [the] public's sake. To make sure that I'm clean, I'm not committing crime and stuff. Cause like I say, the first time you tell them you've used, yeah, they don't see it like, "oh he's fucked up for a day, but he hasn't used since so we'll give him a chance". They don't see it like that. They say, "oh fuck it, one leads to another, that's it, boompf, send him back to prison". You know what I mean, "if he slips up next time he might not have no money, what's he going to do, he's going to go out and commit crime, we can't have that, it's a risk to public is that, send him back."

Bob (persisting drug offender) felt his probation officer was uncaring:

"To tell you the truth, mate, probation to me right, waste of time, I do honestly think, shite. That's probation in my eyes, mate. You go down there right, "right here you are, what you doing?" And the bloke who you're talking to is not interested. You can tell he's not bothered. It's just a job to him."

For some individuals, probation represented not just an inconvenience and a drain on their time, but one more obstacle to overcome. Although we cannot be sure, those who viewed probation as hostile were probably not just discussing their 1997-98 probation orders. Their ire was directed at their experiences of probation supervision as a whole, not at specific officers or orders. It is also

difficult to tell whether negative views of probation are a result of specific probation experiences or whether they represent wider and more entrenched negative attitudes towards “authority”. That is, we do not know whether an identification of probation as ‘useless’ is a cause or a consequence of the low impact of probation supervision. Regardless, it is unsurprising that those who viewed probation with such hostility did not recognise any benefits. Once again, each of these accounts speaks to the importance of the probationer/officer relationship. Those who were scathing about probation generalised what they perceived to be individual officers’ hostile, or at least, unhelpful, behaviour to the probation service as a whole.

Lucy, who described a previous “lovely” probation officer in whom she could confide her experiences of domestic violence and who “understood what I was going through”, had less positive experiences with different officers. *Lucy* recounted how one officer had:

> *“... annihilated me, she said things about me, it was like, I spoke to you and I’ve been more honest with you than I have with anybody in five years, cause I’ve not spoke to anybody. And I think you sort of understand me, I’m probably sounding a bit crazy to you, but you’re getting what I’m saying, I can tell by looking at you. [...] And then I found out you write a report about me, and you write a report like I’m absolutely somebody else [...] You say I’ve absolutely no understanding of what I’m, of the impact of what I’m doing, you talk about me with the most negative approach. I couldn’t believe what this woman said about me, so I got sent to prison. It was horrendous, she recommended me going to prison, she hated me, but she sat in front of me, wishing me the best, and “you’re a wonderful woman, I hope you go back to your voluntary work” and then... you know what I mean?”*

Earlier we likened probation officers to normal-smiths. The more negative accounts of probation supervision presented by *Bob*, *Tony* and *Lucy* also demonstrate the possibility that officers may also act as deviant-smiths (Lofland, 1969). Just as normal-smiths require very little evidence that the deviant is essentially good, the deviant-smith needs little reason to believe in the immutability of the deviant’s bad character. *Tony* felt that his probation officer lay poised to attribute the merest slip up to his irreconcilable “badness”. Such attitudes are unlikely to engender a spirit of co-operation. For *Lofland*, some agents of social control were frequently deviant-smiths (1969: 228-229). The hostility of some respondents to their officers demonstrates the “deviancy”, or bad character, they felt officers imputed to them. This is not to suggest that officers thought that all of their caseloads were “bad uns”, but rather that the risk aversion and enforcement culture had harden attitudes towards probationers.

4.3 Probation as Unnecessary

The majority of those who reported that their 1997-98 probation order had a low impact evidenced a more nuanced, self-reflexive account of the lack of help provided by probation supervision in changes that had taken place in their lives. The most common accounts emphasised the importance of personal responsebility in attempting to desist. For these individuals, the low impact of supervision was a result of a desire to change on their own part. *Dennis* had been in trouble twice since his 1997 order, for common assault in 2007 and breach of the peace in 2009. He had by and large stopped offending, but he attributed this change not to probation but to his own efforts:

> *"There's nothing what probation have done or anything anyone else has done. It's just me as a personal person, cause if you're that way inclined [i.e. wanting to offend] you're that way inclined and that's all that matters. Don't matter how they bang you in prison, give you probation, give you community service, it ain't going to change you. It's the same as – same if you're a smackhead, no matter how many times you try to get him to stop taking smack, he ain't going to do it until he wants to. He's got to be – it's got to come from inside you and not from anyone else."*

Brandon recognised the importance of complying with probation supervision, but taking only what is "needed":

> *"I'm not really sure about "learnt anything from it". It's just, you know, it's like you have to go anyway, don't you? It's a better alternative than prison, so everyone will take it, all the time. If you ask most people, if they told the truth, they'd say it was just an inconvenience and they'll tell you anything you wanted to hear, because that's the way the criminal element is. They don't look at it as like help. You get out of it what you need to get out of it. But most of the people that go to probation, criminals and that, it's just a, probably a big inconvenience."*

So for many, probation supervision, although not helpful, had little impact because probationers did not engage with the opportunities it offered. Their accounts of probation put a priority on personal responsibility, taking ownership of their own change and accepting help offered. For *Keith*:

> *"Probation only can do so much, can't it? To be honest they can just be there to listen to your problems. Try to tell you the right way of going around things and try to help you to stay out of trouble. But that's on your shoulders. There's no one there who can force you to stop getting in trouble.*

It has to be your… conscious choice – don't it? It has to be, because it's all in your hands, innit? You go out thieving. It's only you can stop doing that."

As *Anthony* put it, probation supervision was a facilitative process that it was up to probationers to engage with:

"[Probation] makes you analyse what you've done, who you've done it to, how you can change it. It gives you them tools, it tells you the tools, whether you want to bring them on board is up to you. All through the legal system people are saying to you, "look we'll help you this, we'll help you that". Ever since I was a kid people have offered to help me. I don't want their help. […] So the legal system's there, so if you want to, like probation,stuff like that, if you really want to use it to your advantage then you can. If you really want to get something out of it then you can. I'm not saying it's useless. I'm just saying it's useless to me."

The low impact of probation was therefore identified as being in part because offenders needed to take personal responsibility for changes that happened in their lives. As *Anthony* outlined, probation supervision was one "tool" that can be used to assist desistance, but it is very much down to the individual to engage with that opportunity. In some respects, then, the 'utility' of probation supervision was partly about the extent to which it emerged "at the right time" for the probationer concerned.

5. Summarising the long-term impacts of probation supervision

Based on the above observations, we outline a model of probation supervision impact as we believe it took place for our sample members and represents the insights gained from probation supervision, whether through direct advice and instruction from officers, or perhaps more indirectly through the actions officers perform that come to be viewed positively by probationers, or derived from conversations with officers in which the officer was 'simply' acting as a sounding board for the probationer's own ideas.

Central to differentiating which "path" is taken are two aspects of probationers' personal circumstances that we have termed 'degree of embeddedness in criminogenic situations' and 'desire and willingness to change'. The former represents the extent to which the wider situation of the probationer's life is conducive to further offending, for example, the extent to which peers and/or partner sanction or participate in crime or the presence of absence of drug or alcohol addictions that increase the likelihood of offending. The latter

encapsulates what we might term 'subjective' factors that contribute to the individual's attitude towards changing his/her life. For example, does the probationer want to stop offending and does s/he feel able to in the face of any obstacles s/he may encounter? Within the context of probation supervision impact 'desire and willingness' can also be thought of as the extent to which probationers feel able to work with their officer towards common goals. Such embededdness and desire to change mediate the probationer's responsiveness to the work done by their officer. The stronger the desire to change and the lower the level of embeddedness in criminogenic situations the more likely the probationer is to be immediately responsive to the work done by their probation officer. In *Figure 5.1* we present two ideal types of probationer: one with a low degree of embeddedness and a high desire to change, and a second with a high degree of embeddedness and a low desire to change.

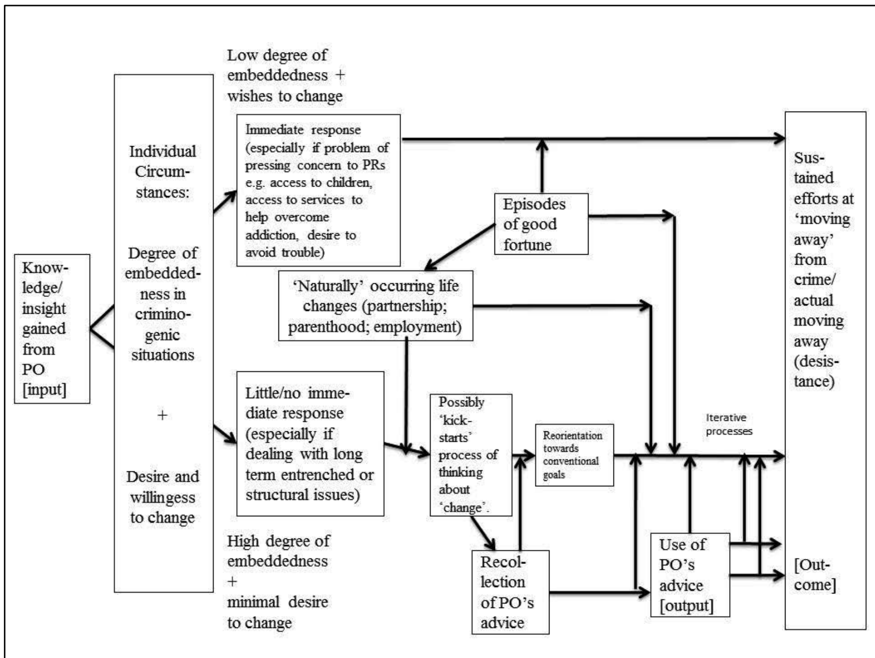


Figure 5.1: Model of Impact of Probation Supervision

Some use the knowledge and insights immediately – as in the case of Gavin (see above) which leads directly to sustained efforts to move away from crime that we identify at the far right of the model. For others, however, the insights given by their officer will not be responded to immediately (e. g. Bobby). How then do the insights gained from probation 'work' when there is no immediate

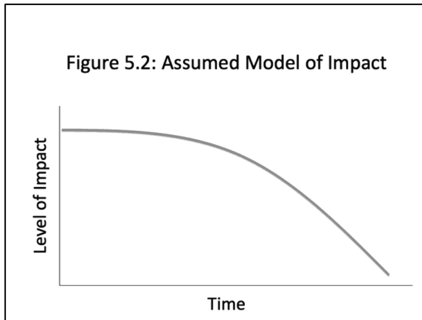
response or change? We suggest that rather than being permanently dismissed, such insights are 'stored' by some probationers until such time as they are more receptive to them. In effect they 'lie dormant' until the probationer is more ready to deploy them. An increased receptiveness may occur as a result of wider changes in the individual's life. Events such as employment or becoming a parent may impact on one's desire to change and also the degree of embeddedness (for example, employment leading to reduced time spent with peers). Such events have the effect of 'kick starting' the process of thinking about change, initiating a reorientation towards conventional goals combined with a consideration of how such goals might be achieved. As part of this process, the earlier advice of an officer might be recalled with a heretofore-unrecognised resonance. Insights given might come to be more explicitly used in the individual's new situation or practical help may now be of more direct use. Recollection of a probation officer's advice as being a possible way to achieve conventional goals increases the chance it will be used, in turn leading to sustained attempts to move away from offending.

Life changes, reorientation towards conventional goals and the recollection and use of an officer's advice do not follow a strict causal sequence. Such 'events' are iterative, feeding back to one another as part of the process of change. So it is that a reorientation towards conventional goals might lead to a recollection of a probation officer's advice about finding employment. Similarly, successfully using an officer's advice may lead to a greater attentiveness to other knowledge that has been imparted. It is the interplay of these factors that make the causal relationships involved in probation supervision and desistance from crime difficult to untangle.

6. Conclusion

Earlier sweeps of interviews with this cohort ended on down-beat notes; probation had appeared of little use or relevance. However, the account being presented to us now by these same individuals is starkly contrasting. Why have they changed their minds? We suspect that a number of things are at play here. Certainly the lives of many of those we interviewed had developed (employment found, relationships formed, children born and so on) and with this came desistance (*Sampson* and *Laub* 1993). But, crucially, these drivers to desistance had required sample members to revisit what their officers had said to them, and to start to think about and apply some of this advice. This confuses standard models of how people change; instead of people thinking about change and then seeking advice about how to effect change, we have observed the reverse; the advice about how to change was delivered many years before the desire to change, but was still able to play a key part in those processes of change. In this respect our data challenges some of the key assumptions of decay in many

interventions. Instead of interventions decaying over time (Figure 5.2), it is possible that for many its impacts actually increased (Figure 5.3).



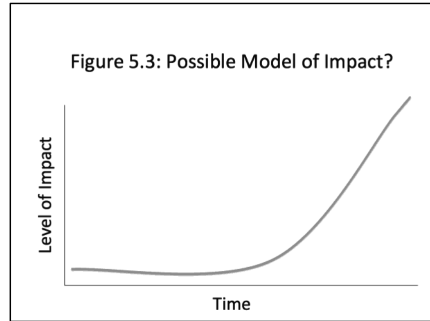


Figure 5.2: Assumed Model of Impact

Figure 5.3: Possible Model of Impact

If supported by other studies, this suggests that 'full' assessments of probation supervision (or any other efforts to encourage individual-level change) ought to focus on periods beyond the common one or two year follow-ups. Such studies, of course, need to go beyond simple assessments of reconvicted/not reconvicted, and to embrace those developed by *Shapland et al*. (2007) as part of their evaluation of restorative justice schemes. Our use of qualitative data also suggests another development: the age old question 'What Works?' is now rather stale. *Mair* (2004) suggested 'what matters?' – but 'what helps?' may be better still (*Ward* and *Maruna*, 2007: 12-15). 'Help' implies assistance; 'works' in this context implies produces the outcome. The stance developed at the outset of this project was that too much emphasis had been placed by academic and policy-related researchers on what happened in the probation office which tended to imply that the input of the person being supervised was of little concern. If the claim that "only offenders can stop re-offending" (the tag-line of the UK-based User-Voice charity) is true, then the focus on 'helps' as a way of re-orientating research questions in this field strikes us as a good development.

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6. The high-risk offender as a subject – the individual approach

Marianne Vollan

1. Introduction

I have been looking forward to addressing today's topic, because it truly is among the most difficult we face as correctional services: How do we execute sentences in a way that can reduce recidivism among those who represent the highest risk of committing serious offences? And let me conclude already: No, I don't hold the full answer to this difficult question. I see that also the four countries involved in the JCN-project have different models – because there is no "quick-fix". My intention is merely to contribute with – hopefully – some food for thought in this complex field.

In my presentation I will touch upon – from a Norwegian perspective – all the four key areas the project has concentrated on: Legislation, sentence planning, release – and re-integration.

Categorizing high-risk offenders might in itself represent a "risk". My presentation will focus on "the individual approach" – from two angles: How do we as a service make the best assessments in order to identify what risks the individual offender represents? Secondly, how to establish a system where the offender himself is an active subject, not a passive object on the path to a safe release?

I will concentrate on three main pillars in the Norwegian general approach in the execution of sentences, and examine how they can be applied in the management of high-risk offenders:

- The principle of normality,
- the import model,
- a "seamless" correctional service.

But before doing so, I need to spend a minute on the project's definition of high-risk offenders in a Norwegian context.

The updated definition from the project reads:

"*A high-risk offender (a violent or sexual offender) is someone who presents a high probability to commit crimes which may cause very serious personal, physical or psychological harm*."

According to the penal legislation in Norway, some in this group will fall under the scope of a penalty called preventive detention, seen as the strictest Norwegian penalty. Preventive detention is imposed for a certain time, but can be prolonged as long as it is deemed to be necessary to protect the society, if necessary for life. The criterion is that there is an imminent risk that the offender will commit a serious violent felony, sexual felony or other serious felony impairing the life, health or liberty of others again. According to the definition from the project, I assume that some of the "high-risk offenders" under Norwegian legislation will be sentenced to preventive detention, others to an ordinary time-fixed sentence. I will sometimes refer to these two different groups in the following, as different regimes may be imposed.

Now – let's move north to the three pillars.

2. The principle of normality

In the Norwegian correctional approach, the principle of normality is a guiding star.

The basic principles in the Council of Europe's recommendation on Prison Rules include the principle of normality or normalisation. Rule No. 5 reads: "Life in prison shall approximate as closely as possible the positive aspects of life in the community."

But also some of the other principles are related to – and support – the principle of normality, like for instance Rule No. 2: "*Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody*."

What is normality? That is an interesting and complex question, which we don't have the time to elaborate further on today. But for today's topic we should bear in mind that the "normal" life of the average convict may differ from the general population's normality – in terms of health issues, employment, drug addiction, relations, etc.

Now: The principle of normality can be discussed from several angles. In my view, the principle is valid in it self for many reasons, but can also be an important measure in the constant ambition to achieve a safer release and thus reduce reoffending.

The principle is valid in it self because it supports a humane approach in the execution of sentences. The penalty shall be felt as a penalty, but still being executed in a way that reduces the negative impact of being incarcerated.
The normality concept is closely linked to the principle that deprivation of liberty is the actual penalty, and that other rights are in behold.

Inmates should be seen as citizens, with the same individual rights as other citizens except the right to liberty; that is for instance with a right to access to society in terms of voting rights, media access, organizational rights; access to public services like health, school, social benefits, etc.; the right to execute basic elements of a private life, in terms of family life and religion.

But citizens also have duties, which are equally important! I will come back to that.

As I mentioned, the principle can also be a measure for a safer release. The smaller the difference between life inside and outside prison, the easier the transition from prison to freedom.

Strengthening the principle of normality means organizing a daily routine in prison that as far as possible reflects the society outside the walls. The ambition is that the prison can be a training arena for the mastering of life skills. The work training should be done in a more realistic manner – that challenges our work shop philosophy, because we need to be more in line with what type of working skills that are required in today’s society, and not only offer yesterday’s kind of occupations. Or what about this lamp, produced in a Norwegian prison?

It is called *Bake me a cake*.

- The lamp is manufactured and quality controlled by inmates of Bergen Prison, through a unique collaboration between the designers, the Norwegian correctional service and Northern Lighting. The goal is to create a high quality design production inside Norwegian prisons, where we challenge the inmates’ thoughts and actions.
- The project’s name originates from the classic story about “The cake with the file”, from the cartoon world where a mum adds a file inside of a cake she bakes for her beloved, imprisoned son to help him escape.
- The project aims to create meaningful activities for the inmates, whilst they are still in prison.
- The lamp has been very popular and awarded, also internationally.

I mentioned duties earlier. Also in that respect the work shops can be training arenas: The prisoner should be responsible for making appointments with his employer, like asking for permission to go to the doctor and so on. The inmate should also pay bills and buy food; in short practicing in being a citizen responsible for his or her own life. This is a way of bringing the concept of a normal society into corrections, and prepare for a safer release.

The principle has limits. When we claim that the actual penalty is the deprivation of liberty, and that all other rights are in behold, we have to nuance a bit. Security reasons can be a limitation, and that is in particular relevant when it comes to the group of offenders we discuss in this conference. Our main task as a correctional service is to provide safety for the public, the victims, the staff, the inmate/convict himself, and the co-inmates. When an inmate serves a sentence under the strictest regime, like for instance the one convicted for the terrorist attacks 22 July 2011 at present does, his daily life is quite different from yours and mine.

A limitation of another sort is of course the architectural limitations of most prisons. We encourage the prisoners to pursuit hobbies and participate in sports, but if your favourite is parachuting or scuba diving, there might be some limitations as to at least the frequency of engaging in such activities. But we have examples of offering horse-back-riding as an activity under a preventive detention-regime; here the horse was brought into the prison area.

So to sum up: The principle of normality is valid also when the offender falls under the scope as "high-risk", but due to the restrictions that may prove necessary, the everyday-life during the serving of a sentence may be less similar to the life outside the walls than in other cases. The individual approach is however important. Even in cases of preventive detention, where the court has deemed the convicted person to pose an imminent risk of committing new, serious crime, it will always be assessed individually which daily routine is suitable.

It is the exceptions from – and modifications of – the principle of normality that need to be argued for, not the principle it self.

A "normal" daily routine can also be a valuable source of information relevant to the risk assessments and at the same time give the offender the possibility to demonstrate a positive development. How does he deal with conflicts? How does he communicate with others?

I sometimes think that we reduce the impact of the offender himself, and look upon him as a passive object that *we* shall help, treat, reintegrate and resocialize. We have an important role in motivating and to create a path to reduced recidivism. But the choice to change and to walk that path lies with the active individual. For me this is also a matter of respect! And that is what we expect from other citizens, so in fact it is the ultimate application of the principle of normality.

3. The import model

Another important principle in the Norwegian approach and strongly connected to the principle of normality is the import model.

Our aim is that everyone who is to be reintegrated in the Norwegian society after serving a sentence, should have an offer of employment, education,

suitable housing, some type of income, medical services, debt councelling, and preferably a social network. This approach was under the previous government called “the reintegration guarantee”, and it is stressed also in the framework of the present project as an important tool for the reintegration of high-risk offenders. In Norway, this was a political, not a legal guarantee. The system is followed up under the current government, but is now called “good reintegration”, based on a close cooperation between the Correctional Service, other relevant public services, NGOs and not least the offender himself.

What have we accomplished so far? Is this picture no longer representative, the released person with two plastic bags? There is still a way to go, but we see results in terms of an acceptance of a joint responsibility for the inmates. Who “owns” the convicted person? Previously, the attitude seemed to be that the Correctional Service had this role. Other public services experienced maybe a relaxing break when their clients were in prison. But the reality is that the convicted person is the society’s “property”. And many public services could have a unique chance to get in touch with their clients when they serve a sentence; they are at hand, preferably drug-free and probably more motivated than usual.

This is “the import model” – we want the public service providers to be in the corrections! Prisons do not have their own staff delivering medical, educational, employment, clerical and library services. These services are imported from the community. The advantages are:

- A better continuity in the deliverance of services – the offender will already have established contact during his time in prison.
- Involvement from the community with the prison system – more and better cross-connections and an improvement of the image of prison and prisoners.
- The services in question are financed by other bodies as they are part of the rights of any inhabitant of Norway.
- Someone from the outside “look us in the cards” every day.

What is the role of the corrections under the import model? I often compare our role towards the cooperating agencies with being a good host, here illustrated by a dinner party in my home last week; we should facilitate for the guests to play their role, by giving them a place to sit – that is: good working conditions, having a nice conversation – that is keeping up a good dialogue and exchange information. The best guests are the ones who respect the house rules; we in corrections need to be clear on what security rules and precautions that apply for the imported services. And what is on the menu? The prisoner and our common goal to reduce recidivism.

What about the high-risk offenders under this model? How do they fit in?

The general answer is that the same principle is applied. This category of offenders needs a multi-agency approach. Offenders under preventive detention will start their sentence in special facilities, where the ratio of psychologists and other health personnel is higher than in ordinary prisons. On the other hand, one general aspect of the import model and reintegration policy, where we plan for the release from “day one” of a sentence, and focus on the path out of imprisonment, needs to be modified in cases of preventive detention. A sentence plan will be more appropriate than a release plan. Having said that, the general aim is that most of the preventive detainees someday should live a life outside the walls. And for high-risk offenders that undergo a time-fixed penalty, and not preventive detention, the sentence plan should be complemented by a release plan, where the continuity in the deliverance of public services is an important element.

If for instance a person tends to reoffend under the influence of alcohol, it is more reassuring that there is established a follow-up scheme for him while in prison than if such a scheme was not in place.

4. A “seamless” correctional service

The third principle I would like to present is what we call “a seamless correctional service”.

For those of us devoted to clothes and design, we know that it is a sign of perfection when the seam in a piece of clothing is invisible. I use this as a metaphor for the ambition of a smooth transition from prison to community. I want to focus on avoiding “seams” between the prison and probation service.

I am fully aware of the fact that there are many ways to organize the correctional service, and that many countries prefer to have two separate entities dealing with probation and prison matters. That was also for a long time the case in Norway.

From my perspective, I find it satisfactory to be in charge of both the prisons and the probation offices, because I think that supports better the offender’s transition from prison to community. A “successful” transition is even more important in cases where there is a high-risk of reoffending with serious crime than in other cases. Let me give you a couple of practical examples of the advantages of a combined service:

- The staff dealing with electronic monitoring in Norway consists of both prison officers and social workers. It is formally a prison sentence, but executed under the auspices of a probation office.
- We have recently adopted a new strategic plan for the correctional service, and it is crucial that we share the same vision, values, goals and objectives in the whole correctional chain.

An organisational choice is of course no guarantee of a safe release in difficult cases, but at least we are one service, sharing the same vision, values and ambitions. And I have organisational measures at hand to deal with difficulties that might occur. Regardless of organisational preferences, there needs to be a close cooperation, because the damage of reoffending is so devastating.

The transfer from closed facilities to the community is, as this project also has illustrated, often very challenging when the offender represents a high-risk of reoffending to serious crime. In my view, it is however inappropriate to characterise the offender as "victimised", as it was done in some of the preparatory material. I think this term should be reserved for the victims of the crime, and in these serious cases they will often be scarred for life. The "label" high-risk offender is based on very serious offences that the offender himself is responsible for.

Anyways, the question of how and when high-risk offenders should return to society is the crucial one. In my view, it is at this point that there is a particularly strong need for an individual approach. Under the Norwegian regime, the competence to release on probation high-risk offenders who are under preventive detention, lies with the judge. The judge will examine the case, and the correctional service will present our view in the hearing. We have had some cases under preventive detention where the court is not satisfied with the progression, or should I say the lack of progression, and released on parole persons against our advice. This has led to a discussion in our own service as to how we can improve our own "menu" for this group of offenders. The well-known dilemma is as follows: How can an offender show that he has now reduced the risk of reoffending, when he has never been exposed to situations where it is possible? We have to look into ways of strengthening open facilities and halfway-houses so the path from the preventive facility to release on probation is not to steep.

For high-risk offenders serving a determinate prison sentence, it is possible to be released on probation after serving two thirds of the sentence. Here the competence lies with the correctional service. In general, we believe release on probation can be a good transition from prison to community, with a follow-up from our probation offices. Again, this is not an automatic procedure, but a case-to-case application that is thoroughly assessed. In approximately 30 per cent of the cases, release is denied. In a serious case not long ago, we had no other option than to deny release on probation, and the offender served the full 21 year long sentence. The reason for our decision of denying release on probation was that he had violated all the conditions set when we tried to move him to more open facilities. He committed new serious crimes as soon as he was released from his sentence and is now in custody. The example illustrates how difficult – and serious – this part of our business is.

5. Concluding remarks

I have in my presentation commented the project's main topics from a Norwegian perspective, by highlighting the principle of normality, the import model and a "seamless" correctional service. I will conclude with the following remarks/questions (as I don't have all the answers...):

- Thorough, individual assessments are crucial. But we need a multi-agency approach also in the assessment process – advanced IT-tools are helpful, but not sufficient. The starting point is the verdict/legal documents from the criminal case – a lot of the risk factors, and the modus operandi, are assessed there – do we sometimes "forget" this information as soon as the offender starts to serve the prison sentence? Secondly, the prison staff will have a lot of relevant information through the everyday-life, hence the principle of normality. Also other public service providers can shed light over the development of the offender; whether there is an import model or not.
- We must – under this individual approach – accept that some offenders are so likely to reoffend by committing very serious, harmful crimes, that they never can be re-integrated. But we never should give up the hope for success. Our (interim) aim in these very rare cases must be to execute a humane regime.
- The daily routine should give room for the individual offender to be an active subject in his own life.

I am looking forward to interesting discussions on maybe the most difficult area in our service!

7. Results of the JCN-Project

7.1 Project results on legislation and court practices (jurisprudence) concerning high-risk offenders – Introduction to Forum 1

Frieder Dünkel

Introduction

The starting point for summarizing the results of the JCN-project has been the question: "Why and under what perspective are legal aspects and substantive legislation so important?"

The answer can be taken from the findings of work-stream 4 – the workshop in April 2014 in Schwerin – where the project partners unanimously stated as regards legislation:

"It is agreed upon that the following results alongside the phase of execution of the sentence should be laid down by substantive law. Only an appropriate quality of juridical rules can reach the necessary commitment."

Background for the necessity of substantive law regulations are general aspects of imprisonment and human rights as developed by national and international human rights standards and jurisprudence, in particular the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights (see in detail *van Zyl Smit/Snacken* 2009). More and more also so-called "soft law" as the Recommendations of the Council of

Europe are of importance and somehow binding for national legislators or at least becoming relevant for the interpretation of human rights in national jurisprudence (see e. g. *van Zyl Smit/Weatherby/Creighton* 2014; *Morgenstern* 2014, p. 173 ff. with regards to the *Vinter* case, see below). In Germany the Federal Constitutional Court in the context of juvenile imprisonment and the necessity of substantive legislation stated:

"It could be an indication that insufficient attention has been paid to the constitutional requirements of taking into account current knowledge and giving appropriate weight to the interests of the inmates if the requirements of international law or of international standards with human rights implications, such as the guidelines or recommendations adopted by the organs of the United Nations or the Council of Europe are not taken into account or if the legislation falls below these requirements." (*Federal Constitutional Court*, FCC, BVerfG Neue Juristische Wochenschrift 2006, p. 2093 ff., 2097).

International human rights standards and in particular, the jurisprudence of the ECtHR indicate that rehabilitation has to be seen as a human right also for high-risk offenders. A recent example is the case of *Vinter et al*. (see *Vinter et al. v. UK* of 9 July 2013, Application-nos. 66069/09, 130/10 and 3896/10), which is interesting insofar as the Court takes up the arguments of decisions of the German Federal Constitutional Court from 1972 and 1975. Recently the German FCC clarified that the right to rehabilitation also applies for offenders in the so-called preventive detention measure, an indeterminate deprivation of liberty for dangerous sex and violent offenders to be served after having served full prison sentence. In its decision of 4 May 2011 the FCC emphasized that already the execution of the prison sentence before the preventive detention part, but also the execution of preventive detention itself must be treatment- and "liberty-"oriented, i. e. the offender must be given numerous forms of rehabilitative programmes and of contacts with the outside world (including prison leaves etc., see *FCC*, BVerfG Neue Juristische Wochenschrift 2011: 1931).

What could be characterized as "good practice" of legislation? Any definition must consider specific principles of criminal law and sentencing, such as certainty, proportionality, preserving human rights and aims of punishment. Sanctioning serious or high-risk offenders in different cultures and historical periods has found different accentuation. In Europe and the US during the 1960s, and 1970s the aim of rehabilitation ("resocialization") have prevailed. In the US since the 1980s retributive and general preventive goals have gained more importance with an emphasis on incapacitation through long-term imprisonment. The introduction of "life without parole" has been the most remarkable development in this regard. Europe (maybe with the exception of the UK), in contrast to the US has never followed a comparable shift to

"punitiveness", although for specific groups of offenders such as sex and violent offenders a tightening of criminal law has taken place. According to *Snacken/ Dumortiers* (2012) it was the human rights orientation and in some countries (e. g. Germany, Spain) the even constitutionally based rehabilitative goal that prevented an overall "punitive" turn in crime policy (see also *Snacken* 2010). Just recently also in the US a revival of the rehabilitative ideal and of "European" ideas of proportionality (as a principle to avoid disproportionate harsh sentencing) can be identified as well (see *National Academy of Sciences* 2014). One of the negative impacts on crime policy in the US was a too strong empowerment of victims in criminal procedure and in the execution of punishments. Victim impact statements and the possibility to influence the sentencing and parole decision process are not seen as useful strategy. In Europe the rights of victims have also been improved considerably, but only with regards to their position in criminal proceedings and the possibilities to get reparation or compensation, not with regards the severity of sentencing offenders.

Topics for the discussion in Forum 1 were on the one hand questions of criminal law (legislation) and questions of identifying and structuring of "good practices" on the other.

Regarding sentences provided for high-risk offenders the role of long-term prison sentences, of extended sentences, of life imprisonment, "life without parole" etc. should be discussed. Concerning the specific question of preventive detention the question of how a society can "survive" without preventive detention was of major interest. Finland and Sweden do not have the legal possibility of imposing preventive detention, whereas Denmark and Norway do (see *Lappi-Seppälä* under *7.1.2*).

It is also debatable if and how post-custodial supervision orders (in Germany: supervision of conduct) can be justified, as the offender in these cases has fully served his sentence. Therefore countries like Finland do not provide for such supervision. The solution of having aftercare supervision lies in an almost automatic and 99% early release (parole), which allows some form of supervision for the time of the remainder of the sentence. In any case, it became clear that clear legal regulations are needed, which legitimize and limit supervision. An indeterminate supervision period, in case life-long, as it is possible in Germany, is hardly acceptable.

As to structuring examples of "good" (or better to say "promising") practices, the discussion of previous workshops of the JCN-project resulted in structuring the examples alongside the phase of execution of the sentence (the custodial part), the phase of transition (preparation for release and decision on

early release) and the situation after release. In conclusion the proposal was to discuss the examples of "good practices" with special regards to legislation under the following 5 topics:

1. Sentence planning and specific prison regimes (specific treatment programmes, socio-therapy etc.),
2. The preparation for release (prison leaves, relaxation of the prison regime, temporary release to half way houses etc.),
3. The decision on release (early/conditional/automatic release), in case the extension of custody by preventive detention and the role of legislation and jurisprudence to avoid preventive detention,
4. The supervision after release including exchange of information and co-operation of agencies involved at the post-release period (probation service, after-care services, police), the role of control mechanisms (intensive supervision and care, electronic monitoring etc.) and
5. The responsibility of local/community agencies ("community guarantee").

Results of the project under these 5 topics may be summarized as follows:

1. Specific treatment regimes (socio-therapy etc.)

It is agreed that socio-therapy for high-risk offenders is a promising model of preventing re-offending. There is empirical evidence that socio-therapy "works". Socio-therapy is an integral part of a prison system based on the goal of rehabilitation ("resocialisation"). Sentence planning, risk assessment, socio-therapy, preparation of release, early (conditional) release, continuity of care are core elements of such an approach, which should be laid down by law (substantive prison law). Socio-therapy is executed in special units and comprises a range of rehabilitative measures described below. Other principles of punishment such as incapacitation and deterrence in general, but also for high-risk offenders are no solution (see above).

High-risk offenders should be subject to a specific prison regime with a therapeutic approach. In this, their specific risk of reoffending, criminogenic needs and responsivity to certain treatment modalities should be considered and an increased effort towards rehabilitation ("resocialisation") through (preferably) cognitive-behavioural therapy in a milieu-therapeutic environment should take place. This includes provisions for a gradual return of the prisoner to life in the free society by prison leaves, work release, open facilities and other temporary release schemes and the orientation at early/conditional release with an intensive aftercare (see for the "What-works"-evidence see *Feelgood* under *7.2.2* and *Pruin* under *7.3.1*).

2. Preparation for release (prison leaves, relaxations of the prison regime, temporary release, halfway houses etc.)

It is agreed that an intensive preparation for release for high-risk offenders is a promising model of preventing re-offending and improving social reintegration. There is empirical evidence that a gradual transition scheme of preparation for release combined with early release (see below) and aftercare “works” (see *Feelgood* under *7.2.2* and *Pruin* under *7.3.1*).

Substantive law should lay down the following principles:

- The planning for (early) release must be organized in due time and give also for high-risk offenders a concrete perspective for the time of release and for the period of aftercare supervision.
- Prison leaves and other forms of temporary release are an essential part of a gradual return of the prisoner to life in free society. The criteria for granting such releases should be less restrictive the longer the stay in prison lasts.
- Particularly in the last phase of the sentence the prisoner should have the right to be granted temporary releases, except if he/she presents a serious danger of committing very serious crimes against other persons.
- These principles should apply also to high-risk offenders. The criteria and legal conditions should be regulated by substantive prison law. The competence of decision-making should be given to prison governors or prison authorities in general (with the requirement to consider the expertise of psychologists or psychiatrists).
- There must also be a right to immediate judicial review if such necessary forms of preparation for release are denied.

3. Early/conditional/automatic release

It is agreed that early release for high-risk offenders is a promising model of preventing re-offending. There is empirical evidence that a systematic preparation of release combined with early release schemes, support, and control by aftercare services “works” (see *Feelgood* under *7.2.2.2* and *Pruin* under *7.2.3.1*). There are different models of early/conditional release in Europe (see *Dünkel* 2013; 2013a; 2015). The advantage of a quasi-automatic release system is that it enables the prison administration to plan the sentence in an appropriate time and gives the offender a sense of predictability about the termination of his stay in prison, which might motivate him. Furthermore, it allows for post-custody supervision by the probation services, in particular in countries, which

do not provide supervision of conduct orders after having fully served the sentence.

On the other hand, the automatic release system might be inappropriate for high-risk offenders, which may present a serious danger to other persons. Therefore, the release system should allow some flexibility in the way that early release for high-risk offenders should regularly be granted and only be denied if concrete facts justify a high likelihood that serious further violent or sexual offences be committed. Legislation should define the competent authorities and the procedure for granting an early/conditional release. The opinion of many project-participants was that preferably a judge, e. g. the judge for the execution of sentences should be responsible. For continental European countries, parole boards with non-lawyers are not acceptable (or in the case of Germany even outlawed by the Constitution) as the decisions are based to a large extend on normative criteria beyond scientific methods of predicting future behaviour (the larger part of decisions have to be done on the base of relatively uncertain prognoses).

Legislation should also define the criteria for "good prognoses", preferably in a way that gives priority to an early release in the situation of uncertain prognoses ("*in dubio pro libertate*"). This would draw the discretionary system nearer to the quasi-automatic release system. It allows the supervision and control after release through directives including – if necessary – electronic monitoring etc. The Finnish legislation and practice can be seen as a model of "good practice".

4. Post-release supervision and support

It is agreed that post release supervision for high-risk offenders is a promising model of preventing re-offending and improving the social integration of high-risk offenders. There is empirical evidence that aftercare support schemes can "work" (see *Feelgood* under *7.2.2* and *Pruin* under *7.3.1*)

Legal provisions should allow for the supervision of high-risk offenders after release. Post-release supervision has to be based primarily on the support of the probation and/or aftercare services. These provisions should clearly determine the range of supervision, the competent authorities for its execution as well as possible directives and obligations to be imposed on the supervised person. The intensity of supervision should decrease in the course of time. Life-long supervision should be excluded. Furthermore, legal provisions should regulate the dissemination and exchange of information regarding the supervision as well as clearly define obligations of the person under supervision to submit information to the competent authority for this purpose. When acting

upon this information, authorities should be legally obliged to consider the effects on the rehabilitation of the supervised person and the protection of potential or former victims. All obligations and directives imposed on the offender under supervision must have the primary aim of rehabilitation. Pure control measures should be excluded. Electronic monitoring is only advisable as an exceptional measure and only if it is combined with intensive support and care by the probation and aftercare services. A revocation of early release or other possibilities to remove an offender to prison should only exceptionally be allowed in case of only technical violations. Police supervision should never be a stand-alone measure of control. It must be combined or as far as possible replaced by forms of support and control by the probation and aftercare services. Police supervision must be based on substantive criminal or procedural law (not police-law). The aim of rehabilitation and possible negative effects by stigmatizing ex-prisoners demand a very sensitive use of police control.

5. Community guarantee

It is agreed that the delivering of post-release services concerning accommodation, employment, social welfare aid, etc. for high-risk offenders is a promising model of preventing re-offending and improving social integration. There is empirical evidence that such aftercare services can “work”, particularly if they are structured by a net-work of intensive co-operation (multi-agency approach). All competent authorities on the local level (state and municipal institutions) should be obliged by law to provide the necessary services to released prisoners according to their needs. Legislation shall define the necessary measures, the competent authority and the right of the released person to demand these services right in advance, i. e. already during the custodial phase. Legislation should set out such guarantees in the laws regulating communal/local competences and duties and also in laws regulating the obligations of after-care services (e. g. probation services) as well as of local agencies involved in the reintegration of released prisoners (job centers, accommodation services, health care services etc.). How and by what kind of legislation can the local agencies be made involved? Experiences of Denmark, Norway and other countries could serve as a model of “good legislation”. In Germany, a “Model Law on Resocialization” has been presented by some scholars (see *Cornel et al.* 2015) and currently is debated in several Federal States.

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7.1.1 Managing high-risk offenders – from sharing experiences to drafting better national laws and European tools

Alina Barbu

1. Preliminary remarks

The objective of the JCN (Justice Cooperation Network) project was to develop a European network and database of best practice for a subject of high interest for all European countries: the transition management of high-risk prisoners leaving custody.

The task was not an easy one, as a fundamental question emerged already at the very beginning: How is the concept of a high-risk/dangerous offender understood in the respective member states? Many differences among the member states involved in the project (e.g. Germany, Ireland, Finland, Estonia) were revealed already at this point. That was the reason why at the beginning of the project a *mutually agreed definition* was needed to be set up among the participating countries of the project. Therefore, identifying *who* is to be considered a high-risk offender and *how* this risk is evaluated were the key topics of discussions within the project. As a result, *a working definition for high-risk offender* was drafted as follows: *Someone (violent/sexual offender) who presents a high probability to commit crimes, which may cause very serious personal, physical or psychological harm.*

Moreover, a list of main principles and relevant terms were agreed upon, regardless of the respective legal frameworks of the participating countries. It was also agreed during the project that *certain provisions and legal bases are necessary alongside the phase of execution of the sentence* – in areas such as: the range and time of supervision, the competent authorities, the obligations to be imposed on the supervised person, as well as clear rules for other agencies competent to offer specific services (aftercare services, local services for reintegration, job centers, health care centers, etc.).

This shows that norms, regulations and common understandings are necessary not only for internal reasons, but also for the purpose of proper cooperation in Europe.

2. How many dangerous offenders are in Europe?

Before presenting the European standards regarding dangerous offenders, a legitimate question has to be raised: *How many dangerous offenders are in Europe?* Exact numbers are difficult to come by. When talking about high-risk or dangerous offenders, we refer to persons convicted for serious crimes: homicide, drug offences, organized crime, terrorism for which penalties for long term or even lifetime imprisonment are imposed.

We can turn at this point to the SPACE statistics (*Statistiques Pénales Annuelles du Conseil de l'Europe*)[1], to see what is the situation among 47 Member states and we shall look at SPACE I[2], which provides data on imprisonment and penal institutions.

From the perspective of the length of custodial sentences, in 2012, according to the SPACE-Executive summary,[3] 20% of all sentenced persons were serving sentences less than one year, 26% sentences of one to three years, 52% longer sentences, from which 12% represent inmates with more than 10 years imprisonment. Moreover, interesting information is given in Table 7.1 on the "Length of Sentence of Sentenced Prisoners"[4] (in percent) from which we can find that the median share of sentences from 5 to 10 years is 19.1%, the one from 10 to 20 years imprisonment is 9.5%, the one from more then 20 years is 0.7% and the one of life imprisonment is 1.5%. We can also identify a share of 0.2% of the prison population to have been subjected to security measures of indeterminate length. One can say that, in absolute terms, we had in 2012 88.528 persons in prisons convicted for more than 10 years, 17.686 persons convicted to life sentences and 8.766 convicted for indeterminate length.

It has to be emphasized, that there is not an absolute unique understanding of terms – some countries may have included persons convicted to security measures (mentally ill and those considered dangerous) under the category of life imprisonment, while other countries exclude them from calculation since

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1 http://www.coe.int/t/dghl/standardsetting/prisons/default_en.asp; http://www3.unil.ch/wpmu/space/.

2 http://www3.unil.ch/wpmu/space/space-i/.

3 http://www3.unil.ch/wpmu/space/files/2014/05/ENG_Executive-Summary_SPACE-2012_140505.pdf.

4 http://www3.unil.ch/wpmu/space/files/2014/05/Council-of-Europe_SPACE-I-2012-E_Final_140507.pdf.

they are not considered as being sentenced in the strict sense according to their national legislation.

The statistics show quite considerable numbers of prisoners convicted to long-term prison sentences (which, however, are not equal with a high risk or dangerousness):

Sentences of 10-20 years: Cyprus 1.123, France 5.280, Hungary 844, Italy 4.961, Lithuania 1.459, Romania 4.509, Spain 8.833, Ukraine 11.343
Sentences of 20 years or more: France 1.871, Italy 1.883, Poland 1.645, Romania 928, Spain 2.725, Turkey 2.860.
Life imprisonment: Belgium: 213, Germany 2.031, Italy 1.563, Poland 317, Ukraine 1.868, UK 7.674.

Since 2011, another table was included in Space I – Table 5.2: Dangerous offenders under security measures. This item concerns inmates detained under special measures, which are usually defined as "dangerous offenders". The measures may have different names such as *security measure, secure prevention detention or preventive supervision*, according to the Recommendation CM/Rec (2014) 3 of the Committee of Ministers to Member States concerning dangerous offenders (Strasbourg, 19 February 2014).[5] The criteria for the inclusion in this table are: persons held as not criminally responsible by the court or persons held as fully or partially criminally responsible.

Countries are, however, also free to include those inmates, which are usually defined as dangerous offenders according to their legislation. In the future, it is therefore important to analyze the differences between the definitions in national legislations as well as the terms used in the standards of the Council of Europe. These efforts should be done in order to develop a common understanding and the enhancement of SPACE statistics.

It is therefore difficult to say whether the percentage of prisoners convicted to long-term prison sentences is too high (in some countries where there is no legal possibility for life imprisonment it is "normal" that the number of inmantes with more than 20 years of imprisonment is high, for instance). What one can say for sure is that there is a rather constant and important share of the prison population detained for more than 5 years for which special care is needed to be designed (see in summary *Drenkhahn, Dudeck and Dünkel* 2014).

What are the European instruments in the area?

The European instruments to consult while dealing with the treatment of high-risk offenders may be divided into two: *European Union* level and *Council of Europe* level.

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5 https://wcd.coe.int/ViewDoc.jsp?id=2163607&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.

3. The situation at the EU-level

At the EU-level there are several instruments, mainly dedicated to judicial cooperation, inclusing those related to criminal field such as:

- Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union[6];
- Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions[7];
- Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention[8];
- 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States[9].

Also mentioned should be those instruments, which are not specifically linked to the issue of qualifying a person as being dangerous offender, but are regulating in a broader area procedural rights in the member states of the European Union:

- Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to

6 http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1416320853976&uri=CELEX:32008F0909.

7 http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1416320947450&uri=CELEX:32008F0947.

8 http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1416320994193&uri=CELEX:32009F0829.

9 http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1416321725537&uri=CELEX:32002F0584.

communicate with third persons and with consular authorities while deprived of liberty[10];

- Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings;[11]
- Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings.[12]

Article 5(2) of the Framework Decision of the Council of the European Union of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States states that "if the offence […] is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure." This article was quoted by the European Court of Human Rights in the *Vinter* case.

In 2011, when it was presented in the Green Paper on the application of EU criminal justice legislation in the field of detention[13], monitoring of detention conditions was adressed among other aspects like alternatives to preventive arrest, detention conditions and mutual recognition detention during prosecution. The discusions on this subject reveiled the fact that member states considered that the conditions of detention have no impact on mutual recognition and that there is no clear legal basis for action at European Union level; that conditions of detention belongs to the member states, being their primary jurisdiction. Therefore the majority of member states opposed to the adoption of minimum rules concerning the conditions of detention, considering that monitoring of detention conditions should return to the Council of Europe, which has expertise in the field. Thus, several member states considered it as being sufficient to apply the existing tools regarding the transfer of sentenced persons and enhancing information exchange in the field between them. The majority of

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10 http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1416321114503&uri=CELEX:32013L0048.

11 http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1416321318860&uri=CELEX:32012L0013.

12 http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1416321365701&uri=CELEX:32010L0064.

13 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0327:FIN:EN:PDF.

them supported the idea that the existing monitoring mechanisms (at the level of the Council of Europe as well as at the United Nation level – through OPCAT mechanism) are sufficient. According to these member states there is no need to create additional systems at the European Union level for monitoring detention conditions.

In this context the topic of prisons was not included in the post-Stockholm program recently adopted by the European Council (26- 27 June 2014)[14].

That does not mean that the conditions of detention in particularry, and the prisons' situation in general are not of interest in certain sectorial dissuctions within various institutions of the European Union. For instance, a particular issue of prison conditions was discussed in the European Parliament early this year. On April 10th 2014 the LIBE Committee[15] (Committee on Civil Liberties, Justice and Home Affairs) discussed the results of the delegation visit to Italy on the situation of prisons, among the conclusions adopted being the need for the following:

- All prisoners to spent enough hours per day out of their cell, because an increased time spent out of the cell has proven positive effects in the prevention of recidivism;
- A new model of detention based on dynamic surveillance and more responsibility for detainees (such a model, to be effectively applied, needs logistic changes and a reorganization of the detention facilities);
- Supporting activities of re-socialization in prisons as well as training projects on aggressiveness and violence.

The LIBE Committee also expressed its wish to continue investigating on the prison situation in member states in order to assess detention conditions and also to improve its cooperation with the Committee for the Prevention of Torture (CPT) and other relevant bodies of the Council of Europe on the issue of prisons situation in the EU.

Where is the core mechanism in Europe?

The core European instruments rely on the mechanisms of the Council of Europe:

- The European Convention of human rights and the jurisprudence of the European Court of Human Rights (see *4*. below);

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14 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2014:240:FULL&from =EN.

15 http://www.europarl.europa.eu/ep-live/en/committees/video?event=20140410-0900-COMMITTEE-LIBE.

- The Committee for the Prevention of Torture (CPT, see *5*. below); and
- The Committee of Ministers recommendations (see *6*. below).

4. The European Court of Human Rights – *ECHR* –

The Court is analysing custodial aspects mainly under Article 3 of the Convention.

Article 3 – Prohibition of torture: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

As the Court has frequently stated, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour – see, among other authorities, *Labita v. Italy*, 2000, § 119, *A.B. v. Russia*, § 99.

The Court also stated that, although public-order can justify high-security prisons for particular categories of detainees, Article 3 nevertheless requires to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measures do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured. In assessing whether such a measure may fall within the ambit of Article 3 in a given case, regard must be had to the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned (see, for instance, *Van der Ven v.Netherlands, § 50-51*).

The Court does recognize the need to take measures to protect the public from violent crime and to keep the detainee how necessary is for this, (see *T. v. the United Kingdom, § 97; V. v. the United Kingdom, § 98*), since preventing a criminal from re-offending is one of the "essential functions" of a prison sentence (see *Mastromatteo v. Italy, 2002, § 72*).

The Court has recognized the essential function of a sentence – to protect the society, and the role of a progressive social reinsertion, including measures like temporary release, even for those convicted to a violent crimes and the state responsibility to protect the life (under Article 2 of the Convention) must be analyzed only if the death resulted from the failure of national authorities to do all that could reasonably be expected to of them to prevent the occurrence of a real and immediate risk to life of which they have or ought to have known (see *Maiorano and others v. Italy, 2009, §§ 108-109*).

However, the imposition of an irreducible life sentence on an adult may raise an issue under Article 3 (see *Kafkaris 2008, § 97, Lazlo Magyar v. Hungary, 2014, § 48, Vinter and others v. UK , 2013, § 106*).

In the context of a whole-life sentence, Article 3 must be interpreted as requiring reducibility of the sentence, in the sense of a review, which allows the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds. (see *Čačko v. Slovakia § 73*).

It is well-established that the State's choice of a specific criminal system (including aspects related to the lengths of a sentence, the sentence review or the release) it is in principle outside the ECHR competence meaning also that the is possible to impose life sentence on an adult offender for especially serious crimes as murder – without violating Article 3 or any other articles of the Convention (see *Lazlo Magyar v. Hungary, §§ 46-47, Vinter and others v. UK § 104*).

The ECHR has made a survey of the legal systems among Members States – in assessing the case *Vinter and others v. UK* – para. 68, in which it was stated that in the majority of member states of the Council of Europe the sentence of life imprisonment may be imposed, being regulated as a dedicated mechanism for reviewing the sentence after the prisoner has served a certain minimum period fixed by law (22 countries among them: Albania, Austria, Belgium, Bulgaria, Czech Republic, Denmark, Germany, Greece, Ireland, Italy, Poland, Romania, Russia, Switzerland, Turkey). In 9 countries life imprisonment does not exist: Andorra, Bosnia and Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain, and in 5 countries there are no provision for parole for life prisoners: Iceland, Lithuania, Malta, the Netherlands and Ukraine (they have, however, the possibility to apply for commutation of life sentences by means of ministerial, presidential or royal pardon). In England and Wales and in other 6 countries (Bulgaria, Hungary, France, Slovakia, Switzerland (for sex or violent offenders who are regarded as dangerous and untreatable and Turkey) there are systems of parole but also special provision for certain offences or sentences in respect of which parole is not available.

Although the Convention does not confer, in general, a right to release on license or a right to have a sentence reconsidered by a national authority, judicial or administrative, with a view to its remission or termination it is clear that the existence of a system providing for consideration of the possibility of release is a factor to be taken into account when assessing the compatibility of a particular life sentence with Article 3 (see *Kafkaris v. Cyprus, § 1*).

The Court's demand to the national legislator in this area is the construction of a legal framework that allows for the perspective of being released even with a life sentence, as Article 3 must be interpreted as requiring reducibility of the sentence. Therefore, the domestic authorities should consider whether any

changes in the life prisoner are so significant and such progress towards rehabilitation have been made in the course of the sentence, to consider if continuing detention can no longer be justified on legitimate penological grounds (see *Vinter et al. v. UK, § 119, Lazlo Magyar v. Hungary §.50*).

The court is not imposing a system of review (see *Lazlo Magyar v. Hungary §.51*), but is asking that a life prisoner must know what he has do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought, and if there is no mechanism for this, a violation of Article 3 will be found (see *Vinter et al. v. UK, § 122*).

There are a number of reasons why, *for a life sentence to remain compatible with Article 3, there must be both a prospect of release and a possibility of review*. The legitimate penological grounds for that detention include punishment, deterrence, public protection and rehabilitation. The balance between these justifications for detention is not necessarily static and may shift in the course of the sentence. This is the reason for having the possibility of reviewing the life sentence, otherwise whatever the prisoner does in prison, however exceptional his progress towards rehabilitation, his punishment remains fixed and unreviewable (see *Vinters and others v. UK §§ 110-112*).

The Court recognizes that the emphasis in European penal policy is now on the rehabilitative aim of imprisonment, particularly towards the *end of a long prison sentence and reiterates Rules no. 6 and no. 102 of European Prison Rules* (see *Vinters and others v. UK § 115*). Also the Court emphasized that the comparative and international law materials show a clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter (see *Vinters and others v. UK § 120*).

In the absence of any gross disproportionality, an Article 3 issue will arise for a mandatory sentence of life imprisonment without the possibility of parole in the same way as for a discretionary life sentence, that is when it can be shown: (i) that the applicant's continued imprisonment can no longer be justified on any legitimate penological grounds; and (ii) that the sentence is irreducible *de facto* and *de iure* (see *Harkins and Edwards v. UK, § 138*).

5. The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – *CPT* –

The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is speaking on this subject

through its countries reports, annual reports, as well as through some other documents like - CPT standards - CPT/Inf/E (2002) 1 - Rev. 2011[16]
In the so-called *CPT-standards* there are some aspects of relevance also for the treatment of dangerous offenders, but mainly related to other aspects like:

- *solitary confinement:* when it is applied, including for the reason of dangerousness, the principle of proportionality should be respected since this measure can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible (para. 56) and accompanied with essential safeguard related to medical examination;
- *transfer of troublesome prisoners:* can be an answer/solution to certain situations in prisons. However, the continuous moving of a prisoner from one establishment to another can have very harmful effects on his psychological and physical well being of the detainees (para. 57);
- *prisoners convicted for sexual offences*: they are at a particularly high-risk of being assaulted by other prisoners. Solutions are to separate such prisoners from the rest of the prison population or to disperse prisoners suspected or convicted of sexual offences throughout the prison or to transfer prisoners to another establishment, accompanied by measures aimed at concealing the nature of their offence. Each of these policies has its advantages and disadvantages, and the CPT does not seek to promote a given approach as opposed to another. Indeed, the decision on which policy to apply will mainly depend on the particular circumstances of each case;
- *medical* aspects are of great attention of the CPT. While stressing again that there is no medical justification for the segregation of prisoners solely on the grounds that they are HIV-positive or hepatitis B/C. For control of the above-mentioned diseases to be effective, all the ministries and agencies working in this field in a given country must ensure that they co-ordinate their efforts in the best possible way. In this respect the CPT wishes to stress that the continuation of treatment after release from prison must be guaranteed.[17]

There is also a specific section in the CPT standards dedicated to the group of prisoners from high security units – for which CPT considers that they shall represent a very small proportion of the overall prison population and is of particular concern to the CPT, as the need to take exceptional measures vis-à-vis such prisoners brings with it a greater risk of inhuman treatment. Prisoners

16 http://www.cpt.coe.int/en/docsstandards.htm.

17 See also “Health care services in prisons“, section “transmittable diseases“.

should enjoy a relatively relaxed regime by way of compensation for their severe custodial situation and they should have a satisfactory programme of activities.

Another particular interest is in *life-sentenced and other long-term prisoners*. Thus, the CPT observes that for life-sentenced and other long-term prisoners, the population which is increasing over the years, special restrictions are imposed like permanent separation from the rest of the prison population, handcuffing whenever the prisoner is taken out of his cell, prohibition of communication with other prisoners, and limited visit entitlements. The CPT can see no justification for indiscriminately applying restrictions to all prisoners subject to a specific type of sentence, without giving due consideration to the individual risk they may (or may not) present.

For this category of prisoners the CPT is underlining that they may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society, to which almost all of them will eventually return.

This is the reason why the regimes, which are offered to prisoners serving long sentences, should seek to compensate for these effects in a positive and proactive way: purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association), contact with the outside world. They should have individualized custody plans and appropriate psychosocial support.

A report on “Actual/Real Life Sentences”, prepared by Jørgen Worsaae Rasmussen, member of the CPT, (CPT (2007) 55, 27 June 2007[18]) stated that: (a) the principle of making conditional release available is relevant to all prisoners, “even to life prisoners”; and (b) that all Council of Europe member States had provision for compassionate release, but that this “special form of release” was distinct from conditional release with the conclusions that no category of prisoners should be “stamped” as likely to spend their natural life in prison; no denial of release should ever be final; and not even recalled prisoners should be deprived of hope of release.

These principles are reflected constantly in CPT reports. For instance:
In the Visit Report on Portugal (2012) there were specific references on high security units, located within Linhó and Paços de Ferreira Prisons, (para 43). The CPT stated that the prisoners should, within the confines of their detention units, enjoy a relatively relaxed regime by way of compensation for their severe custodial situation. They should enjoy a satisfactory program of diverse activities (education, sport, work of vocational nature, etc.) so to have a proactive positive process designed to address the prisoner’s problems and permit his return to the mainstream prison population. CPT recommended a

18 http://www.cpt.coe.int/en/working-documents/cpt-2007-55-eng.pdf.

purposeful program of activities should be put in place for each inmate, elaborated upon arrival in the unit by a multi-disciplinary team and which is the subject of monthly reviews.

Following the 2009 visit in Sweden, the CPT considered that the six-monthly review of continued placement in such a unit (a high security unit) should also involve participation by an independent authority outside the Prison and Probation Service (e.g. a judge). Reviews of placement in a high security unit should be objective and meaningful, and form part of a positive process designed to address the prisoner's attitude and behavior and permit his reintegration into the mainstream prison population. In order for it to be meaningful, this review should involve a thorough assessment of whether there are still grounds for the measure. During placement reviews, the prisoners concerned should always be offered the opportunity to express their views on the matter.

Finally, among the most recent reports, the Report on Germany, published on 24 July 2014, observed that it is highly regret that, despite the specific recommendation repeatedly made by the Committee, for almost two decades, the special security measure of "prohibition of outdoor exercise " has not only been maintained in the federal Law on the Execution of Sentences (which is still applicable in certain Länder), but has also been introduced in the newly adopted regional laws governing preventive detention and the execution of sentences (including vis-à-vis juveniles), (para. 40). However, this specific security measure has not been applied in recent times in any of the establishments visited, but still the CPT once again calls upon the relevant legislators to take the necessary steps.

The CPT's report on its visit to Switzerland in 2012 presented serious reservations as to the concept of confinement "for life" and considered that it is inhuman to imprison someone for life without any real hope of release. The Committee strongly urges the Swiss authorities to re-examine the concept of detention "for life" accordingly.

6. Committee of Ministers Recommendations

An important tool at this level is the *Compendium of conventions, recommendations and resolutions relating to penitentiary questions, available on the website of the PC-CP Committee of the Council of Europe*[19]. Because for more than forty years, in the Council of Europe have been developed standards that led to a long list of Recommendations (formerly called Resolutions), concerning many different aspects of prison life, prison regimes, management

19 http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/PCCP documents 2014/COMPENDIUM E 2014.pdf.

and staff issues, not legally binding, buy unanimously approved by the Committee of Ministers of the Council of Europe, and therefore representing a consensus amongst the member states, it was necessary at a certain moment in time to create an instrument, a compendium of standard-setting texts in this area, for the use of courts, parliaments and national authorities including the prison administration, and also prison staff, detainees, non-governmental organisations and practitioners working in the field. Moreover, on the same webpage of the PC-CP there are also country fact-sheets available, in which there is gathered important information on contact details of prison governors and probation administrations in each country, important and relevant European Court of Human Rights judgements, CPT reports[20] etc.

Particularly interesting of these for the matter of high-risk offender management are the European Prison Rules, the Recommendation on the Management of Life Sentences and Long-Term Prisoners and the Recommendation on Dangerous Offenders. Also related to this subject are the Recommendation on European Probation Rules, the Recommendation on Conditional Release and, with specific subjects, the Recommendation on Foreigners and the Recommendation on Juveniles.

In the subsequent chapters 6.1-6.7 the following Committee of Ministers Recommendations are presented with a focus on their importance for high-risk offenders:

- Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules (EPR).
- Recommendation Rec (2003) 23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners.
- Recommendation CM/Rec (2014) 3 of the Committee of Ministers to Member States concerning dangerous offenders .
- Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member states on the Council of Europe Probation Rules.
- Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole) .
- Recommendation CM/Rec (2012) 12 of the Committee of Ministers to Member States concerning foreign prisoners.
- Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures.

20 http://www.coe.int/t/dghl/standardsetting/prisons/Country factsheets_en.asp.

6.1 Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules (EPR)

This Recommendation represents the core of the regime of the detained persons[21]. Basically on each and every aspect of their lifes there are valuable reccommendations, applicable also in the case of dangerous offenders – admission, allocation and accommodation, hygiene, nutrition, work, medical assistance.

Of course, the provisions dedicated to contact with the outside world (Rules no. 24.1 – 24.12) with their rules related to communications and visits, some forms of participations to public life (elections) or dedicated to the release of prisoners (Rules no. 33.1-33.8) with the aspects concerning the benefit of arrangements desiged to assist them in returning to free society (having appropiate documents and identification papers, suitable accomodation and work, immediate means of subsistence) are of particular importance for the management of high-risk offenders.

Moreover, of particular interest are also the following rules: Good order, safety, security measures, searching and controls (Rules no. 49.54.10), according to which:

- It is essential to treat prisoners with justice, fairness and equity, to have clear channels of communication, since a safe environment exists when there is consistent application of a clear set of procedures,
- the concept of dynamic security and the proportionality condition as well as the concept of risk assesment are regulated (Rule no. 51) – the prisoner should be kept as long as is necessary within the security measures. The assesment of risk can help to identify those prisonners who present a threat to themselves, to the others and to the community, criteria for such evaluation including: the nature of the crime committed, previous history of attempting to escape, access to external help, etc. The Comentary[22] made to this Reccomandation recognised that there are some forms of authomatically labelling as risk offenders in cases like persons serving life detention, or under pre-trial detention, without any personal risk assesment and underlined the importance reviewing at regular intervals the regime since the very prospect of

21 https://wcd.coe.int/ViewDoc.jsp?id=955747&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.

22 http://www.coe.int/t/dghl/standardsetting/prisons/E commentary to the EPR.pdf.

having a lower security cathegory can constitute an incentive for good behaviour.

- Rule no. 53 also underlined the fact that high security and safety measures should be applied only in exceptional circumstancies, for a limited periode of time and subject to review. It is also underlined that long-term prisoners are not necessarilly dangerous.

Of particular interest is the objective of the regime for senteced prisoners (Rules no. 102.1-104.3).

The main idea expresed here, also reflected in the UN Standards (Rule no. 58 from the United Nations Standard Minimum Rules for the Treatment of Prisoners[23]), is that the imprisonment is a punishment in itself, the regime applied shall not aggravate the suffering inherent in imprisonment and shall be designed to enable the person to reach responsible and crime-free life.

Rule 103 and the following regulate the implementation of the regime for sentenced persons – with a golden rule that implementation starts when the person enters the prison, plus the need for an individual sentence plan drawn, which is regulary reviewed and has to contain aspects related to work, education, medical aspects, preparation for release, including some forms of prison leave, and so on.

The pre-release period (Rule no. 107) is dedicated to this transition time, which should be gradual for thosed convicted to longer sentences and should contained pre-release programme with eventual conditional release measures and be accompanied by effective social support. For this reason, cooperation among the agencies involved is essential, including the access of those actors from the community services to the prison and the prisoners themselves in order to properly assess the planning of after-care programmes.

In this context it worth mentioning less recent recommendation, which is, however, still valid: Recommendation (82) 16 on Prison Leave, which contains important suggestions related to medical, social, educational reasons for granting leaves, or reasons to be considered, like the nature of the offence, the personality of the prisoner, the personal situation, the purpose, the duration etc.

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23 https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf.

6.2 Recommendation Rec (2003) 23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners

It worth mentioning that among *general objectives* regulated in this instrument there are also those regarding the need to increase and improve the possibilities for these prisoners to be successfully resettled in society and to lead a law-abiding life following their release[24].
Furthermore, of the *general principles*, two are of interest for the JCN project:

- *The security and safety principle* – Rule no. 6 – a clear distinction should be made between any risks posed by life sentence and other long-term prisoners to the external community, to themselves, to other prisoners and to those working in or visiting the prison;
- *The progression principle* – Rule no. 8 – individual planning for the management of the prisoner's life or long-term sentence should aim at securing progressive movement through the prison system.

Regarding *sentence planning,* it is stated that a risk and needs assessment of each prisoner are required to provide *a systematic approach* to the initial allocation of the prisoner, a progressive movement through the prison system from more to less restrictive conditions with, ideally, a final phase spent under open conditions, participation in work, education, training, participation in programmes designed to address risks and needs, etc.

Regarding *risk and needs assessments,* it is mentioned that the range of risks assessed should include harm to self, to other prisoners, to persons working in or visiting the prison, or to the community, and the likelihood of escape, or of committing another serious offence on prison leave or release (Rule 12), and that the needs assessments should seek to identify the personal needs and characteristics associated with the prisoner's offence(s) and harmful behaviour (Rule no. 12), both being periodically reviewed and supplemented by other forms of assessment (Rules no. 14-15). For instance, according to letter b. of the Rule no. 15, the risk assessment should never be the sole method used for taking a decision, because using a single method should always contain an important margin of error.

Among special categories of life sentence and other long-term prisoners, the recommendation makes references to the foreign prisoners, elders, but also

24 https://wcd.coe.int/ViewDoc.jsp?id=75267&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.

women (especially mothers) and juveniles (with their needs to education and schooling).

Managing reintegration into society for life sentence and other long-term prisoners was regulated in Rules 33 and the following, stating that the release for this category of prisoners should be prepared well in advance and take particular account of the following:

- The need for specific pre-release and post-release plans which address relevant risks and needs;
- the consideration of the possibility of achieving release and the continuation post-release of any programmes, interventions or treatment undertaken by prisoners during detention;
- the need to achieve close collaboration between the prison administration and post-release supervising authorities, social and medical services.

6.3 Recommendation CM/Rec (2014) 3 of the Committee of Ministers to Member States concerning dangerous offenders

Different terminology was developed through the years in the course of trying to find a common language among countries in this area.

This very recent Recommendation of the Council of Europe[25] has *developed the concept of dangerous offenders, with the declared aim to narrow the definition* “in order to characterize more precisely this group of offenders and secondly to consider how best to recommend management and treatment of dangerous offenders that balance the offender’s rights and the protection of the public” (see para. 6 of the Commentary to the Recommendation[26]).

Moreover, the *difficulties* encountered were recognized by the authors of the recommendation since they acknowledged that *“dangerousness is not a clear legal concept, it is vague in scientific terms, since the assessment of criminological dangerousness and individual risk of reoffending in the long term lacks sufficient supporting evidence to ensure an accurate measurement of dangerousness” (*para. 7 of the Commentary to the Recommendation).

The recommendation suggests that member states consider *this definition as being dynamic, as the degree of the dangerousness can change over time* (may

25 https://wcd.coe.int/ViewDoc.jsp?id=2163607&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.

26 https://wcd.coe.int/ViewDoc.jsp?Ref=CM(2014)14&Language=lanEnglish&Ver=add1&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.

increase but also diminish or even cease) (para.37 of the Commentary to the Recommendation).

Therefore, this last instrument has been addressing only offenders, who have committed very serious sexual or very serious violent crimes against person(s) and who present a high likelihood of re-offending with the same type of offences. The recommendation is not covering children or persons with mental disorders who are not under the responsibility of the prison system (Rule no. 2 – letters a. and b.) It was acknowledged that many dangerous offenders who are under the responsibility of the prison/justice system are in need of specific treatment during imprisonment and after.

The term *high likelihood* is also of debatable meaning, but the Commentary to the Recommendation suggests that the courts of the member states address this matter on a case-by-case analysis while considering "both the seriousness of the offence and the likelihood of its (re-)occurrence" (para. 36 of the Commentary).

The recommendation is strongly suggesting that the label of dangerousness should *not* be imposed on offenders *as an automatic process, but based on certain criteria* related to nature, seriousness and pattern of the offender's behaviour in the past; characteristics of the offender, the degree to which such characteristics may or may not be amenable to change, the presence or absence of any positive or protective factors to counterbalance these characteristics etc. (Rule no. 5).

Other aspects dealt with in this recommendation:

- The *risk assessment principle during the implementation of a sentence* – should be dynamic and responsive to change during the execution of the sentence (para. 108 of the Commentary), done by trained staff, take into consideration not only the risk and the need but also responsiveness and resources. It reiterates that there is a difference between the risk to the community and the risk inside prison (see also Recommendation (82) 17 and Recommendation (2003) 23;
- *risk management* – there should be *one planned process* formed by risk assessment, measures taken in prison, interventions after release – no matter how these measures are called under specific jurisdictions. Important idea: some of the best measure for preventing reoffending *may be of social nature* – providing working condititions, housing, social networks, and adequate health treatment – (para. 143 of the Commentary). Offenders may have different needs and therefore a good cooperation and constant dialog between different agents is needed: prison administration, probation workers, social and medical servicies, law enforcement (para.

148), any plan should be realistinc and have achievable objectives (Rule no. 37);

- *treatment and conditions of imprisonment*;
- dangerous offenders should not automatically be held in high-security conditions, security measures, if taken, should be regulary reviewed and special security measures (solitary confinement, strip searches) should be of a short duration and reviewed frequently;
- regulating treatment in a broader sense as to include medical, psychological and social care, with particular attention to offenders with mental disorder, which are particularly vulnerable – should have adequate treatment offered by doctores and/or psychiatrists and appropiate therapeutic treatment and psychiatric monitoring;
- work, education, other meaningful activities;
- vulnerable people – elderly offenders should be offered work possibilities or other activities instead, special care to young adult offenders – particulary from the perspective of continuing education and training and from the perspective of rehabilitation.

6.4 Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member states on the Council of Europe Probation Rules

This Recommendation[27] is also stating that implementing any sanction or measure, *probation agencies shall not impose any burden or restriction of rights on the offender, greater* than that provided by the judicial or administrative decision and required in each individual case, that co-operation with the prison authorities, the offenders, their family and the community in order to prepare their release and reintegration into society is essential (Rules no. 59-60).

Moreover, *supervision following early release shall aim to meet the offenders' resettlement needs*, such as employment, housing, education and to ensure compliance with the release conditions in order to reduce the risks of reoffending and of causing serious harm (Rule no.61). As the Comentary[28] to this Recommendation mentions, the transition from prison to the community – "through the prison gates" – is often not well managed and communication between the prison authorities and those responsible for community supervision is typically a significant problem. If the probation agency has been actively

27 https://wcd.coe.int/ViewDoc.jsp?id=1575813&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.

28 http://www.coe.int/t/dghl/standardsetting/prisons/CommantaryRec_201_1_E.pdf.

involved before release (Rule no. 59), there is a much greater chance of this transition being managed more effectively.

Regarding the transition period, Rule no. 39 imposed that, whether or not probation agencies and the prison service form part of a single organisation, they shall work in close co-operation in order to contribute to a successful transition from life in prison to life in the community, by entire sets of rules.

The *institution of aftercare* is regulated in Rule no. 62 and it is underlining the fact that considering *desistance from offending rather a process than as an event* – offenders may need continuing support and encouragement long after release. For this reason the Rule recognizes that, once the formal period of post-release supervision has ended, the offender has no formal obligation to keep in touch with the probation agency, but he/she is still in need for assistance. For this reason, the Rule is proposing the continuation of the involvement of the probation agencies when and if the national legislation and the resources allow it. The Commentary mentions the fact that research suggests that *desistance is often achieved by living a "good life".* One key component of such a "good life", for the majority of people, is gainful employment that brings a legitimate source of income and social networks, which supports desistance and gives compelling incentives to respect the law. In order to gain employment, however, offenders must not only have the required skills and motivation, but also opportunities to work. Ex-offenders, especially former prisoners, typically find it hard to get a job and win the confidence of employers.

It should be mentioned that there are two other recommendations in this field, Recommendation 92 (16) on the European rules on community sanctions and measures[29] and Recommendation 2000 (22) on improving the implementation of the European rules on community sanctions and measures[30].

6.5 Recommendation Rec (2003) 22 of the Committee of Ministers to member states on conditional release (parole)

Among its general principles[31] are those from paragraphs 3 and 4(a), which provide that the conditional release should *aim at assisting prisoners to make a transition from life in prison to a law-abiding life in the community* and, in order to reduce the harmful effects of imprisonment and to promote the resettlement of

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29 https://wcd.coe.int/ViewDoc.jsp?id=615689&Site=CM&BackColorInternet= C3C3C3&BackColorIntranet=EDB021&B ackColorLogged=F5D383.

30 https://wcd.coe.int/ViewDoc.jsp?id=388373&Site=CM&BackColorInternet= C3C3C3&BackColorIntranet=EDB021&B ackColorLogged=F5D383.

31 https://wcd.coe.int/ViewDoc.jsp?id=70103&Site=CM&BackColorInternet= C3C3C3&BackColorIntranet=EDB021&Ba ckColorLogged=F5D383.

prisoners under conditions that seek to guarantee safety of the outside community, the law should make conditional release available to all sentenced prisoners, including life-sentence prisoners.

Related to this last part, the Explanatory Memorandum states that life-sentence prisoners should not be deprived of the hope to be granted release either, because firstly, no one can reasonably argue that all lifers will always remain dangerous to society and secondly, the detention of persons who have no hope of release poses severe management problems in terms of creating incentives to co-operate and address disruptive behavior, the delivery of personal-development programmes, the organization of sentence-plans and security. Countries whose legislation provides for real life sentences should therefore create possibilities for reviewing this sentence after a number of years and at regular intervals, to establish whether a life-sentence prisoner can serve the remainder of the sentence in the community and under what conditions and supervision measures.

The preparation for conditional release (Rule no. 12 and the following) should be organized in close collaboration with all relevant personnel working in prison and those involved in post-release supervision and should contain appropriate pre-release programs with educational and training courses that prepare them for life in the community.

Specific modalities for the enforcement of prison sentences are encouraged: semi-liberty, open regimes or extra-mural placements, various forms of prison leave, with a view to preparing the prisoners' resettlement in the community.

This Recommendation contains also aspectes related to:

- Granting conditional release: a minimum period to be included in the law, the criteria to be clear and realistic;
- aspects related to implementation;
- procedural rights such as competent authorities to be establised in the law, right to a hearing of the detainee, independence of the authorities, which the detainee can appeal to, etc.

6.6 Recommendation CM/Rec (2012) 12 of the Committee of Ministers to Member States concerning foreign prisoners

Rule no. 13.2 of this Recommendation[32] states that, while analysing the use of remand in custody, the fact that a suspect is neither a national nor resident of a

32 https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2012)12&Language=lanEnglish &Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021 &BackColorLogged=F5D383.

state or has no other links with that state shall not, in itself, be sufficient to conclude that there is *a risk of flight*. The Commentary[33] to this Recommendation stated that remand in custody is rather the norm than the exception; foreign suspects have become overrepresented in the pre-trial prison populations of Europe. Steps should be taken to investigate more fully before denying foreign offenders the possibility of awaiting trial in the community.

Rules no. 32.1-32.4, while regulating good order, safety and security, draw the attention to an additional aspects dealing with foreign prisoners – the potential or actual conflicts between groups due to cultural or religious differencies and inter-ethnic tensions. Moreover, it is stated that nationality, culture or religion of prisoners should not be determinative factors for the assesment of the risk.

The concept of dynamic security in the management of prisons is underlined here (as it is also in European Prison Rules - Rule no.51.2 and European Rules for Juvenile Offenders – Rule no. 88.3) based on the prioritisation of the everyday communication and interaction with all prisoners as well as promoting the awarness and respect for cultural and religious differences.

More challenges are posed for the preparation for release and release from prison of a foreign prisoners (Rules no. 35.1-37.2) – in relation to their legal status, eventual transfer to another state, continuation of the medical tratment received in prison etc.

Preparation for release should start as soon as possible after admission. Moreover, progressive preparation for release and social reintegration requires that prisoners benefit from prison leave and other temporary release schemes. Particular attention has to be given to foreign prisoners who are often denied such possibilities due to the lack of a permanent address, resources to work in a different language, the flight of risk, etc. For them even greater efforts should be done in order to ensure their relations with their relatives and, in case of transfering them, importance should be given to the contact with consular representatives, judicial authorities, as well as the prison administration or the probation servicies from the other state.

6.7 Recommendation CM/Rec (2008) 11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures

According to this Recommendation,[34] deprivation of liberty of juveniles shall provide for the possibility of early release (Rule no. 49.2.). A variety of

33 http://www.coe.int/t/dghl/standardsetting/prisons/Rec(2012)12Commentary_E.pdf.

34 https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.

meaningful activities and interventions should be available according to an individual overall plan that aims at progression through less restrictive regimes and preparation for release and reintegration into society – in order to foster their physical and mental health, self-respect and sense of responsibility and develop attitudes and skills that will prevent them from re-offending (Rule no. 50.1.).

In order to guarantee the continuity of care, juveniles shall be assisted, from the beginning of and throughout any period of deprivation of liberty, by the agencies that may be responsible for them after release. (Rule no. 51.).

Also from the perspective of preparation for release all juveniles shall be assisted in making the transition to life in the community (Rule no. 100 and the following), with special forms of interventions included in an individual plan as to ensure a gradual return of the juvenile to life in free society.

From the beginning of the deprivation of liberty the institutional authorities and the services and agencies that supervise and assist released juveniles shall work closely together to enable them to re-establish themselves in the community, for example by:

- Assisting in returning to their family or finding a foster family and helping them develop other social relationships;
- finding accommodation;
- continuing their education and training;
- finding employment;
- referring them to appropriate social and health-care agencies;
- providing monetary assistance.

These services and agencies shall be obliged to provide effective and timely pre-release assistance before the envisaged dates of release.

7. Conclusion

The shared learning, practice exchange and networking of practitioners in this project, including the challenges for identifying common understanding of terms, was a unique first step in the field of the management of high-risk offenders in Europe. There is a general need to have models, to find best practices, to share experience and to reach common definitions. This is why we see this project as a solid basis for what can be, in the future, a wider European effort.

There is an overall support for the development of a model for better results in the management process, from which not only the prisoners leaving custody will benefit, but the communities and the criminal justice system. This includes an increased effort to agree upon common definitions and principles. The legislator should be called upon to consider and reflect the needs of the

practitioners and communities regarding this matter. It remains a *permanent challenge for legislators* – national or European – to keep the standards and rules up-to-date.

Literature:

Drenkhahn, K., Dudeck, M., Dünkel, F. (Eds.) (2014): Long-Term Imprisonment and Human Rights. New York: Routledge.

7.1.2 Preventive detention and risk-management in the Nordic countries[1]

Tapio Lappi-Seppälä

1. Background

1.1 The adoption and expansion of preventive detention

In the shift of the 19th and 20th century the Nordic countries followed closely policy trends in the continental Europe, including those related to increased interest in protection against "habitual and dangerous" offenders. First legislative proposals for protective measures were put forwards in Norway in 1893. Norway was also the first to Nordic country include indeterminate sanctions in the criminal law. This took place in connection with the enactment of Norwegian Penal code in 1902 (much inspired by the *Franz von Liszt* circle).

While the courts were initially reluctant to apply these new measures, things started to change during the 1920s and 1930s. In 1925-1931 all Nordic countries adopted specific institutions for mentally disturbed offenders and habitual recidivists. The laws generally made a difference between "normal" and "abnormal" offenders. The former were subjected just for longer prison sentences, for the latter also treatment was provided (however, in practice the difference may not have been so substantial). "Abnormal" offenders were further divided into those lacking all penal capacity, and those with only diminished criminal responsibility. Not responsible offenders were released from all criminal liability, but placed usually under mental health care. Offenders with diminished responsibility could be sentenced – depending on the country – either to criminal punishment or specific sanction, or to both.

The "hey-days" of these institutions place around the 1940-50s: "Experts continuously and enthusiastically debated the sanctions. Legal practice was

1 The following is an abridged and complemented version of the text appeared in *Lappi-Seppälä* 2015.

reviewed, individual cases were referred to, and ever more precise diagnoses were demanded of psychiatrists" (*Anttila* 1975). Of the original two tracks of the system – one for normals, and other for abnormals – the latter proved to be more popular. Sweden held in 1953 in all 429 inmates in institutions planned for abnormals, but only 4 in an institution planned for normals. Denmark held in the late 1950 around 400 inmates in institutions for abnormals, with the total number of prisoners about 3,300. Finland had in the early 1960s almost 400 "dangerous recidivists" in indeterminate confinement (and almost 7,000 prisoners).

Table 1: Peak-years of preventive detention* in the Nordics

	Prisoners total (abs.)**	Preventive detention (abs.)**	Population (1000s)	Prisoners /pop.	Prev. det. /pop.	Prev. det. %
NOR 1952	1,679	130	3,327	50,5	3,9	7,7
DEN 1959	3,300	412	4,549	72,5	9,1	12,5
FIN 1966	7,284	389	4,581	159,0	8,5	5,3
SWE 1967	5,438	769	7,868	69,1	9,8	14,1

* NOR = Sikring, DEN = Forvaring+Sikring, FIN = Preventive detention, SWE = Internering
** Daily averages
For sources, see *Lappi-Seppälä* 2015

1.2 The 1960s critics of coercive care

First critical voices against overly long confinement periods for trivial offenses were heard already in the 1950s. In the course of the 1960s this criticism was merged with a general criticism against all forms of institutional treatment – prisons, reformatory schools, the treatment for alcohol misuse, mental hospitals, and specific institutions for mentally disordered offenders (*Galtung* 1959; *Christie* 1960; *Goffman* 1961; *Aubert and Mathiesen* 1962; *Eriksson* 1967; *Siren* 1967).

The critic was fuelled up by criminological research evidence, underlining the empirical ineffectiveness of custodial treatment. Reoffending seemed to be either unaffected by the type of intervention or even more common after imprisonment (*Börjeson* 1966; *Uusitalo* 1968; *Bondeson* 1977). Studies on

hidden criminality in Finland (*Anttila-Jaakkola* 1966) indicated that most of us had been guilty of some sort of law-breaking. This undermined seriously the assumptions that offenders were to be somehow “abnormal” and in a need of treatment and cure.

The discussions took somewhat diverting courses in different Nordic countries, as both the penal and social welfare practices varied locally. In Finland the critique of compulsory care merged with the reform ideology that was directed openly against the outdated and overly severe Criminal Code and the excessive use of custodial sentences in general (*Anttila* 1967). Still, the basic demands of the 1960s reform program for all Nordic countries can be summarized as follows:

- No punishments under the false label of treatment;
- Separation of care and control. Supportive and rehabilitative activities should be taken care by those instances best suited for that purpose, i.e. the general social welfare services. Coercion was to be left solely for criminal justice;
- De-institutionalization. – The use of any kind of custodial sanction and treatment methods should be reduced to its minimum. This applies as well as to alcohol treatment, mental health services, child welfare as to prison.

2. The 1970s sanction reforms and the decline of indeterminate sanctions

First reforms to realize these aims were conducted in the social welfare, mental care and child protection in the 1960s, with criminal justice reforms to follow in the 1970s. Throughout the Nordic countries long periods of incarceration for habitual property offenders were seen as breaches of the proportionality principle, particularly as there was little or no evidence of effective or meaningful elements of genuine treatment. Indeterminate sentencing as such, was seen as a breach of fundamental legal safeguards. In sentencing values of proportionality, predictability and legal safeguards occupied the central positions. In short time, all Nordic countries carried out reforms that restricted or abolished the use of indeterminate sanctions, including both preventive detention and youth imprisonment (for the latter, see *Lappi-Seppälä* 2012).

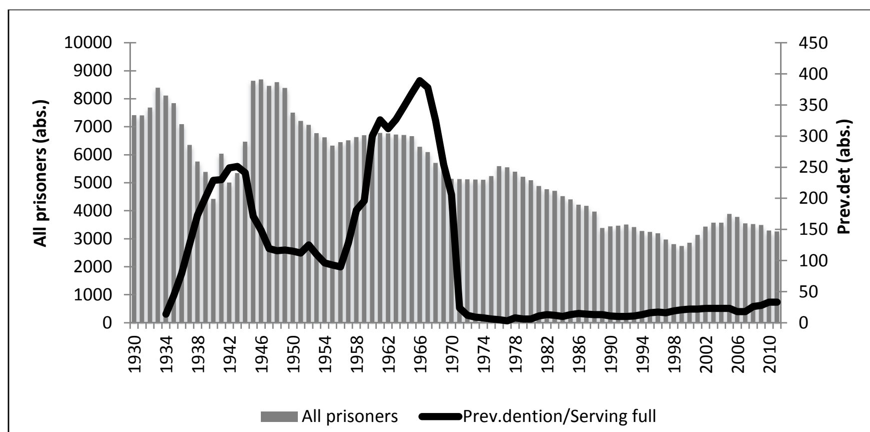
2.1 Finland

The scope of *preventive detention* was reduced in Finland in 1971 by restricting it to repeat serious violent offenders only. The 1971 preventive detention reform in Finland was a forerunner in the Nordic countries in the efforts to reduce the use of indeterminate sanctions. As a result, the number of prisoners held in

preventive detention decreased virtually overnight from 250 to below 10. The law still allowed prolonged incarceration beyond the original sentence on preventive grounds. However, since 1971 no one had been held in prison beyond the originally imposed prison term.

Even in its limited use, preventive detention contradicted the prevailing Finnish sentencing ideology, which is very reluctant to accept assessments of dangerousness as a basis for criminal sanctions. In addition, the reliability of such predictions was questioned in the preliminary studies. In connection with the total reform of prison law in 2006, preventive detention was formally abolished and replaced by a possibility for the courts to order serious violent offenders to serve their sentence "in full". This option is reserved to the same category of high-risk violent recidivists than the preventive detention. The aim was neither to expand nor to restrict the use of long-term confinement in this offender group. This reform was mainly a symbolical one, as no-one had been kept in preventive detention longer than the nominal sentence since 1972.

Figure 1: Prisoners 1930-2011 and recidivist in preventive detention, 1930-2006, and prisoners serving their sentence in full, 2007-2011 (absolute figures)



Source: Criminal Sanctions Agency

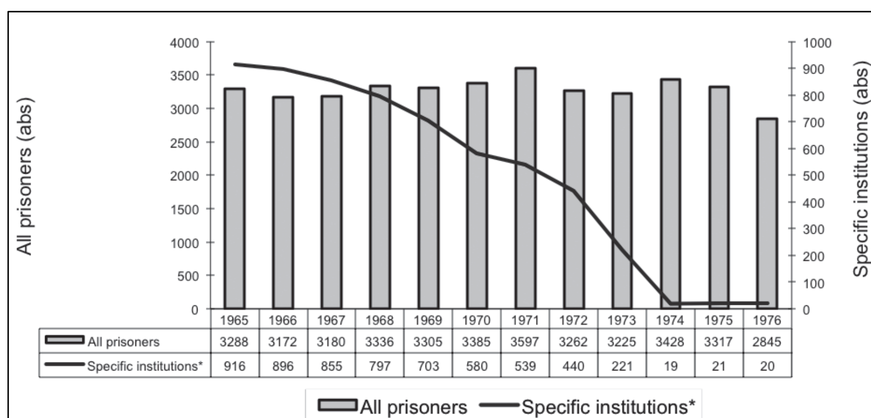
2.2 Denmark

The penal code of 1930 provided originally two specific forms of treatment and confinement for psychopaths; one for a determined period (security confinement) and the other for indeterminate period (later Forvaring). The latter was

provided in a special institute Herstedvester, which became a world famous in her treatment methods.

Like elsewhere in Scandinavia, the critics about effectiveness of treatment and the breaches about proportionality become louder during the 1960s and 1970s. In the course of late 1960s the use of specific institutions and indeterminate sanctions was scaled down. In 1973 provisions of Forvaring were revised. Security confinement was abolished altogether, and the scope of Forvaring was restricted to be used only for serious repeat violent offenders.

Figure 2: Prisoners and indeterminate sanctions in Denmark 1965-1976



*) Youth prison, specific prison, workhouse, Forvaring, sikring, alcohol treatment
For sources, see *Lappi-Seppälä* 2015

Since the 1970s reform, two changes have been introduced to the provisions related to safe custody and mentally disordered offenders. In 1997 the threshold for safe custody (forvaring) were somewhat loosened for sexual offenses (as a reaction of a one single case, see above). In 2002 provisonary time limits were set for care orders for offenders placed under compulsory care. This was motivated mainly by the fact that in many cases offenders found guilty of minor (non-"personfarlig") offenses had been placed under "unproportional" long care orders (see *Greve et al*. 2005, p.327).

In all, Denmark has a system of preventive detention. In addition, Denmark links criminal sanction system closely with compulsory mental care orders for mentally disturbed offenders.

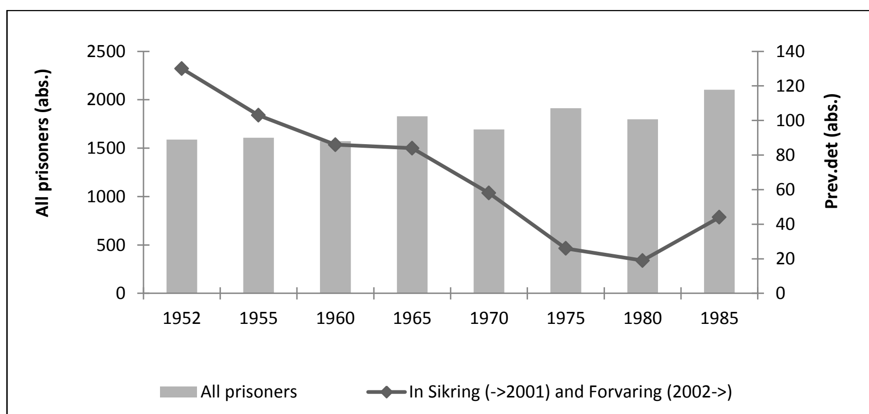
2.3 Norway

In 1929 Norway revised and extended the scope of the system of preventive detention. “Forvaring” was reserved for repeat offenders for whom normal prison sentence was not deemed to secure enough, “Sikring” was reserved for offenders with diminished or totally lacking criminal responsibility due to mental disorders, with a risk of reoffending. Conceptually “sikring” was not defined as a criminal sanction.

The first years for “Forvaring” were a success in numbers (in a period of 1.5 years 115 sentences pronounced). However, after this peak, its popularity declined and the last sentence of Forvaring was pronounced in 1963. Sikring, in turn, was reserved for both non-responsible offenders and those with diminished criminal responsibility. During the 1950 and 1960s the annual number of sentences varies around 100.

The use of Sikring and the double-track-system was criticised already during the 1950s, but this criticism grew stronger in the shift of the 1960/70s. Also the annual number of convictions fell to around 20. In 1973 a proposal was presented to restrict the use of indeterminate sanctions and to remove mentally ill to psychiatric institutions. The reform proposal was criticized both by those who wished to abolish indeterminate sanctions altogether, as well as by the psychiatrists who saw the reform would interfere too deeply on their own discipline (*Andenaes et al*. 2004: 499).

Figure 3: Prisoners in Sikring/Forvaring in Norway 1952-1985 (daily average)



For sources, see *Lappi-Seppälä* 2015

A new proposal was put forward in 1990, accepted in 1997 and enforced in 2002. The reform followed the lines drafted already in 1973, with minor amendments. Both Sikring and the double-track-system were abolished. The 2002 reform replaced the old system of "sikring" by three new type of special sanctions. For those criminally not responsible there are now two forms of compulsory psychiatric care orders, depending on the nature of mental disorder. The third specific sanction – again Forvaring – is reserved for those criminally responsible (incl. diminished responsibility). Forvaring is defined as a criminal sanction.[2]

2.4 Sweden

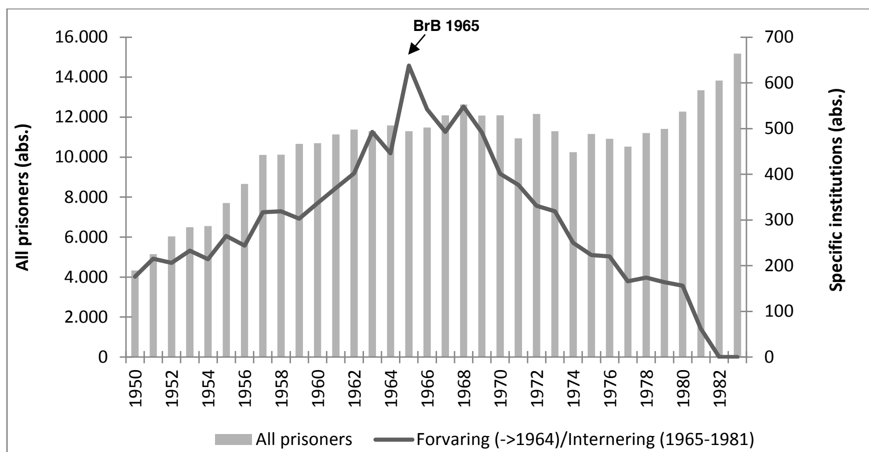
Sweden adopted "Internering" for repeat offenders in 1927. Offenders with diminished responsibility due to mental disorders could be placed instead of regular punishment under indeterminate "Forvaring" (corresponding Sikring in Norway). The use of Internering for habitual recidivists declined by the mid of 1930s close to zero. The law was revised in 1937 and the use of Forvaring was extended towards less serious offenses. The threshold for criminal liability was lowered for psychopaths, which, in turn were placed in Forvaring. As a result the annual admittals to Forvaring increased from around 20-30 in the late 1920s, to 80-100 in the late 1940s (*SOU* 1956:55 p.141).

This system was revised by the 1962 Brottsbalk. New law combined Forvaring and Internering into a single sanction under the label "Internering". The sanction was applicable, under certain conditions, for all repeat violent offenders who were sentenced to a prison sentence of at least two years. The 1962 Brottsbalk also abolished the concept of criminal responsibility (and the category of diminished responsibility), which places the Swedish system in a category of its own. Under the Swedish law, also mental treatment may be defined as a punishment.

However, the critics of coercive care and demands of legal safeguards were pressing limits to the use of indeterminate sanctions also in Sweden. Also the annually imposed detention orders (for offenders sentenced for the first time to this sanction) declined from the level 150 in mid 1960s to around 30 in mid 1970s. Finally, in 1981 Internering was abolished. However, to compensate this mitigation, penalty scales for serious violence recidivist were increased.

2 At the moment Norway has a both the "present" penal code still in force, and the "new" penal code, accepted in 2005 (2005:28), but not yet in force, which makes legal characterizations a bit unclear. However, both codes define forvaring as a criminal punishment (while the present code lists Forvaring together with other "special sanctions".

Figure 4: All prisoners and prisoners sentenced to *Internering* in Sweden, 1950-1985



For sources, see *Lappi-Seppälä* 2015

3. Preventive detention and related arrangements in the present Nordic law

As the systems stand today, two countries – Denmark and Norway – have retained preventive detention as system providing the possibility for indeterminate sanctions. Finland and Sweden, in turn, have abolished this option.

3.1 Finland: Serving the sentence in full Preconditions

The use of the new option to serve the sentence in full and that replaces preventive detention takes place in two stages.

First, the district court gives a statement that a person should serve the sentence in full. This decision is taken only at the request of the prosecutor, provided that the three criteria set by the law are met. The first set of conditions refers to the crime for which the offender is currently sentenced.

1. The offender is to be sentenced to a term of least three years for a serious violent offence. Possible offenses are listed in the law. This list is exhaustive.

2. The second set of conditions refers to the criminal history of the offender. (a) Either during the ten years preceding the offence the offender has been found guilty of similar serious violent crimes, (b) or the offence is committed within three years of the prisoner's release after having served the full sentence in prison or after having served a sentence of life imprisonment.
3. The third requirement refers to an overall estimation of the dangerousness of the offender. On the basis of the factors apparent in the offences and following from an assessment of the offender, he or she may be deemed particularly dangerous to the life, health or liberty of others.

In the next phase, the order to serve the sentence in full needs to be confirmed by the Helsinki Court of Appeal. In fact, the presumption is that a prisoner ordered to serve the entire sentence 'shall be released on parole after he or she has served five sixths of the sentence if he or she is no longer deemed particularly dangerous to the life, health or liberty of another. Release on parole on the basis of this subsection may occur at the earliest when the prisoner has been in prison for three years.

However, if the Court of Appeal deems the prisoner still to be particularly dangerous to the safety and security of others, the enforcement continues. The risk assessment is based on several reports, including the reports prepared by the Criminal Sanctions Agency and the director of the prison, and by a psychologist as well as the separate risk and needs assessment prepared by the prison authorities. In addition, the Court of Appeal may ask for additional clarification from different sources.

There is an absolute limit for any detention under this system. All prisoners must be released on supervised probationary liberty three months before their prison term is completely served at the latest. The ratio for this provision is the fact that releasing high-risk prisoners into society without any form of supervision or support is impractical, inhumane and unwise.

All prisoners serving their sentence in full can be released only after a specific risk assessment. If the prisoner still poses a 'particular risk' to the safety and security of others, release must be postponed (however, the latest point of release is three months prior the end of the sentence).

3.1.1 Enforcement

Aims of enforcement. Enforcement plans and regulations related to the aim of enforcement are no different from ordinary prison sentences. The aims in enforcement include *the general aim of rehabilitation* (Prison Law 1:2): "The goal of the enforcement of imprisonment is to increase the ability of a prisoner to a crime free life by promoting the prisoner's potential to cope and his adjustment to society as well as to prevent the committing of offences during the

term of sentence." The *principle of normalization*, is confirmed in (PL 1:3 §). "The conditions in a prison shall be arranged, to the extent possible, so that they correspond to the living conditions prevailing in society." (PL 1:3 §). *Maintaining health a*nd the *aim of harm-minimization* are spelled out also in PL 1:3 §§: "The possibilities of a prisoner to maintain his health and functional ability shall be supported. The goal is to prevent any detriment resulting from the loss of liberty." (PL 1:3 §). These aims apply to all prisoner groups, including those serving their sentence in full and a life imprisonment. However, as the detrimental effects of prison life are more.

Allocation of high-risk prisoners. Prison law also stresses the *values of security and safety for all parties in enforcement:* "A sentence of imprisonment shall be enforced so that it is safe to society, prison staff and prisoners." (PL 1:3 §). Closed prisons in Finland are not formally classified according to their security status. However, the intensity of supervision varies between closed prisons and some institutes occupy only long term prisoners (prison term over 2 years), while some prisoner occupy also first offenders. Since 2006 it has been possible to establish specific high-security wards, separated from the rest of the prison. A prisoner may be placed in a high-security ward if there is a reasonable grounds to suspect that the prisoner will commit a drug offense or another offense with a maximum punishment of at least 4 years of imprisonment, presents a high risk of escapes, or if he/she has seriously endangered prison security or if the placement is justifiable in order to ensure his own safety. The decision on the placement of a prisoner in a high-security ward and the grounds thereto shall be taken for reconsideration at intervals of a maximum of three months. The rights of a prisoner placed in a high-security ward may not be restricted more than is necessarily required. Prisoner state of health must also be closely monitored.

For the moment two high security units have been established with the total capacity of 18 beds. Serving a sentence in full does not automatically imply placement in high-security ward; the placements are judged individually following the criteria defined in the law.

Sentence plan and long-term offenders. The enforcement of a prison sentence starts by entering into one of the six assessment units. For all prisoners, an *individual sentence plan* will be drafted. The plan is based on a structured risk and needs assessment. The plan is the backbone for the enforcement during the whole prison term. It has information on the personal needs and abilities of the prisoner, the required level of security and a preliminary plan for the release. Sentence plan forms also the foundation for the placement of the prisoner in a prison corresponding his/her circumstances and the level of required security.

The plan includes individual defined aims for each prisoner in order to promote crime-free life. Items taken up in this part may for example include

how to learning to control violent and impulsive behavior, promote one's ability self-reflection and problem solving, to deal with alcohol-problem, maintaining ability to work and maintaining physical and mental well-being during and after the prison term. The plan, furthermore, includes assessment of both static- and dynamic risk factors for reoffending. The plan will be updated and completed during the prison process by the prison where the sentence will be carried out. This updating lists individual sub-aims for the enforcement, as well as all actions that have been taken during the enforcement.

The longer the sentence and the more manifold are the prisoner's personal and social problems, the more important it is to draft a coherent sentence plan. Prisoners serving their sentence in full form an especially difficult and demanding clientele, therefore the drafting and updating of the sentence plan becomes a matter of high priority. The following shortened version of one high-risk long term prisoner serves as a partial example of such a plan.

Modified partial example of a sentence plan (prisoner serving a 12 year sentence in full) – "Actions and interventions in prison"

Item	**Planned**	**Realized**
1. Financial situation, housing	Closer to release dwelling and related issues need to be prepared especially carefully. May need supported housing	Not yet
2. Education, work	X is serving a long sentence, therefore it is important to offer him sensible activities in order to maintain his physical, mental well- being and ability to work	• Placed in a unit, where activities not possible (3/2007) • Moved to another unit, taking regularly part in activities (10/2007) • Moved to drug-free re-habilitation-unit and takes part to the program (10/2012) • Appointed a support officer (1/2013) • Positive drug test, trans-ferred from drug-free unit (4/2013)

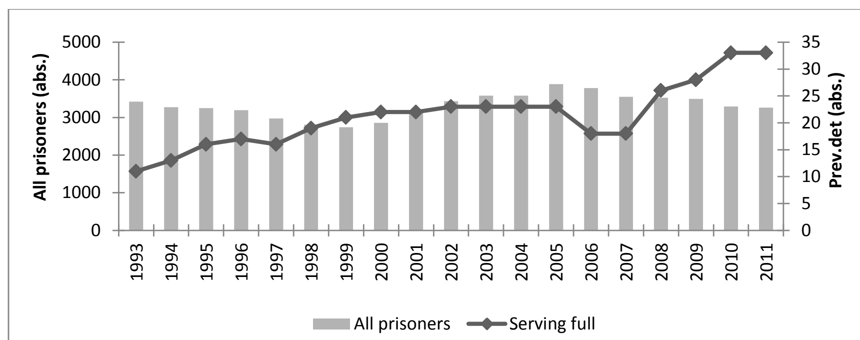
3. Social ties and way of life	Closer to release day need for social support must be assessed. X has shown interest in participating after care programs and peer-support	• Not yet
4. Alcohol and drugs	Serious alcohol problem that requires attention. X has shown interest in AA, which could well suit for him. Also drug-treatment period should be considered	• Participating in AA-group 2008 • Relapsed on booze 2009 • Alcohol problem taken up in in individual sessions in 2009 and 2010
5. Thinking, behavior and attitudes	PRIMARY TARGET: Influence on lack of self-control and tendency to violent behaviour. X shown willing to participate Self change-program and discussions with psychologist, which are deemed to be essential	• CS-course 2007 • Anger management course 2008 • SC-course 2008-2009 • Further sessions with psychologist 2009-2010. Good progress • SC-course 2nd part 2011-2013 • Further individual sessions with psychologist 2013. Good progress

3.1.2 Practice

During the 2000s the number of prisoners placed in preventive detention varied around 20-25. As illustrated in figure there is a slight increase in the number of prisoners serving their sentence in full (from the level of 20 to little over 30).

Since 2006 a total number of 19 prisoners haven been released from serving their sentence in full (3,1 prisoners/year). In half of the cases the prisoner has served at least 8 years before release. On 16 December 2011, there were 34 prisoners (out of 3246) serving their sentence in full. Most typical offense is repeated homicide.

Figure 5: Prisoners 1993-2011 and recidivist in preventive detention, 1993–2006, and prisoners serving their sentence in full, 2007-2011 (absolute figures)



For sources, see *Lappi-Seppälä* 2015

3.1.3 Evaluation and reform plans

Serving the sentence in full, means that repeat violent offenders are been released with a 6 months probation period (or even with a period of 3 months, provided that they are not willing to apply for an earlier release which they are entitled to, even when serving their sentence "in full"). This has caused some concern, and the working group in the MOJ has proposed that offenders serving a sentence in full should be place on a two year probation period for support and supervision. Amendment to the law is now under preparation.

According to the planes, all prisoners serving their sentence would be placed under two year supervision after release. This supervision may be called off after 6 months should it be considered as superfluous or unnecessary. This supervision order can be attached with specific conditions (not possible in connection of regular supervision). These include prohibition to use alcohol/drugs or specific medical products, obligation to use certain medication and to participate substance abuse programs. Supervision can also be conducted in the form of electronic monitoring. A breach of these conditions could lead to a new prison sentence of max. 3 months.

3.2 Denmark: Preventive detention (forvaring)

"Förvaring" in Penal code 70 § is an indeterminate sanction for high-risk violent offenders. It is classified as "measure" ("foranstaltning"), not as a punishment. It may be issued to both criminally responsible and not-responsible offenders. Preconditions defined in the law make a distinction between violent and sexual

offenses. In both cases, the criteria fall into three parts: those related to the (1) seriousness of the offense, (2) the risk of reoffending and (3) the requirement of necessity (for Danish law, see *Greve et al* 2005 p. 332 ff.).

Violent offenders. “A person may be ordered to be placed in safe custody where: 1) he is found guilty of homicide, robbery, deprivation of liberty, serious crime of violence, threats of the kind referred to in Section 266 of this Act, arson or of attempt at one of these crimes; and 2) it is apparent from the nature of the act that has been committed and from the information available concerning his character, with special reference to his criminal record that he poses an close danger to the life, body, health or liberty of others; and 3) the use of safe custody, in place of imprisonment, is considered necessary to avert this danger.

Sexual offenders: Furthermore, a person may be ordered to be placed in safe custody where 1) he is found guilty of rape or any other serious sexual offence or an attempt of such an act; and 2) it is apparent from the nature of the act that has been committed and from the information available concerning his character, his criminal record that he poses an essential close danger to the life. body, health or liberty of others; and 3) the use of safe custody, in place of imprisonment. is considered necessary to avert this danger.

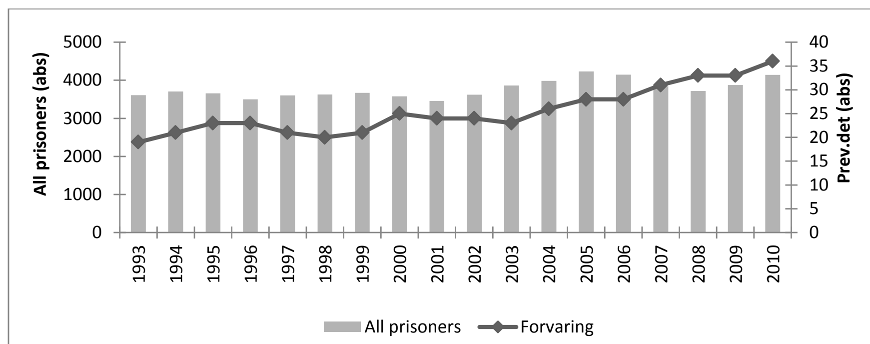
The difference between violent and sexual offenses relates to the risk of future crimes. For violent offenses it is required that there is a “close” (naerligende) danger, for sexual offenses it is enough that the risk is “essential” (vaesentlig).

There is no specific minimum of maximum time for Forvaring. However, the prosecutor is obliged to follow that the confinement is not lasting longer than needed. To ensure this, there are specific rules and procedures. Release and termination of confinement is decided by the court. The offender or the placement unit may request the prosecutor to take the case before the court. If the court decides to continue the confinement, new request may be made after 6 months. Once the confinement has lasted three years, the placement unit is obliged to take the matter up to the prosecutor once a year.

The release process from Forvaring follows the same stepwise model as with normal prison sentences. The prisoner is allowed for normal prison leaves, but first escorted prison leaves take place only after 4-5 years served time (and non-escorted after 8-10 years served time). prisoners are released usually on probation. No formal probation period is fixed. The final termination of Forvaring takes place by the court decision and usually after one year of problem-free probation period. However, probation periods may also last much longer.

There are 2-5 forvaring orders per year. In April 2012 there were 49 prisoners confined under this order.

Figure 6: All prisoners and inmates, 1993-2010, in preventive detention (forvaring) in Denmark (absolute figures)



For sources, see *Lappi-Seppälä* 2015

3.3 Norway: Preventive detention (forvaring)

As noted the 2002 reform replaced the old system of "sikring" by three new type of special sanctions, depending partly of the degree of responsibility: Criminally not responsible can be placed under two forms of compulsory psychiatric care orders, depending on the nature of mental disorder. Forvaring, in turn requires total or partial (diminished) criminal responsibility. Forvaring is also defined as a criminal sanction in the criminal code.[3]

3.3.1 Conditions

Forvaring is applicable, "when a sentence for a specific term is deemed to be insufficient to protect society". The conditions are defined separately for more serious and less serious offenses in Penal Code 39 §.

For more serious offenses it is required that (1) the offender is guilty of a serious violent felony, sexual felony, unlawful deprivation of liberty, arson or other serious felony impairing the life, health or liberty of other persons, and (2) there is an imminent risk that the offender will again commit such a felony.

Forvaring is applicable also for less serious felonies of the same nature as is specified above, (1) if the offender has previously committed or attempted to

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3 For the following, see especially *Johnsen* 2011 and 2013. At the moment Norway has both: the "present" penal code still in force, and the "new" penal code, accepted in 2005 (2005: 28), but not yet in force, which makes legal characterizations a bit unclear. However, both codes define forvaring as a criminal punishment (but the present code lists forvaring together with other "special sanctions").

commit a felony as specified, (2) there is a close connection between the previous felony and the one now committed, (3) and the risk of relapsing into a new felony as specified above must be deemed to be *particularly imminent*.

Thus, for more serious offense Forvaring is possible already in first conviction and with lower reoffending risk, compared to less serious offenses.

In assessing the risk of reoffending importance shall be attached to the crime committed or attempted especially as compared with the offender's conduct and social and personal functioning capacity. In case of less serious offenses, particular importance shall be attached to whether the offender has previously committed or attempted to commit a similar type of felony.

Before Forvaring is pronounced, a social inquiry shall be carried out in relation to the person charged. The court may instead decide that the person charged shall be subjected to forensic psychiatric inquiry.

The law sets initial limits for the duration of Forvaring. The court shall fix a term that should usually not exceed 15 years and may not exceed 21 years. This term may, however, be extended on the application by prosecutor up to five years at a time. A minimum period not exceeding 10 years must also be determined.

Prisoners in Forvaring are released on probation for a period from one to five years. When the convicted person or the prison and probation service applies for release on probation, the prosecuting authority shall submit the case to the District Court, which will decide it by a judgment.

Probation can be attached with similar conditions as in the case of a conditional sentence. The court may also impose a condition to the effect that the convicted person shall be followed up by the prison and probation service or by the correctional services. The convicted person shal1 be allowed to express his views on the conditions beforehand.

3.3.2 Practice and enforcement

From 1.2.2002 to 2.4.2012 in all 144 new Forvaring ordes have been imposed. This makes around 14 orders each year. However, the number of orders have been increasing (the figure for 2011 was 22). Distribution according to offense type was as follows:

Distribution of prisoners in Forvaring by offence in Norway in 2011

- Sexual offenses 46.0%
- Homicide/attempt 25.0%
- Assault 10.0%
- Robbery 6.5%
- Arson 6.0%
- Others 6.5%

Enforcement takes place as a rule in three high security prisons, Ila, Trondheim and Bredveit (for women). On 2 April 2012 there were 84 prisoners in Forvaring (of these five in open institutions). The law places extra requirements for the intensity of rehabilitation efforts for Forvaring, but in practice, the enforcement routines are similar to other prisoner groups.

Prisoners in Forvaring may apply prison leaves, permissions to work outside the prisons and release on probation on a similar fashion as other groups. However, there are different time limits, and these rights are usually granted only after two thirds of the sentence have been passed. Three out of four prisoners have been granted prison leaves before release on probation. Prisoner may be transferred to a prison of lower security level, but not before two thirds of the sentence have been served.

The time of release on probation depends first on whether the courts has defined a minimum time for the sentence. If such time has not been confirmed, the prisoner may apply for a release after serving one year. If the prosecutor agrees, prison authorities may grant the release. If the prosecutor resists, the case must be taken to the court. If the court rejects the application, new application can be passed after one year. In average, release in probation takes place only after almost two years (mean 1 year 9 months) have been passed over the minimum time as confirmed in the court's rulings. Mot prisoners are released by the court (not by prison authorities).

Released prisoners are under the supervision of probation service. The probation period may also include requirements of different sort of institutional treatment. The probation period ranges from 1 to 5 years. This period cannot be extended over the original sentence. In case the prosecutor would wish to have a longer probation period, he/she needs to take the case before the court and ask for a prolonging of the whole Forvaring sentence.

In a daily sentencing practice Forvaring does not seem to deviate much from a regular prison sentence. As reported by *Johnsen* (2011), the courts are inclined to set the minimum time on the level that would correspond to two thirds of a regular prisons sentence for a similar offense. This would also be the time when prisoners would normally be released on parole. Prolonging of the sentence, in turn, takes place mainly with the aim to have a "long-enough" probation period after release.

Provided that the courts actually first measure the length of the sentence with proportionality oriented criteria (as concluded by Johnsen 2011) and place the minimum time on the level that corresponds the regular time for (early) release from prison, we may reach a rough estimation of the "net-effect" of Forvaring in sentence-severity in Norway. As was also reported by *Johnsen*, the release takes place in average by 1 year 9 months after the minimum time has been reached. This is also the "extra amount" on confinement, brought by the introduction of Forvaring. Should there be in average about 20 cases/year, this would mean annually extra 40 prison years (and in 10 years about 400 prison years).

Enforcement takes place in institutions that are able to provide substantial psychiatric treatment.

3.4 Sweden: Compulsory care orders – no concept of criminal responsibility

The structure of Swedish system differs from those in the other Nordic countries. Like Finland, Sweden does not have a specific institution of preventive detention. High-risk violent recidivists may receive longer sentences on the base of extended penal latitudes, but the enforcement follows general rules. Unlike Finland, Sweden also has specific high-security prisons.

Major difference compared to other Nordic countries is the fact that in 1965, the concept of accountability was abandoned and the concept of mental illness and thus comparable mental abnormality introduced. The mentally ill became responsible for their acts and psychiatric care became a sanction as opposed to the mentally ill not being accountable and thus free from sanction.

According to the Penal Code, (Chap. 30, Section 6) nobody should be sent to prison if he due to a severe mental disorder has committed a crime. “Severe mental disorder” is a legal concept and is defined in the general recommendations to the Psychiatric and Forensic Acts that are issued by the National Board of Health and Welfare. “Severe mental disorder” according to the Section 4 of the Forensic Care Act should include mainly psychosis, but also severe personality disorders with psychotic outbreaks, as well as depression with a risk to commit suicide.

If the person who shall be sentenced is in need of psychiatric care, instead of sending the person to prison, the court can sentence him to forensic care. Before such a decision is taken, the court is obliged to have the person medically assessed. According to Chap. 31, Section 3, a person, who has committed a crime under the influence of a severe mental disorder may be sentenced to forensic mental care with an order for special assessment for discharge if there is any risk, on account of the mental disorder which occasioned the order for special assessment for discharge, of a patient’s relapsing into criminal behaviour of a serious nature. A patient can only be released or have permission after a trial in a county administrative court If there is no such risk, a patient may be sentenced to forensic care without special assessment for discharge. Since 1991 approximately 80% of the patients cared for require a special assessment.

When the court commits a patient to forensic care with a special pre-discharge assessment, the prosecutor is entitled to make a representation when either a leave or release is planned. The court supervises the use of forensic care by means of a system of fixed-term committal so that at least every six months an assessment has to be made as to whether or not the care shall continue. The care is also supervised by the National Board of Health and Welfare.

A person sentenced to forensic care with an order for special assessment for discharge cannot be released until there is no longer any risk, on account of the mental disorder which occasioned the order for special assessment for discharge, of a relapse into criminal behaviour of a serious nature. The patient can only be released or have permission after a trial in a county administrative court.

3.4.1 Critics and reform plans

A person can be sentenced to forensic care even if in some special cases there is no effective medical treatment to offer, which may be considered as unethical. With the system of special review of remission, the patient can be retained in custodial care despite the fact that such care is not needed for medical reasons. There is a risk that continued forensic care will evolve into a form of hospitalisation for purposes other than treatment. Some of the persons in forensic psychiatric care have been sentenced for minor criminality and cared for over very long periods and at great expense.

For these, and other, reasons there has been increasing criticism against the present system with demands to move towards the other Nordic countries. Several proposals have been put forwards, so far without concrete results. Most recent proposal covers the whole legislation of psychiatric treatment (SOU 2012:17). This would entail deep going changes in the present system.

For the first, the report suggests that the notion of criminal responsibility should be re-introduced in the Criminal Code. The reform would also require the total reform of psychiatric care orders. It would also introduce new type of specific indeterminate security measures for offenders suffering from different level of mental disorders (*SOU* 2012:17). Also the now existing the prohibition against imprisonment for crimes committed under the influence of a severe mental disorder would be abolished. The proposal would also entail a possibility to place a released prisoner who has served his/her sentence, under "special protective measures" on the grounds of a perceived dangerousness. The proposals have received both positive and negative critics, and no concrete official drafting plans have been recorded.

3.5 Summary

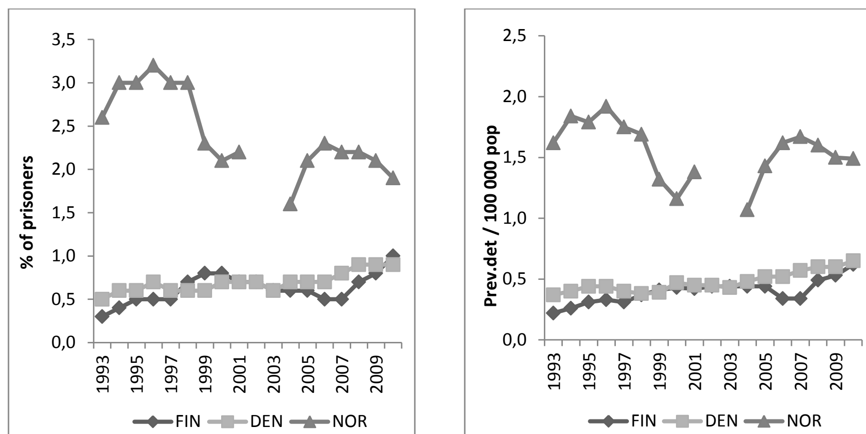
Table 2 summarizes some of the various characteristics of "preventive detention" in three Nordic countries. The dimension relate to the "degree of indeterminancy" (= I Duration), the relevant authority who has the decision-making powers (II), the legal classification of the sanction (III), target offender-groups in terms of criminal responsibility (IV), implementation criteria (V) and practice (VI).

Table 2: Preventive detention and related arrangements in Finland, Norway and Denmark

	FINLAND "Serving full sentence" 2006	*NORWAY "Forvaring" 2002*	*DENMARK "Forvaring" 1973*
DURATION	Min. and max. fixed May not be exceeded	Min. and max. fixed Max. may be exceeded	No formal limits
AUTHORITY	Criminal court		
CLASSIFICATION	Criminal punishment	Criminal punishment	Other measure
TARGET GROUP	Responsible offenders with diminished responsibility	Responsible offenders with diminished responsibility	Responsible offenders with diminished responsibility and non-responsible
CRITERIA			
Present offense	Listed serious crimes Min. 3 years prison	Serious Less serious offences	Violent sexual offences
Past offenses	Same seriousness	No Similar	No
Risk assessment	Yes	Yes Yes	Yes Yes (lower)
Offence-connection	Required	No (No)	No
PRACTICE			
Sentences/year	1-2	10-20	2-5
Serving 2010 (mean)	33	71	49

The use of preventive detention (rate per 100,000 population and as percentage of all prisoners) in the years 1993-2010 is displayed in *Figure 7*. As may be detected the use of Finnish and Danish versions is on the same level, showing a slightly increasing trend. Forvaring in Norway has been used more widely. This, however, may well be connected with the fact that life imprisonment is not applicable in Norway.

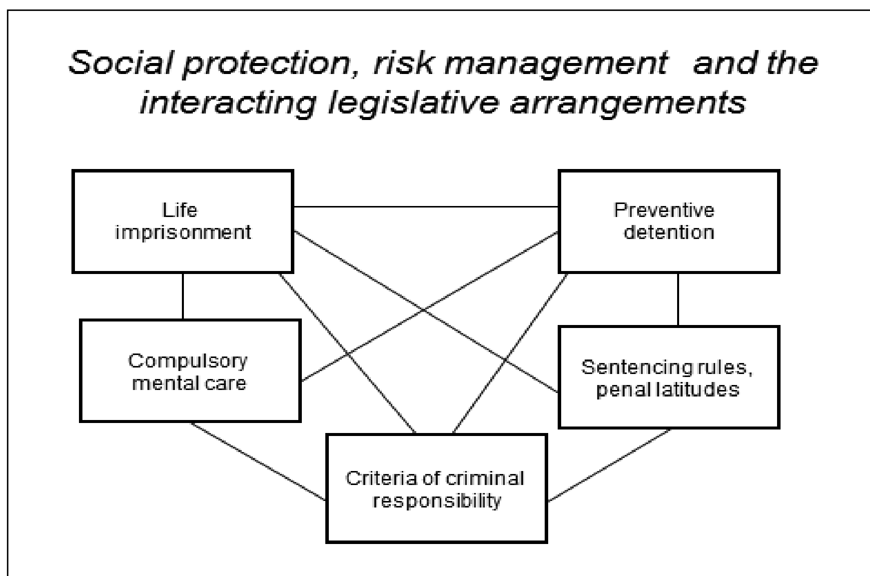
Figure 7: Preventive detention 1993-2010 as % of all prisoners and per 100 000 pop.



For sources, see *Lappi-Seppälä* 2015

4. Management of risk beyond preventive detention.

Comparisons based only on the regulation of preventive detention do to tell the whole story. In addition to secure detention, there are numerous other linked arrangements, through which the legal system is managing risks against the risk of repeated serious violence. These include i.a. the availability of life imprisonment, the limits of maximum penalties, the concept of criminal responsibility and the criteria for compulsory mental health care. All these are interacting and dependent on each other.



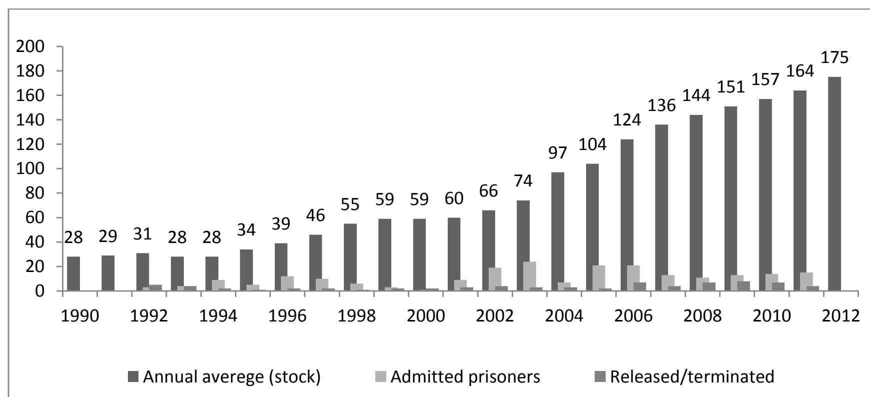
In the absence of life sentence, social protection may be taken care by specific security measures and like preventive detention of by compulsory care. The absence of preventive detention, in turn, may be compensated by life imprisonment, compulsory care, or sentencing provisions (for example by extended latitudes or predictive sentencing rules). The criteria of criminal responsibility are interacting with conditions of compulsory care, and synchronization may be needed, in order to avoid "loopholes" and offenders falling between the two systems. The criteria of responsibility are also linked with sentencing rules for example in the form of mitigation due to diminished responsibility, or aggravation based on increased risk, or as a restriction for the use of life imprisonment. This network is organized differently in each Nordic country, as will be shortly explained.

Life imprisonment is in use in Denmark, Finland and Sweden, but not in Norway. All countries using life imprisonment impose this sanction only for murder. Release from life sentence takes place, as a rule, by a court order in Finland and Sweden, even though the procedures differ. The actual length of life imprisonment is in Finland around 14-15 years and in Sweden little over 16 years.

Should we look at the use of life sentences, especially Finland would profile with a clear increase of life prisoners from the level of 30 prisoners in the early 1990s to around 200 in 2014. This increase is attributable to a much more restricted application of diminished responsibility in murder cases. Life imprisonment is a mandatory penalty for murder, but those with diminished respon-

sibility the sentence was 12 years. As the application of this mitigation was reduced, the number of life sentences grew higher.

Figure 8: Prisoners serving a life sentence. Annual average (stock) admitted and released/terminated life sentences



Source: Criminal Sanctions Agency

Specific in determinate security measures may take different forms and may be used for different target groups, and even with same names. Denmark and Norway have retained indeterminate preventive detention under the name Forvaring. In spite of terminological similarity, this institution is used differently in both countries. Finland and Sweden have abolished indeterminate security measures, and both countries also established different "compensatory schemes" under sentencing rules (Sweden) and general sanction structure (Finland). Both countries are also considering legislative changes in this respects, but again on a different manner.

The criteria of criminal responsibility are defined differently in each country. The Swedish law, in fact, does not recognize the concept at all. Also mentally ill people are held criminally responsible, but they are not allowed to be sentenced to imprisonment. Instead, there are specific treatment orders for this group, that are classified as criminal sanctions. These treatment orders correspond to that what is known in other systems as "compulsory mental health care." While the other three countries maintain the general requirement of responsibility, the criteria differ in detail. Basically a psychosis level mental disorder gives a presumption for lack of penal capacity, but while Norway and Finland require a causal relation between the disorder and the act, this is not the case in Denmark. In Finland, in turn, also a severe mental disorder, not classified as a psychosis, may lead to lack of responsibility.

The relation of criminal law and mental health care are different in each country. The Swedish law defines mental health care orders as criminal sanctions. In Denmark and Norway and care orders for mentally disturbed persons are also defined in the criminal code, although they are not classified as punishments but as “specific measures”. In all three countries, care orders are imposed by the courts and their implementation criteria have been defined in the criminal code. The Finnish system makes a clear separation between criminal law and mental health. Criminal law, as such does not mention compulsory treatment. Medical authorities alone give all care orders and regulation is provided in Mental Health Act. In this point Finland and Sweden represent to opposite ends, with Denmark and Norway falling in between.

Criteria of compulsory care. As regards to the criteria for compulsive care, a psychosis level mental disorder is the core requirement in all countries. Other requirements with different role in different countries include the gravity of offense, the need of institutional treatment and the risk for health and safety of others (and the person him-/herself), again varies. The Danish criminal code refers only to mental illness and requires that other less extreme measures are deemed to be insufficient. The Norwegian criminal code lists separately the offenses justifying a care order. Furthermore it is required that there is an “imminent risk” for a serious offense (defined in more detail in law). Finnish Mental Health Act requires – in addition to (1) psychosis-level mental disturbance – that there is a need of treatment (the condition would deteriorate with care) *or* (2) there is a risk of harm to elf or others *and* (3) no other treatment option is adequate. Care orders differ also on the point, whether they are applicable only for criminally non-responsible offenders but also for other offenders. The Danish law allows compulsory care also for offenders with diminished responsibility, while the Norwegian and the Finnish criminal codes restrict care orders only for non-responsible offenders. On the other hand, in both countries those prisoners with mental health problems may receive treatment either in prison hospital, or in other mental health institutions.

Data on the number of forensic patients (persons placed on compulsory care after committing a crime) and the duration of treatment is restricted. In Finland their annual number varies around 350, corresponding around 10 % of overall prison population. Typical duration of treatment varies from 5 to 8 years, with considerable variation.

Risk assessments and sentencing rules. Sentencing is guided by proportion-nality in all countries. Diminished responsibility, being a criterion of reduced culpability, serves as mitigation in all countries. However, the risk of future offending – also often connected with diminished responsibility – may have been taken into account in a different manner. Sweden, when abolishing indeterminate preventive detention in 1981 added in the law a provision that allowed the courts to go beyond the maximum penalty, while sentencing serious

violent recidivists. Finland, in turn, gave up from indeterminate preventive detention in 2006 without any such extensions.

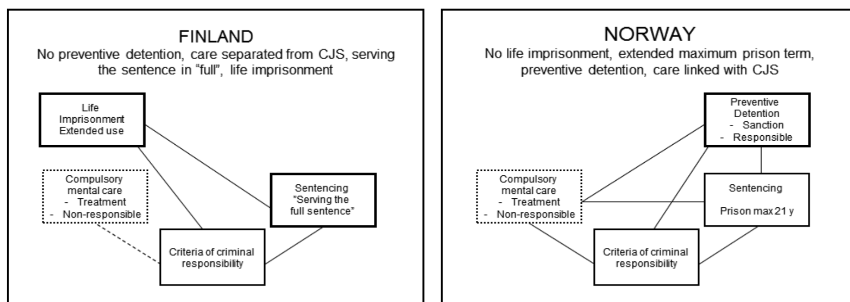
However, risk assessments and predictive assumptions may have a substantial role in sentencing, also in the absence of specific sanctions structures. Prior convictions may be used as an indicator of future behaviour and system with strong emphasis on recidivism as sentencing criteria may factually operate from a predictive basis. Also in this respect, the 1970s represented a shift from predictive to proportional sentencing. Most Nordic countries reduced the role of recidivism as a general sentencing criterion. Denmark removed recidivism altogether as an aggravating criteria from the Danish criminal code in 1973. However, in 1994 the legislator took another course and increased the penalties especially for repeated violent offenses and in connection of the 2004 sentencing reform, recidivism got re-introduced as a general sentencing criteria.

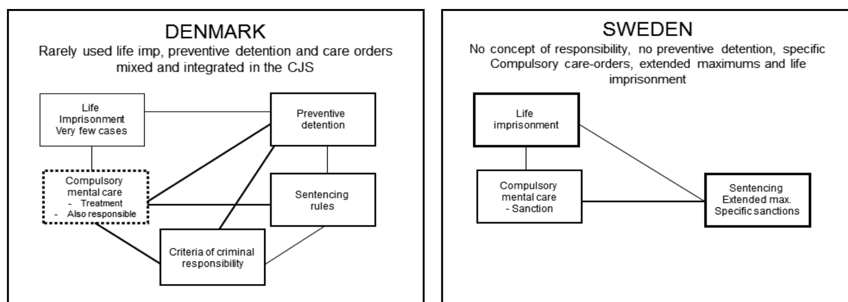
In Finland, one of the main aims of the 1976 sentencing reform was to restrict the significance of a prior record in sentencing. This was done by replacing old mechanical provisions with a regulation, which allowed aggravation only when recidivism implies increased culpability.

The Swedish legislator also wished to restrict the role of previous convictions by enacting in 1988 that recidivism should be, as a rule, taken into account mainly while making the choice between different sanctions, not in deciding on the severity of the chosen sanctions (see in more detail *Hinkkanen* and *Lappi-Seppälä* 2012).

Joint comparison. Figures below summarize these key differences between the Nordic countries.

Figure 10: Legislative arrangements in sanction structures and mental health services for social protection and risk management in case of serious violent offenses in the Nordic countries





5. Concluding remarks

While risk-based predictive sentencing was ruled out by the 1970s sanction reforms, there may be some weak signals of a slight return during the last 20 years or so. In 1997 Norway passed a bill for a new legislation for preventive detention and compulsory care of mentally disordered offenders. At the same time (1997) Denmark extended the use of Forvaring in sexual offenses. But in 2002 Denmark introduced also fixed time limits for compulsory care orders, in order to control overly long treatment periods for offenders guilty of minor offenses.

Recent plans from Sweden (when fully realized) would also imply the adoption a kind of form of preventive detention. However, the flip-side of this coin would be, that treatment no longer would be defined as punishment. The proposal from Finland of an extended two year probation period for released high-risk violent offenders, now serving their sentence in full, represents similar type of risk-management ideology. But, contrary to other Nordic countries, this would take place in a non-custodial setting.

Therefore, one should be cautious with conclusions. These changes hardly represent any sort of return to the pre-1960s practices. The overall use of these specific measures has remained low, legal guarantees have been taken seriously and prisoners fundamental rights have received much more attention, compared to former practices.

But, while the regulation of preventive detention can be deemed to be transparent in its essential points, there are other areas where practices may have been developed in much more obscure and unregulated manner. The expansion in the use of life imprisonment in Finland serves as an example of this. Much of this change took place merely as a result of changed medical practice, without any wider or systematic public discussions. Isolated observations report also how the number of forensic patients in Danish institutions has increased from around 300 in mid 1970s to 2000 in 2010 (see *Danske regioner* 2011). The use of life imprisonment was in a steep growth also in Sweden (*Lappi-Seppälä* 2015, p. 206). However, the prison statistics no longer display this trend, since

the courts have partly replaced life sentences with prolonged determinate prison sentences (now maximum 18 years), and since after 2006 life sentences have been commuted after a certain number of served years to determinate prison sentences (*Lappi-Seppälä* 2015, p. 207). All in all, to obtain a full picture of the measures different legal system use in managing the risk of (repeat) violent behaviour, one needs to observe more than one legal institution.

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7.2 Project results on sentence planning and treatment concerning high-risk offenders – Introduction to Forum 2

Jörg-Uwe Schäfer

The following issues represent the results of the JCN Schwerin workshop in April 2014 and shall now be discussed in a wider circle:

1. High-risk offenders should be subject to a specific prison regime

The limited resources of prison systems have to focus on this special group of prisoners. This is not against the principle of equal treatment of all prisoners.

2. An evidence-based screening at the beginning of the sentence is of major importance (sentence planning).

The screening enables to assess high-risk prisoners. This is only possible by using evaluated and scientifically proved instruments.

3. Risk and Need Assessment

The assessment concentrates on high-risk factors and not on the length of the sentence. It is done by specialized interdisciplinary staff and by using evidence based instruments.

4. Procedure of Assessment

The assessment contains as much relevant and available information as possible. An interview with the prisoner is also part of it. The offender should have the

possibility to take part in the process, which enhances his compliance. The aim of this procedure is a written explanation of the offender's criminal behaviour.

5. Standardized sentence plan

A standardized sentence plan includes a system of priority setting. It has to consider the full length of the sentence to be served and is to be oriented to an early release if this can be justified. The sentence plan has to be updated every six months based on case conferences. The prisoner should be actively involved. The earliest possible transition back into the community has to be part of the plan.

6. The principles of effective treatment

These principles are related to risk, needs and responsivity, but also the issues raised by the so-called "good-lives-model" (for details see the presentations of *Stephen Feelgood* and *Ineke Pruin* in *chapters 7.2.2* and *7.3.1*).

The sentence plan based treatment interventions should include:

- Psychological interventions,
- vocational training/ employment,
- prosocial contact with the outside world, and
- life skills training.

The interventions have to be evidence based and the programmes must be structured and standardized.

7. Prison environment has to be supportive for change and hope

This aspect should be a connection to the important field of measures concerning the atmosphere and the climate of a prison which has a big influence on the success of the treatment. This confirms that the principle of responsivity is as important as the risk and need principles.

8. Questions to be discussed:

- Do you generally agree with point 1-7?
- Have you additional aspects which you consider to be necessary?
- Can this be a part of a good model for Europe?

7.2.1 Everybody matters – Hungarian experiences in sentence planning and treatment of high-risk offenders

Attila Juhász

1. Background: Recommendations of the Council of Europe

The topic of sentence planning is reflected in several recommendations of the Council of Europe, which are forming a kind of European consensus and standard on this matter.

Of particular importance are:

- Recommendation (2006) 2 on the European Prison Rules,
- Recommendation CM/Rec (2014) 3 concerning dangerous offenders,
- Recommendation No. R (82) 17 concerning custody and treatment of dangerous prisoners.

Key elements in the recommendations are:

- Risk assessment (involvement of the offender).
- Risk management (rehabilitative and restrictive measures, protection of others, support of the individual, contingency measures, responsivity).
- Conditions of imprisonment (European Prison Rules, minimum necessary security measures).
- Treatment (risk assessment as soon as possible, medical, psychological and/or social care, medical care according to Rec (98) 7).
- Purpose (sustain health and self-respect, develop the sense of responsibility and encourage those attitudes that will help them to lead law-abiding and self-supporting lives).

Other *key factors* are related to staff members:

- Regular government inspections and independent monitoring,
- Careful selection of staff members,
- Training (in multi-agency co-operation).

2. The paradox of high-risk offenders

The paradox of high-risk offenders lies in the fact that, one the one hand, successful programmes and incentives to motivate inmates to participate, like conditional release schemes, are available, but that, on the other hand, those inmates who are categorized as "dangerous" or "high-risk" are often excluded from many programmes and release schemes – although they are the ones who really need these specialized programmes, they are the ones who need motivation and support.

Put it simply we are wasting money and other resources on those, whose motivation is strong enough, while we do not do anything with the ones who are the most under-motivated and whose risk for recidivism is the highest!

So something has to be done, but how to get the general public (and sometimes even staff members) to understand the importance and necessity of the reintegration of "dangerous"/high-risk offenders, not just locking them away for a long period?

How to link prison with society and get the necessary support? What can be done during the sentence? Who should we be doing it?

3. What have we achieved on a national level?

In Hungary a new legislation has been introduced that provides us with more flexibility during the planning and treatment phase (sub-categories within the low-, medium-, and high security prisons) with continuous feedback.

We also introduced a Central Admission and Observation Institute and the obligation to develop a reintegration plan for each prisoner. Special regimes for high-risk offenders with higher staff/inmate ratio were provided and the inclusion of the probation services into the prison system.

But on the other hand we should be focusing much more on the social inclusion, the social support of the inmates and the social support of our work.

4. What can be done on a local level?

4.1 Get the public to understand

Open the gates. As a medium size prison in Hungary we have hundreds of visitors in the prison every year (in some years over 500 people). We get people from the police, prosecution, courts, schools, people working in the different levels of the justice system, civic organisations, family members, others …

An important result of this opening strategy is a greater understanding for our aims, more willingness for participation.

4.2 Get the inmates/programmes outside the prisons

Initiatives such as the "Prison for the City" is good for the public, as they get cleaner public areas and better maintained public parks and playgrounds. It is also good for the prison, as it can strenghen its public role and prove to the public that prison is an integrated part of the local community. Finally, it is also good for the inmates, as they can "make something good", have direct positive feedback and do a socially important task.

In addition, it is also very important for the staff members, because they can build social respect, enjoy professional pride, and get away from their daily routine (and include high-risk offenders in the group, whenever it is possible).

The result of doing community work or – better to say, work in and for the community – is improving the self-respect of the prisoners, helps them to develop positive attitudes towards work and a feeling of restoration and of building-up of mutual trust. The underlying philosophy is the idea of restorative prisons (see *Stern* 2004; *Aertsen* 2005).

4.3 Get the staff members involved

Individual mentoring programmes should be established. The result is a better understanding and a stronger commitment of staff members.

4.4 Show the public the humane aspects of inmates/imprisonment

This can be achieved for example by story telling for disabled children, community programmes, raising money for children in need, working in pensioner's homes, inmates volunteering for the Hospice Department of the local hospital. The result is improving the feeling of self-importance.

4.5 Get the public involved

For the better re-integration into society of the offender, but also for a better acceptance of prisons and their work for the community it is of major importance to get the families involved. Offenders can write “storybooks” for their parents, family decision making conferences can be established etc. In general the public should get involved as a strategy of the prison rehabilitative work.

The result is: Rebuilding family contacts, decrease in the number of recidivists among the participants, and a multi-agency approach involving outside organisations, volunteers etc. can be developed.

5. Outlook

Who else could be approached? Local municipalities, employers, NGO’s, police, probation workers, families, schools, … because everybody matters!

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7.2.2 The Good Life: The Effective Treatment of High-Risk Offenders

Steven Feelgood

1. Introduction

The "Good Life" is something that we all aim to achieve. Incarcerated offenders also seek the "Good Life" or more specifically their own personal version of the "Good Life". The effective treatment of high-risk offenders appears at first to have very little to do with the notion of a good life. Moreover, many treatment providers and prison authorities prefer issues such as security and risk control measures, the assessment of risk level and the treatment of risk factors. Developing a good life with and for serious offenders is often rejected non-relevant or even as undesirable. This paper proposes that the popular and useful deficit-oriented Risk-Need-Responsivity model (RNR) of *Andrews/Bonta* (2010) can and should be augmented with a resource-oriented model such as "The Good Lives Model" (GLM) of *Ward* (2002). The Social Therapy Unit at Brandenburg on Havel Prison in Germany utilizes a combination of the RNR and GLM to create a positive resource-oriented treatment for high-risk sexual and violent offenders.

2. The Risk-Need-Responsivity Model

The treatment of offenders is influenced not only by empirical evidence regarding the effectivity of particular intervention programs. It is often also a matter of political or public opinion as to whether the treatment of offending behaviour is seen as desirable or not. An influential study and publication by the American sociologist *Robert Martinson* (1974) led to massive reductions in the funding of offender treatment programs and the establishment of the doctrine that "Nothing Works". According to his interpretation of the available data, very little, if any effect could be deduced from offender treatment at that time. His conclusion though, is a prime example of how personal attitudes can influence

the interpretation of objective data, which could support or reject a political or societal view on a particular subject (*Cullen*/G*endreau* 1989).
Only some sixteen years later new publications and reviews of the empirical data, as well as a review of *Martinson*'s claims (*Andrews*/*Bonta*/*Hoge* 1990; *Cullen*/*Gendreau* 1989; *Gendreau*/*Ross* 1987), made it possible to slowly correct his misinterpretation of the treatment findings from 1974. However, the damage was already done and the move from the doctrine that "Nothings Works" to an evidence based model of "What Works" has proved to be arduous.

Martinson himself, a liberal not a conservative, attempted to correct his mistake in 1979, but by then his "Nothing Works" doctrine had been accepted and enthusiastically promulgated, so that his claims of treatment effectiveness were not heard (*Sarre* 1999). The research team, to which *Martinson* belonged to, reported their findings somewhat at odds to *Martinson*'s claims (*Lipton*/*Martinson*/*Wilks* 1975). He had, unknown to the other researchers published his own paper. *Martinson* however, had misrepresented the results, which had in fact shown some successes. A major finding was that many programs were massively underfunded and because of this reason had little chance of being successful (*Lipton*/*Martinson*/*Wilks* 1975), a situation which was also ignored by many justice authorities and politicians. Further structural and conceptual problems with the review by Lipton et al. raise the question as whether the results should have been interpreted as being broadly negative (*Andrews et al*. 1990).

With new review studies that utilized statistical methods, not available to *Lipton*/*Martinson*/*Wilks* (1975), there emerged from "Nothing Works", a clear pattern that led to the new approach of "What Works". It became clear that some programs were more successful than other programs (see also *Dünkel*/*Drenkhahn* 2001: "Something Works").

Andrews et al. (1990) presented data from a range of studies, which established a new direction for research and practice in interventions directed at reducing criminal relapse. Their review clearly demonstrated that some of these interventions were successful. Furthermore, certain interventions, for instance those aimed at punitive measures were either ineffective or slightly damaging, that is they increased criminal relapse.

Andrews et al. (1990) provided evidence that adherence to three principles leads to an increase in the effectiveness of interventions directed at reducing criminal relapse. These are the Risk, (Criminal) Needs and Responsivity principles. More recent studies have also supported the validity of applying these principles (*Hanson*/*Bourgon*/*Helmus*/*Hodgson* 2009). This has important implications for the effective treatment of high-risk offenders.

The Risk principle dictates that different levels of risk require different treatment intensities, so that high-risk offenders require a more intense and complex treatment approach in order to reduce their recidivism. Providing lower levels of treatment cannot be expected to lead to the necessary behaviour

changes. Conversely, lower risk offenders will benefit from lower treatment intensity, which can free up limited resources for the more high-risk offenders.

The Need principle prescribes a clear focus on intervening on those internal and external characteristics that have a demonstrated relationship with reoffending (e. g. drug abuse and criminal associates). Other factors should be largely ignored, except when they add something to treatment effectivity, for instance by improving the therapeutic relationship. These needs, also known as dynamic risk factors or criminogenic needs have good empirical support and include criminal thinking patterns, impulsivity or problematic self-regulation, drug and alcohol abuse, criminal associates, poor problem solving, empathy deficits and various relationship problems (see *Andrews/Bonta* 2010).

The Responsivity principle advocates utilizing intervention methods that the offender's best respond to in terms of demonstrating learning and behaviour change. These methods include generally, a cognitive behavioural therapy (CBT) approach and specifically, the use of social learning strategies like modelling role-plays, traditional CBT techniques like positive reinforcement and cognitive restructuring. A focus on improving motivation to change is also considered important. Adjustments should also be made according to intellectual and cultural differences.

Clearly, if we want effective treatment for high-risk offenders, we have to provide a suitably high level of treatment intensity, focus on their criminal treatment needs and provide a treatment approach which best allows them to change their behavior. As the criminogenic needs, also for high-risk offenders, are well known and have a good empirical basis, the question remains, as to what treatment approach would best serve the needs of high-risk offenders. This is of course an issue related to the responsivity principle.

3. The Good Lives Model

In recent years a relatively new model for the treatment of criminal behaviour has emerged, which suggests that the Risk-Need-Responsivity Model could be further improved. The Good Lives Model is an approach that derives its conceptual basis from the area of psychology known as Positive Psychology, an approach, which, in relation to the treatment of psychological disorders, is not only concerned with the alleviation of suffering, but also improving the quality of life (see *Linley/Joseph* 2004). Psychological treatments based on a positive psychology approach have shown some benefits over traditional Cognitive Behavioural Therapy for clinical disorders (*Pietrowsky/Mikutta* 2012; *Seligman/Rashid/Parks* 2006; *Sin/Lyubomirsky* 2009).

The Good Lives Model proposes that offending behaviour is the result of maladaptive strategies, including those that are part of criminal behavior, which are utilized to achieve important life goals (*Ward* 2002; *Ward/Stewart* 2003).

Accordingly, they see the focus of treatment as assisting the offenders in achieving their life goals, without damaging others or themselves. Naturally, many of these damaging behaviours are what the Risk-Need-Responsivity Model would view as criminogenic needs.

It is perhaps then reasonable to question, why we need a completely new model, certainly *Andrews* and colleagues have raised this question and doubted the value of the Good Lives Model (*Andrews/Bonta/Wormith* 2011). *Ward* and his team have countered by accepting that the Risk-Need-Responsivity Model need not be replaced, but only augmented by the Good Lives Model. They also emphasize, despite the claims of *Andrews et al*., that the Risk-Need-Responsivity Model has not lead to a strong enough focus on the personal needs of the offenders, and thus overvalue deficits and offending behaviour. This they claim leads often to treatment resistance and premature ending of treatment. That many offenders avoid treatment or break off treatment prematurely is well known and has led to new treatment programs to improve treatment compliance (*Marshall/Fernandez/Malcolm/Moulden* 2008; *Mann/Webster/Schofield/Marshall* 2004), which are less deficit oriented and place increased focus on self-management and achieving goals. Some recent studies have indicated that the Good Lives Model approach has certain benefits over a traditional Risk-Need-Responsivity approach (*Barnett/Manderville-Norden/Rakestrow* 2014; *Ward/Collie/Bourke* 2009).

4. The Social Therapy Unit

The STU has developed a multifaceted treatment program that treats the risk factors of high-risk offenders, but with an increased focus on addressing their personal life goals. In this sense we adhere closely to the Risk-Need-Responsivity Model, but pay special attention to the Responsivity Principle, as many high-risk offenders display either a low level of motivation to change or because of their personalities, hinder themselves in making progress. The STU also utilizes a positive psychology approach that adopts some methods not only from the Good Lives Model, but also other approaches from clinical psychology that focus of the life goals of clients, such as Acceptance and Commitment Therapy [ACT] (*Hayes* and *Strosahl*, 2004). As such the unit does strive with the clients to achieve a good life for them, but is not strictly a Good Lives Model Unit.

The focus on achieving personally relevant life goals is clearly going to be more motivating for anyone, including offenders than dealing with highly distressing personal failures. However, when the achievement of these life goals requires that certain barriers be overcome (risk factors), then the reduction of reoffending does not lose its important role as a treatment goal and expectation of the community that offenders correct their behaviour.

4.1 Positive Psychology Strategies

In order to increase the treatment responsivity the STU utilizes general positive psychology strategies. Due to their personal histories with high levels of antisocial, anti-authoritarian and personality disorders, high-risk offenders often display a number of characteristics, which represent barriers to an effective treatment, which otherwise could be successful. These include fear, embarrassment and shame, poor emotional self-regulation, distrust/hostility, lack of hope and poor self-esteem.

These barriers can be effectively broken down through the use of positive psychology strategies. This is the key to effective treatment with high-risk offenders, as the skills to be learned are themselves already well known. Of the above listed barriers poor self-esteem is also known in the general clinical and sexual offender's specific literature as a problem for effective treatment (*Marshall*/*Marshall*/*Serran*/*O'Brien* 2009). In the STU, apart from specific strategies aimed at improving self-esteem in some clients, the avoidance of labelling terms such as sexual offender and the reference only to their behaviour, that is sexual offending improves at a very early stage the therapeutic relationship with the client as it allows him to see himself as a man with various serious problems, however also with some good qualities. Similarly, the focus during assessment and treatment on the achievement of life goals and understanding why he has achieved some and not others provides a more balanced view of his life and his criminal behaviour. This leads to enough emotional relief, so that he can also learn to analyse and change his behaviour directly related to the offence.

The general treatment approach in the STU is to develop a "good life" with and for the clients. This focus on their lives and not just their crimes removes a great deal of tension from the therapeutic process and lets the client know, that he is seen as a person, not as a criminal. In this sense, we ask the client what he wants from life, who he wants to be and work with him on this. We then offer him advice and a treatment structure. A laissez faire treatment is avoided in favour of personal responsibility as well as directed and clear action towards change. This approach requires that the clients fulfil their responsibilities to themselves and others and that their "Good Life" is of course one without crimes.

Another example is the approach to the fear, embarrassment and shame, which many offenders display, in particular when they have committed extremely brutal crimes against children. These feelings represent strong barriers against disclosing personal information and thereby participating in treatment. Here again the focus lies on on life goals and not directly on his behaviour during the offence. The Good Lives Model approach of understanding crimes in terms of failed attempts to achieve personally important life goals, which

themselves function to satisfy fundamental human needs, allows a more humane view of the offender. This view of the offender is not only important for the client himself, but also for the therapist who has to work with clients who have committed extremely disturbing crimes. The clients become quickly aware that they have entered into treatment, which focusses on their lives, their view of themselves and not just their crimes. In this sense his life goals and desires are normalized. Only his behaviour is considered problematic.

The STU utilizes group and individual treatment approaches. However the focus is on treatment in groups, because this presents a better opportunity to learn social skills and practice and develop intense rewarding relationships with a range of people. These groups, as well as the individual sessions are based on a non-confrontational approach. Instead the techniques from Motivational Interviewing (*Rollnick*/*Miller* 1995) are utilized, so that we "roll with resistance" and attempt to create ambivalence so that the clients decide themselves, whether they will work on their "Good Life". This means that insufficient motivation is seen as normal, particular when dealing with shameful personal behaviour and as such has to be dealt with as a treatment target.

Other strategies include praise and encouragement of even small positive changes in behaviour and the development of hope and optimism through the use of client-mentors who have overcome difficult issues and finally by demonstrations of therapist optimism regarding individual change. Higher hope is itself related to less criminal relapse (*Martin* and *Stermac*, 2010) and is continually reinforced through reflection on past successes and the abilities to learn new behaviours.

The consolidation of a strong therapeutic alliance and the focus on common life goals is also encouraged through the use of "we statements", such was "we all face difficulties, … are sometimes impulsive, … have made this mistake when we were stressed, … have the goal to have a nurturing relationship". This is a standard approach in ACT (*Eifert* 2011) which reinforces that offenders have life goals, values and problems that are shared by non-offenders, including the therapists. This reduces resistance to treatment by normalizing maladaptive attempts to solve problems and refocussing the therapy from the offence to behaviours that have led to the offence.

The main therapeutic groups, known as Self-Management Groups, are offered in an open format, which means the therapy group with eight clients does not start and end with the same clients at the same time. Although the treatment modules and therapeutic tasks and goals are clearly defined, each client moves at his own pace through the group. This means some clients leave the group before others are finished and new members come into the group. This has the advantage of being able to use older group members as mentors. Another advantage is that topics are repeated up to three times which intensifies learning opportunities.

An important aspect of the main treatment groups is the inclusion of everyday events into the therapy. Special time is given to current problems and successes. This enables the group member to experience himself as more than an offender as the current events that are important to him are also given attention. It also provides the opportunity to utilize knowledge and skills with real-life problems. This intensifies the treatment over and above the tasks and homework tasks contained in the program.

4.2 Treatment Programs of the STU

The STU is a therapeutic community within a larger prison. This allows the unit to control negative influences and maximize positive influences. The benefits of therapeutic communities are well known (*Taylor*, 2000; *Ware*, *Frost* and *Hoy*, 2009; *Wexler*, 1997). In the case of high-risk offenders there are obvious advantages in conducting treatment within a therapeutic community, however the Risk-Need-Responsivity and Good Lives Models are also possible in a normal prison. In fact a normal prison should always be run along therapeutic guidelines or at least the Risk-Need-Responsivity-Model (*Smith* and *Schweitzer*, 2012).

4.3 The Motivation Program

In the Motivation Area, a preparatory program is offered, which is similar to the program of *Rockwood Psychological Services* in *Canada* (*Marshall et al*. 2008). This program is designed for treatment resistant offenders. The program focusses on developing awareness of life goals and their relation to offending behaviour. The clients are introduced to the main topics of the Self-Management Program in order to reduce their common fears that treatment is only concerned with offending behaviour or that groups are run like interrogations. The group has a high success rate with at least 80% of these initially highly treatment resistant inmates deciding to continue treatment. The program has also lead to an increase of violent offenders from 10 to 50%. Previously, violent offenders had proved extremely resistant to entering the STU.

4.4 The Self-Management Program

The main treatment program is the Self-Management Program for clients who have committed sexual or violent offences. The two offender groups are treated in separate groups but live in the same living groups in the STU. The SMP is built around RNR and GLM principles and deals with the main criminogenic needs of the offenders. Where needed auxiliary groups for drug and alcohol problems, stress management and social skills are also offered.

The SMP includes the following modules:

1. Introduction and Self-Esteem
2. Life Patterns and Life Goals
3. Background of the Offence
4. Coping Strategies and Emotional Self-Regulation
5. Attitudes and Beliefs
6. Relationships
7. Empathy Skills
8. Sexual Issues (only for SMP-Sexual)
9. Review and Risk factors
10. The Good Life and Self-Management

The initial stage of treatment includes developing an awareness of how offending behaviour is related to the achievement of life goals and how this behaviour prevented the achievement of the very things that were seen to be important in life. The life goals are based on those proposed by the Good Lives Model, which interestingly are also found in the ACT-Model. A guiding principle here is that the clients work out and decide for themselves which goals have priority in their lives, this is not dictated by the therapy. This provides extremely dissocial and anti-authoritarian clients with the opportunity to cooperate in developing a theory of their offending, their treatment plan and a "Good Lives Plan".

An extremely important aspect of the treatment program is the refocus of the treatment away from the offence to the behaviours, which lead to the offence as well as the purpose of this behaviour – fulfilling basic needs and life goals. In practice this means that the offenders are no longer required to discuss in detail their offence, they must simply report briefly what they did. Even this can deviate from the case file. However, in such cases they are asked to explain discrepancies so that a reasonable offence theory can be developed. In cases of extreme denial the focus remains on what led to the offence or to the accusation of an offence.

This approach has the important function of focusing on the behaviours that lead to offending and which were also common patterns of behaviour related to goal-achievement. The usual treatment resistance is greatly reduced through this approach, which improves the therapeutic alliance and leads to no significant loss of important information for the treatment process, as most if not all risk factors are to be found in the process leading to the offence. Although the requirement to disclose the offence is removed, many clients go on to discuss the offence, as they no longer have the feeling of being interrogated or disrespected. For high-risk offenders, who in some cases have committed brutal,

sadistic crimes against children, this is a sign that they feel safe and respected, which is an important requirement for effective treatment.

Another major change in the treatment approach is to be found in the module Empathy Skills. Although victim specific issues are still covered, the module has been broadened to include empathy deficits resulting from a number of factors, which may also appear in other non-criminal contexts in life. Here the model proposed by *Barnett* and *Mann* (2013) is particularly useful, as it suggested the temporary loss of empathy, which appears to be common in offenders and others. It also emphasizes the role of cognitive factors which negatively impact on empathy, while leaving general empathy intact (see *Marshall/Hudson/Jones/Fernandez* 1995). Again, the normalization of a treatment target by including non-criminal aspects increases the attractiveness of dealing with this issue.

In the final stage of treatment the clients develop their Self-Management Plans which include their life goals, sub-goals, barriers to achieving these and finally, their risk factors. The plans also include the strategies for achieving their goals and dealing with their risk factors. Here the focus is clearly on achieving life goals, which is far more motivating for offenders than simply avoiding risk factors (*Mann et al*. 2004). The aim here is to place self-management at the forefront as the key process for regulating emotions and behaviour. A process, which although aimed at achieving goals, is also focused on managing risk factors as they interfere with the long-term achievement of these goals.

One of the ongoing open-ended high-risk groups in the STU has now been in progress for over 300 sessions. To increase the learn-effect necessary for high-risk offenders, the two hour group session is offered twice a week. New members are welcomed in which each member introduces himself. However, he does not mention his offence at this time, he states which goals he has achieved in the group and which goals he still wants to achieve. The new member introduces himself with name, personal interests, life goals and his personal treatment goals. He is told not to mention his offence.

Currently (September 2014) the group consists of three men with prison sentences over 8 years in length plus additional supervision of conduct orders due to extremely violent serial rape and repeated child abuse offences. Their only hope for release is a successful therapy. The other five men have life sentences for sexual murders. Most of them have been in prison for between 25 and 30 years and until their placement in the STU had received very little treatment. Attempts at early release had been repeatedly rejected. Individual therapy had proved in their cases to be insufficient.

Despite their serious developmental deficits the group is highly functional. Their level of openness is high, expressions of emotional support and constructive challenging of damaging behaviours occurs often. Everyday problems and personal tragedies are brought freely into the group and respectfully managed by group members. Sexual murder and other highly

shamed-based topics such as violent sexual fantasies are discussed openly. Denial dissipates normally quite quickly and high levels of responsibility develop. Several men have decided to accept hormone level changing medication in order to assist their self-management and in general they are prepared to commit and be active in a long and strenuous therapy.

Within very few sessions clients feel part of the group and provide personal disclosures. Resistance to treatment commonly reduces in a short time period. The average stay in the group is 200 sessions. There is a very low drop-out rate – 2 clients in 300 sessions.

4.5 FutureME: Creating a new Identity

The final stage of the core therapy is another group programme that focuses increasingly on goal attainment and self-management.

FutureME was developed in order to communicate to the clients that setting goals and achieving them are of absolute importance for a fulfilled and offence-free life. Great emphasis is placed on setting and aiming for approach and not avoidance goals. The benefits of approaching goals, including higher motivation, have been suggested in a number of research studies (*Henggeler/Schoenwald/Borduin/Rowland/Cunningham* 1998; *Mann et al.* 2004). FutureME is based on a number of other treatment programs developed in other units (e. g. Sex Offender Treatment Program (SOTP), HM Prison Service in England and the CUBIT Program for sexual offenders, Department of Corrective Services, New South Wales, Australia) and was further developed by the STU to include central aspects of the GLM and ACT Models.

This therapy program builds on the previous topics and personal changes achieved in the Self-Management and other treatment programs and enables the clients to develop the identity of “Old Me”, who due to his particular qualities, committed the serious offences. Based on this “Old Me” the clients develop their “Future Me”, who is goal-oriented and works actively on his goals, but in a way that is incompatible with a criminal lifestyle. A major part of this program is the setting of and working on sub-goals in order to achieve long-term life goals.

5. Summary

The treatment of high-risk offenders presents a serious challenge to clinicians. This challenge is not restricted to identifying and treating criminogenic risk factors. Equally important is the ability to motivate these offenders to actively and authentically grasp the opportunity to change their lives. In the Social Therapy Unit of Brandenburg we believe we are reaching more of these men through the methods which are recognized as part of the positive psychology

approach. The desire to achieve a good life is something that is important to all people, it is something that guides our lives. This natural desire can be used to engage highly disturbed high-risk offenders, so that they are willing to endure the unquestionably strenuous, sometimes distressful process of changing their behaviour.

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7.2.3 Focused Sentence Management – a multidisciplinary and joint task

Annette Keller

1. Preliminary remarks

First, I would like to thank the organizers of the JCN project for the invitation and the opportunity to share some insight into the Swiss criminal sanction system with you. In my presentation I will focus on the efforts for a risk-based prison management with high-risk offenders from the Hindelbank institution.

Even though Switzerland is not part of the EU, I can assure you that we face the same challenges as you do, especially with high-risk offenders and their reintegration.

The contents of my lecture:

- I will briefly describe the most important recent system developed in Switzerland for risk-oriented prisons. It bears the name "ROS" (risk-oriented prison).
- Then I will illustrate the entry process with the development of the individual sentence plan in the Hindelbank Institute.
- Subsequently, I will discuss the concept of a "working alliance" with the inmates.
- And at the end I will share some personal reflections with you - about the "Big Five" of the prison system, as I call them.

2. ROS – risk-oriented prison

One of the most important developments in prison and sentencing measures in recent years in Switzerland is the project "risk-oriented prison – ROS". The pilot project was launched jointly by the Canton of Zurich and three smaller cantons. With ROS a structured risk-based process for the prison authorities of the

cantons was developed. (In Switzerland the prison service is the responsibility of the cantons – 26 cantons in total).

The prison authorities are responsible for the long-term management of the prison and for admissions to the prison facility (JVA). These authorities manage the individual prison sentence and decide on the relaxing of prison conditions and releases. Therefore, they are the most important partner for the JVA in which the sentence is carried out.

With ROS, the procedures of the prison authorities were revised and reorganised for high-risk offenders. It is envisaged that the system will be adopted by other cantons.

ROS is based on the following principles:

- The three widely accepted principles: risk, need, and responsivity.
- An early identification of high-risk offenders.
- An intensive assessment of individual risk factors and recommendations for appropriate interventions and treatment – and as early as possible.
- A monitoring of the process with regular evaluation and adjustment, together with all parties involved.
- Intensive cooperation and communication between the various bodies: the prison authority, the judicial system, probation service or other social organizations.

3. Individual prison management in the Hindelbank Institute

I would like to show you how we have restructured the first phase of the individual prison management for high-risk female offenders, the process of admission up to the preparing of the prison.

We – that is the Hindelbank Institute – are the only prison facility for women in the German-speaking part of Switzerland. The prison has a capacity for 107 inmates (this number of places is sufficient, as only 5% of prisoners are women).

You may ask: Are there any high-risk offenders in such a prison facility for women? The answer is yes, but the number of female high-risk offenders among female prisoners is much smaller than among male prisoners.

In the Hindelbank Institute, 30 of the 100 female prisoners have committed a homicide. Currently, 22 of the 100 women fall under the label "subject to permission and reporting", i.e. they are classified as potentially high-risk.

Let me give you some more information about the Hindelbank Institution: There are 107 places for prisoners, and 110 enforcement officers work here. The women imprisoned here live in seven different residential groups, ranging from a residential group for high security and reintegration, to groups for closed and

open prison and groups with off-institute accommodation and external work. There are 9 different working areas for female prisoners: there is education and training, forensic psychotherapy and treatment, health care centres and various opportunities for meaningful leisure activities – with a special focus on sports and exercise.

A year ago we began to revise the individual prison process. We call this process "individual prison management – focused crime prevention". The process is organized as a "double" case management: There is a case manager or a person responsible for the case in the prison authority and a case manager at the prison. The person responsible for the case at the prison authority monitors the entire prison process from a distance, while the case manager at the prison on the one hand coordinates within the prison and on the other hand functions as the liaison to the prison authority.

The case managers inside the prison are usually social workers with further training in the forensic field. There must be cooperation not only between the case leaders of the prison authority and the prison, but also within the prison. There is a whole "case team" that accompanies and shapes the individual prison management of a specific detainee.

For high-risk female offenders there are, in addition to the case manager who leads the case, also others involved: a forensic psychotherapist, a social worker in the residential group and a mentor in the respective work area. These four employees form together the case team for a detained woman. Even more people are involved in the background: for example, the prison director, the health service and a teacher.

Before a woman commences her sentence, the prison director receives a request for admission from the prison authority, together with a written dossier. This dossier is passed internally on to one of the case managers, who prepares a "structured file based entry analysis," a compilation of the most important information from the files. This "entry analysis" is then sent on to the members of the future case team. If the prison authority has already done a risk and needs assessment (according to ROS), this is part of the dossier. If not, it will be later integrated into the process.

The woman in question then commences her sentence in the prison. In the first days and weeks, the reference person of the residential group makes a detailed analysis of the situation in many conversations with the inmate. She tries to get an idea of the biography and the living conditions of the prisoner and in particular her subjective perspective of her situation.

For 2-3 months the reference persons observes the behaviour of the inmates in the residential groups and at work. He or she records his or her observations in a competency assessment. This competency assessment is similar to the "SAPROF" instrument, but was developed for the Hindelbank Institute. It covers, in particular, social and personal skills.

Not only the employee fills in such competency profiles – the inmate herself also assesses her competencies with it. Differences between self- and external assessment always give important information and are a good basis for the first discussions.

During the same time a comprehensive forensic risk assessment is carried out by the psychologist. In the Hindelbank Institute there are employees of the Forensic Psychiatric Service of the University of Bern (FPD), who perform the risk investigations and forensic services. The JVA and the FPD work very closely together.

The standard instrument for risk assessment is the HCR-20. However, inmates have often been analysed in advance with additional risk tests, e. g. the V-RAG or the PCL-R.

Unfortunately, these assessment instruments are only of limited significance for women: they were previously used only for the evaluation of male offenders, not female offenders.

All this information and observations on a new inmate are then exchanged and discussed in the case team after 3-4 months. The case team, together with the prison director, prepares a "case approach".

This case approach includes:

- the course of events,
- a crime hypothesis,
- the analysis of risk and protective factors,
- and, based on these, the main topics for the treatment and interventions.

On the basis of this case approach the person conducting the case then prepares the sentence plan. The prison authority is informed of the sentence plan.

We have yet to determine how we can coordinate the risk assessment of the prison authority carried out in the framework of the ROS and our process in the prison so that we exploit synergies and two risk assessments are not made.

In this way, we develop the sentence plan for high-risk offenders. We are still in the setting up and learning phase. The whole process is very time consuming and challenging, but the employees involved are motivated and appreciate the professional, prevention-oriented and coordinated approach on a common basis for focused and hopefully effective interventions.

However, one question still remains: What about the offender herself? The sentence plan is the plan of professionals. Does she want this sentence plan? Does she want to be observed, assessed, challenged – does she want to change?

4. Working Alliance and Motivation for Change

Without a "working alliance" with the woman involved all these effort are in vain. To create a working alliance with the aim of a relapse-free reintegration we need two types of willingness from the inmate: on the one hand, the willingness for contact and cooperation with the staff of the prison, and, on the other hand, the inmate must be willing to change, to change her behaviour – as far as is necessary for offense free reintegration.

This can involve changes not chosen voluntarily, but are ordered by the prison system. This is a huge challenge – for the offender and for the professionals – and at the same time it is the most important factor for a successful reintegration.

So I was delighted when the Lucerne University of Applied Sciences inquired last year for our participation in a pilot project on this topic. *Patrick Zobrist* and *Wolfgang Klug* published in 2013 a book on "Motivierte Klienten trotz Zwangskontext – Tools für die soziale Arbeit" ["Motivated Clients in Spite of an Unfree Context – Tools for Social Work"]. *Patrick Zobrist* wanted to test the manual with female offenders and evaluate in terms of a gender-specific perspective. For us, this request was an important supplement to our prison management. We are in the middle of the project, so I cannot say anything about the results.

Nonetheless, I want to mention two points about the project.

First we looked at the factors that may hinder the motivation of women in prison for personal change. For example, the inner values and beliefs that could have such an impact were examined. I am sure some of these dysfunctional beliefs are very familiar to you. "I can't do that..." "All because of others, they should change...", "It's all not so bad...", "Not now, after release ...". Incidentally, it seems to be that among female offenders a lack of conviction regarding their own abilities is one of the main obstacles to change.

How can we tackle resistance to change and a lack of motivation – so that they turn to willingness and commitment to change?

The first and decisive step is assessing the stage in the change process where a woman finds herself a given time. We work with *Prochaska* and *DiClemente*'s model "Change Cycle" which is also used in "Promoting *Motivation* Interviewing". It distinguishes between unintentionality – establishing purpose – preparation – action – maintenance.

The interventions are coordinated at each stage. They are different depending on the stage. The basic principle is: "clarification before change". It aim is to help the person first to clarify her ambivalence and solve it.

The social workers need different skills in order to strengthen the motivation for change: assessing the stage, interviewing techniques ("change talk") – and, above all, they need to fashion a professionally oriented and complementary relationship to the imprisoned woman.

I can assure you it is a very interesting, but also challenging project. We are still on the road. I hope that we can tell you more about it in a year. Anyway – I am convinced that the offender's motivation to change is a central factor in the whole process.

5. Basic considerations

Let me close with a few personal thoughts. We have talked often at this conference about professional risk and needs assessment, structured processes and evidence-based interventions and tools. These are all very important. And yet they reach their full potential only in a comprehensive "culture of cooperation". This includes at least five factors. That is why I call them the "Big Five" of prison management.

The first factor is *competence*. We need many different professional skills: legal, forensic, psychological, educational, medical, organizational and social. We need all of these different perspectives for working with high-risk offenders, and each of them must be developed competently. This challenge is often underestimated by society. In addition to expertise we need sufficient human resources, research, supervision and training.

The second factor is *coordination*. Prison planning and treatment are a joint interdisciplinary task. It is like a puzzle – all contributions are needed and are important, but every one is just a piece of a larger puzzle and must be coordinated with all other puzzle pieces to achieve the goal.

The third factor is *communication*. We need as much information as possible in order to assess the risk of a high-risk offender. And we need to share this information. We must not only share it, but also understand it. The latter is not a matter of course given the different professions involved each with its own specific terminology.

Number 4 is *creativity*. Each "case" involving a high-risk offender with its own unique situation, is different from the others. Therefore, each one requires unique professional answers, and those are always creative answers. Such unique creative solutions must not be stifled by strict structures and processes. Life tends not to be so structured as our prison – not even in Switzerland. Therefore, we must sometimes tread unusual paths together. This requires creative thinking and action – and, not infrequently, a lot of courage.

And last but not least, to complete the "Big Five", we need the offender, his or her willingness to cooperate and their willingness to change. They are and remain the main person!

Only when professional risk assessment is based on structured processes and targeted interventions these "Big Five" can contribute to a successful reintegration of high-risk offenders through prison planning and treatment.

7.3 Project results on transition management and release concerning high-risk offenders – Introduction to Forum 3

Tiina Vogt-Airaksinen

As the overall objective, the working group on "Transition Management and Release" identified the support for the prisoner to resettle safely in the community as a positive participant/citizen and accompanying him/her in the transition from the prison to the community.

The findings from the JCN project define the following key principles:

1. Balance between security and rehabilitation
2. Preparation of release should be structured and through out sentence
3. Multi agency co-operation and joint working
4. Use of community based services/in-reach services
5. Graduated release
6. Early release with supervision should be a standard
7. Information exchange and data sharing should be a consistent practice

These key principles will be discussed in the debates of Forum 3. The following remarks may clarify the meaning and importance of these principles:

1. Balance between security and rehabilitation

- The importance of both factors should be understood, admitted and taken into practice.
- Security and rehabilitation priorities have to be acknowledged, because they need each other.
- Security that is well functioning and consistent is a condition for fruitful rehabilitation and vice versa:

- Rehabilitation, appropriately implemented, boosts and fortifies security.
- The dialogue between security and rehabilitation staff is essential.
- Training for staff and personnel working with high-risk offenders should include pro-social modelling, motivational skills, change management, risk identification etc.

2. Preparation of release should be structured and throughout the sentence

- Sentence management should support resettlement preparation at least several years before release for every high-risk offender.
- "Step-down" stages in sentence management are essential.
- The inmate should be an active participant.
- In-reach services should be used at the earliest possible stage.
- Regular and consistent contact with the supervisor should be part of the preparation for release (probation officer).
- Normalisation: life in custody should seek to resemble living in the community, especially in the period close to release.
- Concrete release and aftercare plans shouldbe developed well in advance of release.
- Stable, secure accommodation should be a priority.

3. Multi agency co-operation and joint working

- There should be joint working between criminal justice agencies as well as with external and municipal service providers both in custody and in the community.
- Clear boundaries and responsibilities must be established, each member will bring their special expertise (not do each other's work).
- This approach should be applied throughout the sentence, as community is where the offender will be – sooner or later.
- Cost of this may be high, but it can be effective in reducing harm and damage.

4. Use of community based/in-reach services

Focus on resettlement of offender in the community implies:

- The use of in-reach engagement and participation to bind the offender to his/her community and promote his/her resettlement.
- "Normalisation" and taking of responsibility by the offender in his/her rehabilitation and actions.

- As far as possible and practicable, the prisoner should have an active role in sentence and supervision planning. Doing with rather than to.
- Sentence planning should include in-reach services and clarify roles and responsibilities of all active parties.

5. Graduated release

It is important to have an opportunity to try out self-management skills and other pro-social knowledge learned in custody, both in prison and community.

- Open prisons, half-way houses, supported independent living should be provided on a regular base also for high-risk-offenders.
- Prison and other temporary leaves are essential.
- Testing and trying out coping in civil life is essential: release, for example, 6 months in advance with supervision conditions eventually including electronic monitoring ("good practice": Finland).
- The criteria for granting such releases should be as minimally restrictive as feasible and graduate towards the end of serving the sentence: reduced restrictions and increased rights and responsibilities.

6. Early release with supervision should be a standard

- All high-risk prisoners should be subject to mandatory post-custody supervision with appropriate conditions and support for a minimum period on discharge from custody.
- All sentences and periods of post release supervision should be time-limited.
- Conditions or restrictions attached to post-release supervision should be constructive, purposeful and subject to review and revision.

7. Information exchange and data sharing should be a consistent practice

Between Criminal Justice Agencies:

- Information exchange between Criminal Justice Agencies and NGOs as well as municipal and community based service providers is an essential condition for effective transition management.
- Graduated or restricted access to information is to be provided where necessary (issues of data protection).
- Protocols for information sharing and confidentiality are essential for effective "joined-up" working in custody and the community.

- The offender should, as far as possible, be consulted/informed on relevant issues.
- An informed consent by the offender for programmes and interventions is needed.
- Tri-partite meetings for clarity and transparency in communication: prison, probation/service providers and the prisoner.

Other rules and regulations:

There are a substantial number of relevant authorities, documents and recommendations as they have been described by *Alina Barbu* in *chapter 7.1.1*).

7.3.1 "What works" and what else do we know? Criminological research findings on transition management[1]

Ineke Pruin

1. Introduction

Structures and procedures for the release of offenders from prison with a view to their social reintegration have been the subjects of much international debate for several years. The debate was fuelled by developments in the *United States* where, following a policy of mass incarceration (*Garland* 2001) the highest incarceration rate in the world is recorded.[2] However, as the vast majority is only serving determinate sentences, a large number of offenders must be released and reintegrated, and thus there is a particular interest in concepts and strategies to successfully meet this challenge.[3] Many other countries, including *Canada*, *Australia* and – as far as can be seen – all European countries have entered into these discussions. Even though in Europe the prison population rates are generally much lower than in the *USA*,[4] the release structures have been subject to critical examination, in particular in view of the high recidivism rate after release from

1 This paper is to a major extent a result of a research project funded by the *German Research Foundation* (Project PR 1325/1-1). A more extensive interim-report on this project can be found at *Pruin* 2015.

2 The *USA* regularly lead the country lists of prison rates. For a current overview see the data regularly published by the *King's College London, Centre for Prison Studies* and *EUROSTAT*; see also *Dünkel/Geng* 2013; 2015.

3 *Bumiller* 2013, p. 15.

4 *Dünkel/Lappi-Seppäla/Morgenstern/van Zyl Smit* 2010; *Dünkel/Geng* 2013; 2015.

prison.[5] The time immediately after release from prison is especially critical,[6] as most of the recorded reoffending occurs in the first year after release. The results show that reintegration initiatives for ex-prisoners often are not satisfying. It is much more a "momentum of relapse"[7] that results in a return to crime due to a lack of reintegration, for example, when stigmatisation as an "ex-offender" leads to problems in finding a job and subsequently to an unstructured daily life and a lack of financial security.[8] These results are also of great concern concerning international human rights standards for the release from prison.[9]

Parallel to the criminal policy debate, criminological research has increased its focus on release and reintegration strategies. Concerning the aim of criminological research on the release and reintegration of offenders (in *Germany* such concepts for specific preparation for release and immediate care after release

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5 According to the latest German statistics on recidivism the relapse rate after serving a youth prison sentence in 2007 was 68% within a risk period of 3 years. Those who fully served the sentence had a recidivism rate of 69%, those with parole of 68%. The reincarceration rate, however, was considerably lower: 35% in total for all released young prisoners, 37% for those fully serving the youth prison sentence and 34% for those released on parole, see *Jehle et al*. 2013, p. 58, 287 (own calculations). Recidivism rates for adults (over 21) are lower: The recidivism rate after having served a prison sentence was 55%, the reincarceration rate "only" 23%. Those serving the full prison sentence showed a recidivism rate of 28%, those with parole only 14%, see *Jehle et al*. 2013, p. 59, 288 (own calculations). Similar data are available for *England*, see *Bateman/Hazel/Wright* 2013, p. 11. For recidivism studies from *Austria* see *Bundesministerium für Justiz* 2009. As to the high methodological requirements for meaningful recidivism studies see *Jehle* 2007. It is remarkable that the recidivism rates in Germany for those released from prisons as well as for offenders sentenced to suspended sentences (probation) have decreased since 1994 (the period of the first recidivism statistics, published in 2003) to 2004 (from 75% to 66% for young offenders and from 52% to 48% for offenders with an unconditional prison sentence), which might be a result of an improved transition management since the 1990s, see for the data *Jehle et al*. 2010, p. 28 f.

6 See Jehle 2007, p. 237.

7 *Kerner/Janssen* 1983 and *Hermann/Kerner* 1988.

8 See e.g. *Wirth* 2006 or *Matt/Hentschel* 2009, each with further references.

9 Resolution of the *Council of Europe* R (65) 1 on on suspended sentence, probation and other alternatives to imprisonment (which is very largely covered by Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation); Resolution R (70) 1 on the practical organisation of measures for the supervision and aftercare of conditionally sentenced or conditionally released offenders, European Prison Rules 33.1.-33.8, 103.2, 103.4, 107.1; Recommendation Rec (2003) 22 of the Committee of Ministers to member states on conditional release (parole), Recommendation Rec (2008) 11 (European Rules for Juvenile Offenders Subject to Sanctions or Measures), Basic principle Nr. 15 and rules 79.3, 100-103, on this and other European requirements see *Council of Europe* 2009, p. 192 f. and *van Zyl Smit/Spencer* 2010.

from prison are often referred as "transition management")[10] one has to distinguish between effective and ineffective strategies. In doing so, various research approaches can be discerned worldwide interpreting the concept of "effectiveness" of release and reintegration strategies differently.

This article evaluates the status of these different criminological research approaches, particularly with regard to dealing with the release and reintegration of prisoners. A particular challenge in this project, which is sometimes difficult to demarcate, is which measures and structures are designed to specifically target the release and reintegration process of ex-prisoners, and which on the other hand relate to prison in general. Since imprisonment in all *European* countries is primarily directed towards reintegration, every measure provided by prison authorities can be understood as a measure of preparation for release and reintegration.[11] In order to narrow down the subject of this article, this paper focuses on the structures and concepts dealing with the typical problems of reintegration before and after release. These problems are primarily about unemployment, homelessness, lack of social relationships, debt and drug addiction and other psychosocial factors that may prevent reintegration after release.[12] While the literature on the effectiveness of offender treatment in generally can be described as comprehensive, studies on the effectiveness of programmes for "transition management" are far more limited, as the criminal policy discussion on this topic suggests. Nevertheless, the current state of research allows some validated statements that are to be more deeply looked into in the following.

2. The "what works"-approach – effective transition management, according to the results of meta-analyses

The debate about the effectiveness of reintegration measures started in 1974 with the notorious criminology researcher *Robert Martinson*. He assessed the evaluation results of 231 programs for offender treatment for their effectiveness. His influential article was called: "What Works – questions and answers about prison reform". His results were understood in the sense that offender treatment is generally not effective; although his results correctly found that there were too few validated results as to which treatments were effective.[13] Nevertheless, his

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10 See discussion on the term by *Matt* 2014, p. 11 ff.

11 The new German prison laws of the federal states also assume that preparation for release must begin on the first day of imprisonment, see e. g. the prison law of *Mecklenburg-Western-Pomerania*.

12 For further term definition, especially in English ("re-entry", "through care" and "resettlement"), see e.g. *Décarpes/Durnescu* 2014, p. 47.

13 *Mease* 2010, p. 4.

results led in the following years, especially in the *United States,* to a "tough on crime" philosophy that focused on punishment and deterrence rather than offender treatment.

Criminological research in the *United States* developed its own strategies for studying the effectiveness of treatment measures. Especially *Sherman* and his colleagues directed their focus towards an “evidence-based” criminal law practice with the help of what they called the *Maryland Scale of Scientific Methods* (*Sherman et al.* 1997). They carried out a meta-analysis on crime prevention programs and studied prevention programmes in prisons. The studies included were assessed on a scale of one to five. A study given a value of five had to have a design with a randomly selected control group and large numbers in the compared groups. Studies, which only had somewhat of a connection between a programme and a result at a point in time, received the value one. The aim of this classification was to find out how resilient the relationship between the prevention programme and the result is (*Petersilia* 2004, p. 6). A programme was defined as effective (“working”) when at least two level-three-evaluations indicated that it helped to avoid or reduce reoffending. In order to reach level three, the study had to have a design with a control or comparison group. A programme was defined as ineffective (“not working”) when at least two level-three-evaluations indicated that that it did not help to avoid or reduce reoffending. Programmes with any form of empirical positive results were defined as “promising”. Everything that could not be classified into these cate-gories was defined as “unknown”. The aim of this categorisation was to enable policy and practice focusing on evidence-based programmes, rather than rely on a “good feeling” when deciding on the programme to choose.[14]

Doris MacKenzie used the *Maryland Scale* for the categorisation of *US* treatment programmes in prisons in terms of their ability to reduce the risk of recidivism. She and her colleagues identified 184 evaluations to treatment programmes in prison that had been carried out from 1987 and 1998 and used a study design that could be classified according to *Sherman's* evaluation as at least level three. According to the results of their research they designated as “working” certain forms of cognitive behaviour therapy and vocational education programmes in prisons, programmes that trained the offender in particularly important labour market skills and that were at the same time productive for the prison (“multi-component correctional industry pro-grammes”), as well as external treatment programmes for sex offenders.

Two other results were particularly significant for the area of “transition management”: A programme could be designated as “working” that worked on

14 See *MacKenzie* 2014, p. 1472. She cites as an example of when the feelings of the population do not agree with the evaluation results, the *US* bootcamps: although these have not proven to be successful in achieving the objectives of recidivism reduction and deterrence, the population still believes in their benefits.

the principle[15] of therapeutic community in prison and was combined with follow-up treatment after release. In addition, programmes that helped offenders in the labour market "outside" are effective in the meaning of the definition.

Further programmes marked as "promising" in *MacKenzie's* studies were intramural sex offender therapy, general adult education programmes and special transition management programmes for high-risk offenders, which included amongst others, individual labour market preparation. *MacKenzie* furthermore stresses that an isolated intensive monitoring after release does not reduce the risk of reoffending.[16]

The research team of *Seiter* and *Kadela* (2003) used the same approach for the assessment of specific prisoner resettlement programmes. Only programmes that were in accordance with their definition of "prisoner re-entry" were included in their study, which specifically focused on the transition from prison to liberty. The programmes had to start in prison and combine the treatment with a follow-up after release. The researchers found 28 programmes that met their definition. Only 19 of these programmes had been evaluated using a control group design, so that they could be classified at level three or higher on the *Maryland Scale*. Ten of these evaluations related to drug treatment programmes. These figures illustrate what happens if the effectiveness of transition management programmes is measured with the strict criteria of the *Maryland Scale*: In the period examined by *Seiter* and *Kadela* there must have been hundreds of transition management programmes in the *United States*, which, however, could not be included in the analysis, because they could neither show any evaluation results or no evaluation results with control group design.[17] *Seiter* and *Kadela* identified the following transition management programmes as "working": 1) vocational training programmes in prisons and work-release programmes at the end of the sentence, and 2) community based transitional halfway houses, which prepare the former offender for life in liberty, and 3) some prison drug treatment programmes with intensive aftercare.

The small number of programmes that could be included in the analysis due to the strict criteria[18] suggests, however, that more evaluations are necessary to be able to determine the effectiveness of transition programmes.

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15 In *Germany* prisons run on the principle of therapeutic community are best compared with the social therapeutic institutions, see *Drenkhahn* 2007 for work on the principle of therapeutic community prisons in *England and Wales*, p. 74 ff.

16 See *Petersilia* 2004, p. 6. These results confirmed the results of *Sherman et al*. 1997 and were again confirmed later e.g., by *Aos/Miller/Drake* 2006.

17 *Petersilia* 2004, p. 6

18 I. e.: outcome evaluation and programmes, which either related only to the preparation of release or follow-up care.

According to the latest meta-analysis on the effectiveness of reintegration programmes by *Ndrecka* (2014), these programmes moderately reduced the risk of reoffending. Greater success was achieved by programmes that began in prison and were continued after release. Of a significant influence on the probability of relapse were the programmes specialising in high-risk offenders, working on the principle of therapeutic community and lasting at least 13 weeks.[19] Whether the subjects had participated voluntarily or not in the programme had no influence.

The "what works"-approach leads to some findings, which, however, are only based on a small percentage of all programmes. This is partly because many programmes and programme evaluations do not meet the high demands for meta-analyses (e. g., using the *Maryland Scale*; for example, because they do not use a control group design, and thus selection effects could have too great an effect on the results. (*Petersilia* 2004, p. 6). Even though the demand for more evaluation in the area of treatment and transition management programmes is certainly justified, the dilemma that meaningful evaluation results on the effectiveness of the programmes require a randomised control group will not just disappear. However, concerning imprisonment it is highly problematic to treat prisoners differently just for methodological reasons (the principle of equal treatment is a basic human right for prisoners as for other citizens). Further ethical considerations do not allow excluding a randomly selected group from participating in a programme that is assumed to effectively reduce reoffending.

3. Good transition management from the perspective of the *risk-need-responsivity (RNR) principle*

The question, if a programme for transition management is good, can be answered not only by the categorisation and evaluation of existing programmes with the meta-analyses method. While the "what works"-approach aims to find out, which programmes do work in general, other research approaches deal more with the question as to why some programmes work better for some offenders than others and what factors can lead to a higher effectiveness of programmes.[20]

To find out how a good transition management should look researchers analyse various findings from evaluations, surveys and observations and summarise them in principles or guidelines and ultimately theories for the implementation of treatment programmes, which then in turn can be empirically

19 *Nedrecka* 2014, p. 64 f.

20 While the meta-analysis on the effectiveness of offender treatment is more likely carried out by criminologists with *US*-American background, this line of research was influenced by researchers with psychological background. It comes originally from *Canada* (see *Petersilia* 2004, p. 5), but it is also found in *Australia* and *England*.

tested again. With this research approach, findings can be taken into account, which cannot be included under the strict criteria for selection of the analysis described in section 2. The importance of selection effects tries to balance the fact that the principles are checked with the help of meta-analysis, so that not the differences between the offenders but the differences between individual programmes are analysed.

An important result of this research is that the effectiveness of treatment programmes depends on a number of so-called "moderators". These include offender-related factors (e.g., motivation), the treatment context (e.g., the institutional climate or the qualifications of the staff) or the evaluation methods. Therefore, it is very unlikely that there could be special programmes for transition management, which are equally effective in any context and in any place.

Very influential in this regard is the well-known "*risk-need-responsivity*" approach of *Andrews* and *Bonta* (2010).[21] It says that there are three main principles for the successful treatment of offenders: the *risk principle* states that the intensity of the interventions should be directed at the risk of the offender. Studies have found that treatment programmes can have a positive effect on offenders with a higher risk of reoffending, while with low risk offenders, they may even have a negative effect, if they are treated together with high-risk offenders. Therefore, the intensity of the treatment should be tailored to the individual risk and lower risk offenders should undergo little or even no treatment whilst high-risk offenders should participate in very intensive measures.

The *need principle* states that interventions are to be aligned to criminogenic needs, and therefore to dynamic risk factors. These factors are closely linked to delinquency and unlike static risk factors (e.g., experience of violence in childhood) variable. Dynamic risk factors include addiction problems, a criminal environment, a lack of self-control or crime favouring attitudes. The treatment goals are to be chosen so that they treat dynamic risk factors.

The *responsivity principle* states that the type and style of intervention in cognitive abilities and learning styles of the offender must be aligned. Factors such as motivation or the cultural background of the offender must be observed.

The *RNR-model* has also been studied with the help of meta-analysis, which categorise the extent programmes follow the *RNR-model* and then in a second step examine whether the observance of the principle has an effect on the effectiveness of the programme. Such relationships have been established, also for sex offenders.[22]

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21 *Lloyd/Serin* 2014, p. 3303 refer to the *RNR principle* as "the guiding principle worldwide".

22 For the risk principle see references in *Lowenkamp/Lattessa/Holsinger* 2006, p. 1 ff. The effectiveness of treatment programs that follow the *RNR principles* showed, among other

Petersilia[23] summarises, how the results of the *RNR-principle* should be implemented, especially in regard to treatment programmes for offenders, in order to achieve a better effectiveness of these programmes. According to her findings, such programmes should use cognitive behavioural methods and the participants should be positively motivated to participate in the programme (participation not imposed as punishment). Treatment programmes should be designed primarily for offenders with a higher risk of reoffending and be directed towards their dynamic risk factors. For this group, the programmes should, depending on the specific risk ("need"), take 3-12 months and occupy most of the time of the participants (40-70%). Offenders with a lower risk of reoffending require no "treatment" in this sense.[24] In order to assess which offenders have a higher risk of reoffending, validated risk assessment tools should be used (instead of mere assessments by prison staff). Participation in outpatient programmes promises higher success rates than carrying programmes out in the prison. Staff must be able to adapt the respective treatment programme to the specific learning style of the participant.

4. Good transition management from the perspective of desistance research

A third way of looking at the effectiveness of transition management programmes is desistance research.[25] This approach assumes that only a change of attitude can lead to the end of a criminal career, but this can be externally encouraged.[26] Social ties and participation opportunities are viewed as being very significant in this context,[27] so that from this point of view offender treatment should be directed towards improving the social skills of the offender. According to *Maruna* (2001) a person must first be cognitively prepared to use these social bonds, and in many cases this requires cognitive changes. According to *Sampson* and *Laub* (1993) the will to change ("human agency") plays an important role in the desistance process, because according to their research the men who abandoned a further criminal

things *Lösel/Schmucker* 2005, *Hanson et al.* 2009 in meta-analyses. For a critique see *Ward/Göbbels/Willis* 2014, p. 1969 f.; *Petersilia* 2004, p. 5 f.

23 *Petersilia* 2004, p. 5 f.

24 The research of *Andrews* and *Bonta* 2010 revealed that cognitive-behavioural treatment methods are better than other methods suitable to reduce the risk of recidivism.

25 E. g. *Laub/Sampson* 2003; *Maruna* 2001; *Giordano/Cernkovich/Rudolph* 2002, *McNeill* 2006; *Paternoster/Bushway* 2009. For an excellent summary in German language, see *Hofinger* 2013.

26 Also *MacKenzie*, who is actually classified as a representative of "what works" approach, emphasised in the overall scheme of the results that all programs do not help if they do not focus on the individual change with the offender, see *MacKenzie* 2006, p. 339.

27 Especially *Farrall* 2002 reiterated the aspect of social capital.

career had actively chosen to do so. According to *Giordano/Cernkovich/Rudolph* (2002) the path to abandoning a life of the crime goes through several stages. The mental attitude and the will to change are at the beginning of the process, however, anchor points („hooks for change") must exist that ensure that former offender will not return to his life of crime.[28] Finally, a changed attitude to one's former criminal behaviour must manifest itself.[29]

For transition management, these approaches mean that not only the criminogenic "risks" and "needs" must be observed, but also individual support must be offered to achieve the own goals and to enable the creation of social capital and hooks for change. Pro-social structures to the "outside world" which are maintained or established during prison time are considered important. Likewise, it is also relevant that the social support after release supports the desistance process and strengthens the former offender.[30]

The so-called "strength-based" approach recommends that the focus be on the strengths of the (former) offender. Instead of focusing on risk factors and deficits, the question asked should be: What positive contribution can this person make and where does his expertise lie?[31]

Of further importance is the relationship between the offender and the person working with him, as well as their professional attitudes or the programme philosophy.

Because desistance research does not have its own theory on the successful treatment of offenders, but rather describes the framework, the approach cannot be evaluated in isolation. However, there are some evaluation results, which indicate that the change of inner attitude is a significant factor for the effectiveness of rehabilitation programmes and that good social integration has an influence on the tendency to recidivism.

Research has shown that programmes that focus on the formulation of positive goals, achieve better results than programmes, which are primarily concerned with the prevention of risk. A study by *Marshal et al*. (2006) has shown that a confrontational therapeutic approach has a negative impact on the willingness of the offender to change. In contrast, empathic and supportive behaviour leads to more positive results.

Alexander, Lowenkamp and Robinson (2014) stress the special significance of the relationship between the offender and the probation officer in the probation supervision. According to their joint analysis, there is a positive influence if the probation officer has an empathic, problem-solving and pro-social attitude that is

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28 Such individual "hooks for change" can the family (marriage, own children), but also treatment programs or religion, as summarised in *Hofinger* 2013, p. 19 f.

29 *Giordano/Cernkovich/Rudolph* 2002, p. 1000 ff.

30 *Ward/Göbbels/Willis* 2014, p. 1970.

31 *Maruna/LeBel* 2003; *Ward/Göbbels/Willis* 2014, p. 1967.

directed to changing the subject rather than monitoring him and highlights his positive characteristics.[32]

Even in terms of *US* "intensive supervision programmes"[33] that have been evaluated in several studies as being ineffective,[34] *Lowenkamp* and his colleagues could show that, in addition to compliance with the *RNR* principles, programme philosophy also plays a role. Treatment programmes that aimed primarily at deterrence or worked with aversive methods were considered ineffective.[35] Programmes that were understood as an offer to the offenders to assist them with a change of lifestyle and where the staff was well trained could achieve better results.[36] *Lewis et al*. (2006) found in their study of seven pilot projects for the reintegration of short-term prisoners that continuous care was of particular importance for the success of measures.

A causality between particular anchor or turning points (see *Sampson* and *Laub* 1993) and refraining from engaging in criminal behaviour could not be established clearly. The most likely assumption is that a stable workplace can have a strong influence on recidivism prevention. *Lipsey* (1995) conducted a meta-analysis of juvenile offenders and found that the most significant factor for recidivism reduction was a job.[37] However, another analysis found no correlation between "job stability" and "desistance".[38] For other areas of social participation, no direct relationship to recidivism prevention has been made.[39]

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32 *Alexander/Lowenkamp/Robinson* 2014, p. 3973 f.

33 The "intensive supervision programs" allow prisoners early release if they allow comprehensive control measures with strict daily routine.

34 See the evidence at *Lowenkamp et al*. (2010), p. 368 f. *Alexander/Lowenkamp/Robinson* 2014 refer to *Taxman`s* "process of proactive community supervision" (p. 3975), which, contrary to pure offender supervision (*Salomon* 2006, summarised by *Petersilia* 2014, p. 3445) has proven to be effective to reduce recidivism.

35 *Lipsey/Cullen* 2007, *Lösel* 2012.

36 *Alexander/Lowenkamp/Robinson* 2014, p. 3957 f. They refer also to the motivational interviewing method as a suitable method of communication in the treatment of offenders; see also *McMurran* 2009. The motivational interview also finds resonance in German prisons; see *Breuer et al*. 2014.

37 See *Petersilia* 2014, p. 1472. Further results, which highlight the importance of the work, are also found with *Décarpes/Durnescu* 2014, p. 53. In a new study for the *State of Minnesota Duwe* 2014 established a moderate decrease effect for the participation in parole.

38 E. g. *Giordano/Cernkovich/Rudolph* 2002.

39 *MacKenzie* 2014, p. 1475. According to desistance literature, it is questionable whether a new offence is a sign of ineffectiveness of a strategy, because failures can be regarded as normal development within the process of desistance.

Farall advocates that we should ask the offender in the initial stage of supervision on what he needs in order not to reoffend, and then selectively work on these problems.[40] In view of this approach, the evaluation results for "*Serious and Violent Offender Reentry Initiative (SVORI)*" are very interesting: In *SVORI* total of 89 programmes were funded in the *United States* that emphasised different aspects for ex-convicts (e. g., housing provision, job creation, health care, etc.).[41] Only projects that offered consistent care from prison to liberty, including a follow-up period, were supported. One focus of the evaluation was the question, as to whether the parolees received the preparation they needed. The results showed a discrepancy between the intended and eventually implemented measures on the one hand and the necessary and actually received measures received on the other hand. Thus, the researchers came to the conclusion that the programmes had not been implemented properly.[42]

5. Summary and outlook

The question of how effective measures to reintegrate offenders after release are delineated from ineffective measures is currently being discussed internationally from different angles. There are no structures or programmes that work for all offenders. Ultimately, all of the perspectives emphasise that the individual case determines whether a reintegration program to prevent recidivism works or not. While the *RNR principle* of preparation for release and reintegration concentrates on the processing of dynamic risk factors, the desistance approach asks what external measures in individual cases can help to ensure that the offender is ready for inner change. It remains to be seen whether the different approaches continue to move closer or further from each other in future.[43] Naturally, however, there are no clear results about the effect of individual programmes, because ultimately the individual personal attitude of the offender or the nature of his individual social problems is always crucial. At this stage, it also seems questionable as to whether the effects of individual programmes can ever be studied conclusively if strong implementation problems appear in the field of rehabilitation programmes. To break this down and to implement programmes as they were intended is to be

40 *Farrall* 2002, p. 227.

41 *Visher/Travis* 2012, p. 697.

42 *Visher/Travis* 2012, p. 698.

43 Interesting in this regard is for exampe the fact that *Andrews* and *Bonta* (as the originators of the *RNR-principle)* see the strength based approach as already being integrated into ther *RNR-model*, see *Andrews/Bonta/Wormith* 2011.

seen as an important step towards a better effectiveness of prisoner resettlement programmes.[44]

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7.3.2 Estonian criminal justice – challenges of deinstitutionalization

Rait Kuuse

1. Introduction

Estonia as a country has faced many changes since the 1990s. The general environment of the country has changed remarkably – from being under soviet rule to today's full membership in the NATO, the EU and the Eurozone, from a planned to market economy, from a punitive regime to democracy. One could continue with the list of principal changes during the past two decades in order to introduce the country's recent and ongoing challenges.

It is evident that the criminal justice system has also been a part of fast and fundamental developments during past 25 years. One of the aims of criminal policy was the modernization of it and included also investments into prison infrastructure to overcome the camp based prison settings' negative effects. Has this been sufficient for meeting modern practices in the field of criminal justice?

This goes beyond the issue of infrastructure. It is widely known that the soviet understanding of criminal policy was rather punitive: Long-term sentences and the death penalty were in the centre of it, the meaning of rehabilitation was interpreted very differently from the western European neighbours, large scale facilities were built, often on former places of war camps. The whole criminal justice system was at great extent military-like organised. The same trend appears to be in place throughout the psychiatric and care sector. Therefore to turn this over-institutionalized system, which was so much focussed on deprivation of liberty, into a community-oriented one is still one of the main challenges for the country.

This summary of the conference presentation shares the author's personal views regarding the evolvement of the Estonian criminal justice sector on the basis of 15 years of experience in the field.

2. Deinstitutionalization principle

The discussions about deinstitutionalization are held actively since the 1950s in order to challenge the overused institution-based care in the psychiatry and social welfare sector. The Common European guidelines define an institution as any residential care where:

Residents are isolated from the broader community and/or compelled to live together, residents do not have sufficient control over their lives and over decisions, which affect them, and the requirements of the organisation itself tend to take precedence over the residents' individual needs.

Estonia can be highlighted (together with other Baltic states) as one of he states in Europe with a high number of persons under institutional care. Measured by the number of clients under 24-hour-care per 100,000 inhabitants the figures were 539 in Estonia, 535 in Latvia and 439 in Lithuania in 2012. The same tendency is observed in terms of imprisonment. According to the Council of Europe statistics, Estonia is belonging to a leading countries in EU regarding the use and length of imprisonment.

So, while the above-mentioned definition aims to describe the social welfare sector, it is evident that these key elements can also be used to describe prisons. The key principles defining the meaning of an institution and describing its key elements can – according to the author's opinion – serve as a guideline to shift the focus from closed institutional settings to community based services and encourage transferring the prison environment towards a less institutionalizing one.

Talking about high-risk prisoners and more important – about their return to the society is nowadays an important issue also in Estonia. It's evident that criminal justice systems are despite its possible efforts far from having a very good and final community-based alternative to imprisonment, which would allow not to have those facilities. There are solutions, which are more or less successful in terms of the desired outcome.

The understanding about negative impacts of the institutionalisation are well known, it is probably not possible to advocate that imprisonment as a tool in the criminal justice system should be abandoned totally, but it is our understanding of imprisonment coherent to today's knowledge and values? The problem of institutionalization is a wider issue. Parallels between social welfare and criminal justice policy challenges are easy to draw. At least that is the case in Estonia if we talk about the facilities of residential care and ongoing challenges deriving from an over-institutionalized environment.

3. Prisoners and Prison Service

There are currently altogether four prisons in Estonia with 1,608 staff members. Two of the prisons are newly built (Tartu Prison was opened in 2002, and Viru Prison in 2008) and two of them are still situated in the places inherited from the soviet era. The plan is to close these two old prisons in the near future. According to the current plan a third closed prison with a capacity of more than one thousand inmates will be built by 2018. As a result only three prisons will remain. Ten years ago there were altogether eight prisons, and only one of them was built as cell-type facility.

The number of prisoners is today slightly less than 3,000. By adding those, who are placed in police detention facilities, the total number is 3,065. For comparison: Ten years ago there were 4,576 prisoners. Among the current prison population roughly 20% are prisoners on remand, 152 are women and 33 are under the age of eighteen. 40 people are serving a life sentence and about two hundred persons are placed in an open prison ward of the closed prison.

The Probation Service was established on 1st May 1998, which has been often named as the beginning of the modern era of alternative sanctions and measures in Estonia. Looking at the alternative sanctions we can observe that probation officers deal with almost twice as much persons as in prisons, there are altogether 5,525 probationers, about 10% of them are prisoners on parole, about 23% are serving their community service hours and about 80 persons are under the electronic monitoring scheme.

3.1 The use of imprisonment

For a better understanding of the situation one should look at the development of the imprisonment figures during the past history of the country. Estonia established its independence in 1918, which lasted until the Second World War. After Estonia was occupied by the Soviet Union the Soviet law system and values were introduced. In the early 1990s the Soviet system collapsed and Estonia regained its independence. When one looks at the graph on the next page it becomes clear what this change in the state governance has meant for the criminal policy. The common structures of economy, society as whole and governance were replaced with something else and we entered into the era of a prison favouring culture. According to the Estonian Board of Statistics there were in 1940 a bit over one million inhabitants, shortly before the collapse of the Soviet Union there were over 1.5 million people and today round 1.3 million people. As as effect of the occupation, Estonians now form 70% of the total population.

The graph does not indicate that Estonians were suddenly more criminal after the Second World War, but it illustrates the negative effect of occupation and its

policy. It left Estonia with huge facilities and a high number of people serving their prison sentence or being treated in institutions with weak links with their family and their community environment.

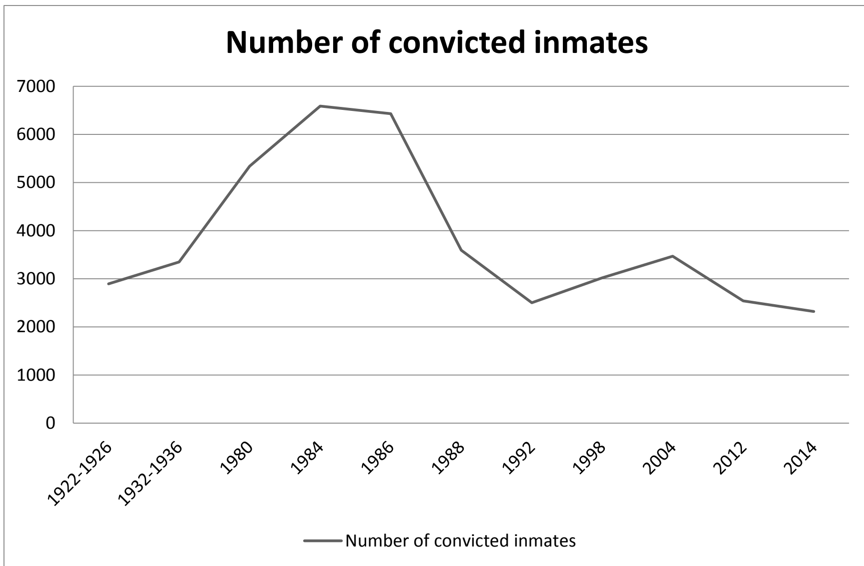

Figure 1: Number of convcted inmates in estonia, 1922-2014

3.2 The overall scope of penal supervision

There are several milestones accompanying the changes in the criminal justice system. During the 1990s several reforms were initiated by an initiative of the Ministry of Justice in order to take over European practice. The creation of the Probation Service with the adoption of Probation Law in 1998, the adoption of the new Penal Code and Code of Criminal Procedure, the building of the new cell-type prisons, they were all contributing to the modernization of the criminal justice system.

If we look at the scope of the penal supervision system (prison and probation) then we can see that during the past two decades the figures have changed significantly. According to the data of the Ministry of Justice in 1997 there were 3,180 convicts in prison, but after the start of the Probation Service in 1998 the overall number of persons serving sentences in prison or under probation supervision started to rise. This was in slight contradiction with one of the aims of this change – to provide alternative answers to the high imprisonment rate. The peak was reached in 2004 when the total volume of the

penal supervision system was 11,553 persons. After some relatively stable years the trend then turned down to today's 8,600 persons dealt by the criminal justice system.

The new penal code is a modern law, which incorporated European standards and values in its paragraphs. The adoption of the Penal Code contributed to further develop alternative sanctions and measures. One of the main changes was the introduction of the community service order. In 2002 the community service regulation presented a very reserved attitude towards modern alternatives. For example, it was regulated that imprisonment can be replaced on ratio of 1 to 4, which meant that for one day in prison an offender had to serve 4 hours of community service. For a maximum of two years of imprisonment it meant 2,920 hrs of community service. Already in 2004, after experiencing a very slow start of the community service order the ratio was lowered to 1 : 2 and community service was added as a diversional measure during criminal procedure. Shortly after, every fifth probationer was serving the sentence by working voluntarily for the community.

Notwithstanding this development it took more than a decade to have the first visible results, of which the foremost is the change in the imprisonment figures. According to the Council of Europe (CoE) statistics, Estonia is still a "leading" country in Europe regarding the use and length of imprisonment. The imprisonment rate measured by CoE has dropped from 337,9 in 2004 to 279,6 in 2008 and resulted in 248 in 2013. In absolute numbers that represents a decrease of about 1,500 prisoners. This, however, is still far above EU average placing Estonia into 3rd place in EU. It is also evident that the proportion of high-risk offenders among prisoners is as a result higher and to reach further improvements is a complex issue. In comparison with Estonia's Nordic neighbours it seems that prisons are used, if not more, than certainly for longer periods. These facts lead to the conclusion that a further reduction of the prison population would be primarily possible by reducing the length of prison sentences.

3.3 Unused opportunities

Looking back at the main developments in the criminal justice sector of Estonia and overall tendency to introduce more alternatives we still see that some opportunities might be underestimated. In terms of the deinstitutionalization principle there are some key questions to be asked: First, are there any good preventive measures and alternatives to imprisonment; secondly, how long is the time spent in prisons and is there a possibility to reduce it; and thirdly, is there a good possibility for reintegration? Some of these aspects shall be elaborated on in the following.

The Ministry of Justice has had the strategic aim to reduce the number of prisoners for many years and, as aforementioned figures show, it can be consi-

dered as a somehow successful approach. The number of prisoners is still in decline and some further actions are aiming at supporting this process. The on-going revision of the Penal Code has been approved by the parliament and as one result a few hundreds of prisoner's cases will be re-assessed by the courts. It is evident that some of them will be released and the usage of imprisonment will be influenced. The changes also include the parole system, community service implementation etc. Therefore, from the point of view of criminal policy the basis for further improvements is positive.

Regarding prisons there are still specific questions in relation to the use of the parole system and of open prisons, the setup of the prison environment and its inside order accompanied by the attitudes of personnel towards reintegration.

First, about the length of time spent in prison. Roughly one quarter of prisoners are coming out from prisons through parole and this proportion has remained relatively stable during the past years. The parole system as such has faced some changes, one of the most principal one would probably be the change from a voluntary application of the prisoner for parole towards a automatic procedure, whereby the relevant material is send to the court for its decision on whether to grant parole. This change was accompanied by the introduction of more favourable parole options, which introduced the possibility to combine electronic monitoring with parole conditions. The effect of the change was significant during a short period of time.

Looking at the current situation we could still state that the usage of parole is rather low than high. Recent data and an analysis made by the Ministry of Justice show that the decisions of the parties involved in the parole process are differing very much. There are most likely too many parties involved in the decision-making process, which can also be observed from the following data: During the first half of 2014 altogether 857 parole cases were sent to the court by the prisons. Prisons, on the basis of the risk assessment tool, released a positive opinion about parole in about 62% of cases. Prosecutors supported parole in 22% of the cases and courts made a positive decision regarding 25% of cases received from the prison. Looking at the data from the year of 2013 the outcome is pretty much the same.

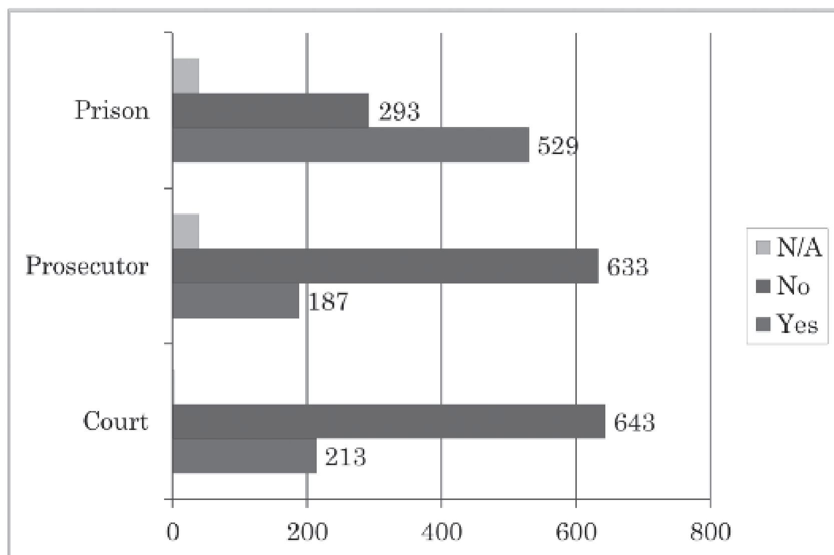

Figure 2: Proposals to grant an early release in Estonia, 2014

In summary we can say that:

- Prisons support parole more than the prosecutor's office, opinions are the same in 53% of cases.
- Prisons support parole more than the courts, opinions are the same in 52% of cases.
- As an overall trend the prison is more in favour of parole in those cases where opinions do not fall together with prosecutors nor court.
- Where the prison authorities do not support parole, it is very unlikely that parole is granted.

So, what might be behind these observations? First of all it is about a different methodological base. The prisons are using the system of risk-assessment and form their opinion on the basis of the calculation of reoffending. Prosecutors and the courts most probably use a wider set of criteria interpreted through the individual understanding and result in more conservative decisions. During one discussion prosecutors highlighted that their opinion is in some cases also influenced by the behaviour of the prisoner during the criminal procedure prior to sentencing. It would require more space and time to elaborate those trends in detail, but the current set up of the parole system as such could be seen as one issue to think about in Estonia if the desire is to move on with prison reforms. It

is evident that the issue of the release schemes is directly linked to the number of the prison population and the negative impacts of imprisonment as such.

Secondly, looking at the use of open prisons one should be aware that the decision-making in this regard falls fully under the power of the prison authorities. As mentioned above, it has been the aim to renew the prison infrastructure in order to overcome boundaries of camp type facilities. Looking at the results it is evident that the focus has been and is on new places in a closed environment. The first modern prison of Tartu was built without open prison facilities. This shortcoming is to be solved more than ten years later, the building of an open prison facility is starting at spring of 2015. The next prison was already built with an open prison department, which has today altogether 100 places. The ratio however was 1 : 10 in favour of closed prison places. There are currently altogether 208 prisoners serving their sentence in an open prison ward of the closed prison. This represents less than ten percent from the prison population. This trend and the modest use of parole result in a situation, where most of the prisoners serve their full sentence in a closed environment. The State Audit Office has highlighted the issue of poor use of a levelled scheme of release already in 2002, when it analysed the efforts to re-socialise persons held in custody, prisoners and those serving a conditional sentence. Not much has been changed so far as also the new prison in Tallinn is going to be built with only about 100 open prison places and more than one thousand places in the closed section.

4. Conclusion

Looking at the Estonian challenges and changes from today’s position one needs to remember that it is a country, which was living under different rules from Europe during 50 years and only during the past two decades steps have been taken to improve matters in all spheres of life. If we consider the influence of the history then the developments over the past three decades in the area of criminal policy have been remarkable. The integration into the European cultural space has influenced the evolution of the sanctions system.

There are still many challenges in terms of deinstitutionalisation. There are at least some unused opportunities in reducing the time spent in prisons. The prison environment as such is still mostly closed, the renewal of the infrastructure is oriented on closed and secure facilities instead of creating open prison places. The attitude of the professionals involved in decision-making about the prisoners’ release is a critical issue. There is probably enough space to work towards a better methodological and organisational base for decision-making.

There are some more aspects regarding daily life of the prisoners and their everyday environment. It is important to keep in mind that, apart from the issues of infrastructure modernisation, Estonian authorities should be able to revise the

plans according achievements in criminal policy. For example to aim at even less cells in prisons by challenging the plans of building the new Tallinn prison could be an idea. There is now a time to look at the prison environment through the lenses of the deinstitutionalisation principle.

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7.4 Project results on aftercare and monitoring concerning high-risk offenders – Introduction to Forum 4

Brian Dack

1. Introduction

Good afternoon everybody and given that I have the graveyard shift I hope to stimulate you for the next 15 minutes or so. There well might be some crossover in relation to what my partner colleagues have spoken about because as anyone familiar with this work knows events and happenings with "High-Risk Offenders" in the community don't always go in a straight line. Relapse of one form or other is always a possibility and it's how we, as workers, respond that is important.

My task is to inform you of the areas of work and activity in the monitoring and management of high-risk offenders which we have collectively identified as good practice, and which might be incorporated into the work of our national and regional organisations.

We have spent much time in the Justice Cooperation Network in clarifying and defining concepts so that we might have a common understanding. Despite our differing legal frameworks, as alluded to earlier, I think we have succeeded in developing this common understanding in terms of working with service users in seeking to assist in the management of the risk they pose. As you know we have concentrated our discussions on those individuals who pose a high-risk of causing serious harm and we have looked at practices in our respective countries to, in the first place, inform each other.

Violent and/or sexual offending can inflict serious harm on members of the public, as either victims or potential victims and clearly they have a right to

protection from such harm. The challenge of this focussed our deliberations. From early on we recognised that relationship is at the core of change, that the evidence is there that we can prevent and lift people out of lives of crime in the supervising process in the community, assisting their reintegration.

Monitoring/surveillance orientated approaches, while necessary at times, in general have had limited effect on recidivism on their own. This, I think, puts into sharp relief our language when we speak of "managing high-risk offenders". Do we "manage" or do we work with and alongside service-users (and others) so that they might manage their own behaviour in a pro-social way, thus reducing victims and victimisation in our communities? Our task was to look at what standards or what are the pillars upon which productive engagement with service users might take place?

2. Legislation

Collectively we have identified that a firm legislative basis is necessary for the building of that honest open relationship. It broadly sets the context and framework of our relationship. It sets down the parameters for both the duties and responsibilities of both the worker and his/her organisation, to the commissioning authority (Be it the Courts, Prisons, Parole Board) and it sets down the duties and responsibilities for the person who is released back into the community to restart their community life. So a legislative basis for our activities is essential. Our discussions focused on the various forms in the various jurisdictions and the ease or, in some cases, lack of ease in returning individuals who do not or cannot co-operate with the reintegration process. We also identified, and I will come to it shortly in this presentation, that for supervision to be effective it must be a multi agency enterprise and to allow for successful inter-agency work there must be trust and the ability to share information. Legislation is necessary in this regard too. Balancing the rights of the individual with the rights of potential victims is always a lively topic for conversation but public safety is paramount and therefore a legislative basis for information sharing with supporting protocols is essential.

3. Assessment

The starting point for most of us engaged with service users released from prison in the community is assessment. This can be completed in prison and follows the individual offender into the community or can be a process initiated by the supervisory authority in the community, such as the Probation Officer or Aftercare Worker. It is not a "once of" event. Assessment is an on going process. Many jurisdictions have moved from individual clinical judgement in

risk-assessing. Risk-assessment instruments are recognised as essential so that we have consistent, defensible and systematic processes using structured professional judgement to support clinical judgement to estimate the risk level to be assigned to a particular individual. The purpose of any risk assessment must be to inform a plan of intervention, to identify what the targets or areas for change might be. Also, we must be clear, actuarial risk assessments do not, in the main, assess for risk of harm.

We recognise that there is a need to undertake a thorough analysis of the offender, their past behaviour, personal and situational factors, and current circumstances, to identify any risk of harm to others and to classify their risk levels. Clients, or service users, should have a clear understanding of all stages in the assessment process. We need to examine:

- Previous risk assessments,
- criminal records,
- probation files,
- books of evidence,
- medical/psychological reports, and
- have discussions with relevant collaterals.

Service users need to be made aware that assessments have a dynamic component and that risk levels will increase or decrease depending on the level of compliance with interventions or treatments outlined in risk management forms.

4. Collaboration and Case Management Plan

Working collaboratively with the risk assessment affords the service user the opportunity to understand his or her own risk level of further offending and the factors which contribute to that risk. Understanding is a first step for the service user in managing his or her own risk. Again, while this piece of work may have been completed in the prison it needs to be revisited in the community. Feedback by the supervising worker to the service user should focus on both risk and protective factors, and opportunities for change. A Risk Management Plan needs to be worked out collaboratively. This plan should inform and be informed by the conditions of supervision proposed in the Court/Prison/Parole Board. Risks cannot necessarily be eliminated but they can be managed. Our collective work is about reducing the likelihood that a harmful offence will occur and reducing the impact of the harmful offence should it occur through the supervision process.

5. Contract

In our discussions we recognised that arising from a collaborative approach entered into by both the supervisor and the service user, the drawing up of an explicit contract with the released prisoner is not just desirable but it is essential. This should focus on the identified risk factors and the specific conditions which are attached to the order of the Court or Prison or Parole Board. The contract highlights the duties and responsibilities of each party and provides clarity about expectations.

6. Supervision and monitoring

Supervision has the dual functions of promoting rehabilitation and reducing harm, through restricting liberty as necessary and engaging an offender in the process of change. We recognised the care and control functions of the supervising probation worker and other players such as police officers, residential care staff and addiction workers. Liberty restrictions might include where one might live, what leisure activities are not acceptable (such as drinking), who one might associate with. Supervision should support the service user in developing pro-social coping strategies for known trigger situations and in developing relapse prevention strategies. Monitoring should identify changes in the service user's individual situation which could increase the likelihood of serious harm to others.

Focus should be on:

- Co-operation with supervision.
- emotional state of the service user,
- social environment and changes to it,
- hostility or affinity towards particular individuals or groups,
- physical state of the individual,
- substance misuse,
- victim access.

7. Multi agency working

There is rarely one player in the supervision process, so information must be shared in a timely fashion and a clear focus must be maintained on the offender's risk level, risk factors and the response to these factors.

In our deliberations we felt strongly that ideally service users who are at a high risk of offending should be managed through a multi agency approach.

Monitoring can only be effective if there is regular, transparent and shared collaboration with other agencies or services that have an identified role with the offender. (e. g. Prisons, Police, Health Services/Child Protection, Mental Health Services, Employment Services, Addiction Services and Housing and voluntary organisations). We discussed Fokus in Germany and SORAM in Ireland as examples of such inter agency working.

8. Community Guarantee

We highlighted and accepted the idea of the "Community Guarantee" that offenders are citizens and that state/municipal authorities have responsibilities to arrange services according to need, to assist the successful re-integration of offenders into the community. So along with all of the aforementioned services, Social Welfare and employment should be available as a right. Obviously we recognise that in difficult financial times such guarantees may prove difficult to deliver upon.

9. Treatment

Specialist treatment facilities provide effective interventions for some offenders, and these interventions may involve individual, group or family work, or a combination of them. The most appropriate type of intervention will be determined by those factors that are related to offending behaviour. But there must be a focus on interventions that work. We know that some approaches with a cognitive behavioural base, delivered at the right time with the right person, supported by the right worker can be effective. But we collectively reiterated the importance of the relationship between the deliverer of the intervention and the service user. Relationship is important. But it is not the full picture. Successful re-integration of high-risk offenders is about public and victim safety. We recognised that monitoring, surveillance, restrictions (such as electronic tagging) and conditions should be used where legally required. Case management plans must be delivered upon and the probation officer or other aftercare worker has primary responsibility for ensuring this happens.

There needs to be alertness to escalating and deteriorating behaviour, and this of course requires linking in with other agencies. I spoke with a probation officer in Ireland who deals with service users at high risk about reoffending and the level of input, the regularity of meetings, his availability on the phone, at weekends, the balance of knowing the client through amassing all of the information available and the deeds he has done with the acceptance of and assessment of the offender's very abberant sexual arousal patterns when trying

to estimate acute risk at various points in the supervision process are really very impressive. This is not easy work!

10. Conclusion

To conclude then the working group on aftercare, monitoring and re-integration identified the following standards as essential/desirable for the successful management and engagement with service users at high risk of committing offences that could cause serious harm. We highlighted: legislative underpinning, assessment – initial and on-going, case management plans, offender involvement based on professional relationship, contract, supervision and monitoring multi-agency working, community guarantee, focussed treatment/interventions, recourse to courts/prison authorities where supervision arrange ments have broken down.

All in all, we concluded, it is vital and important to find a balance between security matters and issues of rehabilitation and re-integration. These two factors should not compete against each other but be combined in a way which promotes both security for the public and rehabilitation. Work with high-risk offenders is aimed at the prevention of new crime and public protection. It should also provide encouragement and motivation for change.

7.4.1 Between Offender Management and Reintegration: The role of the third sector in high-risk offender transition

Paddy Richardson

1. Introduction

The present paper deals with the role of the Irish Association for the Social Integration of Offenders (IASIO) in complementing state services in providing a direct service to high-risk offenders.

When we speak about guidance in respect of IASIO we refer to helping offenders to re-imagine themselves beyond their offending behaviour – the same applies to us as service providers – we also have to be able to do that, otherwise we could leave ourselves exposed to inherent bias and prejudices.

The focus of the present paper is about those considered to be high-risk and moving from prison to the community.

2. Services of the Irish Association for the Social Integration of Offenders (IASIO)

Some background information about IASIO's services:

The Linkage Service

This is community based with a prison in-reach guidance and placement service, for all offender categories. It is funded by the Probation Service and operational since 2000. The number of persons referred is 17,335. The number of people successfully placed into training, education and/or employment or indeed all three accounts for 7,180.

The Gate Service

This is a prison based guidance and placement service for all offender categories. It is funded by the Irish Prison Service and in operation since 2007. The number of persons referred is 4,491. The number of people successfully placed into training, education and/or employment or indeed all three is 1,537.

The Resettlement Service

This is also a prison based resettlement support service for all offender categories. It is funded by the Irish Prison Service and in operation since 2011. The number of persons referred is 1,276. The number of people resettled is 351; those figures are low because the Resettlement Service deals with clients presenting very complex needs.

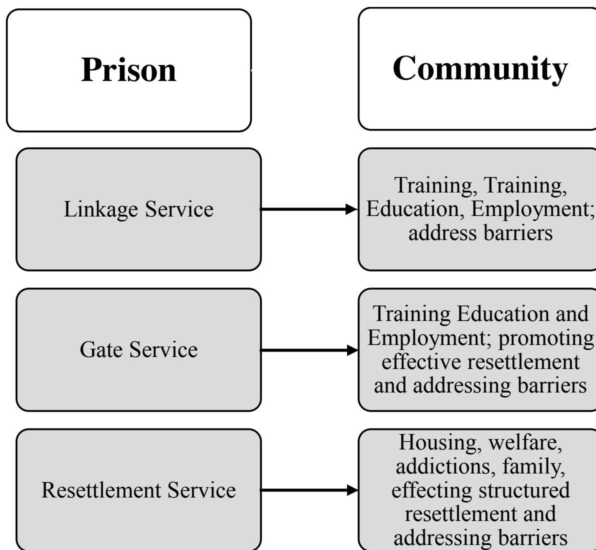
High-risk Offenders account for 300 persons across all the programmes – this is for high risk of personal, psychological or physical harm and not for risk of re-offending.

In 2013, 2,300 offenders were referred to IASIO services. This will increase to about 2,600 in 2014.

The Bridge to the Community

Just to put each programme in context – all of these projects, in some way differentiate, but each of them act as a point of transition between the prison, the wider Criminal Justice system and the community.

Figure 1: The services of IASIO in Ireland



Our primary objective is to add value to the work of the Probation Service and the Prison Service and in doing so, we engage with community based agencies and employers to try to ensure that rehabilitation and reintegration becomes the responsibility of the whole community and not just Criminal Justice agencies such as the courts, probation or prison services.

3. Reintergration work

What do we in IASIO understand by re-integration?

In understanding what we mean by re-integration we believe, for many clients, that resettlement has to come first before reintegration because

- Resettlement could mean the client is housed with access to welfare and medical services but he or she could still remain isolated. Therefore and in our view, Reintegration means the above – access to medical, housing and welfare services plus the social connections / social bonds.
- Reintegration is an ideal; it assumes something is to be re-established, which is not necessarily the case because much of our re-integration work is about creating new pathways.
- Reintegration is more than resettlement therefore – it is the connection to pre-existing or new social networks that offer positive outcomes.

- Reintegration in a sense is less than resettlement, in that it comes afterwards.
- Reintegration is a process and one perhaps with no fixed finishing point. As a process it is useful to imagine it is taking place along a spectrum – at one end the completely excluded and marginalised prisoner with often only strained relationships, and on the other, the integrated individual – which implies on-going support from non-criminal sources.
- Prison therefore is always a point of exclusion from the wider community, so it is a primary reference point in all re-integrative work. The process of reintegration starts in the prison and for those most excluded, it is often the criminal justice professional who is that first point of trusted contact.

Re-integration in an "ideal world" happens like this:

There is ample planning time due to early intervention in prison. A trusting relationship is developed. There are clear definitions and assessment of all possible risks.

There is in place:

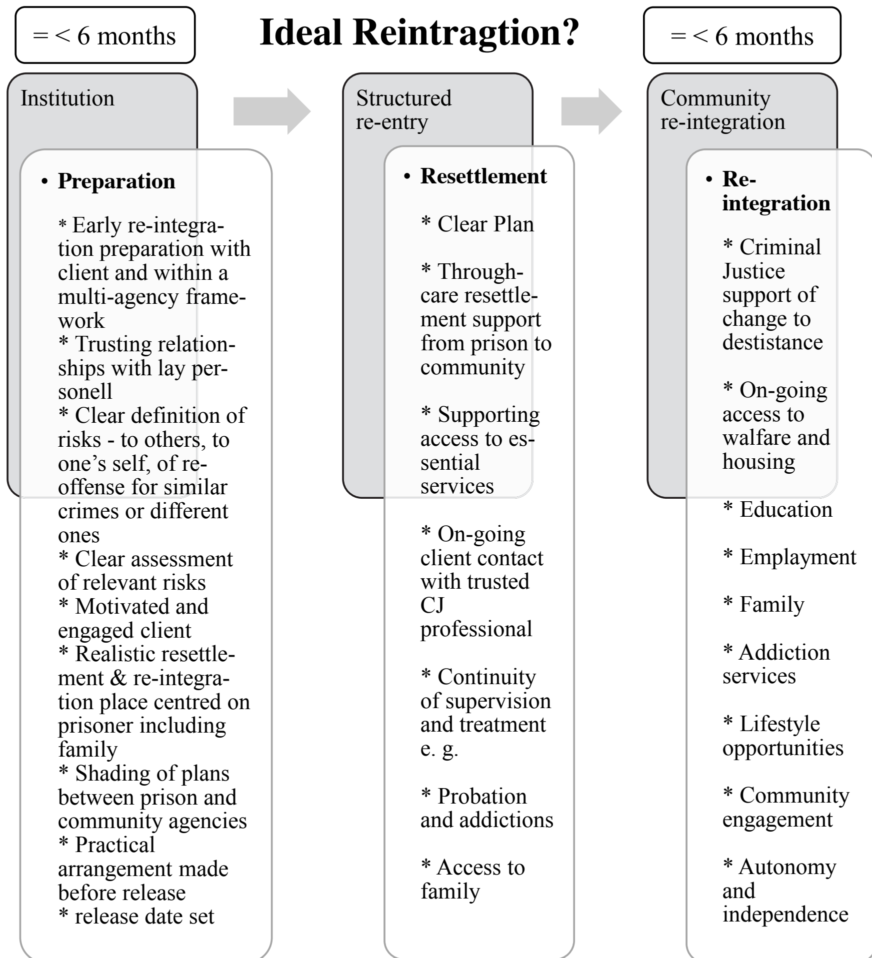
- A multi-disciplinary team approach to identifying and addressing risk and needs.
- A multi-disciplinary team approach to identifying supports and strengths
- A motivated and engaged client.

There is a realistic resettlement and reintegration plan centred on a client, which ideally has been developed with the prisoner and accepted by him or her. This plan is shared with and accepted by community based criminal justice and non-criminal justice professionals.

- Provision is in place for the continuity of treatment from prison to community, especially for high-risk sex offenders.
- There are clear roles and demarcation lines among criminal justice professionals.
- Pre-release organisation of resettlement and reintegration are in place (or a clear plan of the steps towards it) such as welfare support, accommodation, medical support, training, education, employment professionals' support and so on.
- Prisoners are released in a timely manner to best achieve stable re-entry.
- Community based professionals and organisations are notified of release date in a timely manner.

Finally, now that all of the aforementioned are in place, as illustrated in the next Figure, the process of the management of the offenders to the community begins.

Figure 2: Ideal reintegration



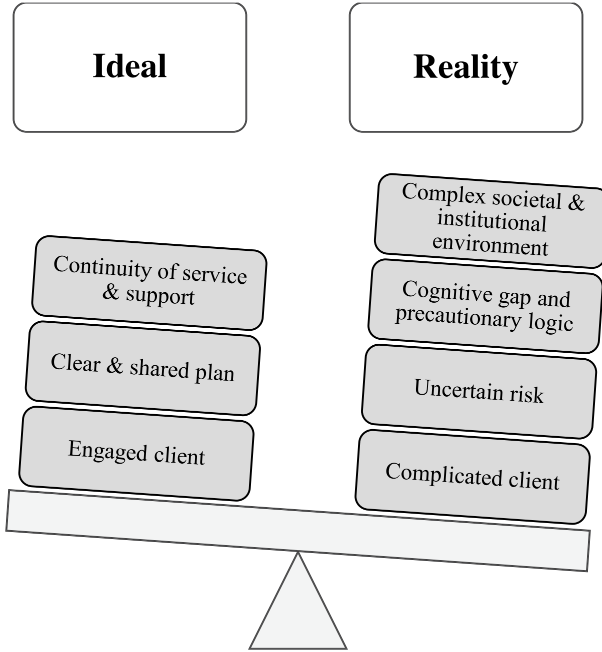
Some cumbersome realities: If only life was that easy…!! This is what the "real world" looks like:

Clients present with different capacities to engage. There are 3 broad categories:

1. Those engaged,
2. those able to engage but not engaged, and
3. those unable to properly engage.

Summary of the "ideal" and the "reality":

Figure 3: Cumbersome realities versus ideal reintegration



Cumbersome realities	Ideal reintegration
Complex societal & institutional environment	Continuity of service & support
Cognitive gap and precautionary logic	Clear & shared plan
Uncertain risk	Engaged client
Complicated client	

Client risk can be uncertain. Post release supervision orders effect the terms of re-integration but are not applied to every offender.

Institutions also have different capacities to engage around offender reintegration, for example, prison mostly focuses on one side of the process, community organisations the other. There is a ‘cognitive gap’ between the two, i. e. different ways of judging the offender and their circumstances. As *Christoph Krehl* (see *Chapter 3*) said “you are always on the safe side if you give a negative prognosis”. We refer to this in IASIO as “precautionary logic” the way thinking changes with the level of responsibility – the greater the responsibility for a client’s re-integration the more risk focused the practitioner. The term “precautionary logic” denotes a kind of argumentation that leads us to take far-reaching preventative measures. It’s a kind of reasoning that urges us to look for doubt instead of certainty and we need to be careful in doing so that we don’t instil a mistrusting mentality within society.

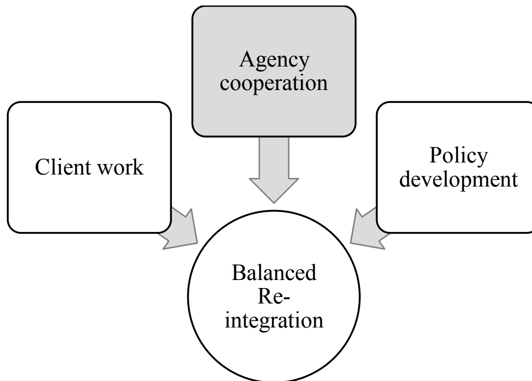
“Precautionary logic” also refers to within same agency differences, i. e. how a prison based Training and Employment Officer and community based Training and Employment Officer might think differently about the same client as he or she leaves prison.

There is an obvious gap in service provision between prison and community based agencies, which must be navigated. One of our former Justice Ministers in Ireland said that “prison is the punishment” The Minister of Justice of Mecklenburg Western-Pomerania *Uta-Maria Kuder* (see *Chapter 2.1*) said that “punishment sometimes starts on release from prison”. For example, people who have served time in prison have a set of needs distinct from those who were never imprisoned. The person working in the state housing department or financial department or welfare department who is unlikely to have ever seen the inside of a prison, is also very unlikely to have ever been trained to understand the many issues facing people who have served time in prison and who now rely on them for their assistance and guidance. Our prisoners are still our citizens and if we must treat all the citizens of our states equally as our customers then it is only right that all divisions or cross-functional state staff should be trained to understand their customer’s needs, which of course includes high-risk offenders. A memorandum of understandings and/or formal protocols should be developed to ensure equality and consistency of services. Unfortunately, with the absence of such training and protocols and the constant media sensation around high-risk offenders, most state service providers outside of the Prison and Probation Services have real fears and concerns which can and does sometimes cause them to adopt a predisposition which is not conducive to supporting reintegration.

There is a not so obvious gap in service provision within services, even those like ours that bridge the prison and the community (i. e. Gate and Linkage). This is where the above “precautionary logic” point applies.

Additionally, there can be a tension between what are otherwise good policies – child protection policies may complicate reintegration practice, e. g. even adult related offenders may be subjected to child related concerns and this specifically applies to sex offenders. Therefore, for balanced reintegration to be achieved there is a requirement for common objectives to be merged as demonstrated in the following *Figure 4*:

Figure 4: The balanced reinteration model



The difficulties being created by the media and its resonance are another important issue. Public perception is informed by media representation or in many cases, misrepresentation. Sensational headlines create a public discourse that provides no comfort to people living in fear nor do they instil any degree of confidence that the hard work of many agencies and thousands of ex-offenders trying to rehabilitate and reintegrate to their own communities will be portrayed in a balanced and a fair manner. A public discourse is developed therefore, which results in a tendency among the public to view all offenders as presenting an immediate threat. Developing partnership with media therefore would reduce a major barrier to successful reintegration – for high-risk offenders in particular.

Achieving balance requires a singular objective between the state services, the communities, and the policy makers.

In respect of client work major concern is to be given to:

- Effective service provision for engaged clients.
- Desistance focused interventions for those disengaged but able.
- Tailored interventions for those unable to fully engage.
- Identify needs and strengths as well as risks.
- Encourage and motivate change.

- Build the community into the release plan early on for both family & services.
- Imagine integration for each individual client.

In regard to agency cooperation the following issues are important:

- Establish if there a lead agency in each resettlement step, e. g. as arising out of post release supervision orders or distinct medical or psychological needs.
- Plan resettlement and reintegration within a multi-disciplinary framework.
- Establish clear role boundaries between prison-based agencies. Everyone should have an understanding of their task and the tasks of others and not overstep.
- Ensure a confidential review process among prison based agencies. Different agencies may have different relationships with the prisoner and may inadvertently tell the prisoner too much about the review process, e.g. that another agency may be advising against temporary release for instance.
- Manage contacts with community based organisations

Policy and protocol development:

- Establish release policies at the prison level that inform release protocols and practice.
- Establish referral protocols with training and education providers in the community.
- Establish referral protocols with essential service providers, e. g. housing, addiction, finance support etc.
- Engage media outlets – in particular national broadcast agencies around the representation of offender issues, e.g. the RTE audience council and IASIO has a seat on this statutory body.

4. Client work – The role of the community and the voluntary sector

From the client perspective:

- In support of the risk-management work of statutory agencies, provide desistance focused release planning with each client – develop approach goals (as part of a multi-disciplinary setting).
- Support and accompany each client during their release and in accessing essential services in the community – act as a bridge to the community.
- Support and help develop the potential for independence and autonomy, e.g. through training, education and employment, and leisure or sporting activities.

- Wean the client off criminal justice services and if necessary onto stable mainstream community based supports.

From the criminal justice perspective:

- Provide a source of potential trusting relationships for each prisoner.
- Provide an informed support that enhances prisoner stability.
- Provide a through-the-gate service to prisoners.
- Provide a developed network of community supports and opportunities during the review and reintegration processes.
- Inform core criminal justice agencies of opportunities and threats in the community, e. g. changes in recruiting practice among companies and training providers.
- Act as an information conduit between community and criminal justice system.
- Inform criminal justice policy development.
- Enhance the release planning and resettlement process in each prison.

5. Summary

As we have seen, what we have called "ideal reintegration" above, is the product of balancing three different processes. "Ideal reintegration" can be recognised as a process taking place along a spectrum of potential exclusion. There is an order to reintegration. "Ideal" reintegration occurs after the more material and immediate needs of resettlement have been addressed.

IASIO believes that despite the complexity of the process(s) it is possible to come close to the "ideal". Reintegration policy, agency cooperation and client intervention can align to effect successful reintegration. It is happening every day but we believe it would happen quicker if fears and prejudices are broken down by providing all state staff with appropriate knowledge and training to understand and help offenders reintegrate.

Public Service Broadcasting has an important role to play in supporting efforts to rehabilitate and reintegrate offenders and therefore should be approached to develop in the public the knowledge required for a mature and measured response to crime as it occurs and the capacity to realistically judge individual crimes and trends rather than fearfully respond to them.

However, IASIO also recognise that there will always be uncertainty. The client group and the institution of prison are just too complex for it to be otherwise. We also believe that each stakeholder has a stabilising role.

But for IASIO as a community and voluntary based organisation in Ireland, it is to bring the community and all its resources into contact with the prison and its prisoners. That is, to help the offender re-imagine themselves in the first

instance (as much as possible), but also to create and maintain opportunities for progression to the community.

7.5 Presentation of Forum Results

7.5.1 Results of Forum 1: Legislation and court practices (jurisprudence) concerning high-risk offenders

Frieder Dünkel, Elina Ruuskanen

1. Introduction

Topics of the discussion have been:

1. Sentence planning and specific prison regimes (specific treatment programmes, socio-therapy etc.),
2. The preparation for release (prison leaves, relaxation of prison regime, temporary release to half way houses etc.),
3. The decision on release (early/conditional/automatic release), in case the extension of custody by preventive detention and the role of legislation and jurisprudence to avoid preventive detention,
4. The supervision after release including exchange of infor-mation and cooperation of agencies involved at the post-release period (probation service, after-care services, police), the role of control mechanisms (intensive supervision and care, electronic monitoring etc.) and
5. The responsibility of local/community agencies (community guarantee).

The discussion was addressing the problem of the relationship between politics and the evidence coming from practitioners and academics on what is

needed for the rehabilitation of high-risk offenders. Some clarifications were made with regards to the system of automatic release, resulting in the remark, that only quasi-automatic release can be meant, considering the group of high-risk offenders (see also *Dünkel* under *7.1*)

The question, if the German model of socio-therapeutic treatment programmes would be desirable for all offenders was clarified by emphasizing that a specific treatment approach cannot be prioritized, although empirical evidence shows best evaluation outcomes for cognitive-behavioural programmes. In the context of high-risk offenders, a general agreement was that some treatment approach with elements of therapy and intensive treatment should be provided for this group of offenders. There should be no forced treatment, but trying to motivate offenders for undergoing the treatment, they need.

The about 70 participants of the Forum 1-group agreed that substantive legislation is needed alongside the phases of execution, preparation for release and aftercare support and supervision. The issue of responsibility of local/community agencies was discussed by emphasizing also the involvement of private organizations and NGO's for the resettlement of offenders.

2. Presentations at Forum 1

Alina Barbu's presentation on "Managing high risks offenders – from sharing experiences to drafting better national laws" emphasized the increasing role of the EU, Council of Europe, CPT-standards and the jurisprudence of the ECtHR and their influence on national law and/or jurisprudence. She gave examples for the increasing importance of critics from the Committee for the Prevention of Torture (CPT) for law reforms in some countries. Legislation needs to reflect the needs of practitioners, but also human rights standards. Of particular interest in the context of the JCN-project is Rec. (2014) 3 on dangerous offenders. It is evident that "dangerousness" is a "vague concept". In any case, high-risk should be seen as a dynamic concept and also this group of offenders must be given a realistic hope for release, a regular review of dangerousness/high-risk in order to prevent disproportionate long-term incarceration. *Alina Barbu* recommended that the JCN-project should continue in a way in order to drafting a manual or a handbook on dealing with high-risk offenders. Her presentation was in line with the results of the JCN-project.

Tapio Lappi-Seppälä's presentation on "Preventive detention in the Nordic countries" emphasized that Finland and Sweden do not have preventive detention, whereas Denmark and Norway do. All Nordic countries had introduced it in the first half of the 20th century, but since the 1970s a strong movement to reduce indeterminate detention in general, and preventive

detention in particular, emerged. Countries that abolished preventive detention have introduced "compensating" systems such as an increased use of mental hospital orders, increased penalties for recidivist offenders (Sweden) or of life imprisonment or mechanisms to fully serve the sentence (Finland). Countries maintaining preventive detention use it only rarely and to limited period: In Norway preventive detention in practice means 1.5-2 years extra-time (about 14 offenders per year). In Denmark 2-3 persons are sent to preventive detention per year (about 50 offenders serving on a given day). The question "Can a society survive without preventive detention?" was clearly answered with a "yes!" However, you need a system of support and community supervision after release, schemes of psychiatric treatment for high-risk offenders with mental illness, and a well-structured system of cooperation between medical, social and justice authorities.

Nora Demleitner's presentation on "High-risk offenders in the US: Imprisonment as the dominant response?" comprised a critical analysis of the crime policy in the United States. She emphasized that the US is the country with the highest prison population in the world. The massive increase since 1980 was the result of a change of sentencing philosophies since the 1980s focusing on retribution and deterrence, fear of crime and incapacitation. With regard to offenders, the focus was on drug, violent, and sex offenders. Longer sentences were imposed and more prison admissions took place despite a decline in criminal offending. The so-called "truth in sentencing"-policy (i. e. 85% of the sentence have to be served) had a major impact on the expansion of the prison system. Another factor in many states was the abolition of "good time"-schemes (reduction of the sentence for good behaviour or work) and of parole-schemes. The negative side effect of prisoners serving their full sentence was and is that no after release supervision can be imposed. Another negative factor increasing the prison population was the expansion of life sentences without the possibility of granting parole. At present about 160,000 prisoners serve a life sentence in the US, 50,000 of them "life without parole", 1 out of 9 really serve a life term, i. e. dye in prison. Some hope for a change in this respect is the jurisprudence of the US Supreme Court. The US Supreme Court outlawed mandatory life for a juvenile and for juveniles not convicted of homicide. However, sentencing courts may continue to impose (determinate) sentences equal to "life without parole". Some never come out of prisons, but 600,000 per year do! If on parole, standard and specific supervision conditions often are problematic resulting in many cases in a return to prison only for technical violations. *Nora Demleitner* reported that recently mass incarceration has become an issue in public debates. There is a pressure to reduce prison population because of economic reasons. Measures to reduce prison population are so-called Alternative Courts: Drug courts, veteran courts etc. Ineffective and effective models of supervision are discussed. An effective model concerning high-risk offenders is to focus on risks

and criminogetic needs by providing intensive treatment programmes for high-risk offenders. Emphasis should be given to dynamic risk factors and a progressive sanctioning regime.
Legislative changes needed in the US are:

- The abolition of "Life without Parole".
- The reinstitution/expanding of parole.
- The creation and funding of alternative courts.
- Providing sufficient budgets (funding legislation).

To move forward *Nora Demleitner* recommended:

- Research and federally funded pilot programmes.
- The public recognition of "mass incarceration" as a problem for the society.
- The reconsideration of underlying punishment philosophies in the light of budget pressures.
- To focus on collateral sanctioning (Ban the Box-movement).

3. Final remarks

The audience agreed with the three presentations as being supportive for and in line with the outcomes of the JCN-project and in particular of the results presented in Forum 1 (see *Dünkel* in *Chapter 7.1*).

7.5.2 Results of Forum 2: Sentence planning and treatment concerning high-risk offenders

Ethel Gavin, Jörg-Uwe Schäfer

1. Standardized sentence plan

- A sentence plan should be a minimum standard for all high-risk offenders.
- It was agreed that this plan should be an individualized sentence plan, reflecting that each offender's risk factors, crimes and needs are different.
- A system of priority setting, e. g. serious addiction issues should be addressed as a priority where these may prevent the prisoner to address other criminogenic factors.
- With regards the full length of the sentence to be served the sentence plan should establish realistic tools.
- Transition back into the community from the beginning must be an integrated and essential part of the plan.
- The sentence plan must be updated every six months based on case conferences, the prisoner should be actively involved.

2. High-risk offenders should be subject to a specific prison regime.

The prison regime should have the capability to provide all the services needed to support the high-risk offender to fully engage with the agreed sentence plan.

3. The process for making the plan

The process for establishing a sentence plan should include as much relevant and available information as possible, an interview with the prisoner with an emphasis on motivating him to take responsibility for setting the goals and the achievement

of them. Sentence plans should include a hypothesis on the explanation of the offender's criminal behavior.

4. The use of evidence based instruments

An evidence based screening at the beginning of the sentence, e. g. LSI, OASys, and/or HCR-20 should be used. As to risk and needs assessments, there was much discussion which model was best to use in the case of high-risk offenders. The Risk-Needs-Responsivity (RNR) model and the Good-Lives-Model were not seen as alternatives, but as complement approaches, which each have their justification. It was agreed that both these models are a very good base for sentence planning and that they contribute to identify the necessary treatment requirements.

5. Treatment interventions contained in the sentence plan

The sentence plan should include detailed information on:

- The necessary psychological interventions,
- vocational training/employment,
- prosocial contact with the outside world, and
- life skills training.

6. Prison environment

The prison environment should be an environment, which reflects hope and works towards motivating the prisoner to fully engage with his sentence plan.

In conclusion the results of the project were fully supported by the discussions and outcomes in Forum 2.

7.5.3 Results of Forum 3: Transition management and release concerning high-risk offenders

Gerry McNally, Tiina Vogt-Airaksinen

1. Context

In *Wer einmal aus dem Blechnapf frißt* (Translated as Once A Jailbird, 1934) by *Hans Fallada*, born in Greifswald, *Willi Kufalt*, convicted of embezzlement and forgery, has served his time in prison and is released to work for his keep and resettlement at a half-way house. After five long years, he's happy to be free and vows that once the grim prison walls are behind him, he will never lay eyes upon them again. As he prepares to leave his fellow prisoner is less optimistic:

"*Don't you try it ......you'll never keep it up. You'll knock around for a few months looking for a job. And perhaps you'll find a job and sweat yourself to death to keep it. But then it'll come out somehow that you've been in the clink and the boss'll put you on the street, or the other blokes – they're always the worst – won't work with a criminal...And when you're beat and haven't eaten for three days, and pinch something, and get caught, they say: "Just what we thought; good job we threw that bloke out". That's what they're like, and if you've got any sense you'll listen to me, and won't even start to run straight.*"

By the end of the book *Willi* is back in his prison cell after trying and failing to establish a life outside prison:

"*How good it was to be back again. No more worries. Almost like home in the old days ... It was better. Here a man could live in peace. The voices of the world were stilled. No making up your mind, no need for effort. Life proceeded duly and in order. He was utterly at home. And Willi Kufalt fell quietly asleep, with a peaceful smile on his lips.*"

The dark and moving story of *Willi*'s struggle to cope and settle after prison in *Wer einmal aus dem Blechnapf frißt* even 80 years after it was still resonates. It is never easy to cope in prison, but to leave and make a new start is to face stigma, challenges and obstacles require help, support and guidance particularly for those high-risk prisoners for whom crime, an anti-social lifestyle and institutionalisation have become a "normal" part of life.

2. Objectives of Forum 3

The objective of working Forum 3, in the course of the JCN-project, was identified as supporting the person to resettle safely in the community as a positive participant/citizen on their transition from the prison to the community. This objective provided an overarching context for the particular tasks in the transition management and release phase for prisoners leaving custody and also for the contributing service providers, criminal justice agencies and the receiving communities. For the ex-prisoner to settle safely in the community as a positive participant/citizen necessitates significant change and development in their personal management and behaviour, pro-social attitudes, expectations and coping skills, commitment to a new lifestyle and social engagement and skills/capacity for a new career. The community does need to recognise its contribution, responsibilities and benefits in supporting such change and coping with the fears and challenges in a high-risk ex-prisoner's resettlement. Past victims, potential victims and those fearful of becoming victims need to be assured, as far as practicable, in their safety and security.

3. Framework

There are a substantial number of existing Council of Europe, United Nations, EU and other international conventions, recommendations and resolutions relating to criminal justice, penitentiary and probation questions. Among them are important documents that should inform and provide a framework for discussion and proposals on best or promising practice with high-risk prisoners/offenders regarding work in prison, release planning, transition management and supervision and resettlement in the community.

Examples cited, in the course of the workgroup, included the Council of Europe (CoE) European Probation Rules 2010, CoE Prison Rules 2006, CoE Rec (2003) 23 on the management by prison administrations of life sentence and other long-term prisoners, CoE Rec (2003) 22 concerning conditional release (parole), The European Convention on Human Rights, UN International Covenant on Civil and Political Rights and more.

The working group recommended that this body of work be considered as providing a framework informing the context of the working group report and for the final report as a whole.

4. Key points/action areas

In the course of the JCN-project, working group 3 identified key priority areas for attention and action (see also *Vogt-Airaksinen* under *7.3*).

4.1 Multi-agency working

Preparation of release must begin at the commencement of sentence, be systematic and focus support for positive resettlement. It should not be left until just before release as institutional 'habits' and unresolved issues are likely to be, by then, difficult to change and prove even more substantial obstacles.

"Joined-up" services and co-operative working should be key principles and priority actions in custody and in the community.

There is an established body of international evidence and research findings supporting and promoting multi-agency working and "joined-up" service provision as promising practice in terms of results and outcomes.

There should be co-ordinated partnership and joint working between criminal justice agencies and with external and community supports and service providers (e. g. Integrated Offender Management) in custody and in the community.

Maximise in-reach engagement/participation by community based services particularly towards the end stage of sentence in custody.

There should be integrated and partnership/joint working between the agencies and services in sentence management throughout the sentence in custody.

Sentence planning should include clarity of roles, tasks and responsibilities for all involved in sentence management and service delivery.

As far as practicable and possible the prisoner should have an active and participatory role in sentence/supervision planning, review and revision particularly in the transition phase in custody and on release in the community. (Doing with rather than to)

Training for all staff and personnel working with high risk should include pro-social modelling, motivational skills, change management, risk identification and management etc.

Multi-agency co-ordination and working with high-risk offenders is a high cost process, which can be effective in reducing harm and damage in further offending. It is consistent that resources and interventions should be prioritised to follow and address risk of harm.

Integrated working does not mean all members doing each others job but each bringing their special expertise and skill to the team for the benefit of all, the prisoner/offender in particular. Team members should retain their own professional identity as part of the team.

4.2 Data and information exchange

On-going good quality risk and need assessment by trained personnel are key supports in decision-making at each stage of the release and resettlement process. However, the limitations and vulnerabilities to error of risk assessment must be acknowledged. Risk instruments cannot substitute for decision-making.

Protocols for information sharing and confidentiality are essential for effective “joined-up” service working in custody and in the community.

Informed consent by the offender should be sought for programmes, interventions and actions (requiring their commitment).

A shared information structure with, if necessary, graded access is necessary to support effective protocols and information sharing.

In case management, for example, tri-partite meetings, involving service providers, managers/supervisors, and the prisoner should be encouraged for clarity, effective communication and engagement.

Standards, rules and practices must be in place to minimise confidential or sensitive information leakage or abuse

4.3 Normalisation

The principal of ‘normalisation’ in sentence management and preparation for release should be a priority. In so far as practicable, life in custody and preparation for release should seek to resemble living in the community building in preparation for release and return to the community (while acknowledging restrictions on liberty and actions).

“Community guarantee”: In-reach service provision by community services in preparation for release and as “bridge” link to those services to be continued on release in the community.

There should be a range of “step-down” stages in preparation for and on release. i. e. reduced restrictions, open prisons, half-way houses, supported independent living etc. This should include opportunity to test and try out new coping, problem-solving, self management skills and learning developed in custody or in training for release.

4.4 Post custody supervision/support

All high-risk prisoners should be subject to post-custody supervision for a minimum period in the community on release in the interests of effective resettlement and also community safety.

Early release under supervision should be used where mandatory post custody supervision is not possible.

All sentences and periods of post release supervision should be time-limited. e. g. mandatory post custody supervision (no more than 5 years) with an option of voluntary continued support with mainstream community services or, in extreme cases with specialist criminal justice agencies.

Supervised early release should be availed of, as far as possible, as a trial or step-by-step familiarisation process in the release of high-risk prisoners.

Relapse and slips are normal problems and challenges in changing behaviour and learning new coping skills. There needs to be responsible discretion and flexibility exercised in supervising high-risk offenders on release to support and sustain change in acknowledging slips while also responding quickly to serious transgressions.

4.5 Prisoners as citizens

Prisoners' rights, entitlements, responsibilities and obligations as citizens should be acknowledged and built on in preparation for a law-abiding lifestyle in the community.

Communities and society in general should acknowledge high-risk prisoners and people with serious offending behaviours as members of the community to be supervised and supported appropriately in the community in so far possible when they have served their custodial sentences.

"Community Guarantee": The "Scandinavian model" (Denmark) was seen as a "good practice". Entitlements and obligations for the resettlement in the community should rest with the community of residence on release including equivalence of care and provision with other citizens. Shared responsibility with criminal justice agencies in dealing with risk factors, anti-social behaviour and offending. A communications strategy should be in place to address and respond to community and media queries and concerns regarding the release and resettlement of high-risk prisoners.

4.6 Victims

Victims should be consulted in the sentence, release and resettlement process with their concerns taken into consideration in planning and implementation.

Victims should be informed of actions that may directly affect or impact on them e. g. release date. Engagement with victims or victims' interests should be encouraged where appropriate and feasible in custody to address and reduce victimisation issues. E. g. victim-offender-mediation.

Engagement in victim-offender-mediation or similar initiatives should not be a factor or consideration in influencing decision-making on privileges in prison or release. Victims should not have a direct role in release decision-making, but their concerns should be taken into account and needs addressed separately.

5. Final remarks

Once a person has served a prison sentence, the likelihood that he/she will serve further periods in custody escalates. For the serious and high-risk offender this likelihood escalates even more extremely as the stigma, alienation and marginalisation experienced and distrust and fear by communities, victims and authorities grows.

As *Willi Kufalt* found out to his cost, it is very difficult to change career and behaviour after a prison sentence. For some, the security and dependence of the institution, can itself be an obstacle to leaving especially when one has served a long period in custody, it has become home, and one has no home outside.

The transition phase just after release is well recognised in research as the period with the highest risk of breakdown and relapse. It, therefore, merits the greatest attention, expenditure of resources and detailed preparation.

Ensuring that the released prisoner, however good or weak his/her intentions, has the best possibility to settle in a law-abiding and positive lifestyle in the community requires considerable investment in time, personnel and resources in both supervision and support. That investment will be repaid through reduced offending and victimisation and in greater community safety, less long-term security costs and successful resettlements.

7.5.4 Results of Forum 4: Re-Integration, aftercare and monitoring concerning high-risk offenders

Laura Kikas

Mikko Aaltonen introduced his research about the employment before and after a first prison sentence. Potential mechanisms through which incarceration can affect employment are:

A stigma of conviction gives a negative signal to potential employers. The Loss of human capital results in a lack of work experience, losing job skills, decreasing physical and mental health and a change in personality. The Loss of social capital may cause lacking networks and skills enabling to find jobs. The weakening of (pro-)social ties furthers new networks with criminal others.

The outcomes of *Aaltonen*'s research can be linked to the JCN results:

The employment rates among future convicts tend to be below the state's avarage already before the first sentence; one third of offenders are not working and are not officially seeking a job after the sentence. Offenders tend not to participate in active labour programmes that are offered by labour offices after release from prison.

Paddy Richardson described the gap between the reality and an ideal model of reintegration. The suggested solutions are: Re-integration efforts by the criminal justice system and the third sector are essential. Support for change and desistance, on-going access to welfare and housing, education, employment, family support, addiction services, lifestyle opportunities, community engagement must be guaranteed. The aim must be the autonomy and independence on the offender's side. An ideal model of reintegration should comprise early intervention, a trusting relationship, clear definition and assessment of risk, a multi-dimensional approach to identifying and addressing risk, a multi-dimensional approach to identifying and addressing needs, a multi-

dimensional approach to identifying supports and strengths, a motivated and engaged client, a realistic resettlement and reintegration plan centred on the client, ideally developed with the prisoner and accepted by him or her, and an agreed plan shared with and accepted by community based criminal justice and outside criminal justice professionals.

The presentation from members of KRIS shared the experiences on practical field:

The contribution that people who have offended in the past can make more effective results. Only offenders can stop offending. Walking the walk allows for honest intervention and trustful partnership for partner organisations.

The JCN-project team identified the following standards as essential/desirable for the successful management and engagement with service users at high risk of committing offences that could cause serious harm. In the discussions of Forum 4 the priciples of the JCN-project were confirmed and agreed. So legislative underpinning, assessment – initial and on-going, case management plans, offender involvement based on professional relationships, contract, supervision and monitoring, multi-agency working, community guarantee, focussed treatment/interventions, etc. were highlighted.

The conclusions in Forum 4 were fully in line with the JCN-project results. However, building the bridge from imprisonment to reintegration after release is difficult. Education and labour should be targets in prison and after release. A multidisciplinary approach is needed. Community garantee can make a difference for a successful re-integration. A more individualised approach to the needs of offenders can make the difference. The economic situation influences possibilities and the quality of the process.

The prison regime should have the capability to provide all the services needed to support the high-risk offender to fully engage with the agreed sentence plan.

8. Three days in Warnemünde: Reflections from different point of views

8.1 Reintegration of high-risk offenders – Closing remarks on human rights issues

Mary Rogan

When thinking about how to draw commonalities from these three days of interesting discussions, diverse topics, different perspectives and examples of varying practice which we have shared together, three key themes, for me, emerged.

The first was the question of, in the midst of all this diversity, what distinctively European features can we find? It is clear from the proceedings that this question has animated the organisers a great deal, and has been an important root of what has emerged over the past two years. The second theme was that of how to overcome the challenges which exist to sharing best practices, and translating those practices across borders. How can we take this knowledge and bring it home to our own countries? The third theme was particularly intriguing to me, that is, what practical requirements are needed when dealing with this group, this category of high-risk offenders. Specifically, I am referring to the legal obligations and responsibilities at issue when making decisions about their management. It has been a truly excellent feature of this conference that so many practitioners, from prisons and from probation, as well as community partners, and those who have experienced prison are here. This is, in my view, an enormous strength.

So, thinking about the first issue: What is distinctly European about the ideas which have emerged? Reflecting on this brought to mind some cases decided by the European Court of Human Rights, perhaps the best chance we have of attempting to identify a consensus European position. The first case is one which has been mentioned in several of the preeding papers, including that by *Frieder Dünkel*, and it is that of *Vinter* and the *United Kingdom*. This case, of course, laid down the crucial principle, that there is a right to have a review of a whole life sentence at least at the 25 year point, and that an offender is entitled to know the possibility for review at the outset of his or her sentence. Not all of the group with which we are concerned here are serving long sentences, but for those who are, the *Vinter* case hints at the possibility of some both principled and practical effects on their treatment. While it may be the case that the decision may not go so far as some commentary suggests, nonetheless *Vinter* was of huge importance. While its effects may be relatively limited, in that this kind of sentence is unknown in many countries, some of the discussion of the right to hope and right to rehabilitation in the decision has much wider potential application.

The Grand Chamber considered that if a prisoner were to be incarcerated without the prospect of release and without the possibility of review, there is a risk that he or she can never atone for the offence. The Grand Chamber felt that, in fact, the punishment in such a case increased with time, such that it became a poor guarantee of just and proportionate punishment. In the view of the Grand Chamber, an unreviewable life sentence was incompatible with human dignity. It is fitting that we these proceedings took place in Germany, as the Court drew, in particular, on two decisions of the German Constitutional Court in this regard, which held that prison authorities had the duty to strive towards the rehabilitation of a life sentenced prisoner and rehabilitation was constitutionally required in any community which had dignity at its centerpiece. This was so regardless of the nature of the crimes committed.

The Grand Chamber placed a great deal of emphasis on the importance of rehabilitation as an aim of imprisonment, considering there to be "*clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved*."

It also noted that while punishment remains one of the aims of imprisonment, the emphasis in European penal policy is now on rehabilitation, especially towards the end of a long prison sentence. The Court also took into account Rule 6 of the European Prison Rules which provides that detention should be managed so as to facilitate reintegration upon release, as well as Rule

102.1, which provides that a prison regime should be designed to enable a prisoner to lead a responsible and crime-free life on release, and Rule 103 which provides that individual sentence plans should be created for prisoners.

In her concurring opinion, Judge *Power-Forde* considered that Article 3 encompassed a "right to hope" and that the judgment recognised, implicitly, that hope is an important and constitutive element of the human person. In a strong and uplifting statement, Judge *Power-Forde* went on:

"*Those who commit the most abhorrent and egregious of acts and who inflict untold suffering upon others, nevertheless retain their fundamental humanity and carry within themselves the capacity to change. Long and deserved though their prison sentences may be, they retain the right to hope that, someday, they may have atoned for the wrongs which they have committed. They ought not to be deprived entirely of such hope. To deny them the experience of hope would be to deny a fundamental aspect of their humanity and, to do that, would be degrading*".

It is most interesting that we see in this case the movement towards the establishment of a principle that European prison law and policy should contain a *right to rehabilitation*. This event has done much to shape our understanding of what this European concept means. This statement of principle has really important effects in terms of resources, and poses key questions for those who organise domestic prison regimes. What will this mean? Will it become possible to litigate purely on the basis of the absence of the tools of rehabilitation? What does it mean outside the prison context? At the very least, it must require individulalised sentence planning.

The second case which comes to mind when considering this issues is *Hirst v United Kingdom* (No. 2). This case, of course, concerned the right of prisoners to vote, an issue which has brought the United Kingdom to the brink of leaving the Council of Europe it seems. The key statement in that case for our present purposes is as follows:

There is no question … that a prisoner forfeits his Convention rights merely because of his status as a person detained following conviction. Nor is there any place under the Convention system, where tolerance and broadmindedness are the acknowledged hallmarks of democratic society, for automatic disenfranchisement based purely on what might offend public opinion.

This statement should not be underestimated. It speaks to the European ideals of the value of protecting rights, and adherence to the rule of law even when dealing with those who have broken societal norms. I think these values,

which are even more at risk in the context of high-risk offenders, are particularly interesting to consider as “European” values. The Convention has acted as an important bulwark against some elements of punitive policies. In the American context, for example, the life without parole sentence has been ruled unconstitutional for juveniles in certain circumstances. It is hard to see the US Supreme Court moving to the position adopted by the European court for adults in *Vinter*, though it is extremely interesting that the majority of the US Supreme Court in *Graham* referred to the international consensus against such a sentence, in an intriguing example of the cross-fertilisation of judicial concepts.

The *second issue* emerging concerned the *challenges to sharing best practice*. First, it is important to recognise that, in part because of the difficulties in achieving consensus across such diverse cultures, histories, political and legal systems and institutional practices, the European Court has been most reluctant to be prescriptive about how states should run their criminal justice systems. As a result, while we have a right to hope and a right to review from *Vinter* we see other positions adopted by the Court which are quite different. For example, in *Boulois v. Luxembourg* we have the Court clearly saying that there is no right to home leave or temporary release, and, as such, Article 6 and its guarantee of fair procedures cannot apply. Similarly, a case from Ireland decided by the Court after *Vinter*, *Lynch* and *Whelan v. Ireland* sought to confine *Vinter* very much to its facts. The Court in *Lynch* and *Whelan* firmly confines its scope, suggesting that there will be some way to go before those seeking to ensure that all long-term prisoners obtain some kind of review are successful. Indeed, *Lynch* and *Whelan* found no difficulty under Article 5 with the Irish system whereby a prisoner serving a life sentence, which was characterised as entirely punitive, may be released by a decision of the Executive and without a judicial kind of mechanism or assessment.

A further hurdle to the development of consensus concerning the ideas emerging from this conference is that of domestic political reaction, again a recurring theme. The reaction in the United Kingdom to *Vinter* politically was highly negative, and indeed the domestic courts did not accept the findings of the Court concerning the English position. A further barrier is the difficulty of comparing what we are talking about. In this respect, the value of statistical data can be very limited. In my view it has become very apparent that the European Union and the Council of Europe will be major drivers in the improvement and standardisation of the collection of criminal justice statistics across member states. A brief glance at the SPACE statistics, will demonstrate many of us have a long way to go in this respect.

The *final theme* which I felt emerged strongly was the practical one: *What are the necessary processes and procedures which we must employ when*

dealing with this group of offenders? There are a number of key pressure points, where decisions are made which have enormous consequences for the offender and indeed for the community. Certain basic legal protections must be upheld at these moments. The obvious one is at the point of release. There is still huge diversity across Europe concerning the mechanisms which must be in place when deciding on release. Should it be a court or court-like body, what right does the offender have to receive information upon which the decision is based, is a formal oral hearing necessary? It is imperative that basic principles of fair procedures must apply when a liberty interest is at stake. There should be an opportunity to obtain legal advice, to respond to material which is adverse to the prisoner and to have the decision taken by a body independent of the Executive. This is the most dramatic moment in such a sentence, but fair procedures must apply at other points, too. For example, in the case of the decision to transfer a prisoner from one institution to another. In some countries, like the UK, a transfer can have major implications as one's security classification can change, which affects one's prospects for release. But what of less dramatic instances? Should fair procedures also apply when a prisoner is transferred from one prison where he or she is engaging in a particular programme, to one where no such programme exists, or where a particular form of treatment is severely interrupted? If, for example, you must demonstrate progress and participation in such courses in order to earn release, such a decision can have profound effects. It can, of course, impact on one's psychological wellbeing. There is a strong argument to be made, but one which goes beyond the Court position, that basic fair procedures must apply. What might these fair procedures comprise? One should have sight of the information upon which the decision to transfer is based, subject to precisely articulated limitations of security, to be able to challenge adverse findings, and to some degree of notice, wherever possible. We have further to go in terms of developing our fair procedure rights, and in adhering to the rule of law, in this respect. Decisions about what courses and programmes a prisoner may take, should also, it seems to me, attract some of these protections. This area, the question of the processes and rights which apply when such decisions are taken, will be crucial for the future development of policies and legislation concerning high-risk offenders. So far, the focus has been on the prison context, what rights should apply when we come to decisions made by probation officers?

This conference has acted as a source of ideas, guidance and support for those faced with making decisions in difficult situations. It can only be of assistance as Europe works to create better systems for dealing with this group of offenders.

8.2 Reintegration of high-risk offenders in the media – part of the problem and part of the solution

Beate Lakotta

As a journalist, who deals with crime and justice issues, I have been asked to give you a view from the outside on the JCN-conference: What strikes me? What issues do I as a layman perceive differently from you, who have been dealing on a daily basis and sometimes for many years, both in theory and in practice, with the rehabilitation of high-risk offenders? I am happy to oblige you.

I am impressed by the commitment, perseverance and passion with which you all campaign for your difficult clientele – whether in prisons, during after-care, in transition facilities or in research. Your work is important for our society. It is central to public confidence in the rule of law throughout Europe. In the home countries of many conference participants this rule of law is still young. However, everywhere it must be measured by the humane treatment of offenders.

Another important insight I am taking with me: reintegration as the primary objective of the penal system is not a question of sentimentality or social romanticism. It is an utterly rational goal, and it is academically justifiable. Successful rehabilitation makes our society demonstrably safer. You all are contributing to this generally laudable goal.

You receive little applause from the general public. This is primarily due to people like me: The media.

At this conference, speakers from different countries have emphasized the destructive role of the media in the efforts of social rehabilitation. Therefore, I would like to address this phenomenon and try to expand your view in terms of the facets of the media impact of your work.

I can understand your rebuking of the media. It was reported here in a survey of probation officers that hardly anything has a more obstructive effect

on the reintegration of an offender into the community, as media reports of his impending dismissal or his new life in liberty. Not to mention the influence of the mass media on the criminal-political climate. We, the media people, are making your work difficult. From this perspective, you are right of course when you describe the media as part of the problem.

You criticize rightly, that the media stir up the fear of crime and then capitalize on it.

This applies to the sensationalism of the tabloid media in particular. But even the so-called quality media such as *DER SPIEGEL*, my employer (circulation: 880,000), have reason for self-critical analysis. We also benefit sometimes from fear and resentment – of which even quality journalists are not always free.

With the spectacular original recording from a security camera of the Berlin underground we sold a story about the alleged “sinister escalation of youth violence”. The readers learnt indeed that such an escalation is not taking place, but on the contrary youth violence has been decreasing in Germany for years, but only after carefully reading the long, differentiated article inside the magazine.

I later reported for *DER SPIEGEL* on the trial of the so-called “underground kicker”. His picture had become an overnight icon of youth violence. That the 18-year-old first-time offender, a depressed high school student, did not fulfil a single stereotype of a young offender did not stop the tabloids at all. From the first moment they followed the case with demands for ever more draconian penalties for all possible violations of personal rights. This made the reintegration of the boy extremely difficult. And we, the reputable, the good people from *SPIEGEL*, had had our share in it. So I understand exactly what you mean.

However, the tabloid media usually run the business of fear in a much more unrestrained and striking manner: “500 murderers and sex beasts wait for their release” was the headline in *Bild.de*, when the Federal Constitutional Court in May 2011 declared the German practice of supplementary preventive detention unconstitutional.

The print version of *BILD* (circulation: 2.4 million) published in an article an unpixeled photo of a recently released offender taken by a paparazzo: “Here walks a ticking time bomb out of jail” (see *BILD* of 5 May 2011).

How the sensational press can destroy every effort to rehabilitate is shown by a tabloid headline from Hamburg: “New job for ex-detainees. Sex-gangster is now a janitor”. The man in this article was the victim of a week-long media campaign and for some time took refuge in a life in the forest.

Similar articles have lead to vigilante groups being formed in Germany to prevent the planned resettlement of released sex offenders or the opening of

forensic outpatient clinics. Another parolee asked to be re-imprisoned months after his release because outside he found no place to live after being chased by journalists and upright citizens.

Even judges must fear that decisions conforming to the rule of law are scandalized and that they are subject to media shaming. “This is the judge that released the thug” headlined the Berlin tabloid *BZ* with name and photo of the examining magistrate, who had decided not to imprison the earlier mentioned Berlin underground attacker on remand.

In Germany, the media has its own invective for the allegedly lax handling of state institutions with high-risk offenders: “cuddly justice”.

However, hardly anything has such a devastating affect on the reputation of the prison service and reintegration approach as reporting on successful escapes or relapses of day-release prisoners. “Sex gangster abused girls on prison day-release” was a headline in the *BILD* last summer. “He had 384 day-releases in two years,” says the article, and added: “Why does such a person get day-releases?”

This type of coverage is indeed a big problem for the acceptance of your work in society. In countries with extremely powerful tabloids such as the UK, these difficulties may perhaps be even greater than in Germany. In contrast, in Finland, a country without a powerful tabloid media, reintegration can take place without the negative publicity. As such, I can understand you condemning the work of the media and would like to have as little as possible to do with it.

However, I would like to encourage you to see the media not only as part of the problem, but also as part of the solution – namely by being instrumental in informing the public of what you do for the community.

As a listener who does not belong to your circle, I noticed that the programmatic passages of the speeches that we have heard at this congress were mostly addressed to “the society”. Society must learn that there can be no zero-risk policy in a state founded on the rule of law. It must learn that successful reintegration protects the public. It must learn that every Euro spent on reintegration results in significant savings in the follow-up costs of new violence and sexual offenses. And so on.

But: How do you want to bring this to the attention of society, if not through the media? An example, you have shown here in your highly interesting studies that not tougher penalties and more controls prevent crime, as right-wing populist politicians stubbornly claim, but that social networks, work and housing provide much more effective protection against new offenses. Such a professional exchange with colleagues and peers is a fine thing, but when you leave public opinion to populists, you will find it difficult to implement your findings. You need someone to transport all your visions into society and help

prepare their acceptance. You need us, the media, as multipliers. As part of the solution.

I am aware that anyone who publicly nails his colours to the mast for such an unpopular topic and approaches the media or journalists about it needs courage. For the next incident with a day-release or released high-risk offender is guaranteed. In such crisis situations, the institutions of law enforcement and reintegration rely on the support and solidarity of the politicians. But how can this be demanded most effectively? You can, for example, praise politicians publicly if they are brave enough in a crisis situation to support their institutions and the governing principles of the rule of law and academic empiricism, rather than be driven by media-fuelled hysteria. Or you can publicly raise your voice when your elected officials and senior managers leave hanging because of fear of the voters. For this kind of lobbying for your cause, you may need the media.

So if I could wish for a new additional programme point for a future conference in view of the abundance of interesting, important topics, it would be a workshop on strategies how to deal with public communication. Because this subject seems to be of interest to many of you.

8.3 Reintegration of high-risk offenders – Closing remarks

Elisabeth Kotthaus

1. "Thank you's"

First of all I would like to thank the organisers of this conference for this impressive event. It is the result of three years intensive work. Our thanks go especially to Mrs. *Eva- Maria Kuder*, the Minister of Justice of Mecklenburg-Western Pomerania, who is present today, and in fact for most of the conference, to have supported this huge project.

My sincere thanks go to Director General *Jörg Jesse* who has skill-fully coordinated the project and the conference starting from the preparation a number of years ago, through kick-off meetings and workshops to this final conference. His personal involvement covered without doubt the concept and organisation the project to make sure that is has European added value, but also very practical questions, such as – apparently – the handling of around 300 e-mails enthusiastically replying to a question which was not asked and getting participants into the right places at the right time.

We shouldn't forget a big "Thank you" for the team who supported him with this work and who accompanied us during these three days starting with the kind and professional reception at airports and during the conference. This "thank you" includes of course the entire team from assistants to drivers, technicians and interpreters.

I wish to express my gratitude to all the project partners and associated project partners without whose contribution this really European project on an important and delicate subject would not have been possible. You developed your reflection coming from your particular national systems and putting them into a much larger context.

The project and the final conference allowed extending this view progressively from 4 to 34 different legal systems. This alone is impressive! And for this I would like to thank all project partners and the participants of this conference who actively contributed – especially in yesterday's fora.

2. Content of the work during the conference

But let us now turn to the content of the work done!

Here I draw upon the input of my colleague *Bärbel Heinkelmann* of DG Justice in Brussels, who attended the first part of this conference: As many of the speakers have outlined the topic is extremely difficult as it concerns not only a number of persons concerned: (1) the offender or "service user"; (2) the victim(s); and (3) the entire society.

The main stakes appear to be the fundamental rights of the offender, especially the right to freedom" and the right to security of victim(s) and public.

Some of the speakers highlighted the challenge faced by services involved to deal professionally with this topic against the background of fears and misconceptions in the public which lead to a climate of mistrust, danger and insecurity. This would lead to or at least reinforce constraints on decision makers who would in turn avoid decisions implying risk. The media are indeed also partners in disseminating good practices, as Mrs. *Beate Lakotta* from the weekly magazine DER SPIEGEL has pointed out.

One speaker (*Christoph Krehl*) was very explicit in this respect: While the expert may refrain from the risk give a positive prognosis – being "on the safe side" with a negative one, a judge may happily follow this expertise.

The red lines which went through all the discussions about all stages starting with (1) sentence planning and treatment, over (2) transition management and release to (3) re-integration, aftercare and monitoring appear to be the following:

A multi-disciplinary approach. A speaker brought it exactly to the point: High-risk offenders do not "belong" to the Ministry of Justice and its services alone, but the responsibility for their re-integration lies upon the entire society (Ms. Director General *Marianne Vollan*): services at all levels from local to ministerial level need to get involved covering the entire range from justice, to social affairs, health care, education and training. The ideal would be indeed a "seamless" correctional service.

Information is a key for success: This does not only require optimal documentation by all the participants in the process but also information sharing

and exchange at all levels. This will lead to more informed assessment, plans and guidance to the offender and to timely reaction in cases of breaches which not necessarily needs to mean re-imprisonment.

Both risk screening and planning require careful, evidence based and scientifically sound assessments at all stages. Referring to a "black box of probation supervision" change has been described by one of the speakers (*Stephen Farral*) as being "complex and massy" requiring longer assessment periods. The practical examples given by him were very powerful: Only after the end of the probation period real impact may happen.

Standardised planning is indispensable. While we will need to keep in mind the entire length of the sentence in terms of planning, the length of the sentence itself does not appear to give indications for risk. Clear priorities should be set to allow not only for follow-up but also for a better understanding by the offender. And this planning should be regularly updated (a 6 month interval was mentioned in this context by *Jörg-Uwe Schäfer*). It was also said that all prisoners should – if possible – know the day when they can be released (*Gerry McNally*).

Very interestingly the importance of legislation at all stages was underlined (*Frieder Dünkel*): While legislation needs to be applied in practice, and "good practices" are necessary to make things function in reality, good legislation is in turn indispensable not only to provide a framework for best practices, but also to give legal certainty and ensure proportionality. This would be vital to provide people who are detained or on probation with clear guidance. Soft law has also a big influence (see the contribution of *Alina Barbu* in *chapter 7.1.1*).

I am sure that these aspects and elements of the discussions over the last days are not entirely new to you who are experts in this field coming from different disciplines. But I am also certain that each of you will have heard something new, that the discussions will have helped you to see things from a different angle or that you were reminded of subjects and solutions which will help you further in your work.

Jörg Jesse mentioned in the beginning of this conference the reluctance of the project team to pin down principles as "best practices" and possible "minimum standards" which may seem quite far reaching for countries fighting with problems such as large prison overcrowding.

This being said such guidance is and remains important and I trust that the outcome of this project will give guidance which will be sustainable and go beyond principles already contained in national and international standards, principles and recommendations, providing a real EU added value.

I would like to come back to the interesting analyses of the term “risk” which was presented by *Benoit Majerus* on the first day of the conference: initially (around 600 years ago) the word “risk” was not only understood as (negative) risk, but as (positive) opportunity.

We might need re-thinking this today – without of course being naive. If “risk” today is no longer linked to large populations, but to decisions taken by or concerning individuals, why not giving it back its initially also positive meaning. This might lead to more courage of decision makers at all levels which is essential.

3. Final remarks

- I hope – and heard it already from some of you – that this conference was interesting, refreshing and inspiring for all of you in general and for the project partners in particular;
- I trust that you all will have widened your network which is so important to make processes and legislation – including the relevant EU Framework Decisions on probation and alternative measures and on transfer of prisoners – work; and
- I wish you a safe way back home from this amazing place, which hosted this conference over the last three days.

9. Final Evaluation Report of the Justice-Cooperation-Network-Project “European treatment and transition management of high-risk offenders”

Frieder Dünkel, Ineke Pruin, Moritz von der Wense

9.1 Introduction

This evaluation report shall provide information on the work of the Justice Cooperation Network (JCN) project in regard to the scientific findings produced in the course of the evaluation of this project. The evaluation process is part of the JCN project under workstream 0.D) of the project’s agenda and has been conducted by the Department of Criminology of the University of Greifswald under the direction of Prof. Dr. Frieder Dünkel.

Previous results of the evaluation of the JCN project can be found in the First and Second Progress Evaluation Report, which have been produced by the evaluators throughout the course of the project and feature preliminary results of the evaluation process.[1] The results produced in this report stem from a survey including the project partner countries as well as the associated project partner countries, the results from the questionnaires handed out before each workshop, the workshop reports and the observations made throughout the project’s work as well as additional research carried out by the team of the Department of Criminology.

1 The First and Second Progress Evaluation Report are attached to this report in the appendix and are also available for download on the project’s website.

9.2 Findings on existing legal provisions and current practices

The first part of this report focuses on the existing legal provisions and the current practices in regard to high-risk offenders, which can be found in the countries that are partners or associated partners of the JCN project.[2]

9.2.1 Overview of the legal implementations of the concept of high-risk offenders in criminal law

In reviewing the current legal situation in the participating countries of the project, it became apparent that in most of the countries there is no direct reference or definition of the concept of "dangerousness" or high-risk offender in the national criminal law. This lack of statutory provisions does not mean that this concept is not otherwise implemented in the process of imprisonment and release, but already highlights the dissimilarities in the national approaches towards a high-risk offender management. Likewise at the level of law on sentencing, provisions concerning risk assessment could scarcely be found. In contrast to this, however, legal provisions for a redefinition of risk or a risk assessment during the execution of the prison sentence are existent in the respective prison codes of all project member states except for Belgium and Ireland.

9.2.1.1 Estonia

In Estonia the concept of dangerousness or a high-risk of reoffending is not laid down in criminal law. The only reference to an increased risk of an offender at this stage could be seen in the provisions for sentencing in cases of aggravating circumstances.[3]

The Estonian Prison Code refers to the matter of risk two times: Firstly it does so indirectly by stipulating the requirement of a set-up of an individual treatment plan for prisoners with a term of imprisonment exceeding one year, covering inter alia the transferability of the prisoner to an open prison and thus the risk of the offender, and secondly explicitly in regard to release on parole.[4] While the legal text does not define dangerousness or risk itself, in practice those terms are defined by the manual of the assessment tool, which is used in the aforementioned circumstances. Therein risk is described as the probability

2 For the purpose of comparability and to facilitate research, all legal citations in this report follow the Oxford University Standard for Citation of Legal Authorities (OSCOLA, www.law.ox.ac.uk/oscola).

3 Criminal Code (Estonia), s 58.

4 Imprisonment Act (Estonia), s 16(1) (2) and s 76.

that a person's behaviour will cause material, physical or moral damages. Dangerousness, on the other hand, is defined as a person's ability to cause events, which are life-threatening and with severe consequences and from which a recovery will take time or is impossible.

9.2.1.2 Finland

Finland is one of two participating countries which has a reference to the concept of dangerousness / high-risk in its national criminal code and which possesses a kind of legal definition for a dangerous / high-risk offender. The Criminal Code of the Republic of Finland provides in chapter 2(c) section 11 for the possibility of a court order (at the sentencing stage) to prevent the early release of a prisoner, who fulfils certain criteria (commission of an enumerated serious crime and the assessment that the offender is "to be deemed particularly dangerous to the life, health or freedom of another [person]"[5]), thereby giving a quasi-definition of a high-risk offender.

Another reference to risk is made in the provision for assessment prior to the decision about parole for a prisoner serving a life sentence in the Act on the Release Procedures of Long-term Prisoners, section 1.

9.2.1.3 Ireland

The concept of dangerousness or a high-risk of reoffending is not addressed in the Irish Criminal or Penitentiary law. This reflects, on the one hand, the structural reluctance of a Common law system to regulate details of sentencing and the execution of sentences in parliamentary legislation, but also an Irish aversion against fixed minimum terms or detention solely based on the estimated risk of reoffending.[6]

9.2.1.4 Germany

German Criminal law refers to the concept of dangerousness / high-risk at multiple points. The main reference is made by section 66 sub-section 1 of the Criminal Code, according to which a preventive detention can be imposed for the commission of certain offences, if the offender has been repeatedly convicted for at least two of these offences to a sentence of at least one year each and has served at least one of those sentences for at least two years or has been subject to a measure of rehabilitation and incapacitation and a

5 This wording is reiterated in the Code of Judicial Procedure (Finland), c 17, s 45 in regard to the assessment mentioned in Criminal Code (Finland), c 2(c), s 11.

6 Cf *The Law Reform Commission* 1995, p. 16.

comprehensive evaluation of the convicted person and his offences reveals a disposition for the commission of serious crimes and he has been deemed to pose a danger to the general public. This provision provides, like in Finland, a quasi-definition of a high-risk offender.

Other references to the concept of high-risk or dangerousness can be found in the legal provisions for early release[7], release from a measure of rehabilitation and incapacitation[8], imposition of post-custodial supervision[9] and remand[10]. There is, however, no legal differentiation between the terms dangerous and high-risk.

The law on sentencing in Germany refers to the aforementioned concept insofar, as the future effects of the imprisonment have to be considered by the judge when imposing the sentence.[11] This principle of special prevention also encompasses the level of risk of the offender and its estimated development through imprisonment.

9.2.1.5 Associated partners (Belgium, Slovakia, Slovenia)

In all three associated partner states there are no direct references to the concept of dangerousness / high-risk in Criminal or Sentencing law. In Belgium certain types of offenders are indirectly defined as high-risk offenders by exceptions to the rules for conditional release. On the level of Prison Acts, the Slovenian Penal Sanctions Enforcement Act refers in sections 98 and 206 to dangerous offenders for the purpose of disciplinary and security measures during imprisonment.

9.2.1.6 Summary

While the concept of high-risk has found its way into practice in regard to prison regimes at least to some extend in all participating countries, the amount of statutory law referring to this concept at an early stage of the criminal process (Criminal law, Sentencing law) is low. Only two states have defined a type of offender, who is subjected to restrictions or additional detention on the basis of his/her estimated dangerousness. The most common applications of the concept of high-risk are provisions for an early/conditional release, which indicates that legislators are especially sensitive to matters of risk at this point.

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7 Criminal Code (Germany), s 57(1).

8 Criminal Code (Germany), s 67d(2).

9 Criminal Code (Germany), s 68(1).

10 Code of Criminal Procedure (Germany), ss 112a, 454(2) (2).

11 Criminal Code (Germany), s 49(1) (2).

9.3 National legal provisions on the early[12]/conditional release of high-risk offenders from prisons and security institutions

National criminal law generally provides for the possibility of a release prior to the full service of sentence, either as a discretionary or as a mandatory release scheme.[13] Mandatory release schemes are rare and are, in fact, used only by two states involved in this project. Discretionary release schemes[14], on the other hand, are existent in every of the project member states and the associated project member states, but differ significantly in their prerequisites and the degree of discretion granted to the administrative body or court. Discretionary release schemes themselves can be broadly divided into two groups, those that require the satisfaction of some kind of prognostic threshold and those, which do not refer to any prognosis in their requirements. By definition, high-risk offenders have a negative prognosis and are thereby excluded from that first group of discretionary release options.

Release under a discretionary release scheme typically subjects the former prisoner to probation, usually for a period equal to the length of the unserved part of the sentence. Post-custodial supervision is either obligatory or may be ordered by the releasing court.

9.3.1 Estonia

The Estonian Penal Code provides for a discretionary release scheme in section 76 (release on parole). Prisoners can be released after having served half[15] of the sentence respectively two thirds[16] of the sentence. While prognostic elements are included in the consideration for conditional release, high-risk offenders are not excluded, as subsection 3 explicitly only refers to “the

12 The term „early release“ refers to automatic or unconditional release schemes, cf *Padfield/van Zyl Smit/Dünkel* 2010; *Dünkel/Padfield/van Zyl Smit* 2010, p. 396 ff.; *Dünkel* 2014, p. 167 ff.

13 For a tabular overview on the legal provisions on early/conditional release in the states involved in this project as well as a comparative analysis for Europe, please see Annex, Table 1, II.1 and Table 2, II.1.

14 Also referred to as “conditional release” or “release on parole”.

15 In cases of sentences for a criminal offence in the second degree or criminal offence in the first degree through negligence. If the prisoner agrees to electronic surveillance the minimum served term is reduced to one third of the prison term.

16 In cases of sentences for an intentional criminal offence in the first degree. If the prisoner agrees to electronic surveillance the minimum served term is reduced to one half.

consequences which release on parole may bring about for the convicted offender".

The probation term after conditional release is equal to the extent of the unserved part of the term of imprisonment, but not less than one year. Post-custodial supervision is ordered, if the offender has fully served a term of imprisonment of at least 2 years, has previously been convicted for an intentional offence with a term of at least 1 year of imprisonment and there are solid grounds to believe that the offender will reoffend. The supervision can last from 12 months to three years.

Release from life imprisonment is possible earliest after 30 years.

9.3.2 Finland

Finland uses a mandatory[17] release scheme with releases at one and two third of the sentence respectively (five sixth in cases, where the offenders has been ordered to fully serve the sentence).[18] High-risk offenders are therefore fully eligible for release under this scheme.

The probation term after conditional release is equal to the extent of the unserved part of the term of imprisonment, but not longer than three years. Supervision after release is ordered, if the part of the sentence, which is not served in prison, exceeds one year, if the offence is committed at a time, at which the offender was under 21 years old or if the prisoner so requests. The duration of the supervision is the same as the probation term.

Release from life imprisonment is possible earliest after 12 years.

9.3.3 Ireland

The Irish law provides for both, a mandatory and a discretionary release scheme. The mandatory release takes the form of an automatic 25% remission of the prison term, without exclusions of high-risk offenders.[19] The discretionary release scheme provides no entitlement to prisoners for conditional release, but merely grants the Minister for Justice and Equality the right to conditionally release a prisoner at his or her full discretion. While the statutory provisions do not explicitly exclude high-risk offenders from release under this scheme, they oblige the minister to consider the risk of further offences and the risk of non-

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17 In exceptional cases (> 3 years of imprisonment for violent or sexual offenders who present a particular danger to society), the sentencing court can order the full serving of the sentence.

18 Criminal Code (Finland), c 2(c), s 5.

19 Prison Rules 2007 (Ireland), s 59. While the statutory provision sets the requirement of a good conduct, the remission is, in practice, granted quasi-automatically.

compliance with conditions imposed, thus making a release of a high-risk offender unlikely.

Prisoners released under the mandatory scheme are not subjected to any kind of supervision. For prisoners released under the discretionary scheme, supervision may be imposed as a condition of the temporary release order (obligatory for life sentence prisoners), by the sentencing court when convicting a person of a scheduled sexual offence or as a condition to a court order to suspend a sentence wholly or partially under Criminal Justice Act 2006 s 99(1). The duration of supervision cannot exceed the maximum custodial sentence.

Release for prisoners serving a life sentence is possible earliest after 7 years of imprisonment.

9.3.4 Germany

Germany uses a discretionary release scheme, which makes a direct reference to the "interests of public safety".[20] While this hinders a conditional release of high-risk offenders at first glance, under a ruling of the Federal Constitutional Court conditional release options must be considered also for offenders with a higher risk of reoffending towards the end of their sentence.

Prisoners released by conditional release are always subjected to probation, ranging from two to five years, but not less than unserved part of the sentence. Supervision of conduct after the release may be imposed either by the sentencing court when convicting a person to imprisonment of not less than 6 months for an offence, to which the law specifically provides for the availability of a supervision order, if there is a danger that the person will commit further offences, or as a consequence of statutory provisions providing for supervision (e. g. for release from preventive detention).

Prisoners serving a life sentence can be conditionally released earliest after 15 years, if the gravity of the offender's guilt does not necessitate that he continues to serve his sentence, the release can be justified with regards to the interests of public safety and the prisoner agrees.

9.3.5 Associated partners (Belgium, Slovakia, Slovenia)

All three associated partner states have discretionary release schemes that require a negative prognosis and therefore bar high-risk offenders to be released under these schemes. In Slovenia, however, section 108 of the Enforcement of Penal Sentences Act also provides for an early release option of up to three months prior to end of the prison term at the discretion of the prison governor. Since this release scheme requires only a good conduct within prison, but makes

20 Criminal Code (Germany), s 57.

no demands to the future behaviour, high-risk offenders can qualify for this as well.

In Slovenia and Slovakia the minimum term of imprisonment for offenders serving a life sentence before being eligible for conditional release is 25 years. Offenders who are repeatedly sentenced to life imprisonment are, however, exempt from conditional release in Slovakia.

In Belgium and Slovenia the probation term equals the extent of the unserved part of the term of imprisonment, but can not be less than 2 years in Belgium. Furthermore, in Belgium convictions or correctional convictions that sum up to more than five years of imprisonment lead to a post-custody supervision period of five to ten years, a lifelong sentence to a post-custody supervision period of ten years.

In Slovakia the probation term ranges from one to seven years, but an additional protective supervision of one to three years or up to five years for recidivists may be added.

9.3.6 Summary

Due to their nature, mandatory release schemes apply, where provided, automatically to all prisoners, regardless of their risk of reoffending. Discretionary release schemes, however, require a certain prognostic threshold regarding future behaviour on the majority, which excludes high-risk offenders from these schemes, who, by definition, have a high prognostic risk of serious reoffending.

Furthermore, it should be noted that the release of prisoners and of inmates of security institutions, who have committed serious offences, is generally viewed as a precarious issue. Public opinion does not favour the assumption of risk in regard to the release of prisoners or other inmates, which is clearly perceived on the decision-making level. This can easily lead to a growing reluctance to use release schemes that allow for a pre-dated release in cases of prisoners with a history of serious offending.

9.4 Overview on penitentiary practices (concerning high-risk offenders)

The project found that the execution of sentences for high-risk offenders, without prejudice to provisions and practices regarding the transition process, is influenced by their assessed risk only insofar as security measures and prison leaves are concerned, but does otherwise not fundamentally differ from execution of sentences for those prisoners, who are not deemed to be of high-risk. On closer examination, three aspects became apparent as the major factors of penitentiary practices for high-risk offenders. Firstly, high-risk offenders can

be subjected to segregation and accessory security measures, namely solitary confinement, either as a disciplinary sanction, a result of a court order or for preventative purposes. Secondly, high-risk offenders may be excluded from or only restrictively granted prison leaves due to an assessed risk of flight or committing new offences. And thirdly, high-risk offenders may not be transferred to open prisons or only at a late stage of their sentence.

9.4.1 Estonia

Under Estonian Prison law an offender who has served at least one year of imprisonment or at least half of his/her term of imprisonment, if he/she was convicted for a first degree offence for at least the second time, can be granted a short time leave from prison for up to 21 days a year. This, however, requires the absence of a positive assessment for a risk of flight. Furthermore, prisoners serving a life sentence are exempt from this provision.

A transfer to an open prison requires an even stricter catalogue of prerequisites to be fulfilled, among which a negative assessment of risk of flight and an absence of a need for the placement in an extra security ward are the most relevant points for high-risk offenders. Because the length of sentences for these offenders regularly exceed one year, such a transfer is possible only 18 months prior to release, if the prisoner's dangerousness is not rated as being at the highest of the four-point scale and the prisoner is not currently abusing substances, or on the basis of a recommendation in the individual sentence plan. Given that currently just about 10 per cent of all prisoners serving a sentence in Estonia are placed in an open prison, the probability of a transfer could be said to be rather low for a high-risk offender.[21]

Concerning solitary confinement, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has reprimanded Estonia for an "excessive use being made of solitary confinement at Viru Prison, in particular for disciplinary purposes".[22]

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21 Estonian Prison Service, Numbers of prisoners and probationers as of 04.01.2016, <http://www.vangla.ee/et/uudised-ja-arvud/vangide-ja-kriminaalhooldusaluste-arv>.

22 Report to the Estonian Government on the visit to Estonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 May to 6 June 2012, published on 21.01.2014, CPT/Inf (2014) 1, No. 75-76.

9.4.2 Finland

In Finland all prisoners are eligible for a prison leave at some point of their sentence.[23] The prison leave, which is granted by the prison governor, can be based either on the served part of the prison sentence or on exceptional circumstances. A prison leave based on time served is seen as a normal part of the sentence enforcement and can be granted earliest after two-thirds of the mandatory time in prison, but not less than two months, have been served. Leaves may be granted for a maximum of three days in every two months. Life prisoners, who are not granted a permission of leave on the basis of the length of their sentence, shall be granted a permission of leave under escort at least once every year.

In addition, a prison leave can be granted for important reasons, such as contact with the family outside of prison, health care, subsistence, work, training, social or housing issues of the prisoner or for other corresponding reasons. If needed, an escort may be used during the leave.

While security is always considered in the decision-making process before granting a prison leave, the general notion of a non-restrictive eligibility of all prisoners for leaves seems to lead to a handling of the issue with wider discretion and virtually no exclusions on the basis of risk.

Transfers to open prisons are conducted on the basis of assessments by the Assessment Centre subsequent to an application to be transferred by the offender. Among other requirements, the level of risk of the offender has to be assessed as being suitable for a placement in an open prison. The decision whether an offender should be transferred is taken by the director of the Assessment Centre. In Finland about 40 per cent of the prisoners and 44 per cent of prisoners with a prison sentence exceeding two years are transferred to an open prison before release.[24] There is no information, however, up to which risk category offenders are being transferred and it could be assumed that offenders with a high or very high-risk are not allocated to an open prison during the course of their sentence.

9.4.3 Ireland

Prison leaves in Ireland are dealt with within the Temporary Release Scheme (see 9.3.3). Temporary release may be granted on compassionate grounds[25], such as important family occasions or other personal matters outside of the prison, or on a day-to-day basis. There is no statutory limitation to the number or

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23 *Lappi-Seppälä* 2009, p. 333 ff., 345.

24 *Statistics of the Criminal Sanctions Agency* 2013, 6.

25 Cf Prisons Act 2007 (Ireland), s 39.

length of leaves that can be granted. As mentioned before, considerations with regard to the risk of further offending and the risk of non-compliance with conditions imposed are obligatory before granting temporary release, which means that high-risk offenders are de facto more likely to be excluded from this scheme.

Prisoners with a term exceeding one year of imprisonment may be considered for a move to an Open Centre with about two years left in their sentence; in exceptional cases, where prisoners are engaging strongly with the therapeutic services, they can be considered for a transfer already with up to four years left to serve in their sentence. Prisoners serving sentences in excess of eight years may recommended for transfer to an Open Centres by the Parole Board; however, the decision still lies with the Minister for Justice and Equality. There is no indication of what level of risk is generally seen as acceptable for a transfer to an open centre, but given then abovementioned standards, it is reasonable to expect a general exclusion of high-risk offenders from such transfers, especially as currently just about 9 per cent[26] of all prisoners in Ireland are placed in an open or semi-open facility.

Solitary confinement has decreased in Ireland since July 2013. The overall figures of prisoners on restricted regime went down by 26 per cent from 339 to 250 with a one-year period; the number of prisoners on 22/23-hour lock-up decreased by 80 per cent from 211 to 42 in the same time.[27] This reduction is mainly the result of the declared aim of the Director General of the Irish Prison Service to reduce the number of prisoners held on restricted regimes within a timeframe of twelve months and to introduce a minimum standard of 'out of cell time' of at least three hours per day.[28]

The majority of prisoners were held in solitary confinement for protective reasons[29], while only just under 8 per cent were held for disciplinary reasons or on grounds of order. Given that one group of vulnerable prisoners are sex offenders, of whom a subgroup constitute high-risk offenders, it can be said that with a high probability high-risk offenders are impacted by solitary confinement in Ireland as well. The decreasing number in total as well as in hours out of cell are, however, a promising development.

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26 Prisoner Population on Friday 8th January 2016, <www.irishprisons.ie/index.php/statistics/daily-custody-figures>.

27 Census of Restricted Regime Prisoners July 2014, Irish Prison Service.

28 Census of Restricted Regime Prisoners July 2014, Irish Prison Service; „Prison Service says solitary confinement numbers 'not acceptable'", RTÉ News, www.rte.ie/news/2013/0722/463861-solitary-confinement.

29 Out of which 97% are listed as being on protective regime on their own request.

9.4.4 Mecklenburg-Western Pomerania (Germany)[30]

According to section 38 of the Prison Act of Mecklenburg-Western Pomerania, prison leaves may be granted generally after a term of six months has been served, if it can be accounted for to put the prisoner to the test that he/she will not commit any offences or flee during the course of the prison leave. The number of days or the lengths of prison leaves are not limited. Prisoners serving a life sentence can be considered for prison leave after having served a term of ten years or if they have been transferred to an open prison.

Furthermore, prisoners may be granted a special leave of up to six months, if this is imperative for a successful preparation of reintegration and they have served at least six months of their sentence.[31] Alternatively they may be transferred to a half-way institution.

A placement in or transfer to an open prison requires that the prisoner is found to be suitable for such a placement.[32] The threshold for the accepted level of risk is the same as in the case of a prison leave. While this allows for a wider discretion in each individual case, the majority of high-risk offenders would still not be likely to be considered for this. In this context it is worth noting, however, that currently 16,5 per cent[33] of prisoners in Mecklenburg-Western Pomerania are placed in an open prison.

9.4.5 Associated partners (Belgium, Slovakia, Slovenia)

In Belgium (un)supervised prison leaves may be granted by the Minister of Justice depending on the advice of the Psychosocial Service and the Prison Governor. Limited detention, which equals an open prison and is granted by the Court of Implementation of Sentences, is usually provided for prisoners considered to be of higher risk before conditional release. However, on the whole leaves as well as limited detention are being evaluated more carefully and granted less easily, when the prisoners has been assessed as a high-risk offender.

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30 Due to the federal structure of Germany the focus will be limited to the partner state of Mecklenburg-Western Pomerania, where the legislative competence rests with the states of the Federal Republic.

31 Prison Act (Mecklenburg-Western Pomerania), s 42(3).

32 Prison Act (Mecklenburg-Western Pomerania), s 11(2).

33 Bestand der Gefangenen und Verwahrten in den deutschen Justizvollzugsanstalten as of 31.08.2015 (excluding prisoners on remand and other forms of imprisonment), < https://www.destatis.de/DE/Publikationen/Thematisch/Rechtspflege/StrafverfolgungVollzug/BestandGefangeneVerwahrtePDF_5243201.pdf?__blob=publicationFile>, p. 5.

In Slovakia, high-risk offenders are generally not allowed prison leaves or placed in an open prison. To be admitted to an open prison, the prisoners also have to have been placed in a low security prison beforehand.

In Slovenia prison leaves are granted by the prison governor on the basis of the opinion of professional staff as a disciplinary reward and can take the form of a supervised or unsupervised leave from prison (with the possible exception of the former site of the crime). Unsupervised leave may be granted up to five times per month and may not exceed 53 hours. Any grant of prison leave is subjected to an assessment of the risk of abuse of the leave as well as the response of the environment to it. The transfer to an open prison is granted depended on the assessment of the risk of abuse of this relaxation. However, it is not stated which level of risk is seen as acceptable.

9.4.6 Summary

In the vast majority of states, which have been examined, prison leaves and transfers to open prison require that the offender be assessed to be under a certain level of risk for reoffending as well as risk of flight. While this threshold is differently defined, it often appears unlikely that it would be met by any of the high-risk offenders. Finland differs from this insofar, as all prisoners are thought to be eligible for prison leaves at some point during their sentence, thus admitting high-risk offenders to this means of relaxation of prison regime as well.

While recognising the public and political concern, already referred under 2.6, it should nonetheless be pointed out that gradual release, i.e. the use of different forms of prison leaves after careful preparation as well as conditional release before the end of the sentence, have proven to be an effective tool in reducing recidivism among all groups of offenders, including those assessed as being of high-risk.

Though there are no numbers concerning the precise amount of high-risk offenders in solitary confinement, it appears to be likely that solitary confinement on the basis of disciplinary as well as protective grounds is also targeting high-risk offenders. Placing prisoners in solitary confinement on these grounds has been identified as a practice in some of the states involved in this project, albeit implemented to different degrees. No distinct pattern for the use of solitary confinement could be found, however; the missing evidence of solitary confinement in Finland for example, is not representative for a Scandinavian practice, since international critique has been expressed concerning solitary confinement in Denmark[34] and Norway[35]. In general,

34 Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/63/175 (28 July 2008), 5.

solitary confinement is viewed as a measure of last resort, which should be limited in time and scale and provided with appropriate safeguards, so as to avoid an infringement of the prisoner's human rights. Solitary confinement, which might have once been legitimate, may, for example, become obsolete during the course of time or due to changes in the environment. Such a change of circumstances could be seen in Spain where, with the declaration of a permanent ceasefire and cessation of armed activity by the ETA,[36] the level of risk of the convicted members of this underground organisation should be reassessed. However, those prisoners continue to be subjected to the high security regime of the first degree in the Spanish prison system.[37]

9.5 Preparation for release and transition to the community for high-risk offenders

The preparatory stage of release marks an important point in the transition process from prison to community. It is at this point that the organisational and personal foundations are laid for a smooth and seamless transition. Careful planning and early cooperation with public and private organisations outside the prison have been identified as one keystone in successful offender transition. Personal continuity and the extended use of half-way institutions or other methods of "normalizing" the execution of the sentence are known to be effective as well.

9.5.1 Estonia

A set-up of a sentence plan is obligatory for all offenders with a prison sentence exceeding one year and includes a risk assessment and the planning on all necessary measures for the execution of the sentence. During the sentence a case manager is responsible for the prisoner's execution of the sentence. He/she liaisons with specialists inside and outside the prison and, in cases of a release after having fully served the sentence, informs the social worker of the

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35 Report to the Norwegian Government on the visit to Norway carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 10 October 2005, published on 11 April 2006, CPT/Inf (2006) 14, 25.

36 Euskadi Ta Askatasuna (basque: Basque Homeland and Freedom).

37 By virtue of General Prison Law 1979 (Spain), s 10(1) and Royal Decree on the Adoption of the Prison Regulations 1996 (Spain), s 102(5)(a) and (c), specified under Royal Decree on the Adoption of the Prison Regulations 1996 (Spain), ss 89-95. Cf *Hogg* 2012, p. 12 ff.; *Dünkel/Lappi-Seppälä/Lazarus* 2014, p. 6 f.

respective municipality[38] about the prisoners release. In cases of a conditional release the law requires the prison to prepare a report with recommendations to the court, based on the risk-assessment and the progress of the offender during the sentence, two months prior to the earliest date for conditional release.[39] By request of the case manager a probation officer can be involved in the preparation for release. If needed, the probation officer can visit the offender in prison.

There are no legal provisions for halfway houses and/or electronic supervision for “dangerous” or high-risk prisoners in the preparatory stage for release or on release. There is, however, the possibility to agree to electronic monitoring in order to be admitted to an earlier conditional release.

Whilst imprisonment, NGOs are involved in providing rehabilitation services to offenders, e.g. support persons, self-help groups for addicts, drug treatment services, etc. Every prison and probation department has its regional partners. The NGOs are generally not funded by the prisons, but are operating on project grants awarded from third parties.

9.5.2 Finland

Next to a sentence plan a release plan has to be set up by the prison well in advance of the probable release date. The Criminal Sanctions Agency has specified the beginning of the preparatory stage in their instructions to be at the latest 6 months before release. A senior criminal sanctions official is in charge of drawing up the release plan and will, where necessary, cooperate in doing so with other officials, such as the prison’s social worker, a guidance counsellor or health care officials. If needed and with the consent of the prisoner, the local authorities of the municipality of residence of the prisoner can be involved in the drawing up of the release plan. Risk assessment is carried out by the psychiatric prison hospital, which produces dangerousness evaluations of prisoners serving the full sentence before release and evaluations of the risk of committing violent crimes for life prisoners prior to release.

A few months before release the prisoner is visited once or twice by his/her future probation officer, if he/she will be under supervision after release. In those cases continuity of care is provided by law.

Halfway houses exist in connection with the prisons in Kuopio and Oulu. Furthermore there are halfway houses as an outsourced service in Tampere and Helsinki. Prisoners are placed in these units some weeks or a couple of months before release.

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38 Cf 9.6.1 (Aftercare in Estonia).

39 In practice, this procedure has been reported to begin with the commencement of imprisonment.

Electronic supervision is only used in the context of the "Supervised probationary freedom" scheme.

In prison prisoners are supported by peer groups, self-care groups (AA, NA), spiritual groups (congregations) and other voluntary organizations. Furthermore, there is an existing cooperation with the probation work organisation KRITS and the peer group support association C.R.I.S. The support work of NGOs within prisons is supervised by the Criminal Sanctions Agency.

9.5.3 Ireland

In Ireland a case manager of the Integrated Sentence Management (ISM) is responsible for the release preparation of high-risk prisoners within prison. He liaisons with the prison-based officer of the probation service, who is in charge of drawing up a pre-release case management plan twelve months prior to release. At the same point, offenders with a term of imprisonment exceeding two years are subject to a risk assessment. The release phase begins nine months prior to release with the development of a Community Integration Plan (CIP), which addresses relevant issues for the resettlement in the community, such as accommodation and employment or education. A number of services are involved in the release planning, which are, besides for the Irish Prison Service, the Custody Management, Health and Nursing Service, Psychology Service, Addiction Service, Training Service and chaplaincy along with external providers including statutory services such as the HSE Forensic Psychiatric Service, the Probation Service and the Education Service. Statutory Homeless and Social Protection services as well as community and voluntary bodies provide an in-reach service in each prison for additional support. The Irish Prison Service provides funding to specific community based organizations to support their work in prison.

Half-way houses or electronic supervision are not provided for in the preparatory stage for release or on release.

9.5.4 Mecklenburg-Western Pomerania (Germany)

Formal release preparations within the multi-agency framework of InStar (Integrated Offender Management) begin, depending of the length and kind of the sentence, twelve to six months before the prospective release. The division manager is functioning as a case manager in prison and is responsible for the release preparation process. One year before the release of the prisoner the probation service has to be involved. Prisoners are then either transferred to a special preparation station of release or, should they be suitable, to an open prison. Depending on the needs of individual prisoners, probation officers can visit the persons they will be responsible for in prison. This is usually done at least six months prior to the scheduled time of release. In general, the probation

officer meets the responsible prison officer and the prisoner at least once before release. They coordinate the release together. The frequency of contact is set individually.

Continuous service and care are provided by law for those under probation or supervision of conduct. For released prisoners under supervision of conduct national law provides the possibility of electronic supervision. The use of half-way houses is laid down as an option in the prison code of Mecklenburg-Western Pomerania[40], but has so far not been implemented into practice.

Prisons work together with external services, private and public institutions, during the execution of the sentence and in the preparation process for release, e.g. in the areas of vocational training, school, social training, consultation, counselling and treatment programmes. However, all decisions related to of the prisoner's treatment before and after release rest solely with the prison and the probation service.

9.5.5 Associated partners (Belgium, Slovakia, Slovenia)

In Belgium, the beginning of the preparatory stage for release is not defined by law; however, in practice at least the assessment of the Psychosocial Service starts a few months before the offender can ask for unsupervised leaves, which implies that in many cases the assessment will start at the beginning of the sentence or shortly after. The release planning process begins with the release plan, which the offender has to formulate in the procedure of conditional release. This release plan is then being evaluated by the Psychosocial Service. The Psychosocial Service then advices the prison governor on the question of the release and it's proposed conditions, who in turn is sending his/her advice to the Minister of Justice and the Court.

There are currently no halfway houses in Belgium. Electronic supervision can be applied as a conversion of the prison sentence into an execution of the sentence outside of prison under electronic monitoring six months before the earliest point of release on parole. The supervision is carried out by justice assistants[41]. There is also a system of 'home detention', for which prisoners, serving a sentence of up to three years, are eligible two months prior to their earliest date for release on parole. In these cases the supervision is carried out by the prison administration in the first week and afterwards by the National Centre for Electronic Monitoring.

In Slovenia, sentence and release plan are combined in a "personal treatment plan", which should take into account all recommendations contained in social

40 Prison Act (Mecklenburg-Western Pomerania), s 42(3) (1).

41 Belgian equivalent to probation officers.

work, psychological and pedagogic reports as well as other specialized assessments which are available. This means, that the preparatory stage for release starts at the beginning of the sentence. By law, the responsible centres for social work and other such entities must, in cooperation with the prison, prepare a programme of necessary measures for assisting convicts at least 3 months before release from prison.

During the prison sentence individual case managers (called adviser-pedagogues, who are usually pedagogues, psychologists or social workers) are responsible for the implementation of the personal treatment plan and the preparation of the prisoner for release. They are then assisted in the preparatory phase for release by staff of the social work centre, who are also engaging in direct contact with the prisoner. The amount of visits by a social worker in prisons depend on the prisoner's personal circumstances or needs.

Half-way houses or electronic supervision are not provided for in the preparatory stage for release or on release.

During the sentence prisoners are supported by different NGOs, self-care groups (AA, NA) and other voluntary organizations and are supervised by social workers.

In Slovakia, the beginning of the preparatory stage for release is not defined by law, nor are there any standards or guidelines for it. As there are no case managers, educationists and social workers are mostly trying to prepare the prisoners for their release. Probation and mediation officers usually do not visit prisoners whilst they are in prison. There are also no halfway houses. Electronic supervision is currently being set up, but is not in practical use yet.

While NGOs are generally not involved in the work with offenders during prison sentence, prisoners are often supported and educated by spiritual groups (church congregations).

9.5.6 Summary

Release planning is reported to often begin at the start of the prison sentence, while the legal provisions only require it to begin some twelve to three months before release. Arguably, legislators have not correctly identified the necessary length of release preparation and should adjust statutory provisions to this good practice. Cooperation with public, and often also private, bodies outside the prison is existent, but should be further developed. To that end, a multi-disciplinary approach, which is best pursued throughout the execution of the sentence, should be extended to a multi-agency approach towards the end, to allow for personal interaction between the parties involved. Personal continuity should also be emphasized concerning the offender – early visits of his/her future case manager in the community are important for relationship building before the "release shock". To reduce the latter, half-way institutions have long

been recommended, but are so far only used in one of the seven examined states. However, there is a promising development in some European states to invest more into such institutions.

9.6 Aftercare (supervision and support) for high-risk offenders

Aftercare is the final step of transition management. It often consists out of the two elements of supervision and support, which should be sufficiently balanced, as there is clear evidence that a model of supervision which is solely directed towards control does not only not help to reduce recidivism, but also leads to an increase in the number of technical violations.[42] Furthermore, aftercare should be obligatory for high-risk offenders and include private organisations as well as public institutions. Case management continues to be of importance, as it reduces complexity for the released prisoner and provides personal continuity throughout the process.

9.6.1 Estonia

The supportive aspect of aftercare is provided in Estonia by local municipalities, whereas the post-custodial supervision is carried out by the probation service. Estonia is one of two of the examined states, which have legal provision for the usage of a risk assessment tool during the probation/aftercare period. Probationers with a sentence exceeding one year are being risk-assessed according to the Probation Supervision Act. Upon return to the community the local police forces are informed about offenders in their district. Furthermore, the probation officer is entitled to receive and request information from police regarding probationers.

Since 2007 electronic monitoring is used after release on parole, where the prisoner has agreed to electronic monitoring; mostly for house arrests.

NGOs can be involved by local municipalities in the process of rehabilitation with services such as support persons, drug treatment centres, etc. This option of cooperation is, however, hardly used.

9.6.2 Finland

Only prisoners who have been ordered to undergo post-custodial supervision are covered by aftercare in Finland, which involves both control and support.[43] The supervisor at the Community Sanctions Office functions as the case manager in

42 *Taxman* 2008, p. 275 ff., 277 f.

43 *Lappi-Seppälä* 2009, p. 333 ff., 346.

the community and supervises the fulfilment of the supervision orders. The social worker of the prisoner's municipality of residence takes care of planning the supportive aftercare and guides him/her to the services. Risk assessments (static factors, SIR-R1 and ARAT) and risk and need assessments are available for supervisors, but they have no own guidelines/standards for the definition of risk.

The police can assist the supervisor with appointments by providing safety, neutral rooms, etc. Police officers are also used as assistant supervisors with high-risk offenders. In case of a suspected breach of obligations the supervisor can also receive information on the parolee from the police

Electronic monitoring is applied only within the "supervised probationary freedom" scheme.

NGOs provide voluntary support services on their own account, such as housing services, contact points or programs focusing on street violence (KRITS, Aggredi, C.R.I.S).

9.6.3 Ireland

The Irish Probation Service has responsibility for the supervision of offenders where supervision has been imposed by the sentencing court (Post Release Supervision Order), is a condition to a court order to suspend a sentence wholly or partially under Criminal Justice Act 2006 s 99(1) or is a condition of a Temporary Release Order. It works in partnership with communities, local services and voluntary organizations and provides funding to over 60 community-based organizations, which are accountable to the Probation Service. The police are involved only in relation to the requirements of sex offenders under the Sex Offenders Act 2001 and a joint model of sex offender management (SORAM).

Electronic monitoring is only used in prisoner management during hospitalization and similar circumstances.

9.6.4 Mecklenburg-Western Pomerania (Germany)

Due to the federal structure, various bodies with differing responsibilities are engaged in the rehabilitation process in the community. On the supportive side there are mixed federal-and-state agencies (employment agency), state bodies (schools, health institutions) and municipal organisations (social assistance office). The supervision is carried out by the probation service, if the prisoner is released on probation, and additionally the agency for supervision of conduct, if the prisoner has been ordered to supervision of conduct after release.

There are no provisions for risk assessment as such during the aftercare period, but federal law allows the court to impose, as a directive to an order for

supervision of conduct, on an offender the duty to undergo psychotherapeutic or psychiatric treatment.[44]

Cooperation between the police and the supervisory bodies (probation service, agency for supervision of conduct) has been established by a statutory regulation (FoKuS, "For optimized control and security"), in order to guarantee a swift exchange of information concerning the compliance with the imposed directives and obligations.

Electronic monitoring may be used where offenders are under supervision of conduct. In these cases GPS, and in regions with tunnels and buildings additionally LBS, is used. There is no electronic supervised house arrest.

There is an existing cooperation with non-profit organisations and local authorities on a contractual basis.

9.6.5 Associated partners (Belgium, Slovakia, Slovenia)

The Probation Service in Belgium is integrated in the Directorate General 'Houses of Justice', a department of the Federal Public Service of Justice. Every court district has a House of Justice with justice assistants to carry out the actual fieldwork. The justice assistant is being given a mandate by the Court of Implementation of Sentences at the moment at which the conditional release is granted. During the aftercare phase the justice assistant is the responsible case manager. He offers assistance and guidance in ensuring compliance with the imposed conditions and gains all relevant information according to his mandate, analyses it and informs the judicial authority. In doing so, he applies a restorative approach.

Behavioural rules imposed upon conditional release by the Court of Implementation are monitored by the police services.

Specific mental health outpatient services are being funded on the basis of a special agreement to carry out aftercare supervision for sexual offenders. Otherwise there are no specialized private aftercare services in Belgium. Involvement of NGOs/private aftercare services can take place, if demanded by a condition to the release.

In Slovakia, probation and mediation officers are carrying out the main work in the community after release. Due to a lack of state aftercare programs, however, their tasks are limited to monitoring and supervision, such as the control of compliance with the imposed restrictions and obligations. In this, they are assisted by the police. There is no link between state and private rehabilitation efforts.

In Slovenia, centres for social work, which are organised within the Ministry of Labour, Family and Social Affairs and equal opportunities, provide financial and social assistance concerning personal, family and employment matters,

44 Criminal Code (Germany), s 68b(2).

coordinate programmes and provide social care to released persons on a voluntary basis, except if the prisoner is released with the condition of post-custodial supervision. Those centres are organized, supervised and co-financed by the state.

NGOs, self-care groups (AA, NA) and other voluntary organizations are involved in the aftercare as well, even though the degree of their involvement is not specified.

9.5.6 Summary

In a number of states the tasks of supervision and support are split; while a state agency is responsible for the supervision, the support task rests with the municipality[45]. In this respect it is worth reminding that the respective bodies should be financially enabled to carry out their statutory task in order to prevent a lack of aftercare due to financial restraint.

Links to private organisations and NGOs have been found in the aftercare models of most of the examined states, but it appears that this cooperation could be intensified and structurally enhanced to maximize the rehabilitative potential.

The involvement of police forces is advisable only insofar as information exchange and a security support of supervisors is needed. There is no conclusive evidence, however, that would allow one to argue for an extension of competence of the police in this field.

9.7 Evaluation of the proposed best practices

In criminological research, the concept of "evidence-based" practices is oftentimes connected with the so called "what works"-movement, which focuses on experimental evaluations to proof whether a practice can be seen as effective or not.[46] One methodological challenge within this research line is that many programs or studies cannot be considered within this method of "synthetic review"[47], just because their evaluations do not employ some kind of control or comparison group. Therefore, we can only rely on an incomplete and inconclusive body of evidence when we look at resettlement programs and practices.

The public sector uses different concepts of "good practices", for example stemming from international organizations. This methodology of identifying practices considered as being successful was initially put into work in the private sector under the name of "best practices", with the objective of disseminating

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45 In relation to this, see 9.7.6.2 for the best practice of a "community guarantee".

46 *Sherman et al*. 1997; 2002; *Farrington/Petrosino* 2001.

47 *Petersilia* 2004, p. 6.

them in order to stimulate improvement.[48] This process has subsequently been extended to the public sector.

UNICEF, for example, defines “good practice” as “well documented and assessed programming practices that provide evidence of success/impact and which are valuable for replication, scaling up and further study”, adding that “they are generally based on similar experiences from different countries and contexts”.[49]

To translate this definition to the meaning of the JCN project would mean to define a program or project only as good practice, if there is evidence of success. Success in this regard can be public safety and prisoner rehabilitation or reducing recidivism.

Another more open definition for good practice stems from the identification of “good practices” in the field of education. Within the framework of the Decade of Education for Sustainable Development (DESD), the UNESCO has defined the concept of “good practices” as “initiatives, projects and/or policies”, closely related to the respective field, “that provide examples of practice, generate ideas and contribute to policy development”[50].[51] This definition does not rely on evaluation outcomes but is very wide on the other side.

As a definition of good practice for the scope of the JCN project, the decision was to label such programs, projects or strategies as “good practice” that mirror the results and principles of research on prisoner re-entry. That means that a “good practice” can be a program, a project or a strategy that implements the outcomes of re-entry research. Until the existence of positive and convincing evaluation outcomes programs or projects will be labelled as “promising”.

9.7.1 Legislation

The complex of legal matters in regard to the transition management of high-risk offenders was split into two subsections, of which “Legislation” is the first. Under this title the project partners discussed proposals for concepts they found necessary to be embedded in a legislative framework. Treatment of prisoners,

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48 *Brannan et al*. 2008.

49 *UNICEF*, ‘Evaluation and lessons learned’ (UNICEF, 3 October 2011) <http://www.unicef.org/evaluation/index_49082.html> accessed 20 September 2014.

50 *UNESCO*, ‘ESD good practices’ (UNESCO, 19 September 2014) <http://www.unesco.org/en/esd/publications/good-practices> accessed 20 September 2014.

51 *UNICEF* distinguishes between the concepts of ‘good practices’ and ‘lessons learned’ in that way that ‘lessons learned’, unlike ‘good practices’, result from “detailed reflections on a particular programme or operation” and can represent successes or failures.

their release and the organisation of aftercare were identified as necessary and respective proposals brought forward.

9.7.1.1 Work of the project group on this topic

There were a number of legal provisions from the project group member states, which were discussed during the workshops, concerning their potential to be formulated as a general recommendation. However, the different legal systems and unequal traditions in practice proofed to put a test to those proposals. In the end, the project group agreed on three concepts they found to be of such significance to the transition process that they should not be omitted and at the same time thought them to be transferable to the different legal systems.

9.7.1.2 Proposed best practices

The first concept proposed as a best practice in the field of legislation is the so called "community guarantee". Community guarantee is a term used to describe statutory provisions in Denmark and Norway, which stipulate responsibilities of the competent state and municipal authorities to arrange services to released prisoners in the community according to their needs.[52] The comparison between the participating partner states highlighted that in a majority of states the municipalities to a different extend are responsible for the prisoners support after release from prison.[53] Practice shows, however, that unclear responsibilities and a lack of cooperation from local institutions can constitute a significant hindrance in the process of rehabilitation in the community. This experience was shared by practitioners from all partner states and emphasised as a major problem.

To allow for a swift and comprehensive provision of released prisoners with the necessary services in the community, it is proposed to enact statutory provisions defining clear responsibilities for the aftercare of released prisoners and compelling the competent authorities to cooperate with the prisoners as well as all other agencies involved. At the same time, the state should ensure that the responsible bodies are assigned the necessary funds to carry out their task as laid down in the law.

The second concept has been chosen from a proposal of the German project partner to include the so-called "socio-therapeutic units" into the model for transition management. This concept[54] combines a milieu-therapeutic prison regime with a wide range of psychotherapeutic, pedagogical and occupational

52 In regard to accommodation: cf Danish Law on Social Services, s 80.

53 Cf 9.6 (Aftercare (supervision and support) for high-risk offenders).

54 Reports of the project also refer to this concept as "specific treatment program".

therapy programmes as well as an inclusion of the social and personal environment of the prisoner. It is mainly directed towards the treatment of sexual and violent offenders.[55] While it was recognized during the discussions in the project that such a specialized form of treatment within prison could not reasonably be demanded as a minimum standard throughout all member states of the European Union, it should still serve as a "best practice" due to its desirable approach in the treatment of prisoners.

It is therefore proposed that legislator should define criteria for the treatment of offenders in prison, which should, ideally, be aligned with the concept of "socio-therapeutic units".

Focussing on the end of the prison is the third concept, which has been introduced to the discussion by the Irish project partner. Temporary release is an Irish release scheme set up by the Criminal Justice Act, 1960[56] whereby the executive branch of government, namely the Irish Minister for Justice and Equality, is empowered to grant a (temporary) release from prison at his/her discretion at any time, without giving prisoners the right to claim early release.

9.7.1.3 Related research results

The effectiveness of the "community guarantee" has not been evaluated. According to desistance research supporting the released prisoner with good social structures such as housing, satisfying employment or drug treatment is seen as important. Building and strengthening environmental opportunities, resources and support should be as central to offender rehabilitation and reintegration as psychological treatment. It is seen as essential that the community outside supports and reinforces the desistance process of the released offender.[57]

Evaluation studies have shown that the "socio-therapeutic units" have an at least moderate positive effect on reducing reoffending rates.[58]

The concept of "temporary release" has not been evaluated yet. It is evident that building and strengthening environmental opportunities needs contact to the outside world. Contracts for work or rent can better be prepared outside the prison. In general evaluation results show that prison leaves and work release schemes can be efficacious in reducing recidivism and increasing employment rates.[59]

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55 Prison Act (Mecklenburg-Western Pomerania), s 17.

56 Amended by the Criminal Justice (Temporary Release of Prisoners) Act, 2003.

57 *Ward et al*. 2014, p. 1970.

58 *Spöhr* 2009, p. 142 ff.; *Dünkel/Drenkhahn* 2001; *Lösel* 2001; 2012; *Lösel/Köferl/Weber* 1987.

59 *Cheliotis* 2008, p. 166.

9.7.1.4 Conclusion and recommendations

Community guarantee is a good example for how the responsibilities and measures in the community can be organized, structured and synchronized for a released prisoner. The aim is to avoid that anyone can fall through the social net. According to the experiences of the project partners such coordination is absolutely necessary and it helps to clarify the responsibilities for every stakeholder. Due to missing evaluation results, community guarantee cannot be labelled as "good practice" but from all we know we can label it as "promising".

Socio-therapeutic units have positive research results and implement the RNR-model of *Andrews* and *Bonta*, which is seen as the "guiding principle worldwide" for prisoner treatment.[60] It can be labelled as "good practice".

The temporary release scheme can also be labelled as "promising" according to research results that do see release schemes as effective. The Irish example allows for an increased amount of flexibility in the release planning process, while, in the absence of a fixed time for early release and a corresponding entitlement of prisoners, also causing danger of reluctance in the use of early release in regard to high-risk offenders. To reduce the risk of lowering existing standards of early release, it would be advisable to implement this concept only together with prescribed minimum terms for the consideration for early release as well as statutory provisions granting prisoners a right to early release on pre-set conditions as well as the right to a judicial review of the decision on this matter.[61]

9.7.2 Court practices

"Court practices" forms the second part of the legal complex the project group was examining in order to find and formulate best practices. In this field the matter of release was revisited and concepts for supervision after release elaborated.

9.7.2.1 Work of the project group on this topic

Post-custodial supervision is a common denominator in the control-oriented part of aftercare in nearly all participating states. It was unanimously agreed during the discussions that high-risk offender should be placed under supervision after their release from prison and that sentence management should be directed at a form of release, which would allow for such supervision. There were, however,

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60 *Lloyd/Serin* 2014, p. 3303.

61 See in summary *Dünkel/van Zyl Smit/Padfield* 2010, p. 395 ff., 438 ff.; *Dünkel* 2014, p. 188 ff.

differing views on the point at which this kind of supervision should be ordered. While the Irish proposal is aiming at the possibility of ordering post-custodial supervision already at the sentencing stage, the majority of project partners objected a supervision order at such an early point and were in favour of taking such a decision only during the execution of the sentence, preferably towards the end of the prison term. Whether such a decision should be taken by prison administration or a judicial body was not agreed upon, as the legal systems and existing traditions were seen as being too different to formulate a uniform decision-making process.

9.7.2.2 Proposed best practices

Firstly, it is proposed that a court should be able to subject prisoners to supervision after their release, if they are released after having fully served their sentence and given that they present a continuing danger to society. Provisions for such post-custodial supervision after a full execution of the sentence are existent in Estonia and Germany. In Estonia a court may order an offender, who has fully served a term of imprisonment of at least 2 years and has previously been convicted for an intentional offence with a term of at least 1 year of imprisonment, to undergo supervision in the community, if there are solid grounds to believe that the offender will reoffend. Similarly, in Germany an offender who has fully served a term of imprisonment of at least 2 years and has been convicted for an enumerated list of offences is subjected to supervision of conduct upon release. Here, however, the supervision is automatism as a consequence of statutory provisions requiring such supervision and not due to a court order.

As another court practice concerning supervision, the Irish model of the post-release supervision order was put forward as a proposed best practice. The post-release supervision order of the Sex Offenders Act, 2001, which can result in post-custody supervision of five years or more,[62] is, however, imposed on an offender at the sentencing stage and does therefore contradict the project partners declaration to agree "that it is not timely for the court to take a standpoint on the dangerousness or need of intensive supervision of the offender at release because the risk of reoffending can change during a long prison sentence"[63]. The issue was revisited at the final conference of the project, where the inconsistency was resolved by confirmation of the aforementioned declaration and the subsequent de-listing of the post-release supervision order as a best practice.

62 Irish Sex Offenders Act, 2001, s 16.

63 Report of the Third Workshop of the JCN project, p 3.

The Finnish automatic release scheme[64] has been selected as third best practice of court practices. Automatic release is a release scheme whereby prisoners are released from prison after having served a fixed proportion of their sentence without individual assessment of risks or needs. This practice should be understood as an alternative to systems, in which the decision about an early release rests with a judge or parole board (or another competent authority) and based on individual risk assessment. The project group made no recommendation on whether such a system should be implemented discretely or along side a discretionary release system.

The last best practice in the field of court practices are the information requirements set up by the Irish Sex Offenders Act, 2001. Under this legislation persons who are convicted of certain sexual offences are, once released, obliged to provide certain information, such as their name, address, residence, to the local police.[65]

9.7.2.3 Related research results

In general, when implementing a model of post-custodial supervision states should consider a sufficient balance of control on the one hand and support and empowerment on the other hand. There is clear evidence that a model of supervision which is solely directed towards control does not only not help to reduce recidivism[66], but also leads to an increase in the number of technical violations.[67] Intensive supervision programs that are based on a human service philosophy and provide treatment to offenders offer more promising.[68]

Scientific evidence shows that a prognosis of danger, which alone should give reason to post-custodial supervision, exceeding a relatively short prognostic period does not meet an acceptable level of accuracy.[69]

Currently there is no empirical evidence supporting the transfer of information to local police service.[70]

The Finnish automatic release scheme has not been evaluated as such. According to research results presented above (see 1.3) release schemes can in general be labelled as promising. Automatic release schemes are advantageous

64 Cf A.2.2 (Early release in Finland).

65 Irish Sex Offenders Act, 2001, s 10.

66 *Petersilia* 2004, p. 6; *Aos et al*. 2006; *MacKenzie* 2006; *Dünkel/Padfield/van Zyl Smit* 2010, p. 435 ff.

67 *Taxman* 2008, p. 277 f.

68 *Lowenkamp et al*. 2010.

69 *Nedopil/Müller* 2012, p. 363.

70 For the negative effects of supervision entirely based on control, see footnote 66.

over discretionary release schemes when it comes to release planning. It is easier to plan the release and the transition to the community (including contracts for housing and work) if the day of release is predictable from the beginning of the prison sentence on.

9.7.2.4 Conclusion and recommendations

If prisoners present a continuing danger to society they must be supervised after their release. Research has shown that pure supervision in terms of surveillance is not effective in reducing criminality. Control has to be combined with support and personal contacts.

The implementation of a practice such as the information requirements set up by the Irish Sex Offenders Act, 2001 into other, especially civil law systems, would have to be subject to an increased scrutiny in regard to the competences of the agencies involved as well as to the indirect effects on the persons obligated by such legal provisions to ensure the protection of constitutional basic rights as well as the protection of data privacy of all persons involved. It would, therefore, in light of the aforesaid concerns be recommended to preferably examine the possibilities of an exchange of already existing information between authorities and the exhaustion of present competencies to acquire the necessary data before expanding those competencies.

9.7.3 Assessment

Assessment marks a cornerstone of high-risk offender management, because it provides the basis for the classification of risk in individual offenders and allows monitoring their risk level throughout the term of incarceration.

9.7.3.1 Work of the project group on this topic

Ever since the formulation of the RNR-model by *Don Andrews* and *James Bonta*, the identification of risks and needs have become a fundamental necessity in treatment-oriented sentence planning. With high-risk offenders, however, the emphasis tends to be more on the assessment of risks. The assessment of a “high probability [that an offender might in the future] commit crimes which may cause very serious personal, physical or psychological harm” constitutes what is referred to in this project as a high-risk. The project partner discussed and brought forward proposals for an assessment process for high-risk offenders.

9.7.3.2 Proposed best practices

The core practice proposed and recommended for implementation in the field of assessment is a multidisciplinary risk and need assessment for high-risk offenders. To this end, the project partners have proposed the installation of a designated diagnostic centre for offenders having committed serious sexual offences, homicide or manslaughter and the use of a special assessment tool for sex offenders. Furthermore, the use of tools to assess the risk of harm, such as the Irish PS / Rosh[71], have been found to be of value in achieving valid and relevant risk assessments.

9.7.3.3 Related research results

According to research, the most effective strategy for discerning offender risk level is to rely not on clinical judgments but on actuarial-based assessment instruments.[72] Combining static and dynamic factors together gives the best picture of overall risk of recidivism and the most effective way to target criminogenic needs.[73] But no assessment instrument has been proven to be perfect and there are always false positives and false negatives. Assessment tools can achieve better levels of reliability, if the staff is adequately trained on the instrument.[74] Risk assessment tools must be able to measure change over time.[75]

9.7.3.4 Conclusion and recommendations

The use of risk and need assessment tools can in general be labelled as promising from a scientific point of view. A diagnostic centre with staff trained on the assessment instruments is insofar promising as a continuous occupation with this tool and the characteristics and developments of the specific group of high-risk and long term prisoners will enable the staff to use the possibilities of the tools and make sure that change can be measured as well. Staff must be continuously trained on the tool and should be convinced on its effectiveness. It must be ensured that the results of the risk and need assessment are implemented into the planning and execution of the transition process and that prisoners receive the treatment they need.

71 Probation Service / Risk of Serious Harm.

72 *Andrews/Bonta* 2010.

73 *Latessa/Lowenkamp* 2005.

74 *Latessa/Lovins* 2014, p. 4463.

75 *Andrews/Bonta/Wormith* 2006.

9.7.4 In custody

The treatment in custody is the first of the three stages of the phase-model of transition management. In-custody-treatment can support the reintegration process outside by preparing the prisoner for the challenges he or she will face after her release. Prisoners are oftentimes motivated to take part in such a treatment because they hope to earn privileges or early release. Long-term stays in prison may be used to qualify prisoners with several skills they might need in the community and to work on their deficits as well as resources in the areas of work or health. Several research approaches highlight that work after release might be seen as a protective factor against recidivism[76] and therefore schooling or vocational trainings, that are planned for a continuation outside prison, can increase the chances for a crime-free life after release. Transitional programs providing individualized employment preparation and services for high-risk offenders have been found to be "working" according to evidenced-based research approaches.[77]

9.7.4.1 Work of the project group on this topic

Regarding the transition management for high-risk offenders, the project groups discussed a wide range of practices and ultimately focussed on sentence planning as well as multi-disciplinary treatment approaches for their proposals as best practices.

9.7.4.2 Proposed best practices

The first best practice is the set-up of an overall sentence plan for the full length of the sentence and subsequently the development of a more detailed plan for a short-term phase, no longer than a one-year period, which is regularly updated. This could be achieved by implementing a system like the Irish Integrated Sentence Management System (ISM), in which an immediate first contact assessment and subsequent sub-assessments identify the needs of the prisoners and form the basis of a personal integration plan (PIP), which is reviewed every six months, and in which a community integration plan (CIP) is developed approximately nine months prior to release.

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76 *MacKenzie* 2006,

77 *MacKenzie* 2006; *Seiter* and *Kadela* 2003; *Lipsey et al*. 1995.

Quality standards[78] as part of a systematic and continuous diagnostic process for high-risk offenders during imprisonment form another best practice proposed for implementation.

Finally it is recommended that the process of transition from closed to open facilities should be managed by a multidisciplinary team.

9.7.4.3 Related research results

According to research results the continuity of services "through the gate" can be seen as important to follow up work begun in custody. Results suggest that pre-release work by professionals trained to address thinking skills and practical problems might be central to an effective resettlement strategy.[79] Therefore research results opt for resettlement programs that begin treatment in prison and provide continuity in the community.

9.7.4.4 Conclusion and recommendations

Adequate planning structures enable to coordinate programs that start inside prison and continue after release. The Irish Integrated Sentence Management System (ISM) with different planning phases seems to be a promising practice and enables the staff to address the (changing) specific needs of the prisoner/released person at different levels. Comparable structures can be found in other countries. Quality standards make sure that the planning quality is not reduced to the good will of the single staff member and can be recommended as promising as well.

9.7.5 Preparation for release

The second of the three phases in the transition process is the preparatory stage of release. This stage is said to begin some time around one year to six months before release, but experts agree that a far earlier focus on the release process is necessary.

9.7.5.1 Work of the project group on this topic

There was a strong agreement in the project group that "all high-risk offenders should be prepared for release gradually". To this end, the use of prison leaves, open prisons, half way houses and conditional release schemes is strongly

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78 For a complete list of the proposed standards please see the answer of the German project partner in the questionnaire for the third workshop.

79 *Lewis et al.* 2007, p. 34.

encouraged by the project group. Furthermore, the members of the project group highlighted the importance of a multiagency co-operation during the preparatory stage and provisions for continuity of care.

9.7.5.2 Proposed best practices

As a first best practice in this field it is proposed that preparation for release should be performed by a multidisciplinary team of specialists who were already involved in the sentence management, but should also be extended to a wider network of specialists and institutions outside of the prison in order to engage resources and means for cooperation. A pre-release consultation should take place and be carried out by the responsible case manager from prison and the corresponding probation officer. Furthermore, high-risk offenders should be subjected to a conditional release process involving the use of half-way houses.

This should be complemented by the second best practice; the supervised probationary freedom scheme from Finland. Supervised probationary freedom is a conditional release scheme under the responsibility of the prison and obligatory for prisoners serving full time for a period of at least three months. This scheme aims at allowing for the advantages of conditional release even in those cases, where offenders have been ordered to serve their sentence until the end. Because the time spent under the supervised probationary freedom scheme counts as jail time, there is no legal difference to a sentence served fully in prison.

The third best practice is the German model for information exchange between prisons and probation service (InStar), which sets standards for the cooperation between both institutions to guarantee an easy and swift exchange of information. The probation service is involved already in the preparatory stage of release to coordinate the re-entry plan with the prison service and take responsibilities for the aftercare at an early stage.[80] The project also includes a multi-agency approach after release including different levels of supervision and support according to a continuous risk assessment.

The Irish concept of a multi-agency pre-release case management conference forms the forth best practice in preparation for release. In it a case management conference involving all the competent authorities and institutions should serve as platform for a development of appropriate care and safeguards as well as interventions before the release.

9.7.5.3 Related research results

InStar could be classified as a „promising“ approach with regards to the evaluative literature in the United Kingdom, as well as the United States,

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80 Cf *Jesse/Kramp* 2008; *Koch* 2009.

concerning programmes such as the PPO strategy for prolific offenders[81] or the so-called MAPPA[82], which include different supervision and monitoring arrangements of the Probation Services and the Police based on different risk levels of violent and sexual offenders.[83]

Similar to InStar are a number of re-entry initiatives in the United States, among which is the so-called SVORI-project (Serious and Violent Offender Re-entry Initiative). In these initiatives the transition process is structured as a "a three phase continuum of services" beginning during the period of incarceration, with a peak of insensitivity just before release and during the early months after release and continuing for several years after release until "former inmates took on more productive and independent roles in the community".[84]

According to desistance research, the motivation to change is central for the desistance process.[85] Practitioners oftentimes report that offenders lose their motivation after their release from prison. Structures like the supervised probationary freedom aim to motivate offenders with an earlier release and then try to influence the rehabilitation while the offender lives "outside" or in a halfway house. This strategy can be seen as promising according to research results.

9.7.5.4 Conclusion and recommendations

Multidisciplinary team of specialists who offer a service "through the gate" by starting their work inside prison and continuing it in the community can be seen as very promising in terms of re-entry research results. The German structure of InStar can be seen as promising in this regard, so can the Irish concept of multi-agency pre-release case management conferences. The Finnish supervised probationary freedom scheme can also be seen as promising as it aims at motivating ex-prisoners who would possibly not have access to an adequate service outside or could have less motivation for receiving help after their release at the end of their sentence.

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81 Prolific and other Priority Offenders Strategy, launched by the British Government in 2004, cf *Vennard* 2007.

82 Multi-Agency Public Protection Arrangements (Criminal Justice and Court Services Act 2000 [United Kingdom], s 67 and 68).

83 Cf *Kemshall* 2007, p. 279 ff.; Summary in: What works in prisoner reentry? *Petersilia* 2004; *Travis/Visher* 2005; *MacKenzie* 2006; *Moore et al.* 2006; *Solomon et al.* 2008; *Visher/Travis* 2012, p. 696 f.

84 *Visher/Travis* 2012, p. 697.

85 *Maruna* 2001; *Paternoster/Bushway* 2009.

9.7.6 Community setting

The most important part for the resettlement process is the first time after the release from prison in the community. If released prisoners return to offending behaviour, they oftentimes do this within the first weeks after their release.[86] In case of high-risk or sex offenders the community feels oftentimes very insecure if the ex-prisoner returns and state authorities want to monitor the first steps in freedom.

9.7.6.1 Work of the project group on this topic

The project partners greatly welcomed the Community Guarantee as an example of legal municipal responsibility for reintegration of former offenders and urged that local authorities should help released prisoners along this process. Furthermore, it was agreed that control and support should be well balanced in regard to post-custodial interaction with the released prisoner.

9.7.6.2 Proposed best practices

The project group listed the concept of the "community guarantee", previously mentioned under A.1.2, again in the section for community setting to highlight that both, legislation and practical implementation in the municipalities, are needed to reach the aim of this concept.

Another best practice is the German concept for optimized control and security (FoKuS). The "FoKuS"-concept aims at connecting courts, prisons, prosecutors, police and the state office for probation and supervision (including the department of probation services, agency of supervision of conduct and forensic ambulance) to allow for fast and direct exchange of information concerning the person under supervision, but does not provide additional competences for the authorities involved.

Post custody supervision as implemented in Ireland forms the third best practice example. This includes the post release supervision order, but also the post-custodial supervision as result of a partially suspended sentence.

The forth example of best practice in aftercare is the Irish Sex Offender Risk Assessment and Management model (SORAM). In this model the risk assessment and management is carried out by a joint team of members from the police, the probation service, the children and family service (HSE), and the prison service. The aim is to create a joint approach in risk management and a common understanding of risk. Given its explicit focus on risk, this model

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86 *Jehle* 2007.

causes considerable concern in respect to its effects on reoffending and its likely increase in the number of technical violations.

9.7.6.3 Related research results

Research results repeatedly highlight the importance of the reception by the society. In particular desistance research highlights the importance of social bonds and ties on the side of the offender and of positive attitudes towards the (ex-) offender on the side of the society and probation officers and/or prison staff.[87] Concepts like the community guarantee have not been evaluated so far but can be labelled as being promising because they support the continuity of care "through the gate" and make responsibilities and rights clear and comprehensible.

9.7.6.4 Conclusion and recommendations

Concepts like the community guarantee that seek to facilitate the offenders arrival in society and to make responsibilities comprehensible can be seen as promising approaches. The strategy of FoKuS in Mecklenburg-Western Pomerania and the Irish SORAM aim at clearing responsibilities as well. But strategies like FoKuS, the Irish Post custody supervision program and SORAM also focus on surveillance. It might be inevitable in some cases of high-risk offenders to provide a functioning and elaborated system of control and surveillance, but the programs should consider the research results that are clear in manifesting that pure surveillance is not a promising practice and combine control with support wherever possible. Furthermore the programs have to avoid net widening effects or an increase of re-imprisonment due to technical violations. Evaluations of surveillance-led programs should carefully research such negative effects.

9.7.7 Conclusion

The working groups discussed a variety of practices on different levels of the reintegration process of high-risk offenders. What becomes clear is that in many aspects the estimated optimal transition management for high-risk offenders does not differ from the general concepts and structures for the reintegration of prisoners into the community. The mentioned programs and projects do all find a theoretical fundament in re-entry research. Because no project has been evaluated so far they can, according to the terminology of "what works" approach, be labelled as "promising" whereas according to the terminology of

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87 *Maruna* 2001; *Paternoster/Bushway* 2009; *Weaver* 2016.

the public sector they can be labelled as “good practice”. The only question remains for concepts and structures in the community setting that concentrate on surveillance. Those projects must be combined with elements of support and safeguard the avoidance of net-widening unless they can be labelled as promising.

9.8 Process evaluation

The third part of this report will be reflecting the development throughout the course of the project and the implementation of the project’s agenda. For this, it will focus on the structure of each work stream and examine the methodological and organisational approach.

9.8.1. “Working out the common basis” (WS1)

The first workshop was designed to serve as a platform for the development of a common understanding. Room was given to present the definition and management of high-risk offenders in the partner states as well as to explain the execution of sentences and the release process in the respective states.

It quickly transpired that terminology and knowledge of existing penitentiary systems were important issues, as the project partners, given their respective national background, understood terms differently or were not aware of current practices in other states. The project partners later acknowledged that this process had taken a lot of time.

In view of the fact that the time the project partners can spend together is a rather limited resource, it is recommended for further projects that information on existing practices and terminology, which is considered relevant to the subject of the project, be compiled and exchanged beforehand. This should help to identify the problematic issues whilst the planning phase and leave room to those critical points for the workshops.

9.8.2 “Transnational Comparative Analysis” (WS2)

The aim of the second workshop was to carry out a transnational comparative analysis of transition management strategies in the JCN partner countries. A pre-workshop questionnaire was used to gather information on the management of high-risk offenders from court to post-custodial supervision.

The participants reviewed the process of managing high-risk offenders with view to each national jurisdiction, thus allowing for a comparison of all existing practices in the partner states. This provided a better understanding of the differences in the management processes in all participating states and enabled the participants to articulate common needs and similarities in this field.

The working groups highlighted the areas and practices, which were seen as important by the participants for the development of a best practice model. Subsequently, a panel discussion examined the strengths and weaknesses in current practices, discussed needs for future development and explored concerns regarding certain practices. This provided the basis for the selection of specific practices at the third workshop.

9.8.3 "Best Practice in Transition Management" (WS3)

In the third workshop the project group aimed at identifying those practices that were both seen as effective and transferable to other states in order to later construct a common best practice model.

The project partners were asked by the hosting partner to bring forward one practice per each block, which was considered to be the best practice for this field, either of their own or of other countries' practices. The hosting partner then listed those proposed practices as well as practices, they themselves had identified in the answers of the other project partners, as "good elements and principles" and put them on display for discussion during the workshop. Divided in working groups, the project partners then decided on which of the practices should be considered as "best practices" and therefore serve as basis for the development of a common best practice model in the next workshop.

From a scientific perspective, this process of determining "best practices" leaves room for improvement. At no stage was there a request for a minimum reasoning on why a certain practice should be considered as "good" within the framework of the project, nor was there any requirement to produce evidence for the assumed effectiveness of these practices. The lack of objective standards, to why a certain practice should be considered commendable, and the absence of minimum requirements for the proposal of practices result in a methodological weakness of the definition process.

It would be recommended that further projects refer set up such standards before the examination of practices and refer to the existing literature on best practices and transition management. It also should be clarified, if a "good practice" is based on evaluation research and empirical evidence or if theoretical knowledge and/or practical experience indicate that an existing practice might be judged as "promising".[88]

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88 Cf *Sherman et al*. 1998; *MacKenzie* 2006; *Visher/Travis* 2012, p. 696 ff.

9.8.4 *"Development of Minimum Standards and Best Practice Models" (WS4)*

The forth workshop focused on the development of a common best practice model and minimum standards for handling high-risk offenders.

Based on the results of the third workshop, the participants discussed the integration of the established best practices into a common European best practice model of high-risk offender management and the formulation of minimum standards for this management process. In four parallel working groups they expanded on the given best practices, put them into context and formulated principles deriving from these practices.

It should be critically noted, however, that the workshop did not differ between a best practice model and minimum standards, as originally aimed at. It would favourable to distinguish between what the parties of the project see as being a best practice and where they draw the line of a minimum standard. This would help to implement the project's recommendations and separate the declared minimum methodologically from what has been defined as a preferable condition.

9.8.5 *Final conference (WS5)*

The final conference was directed towards the dissemination of the results of the project to a wide audience within Europe and beyond.

The project reached out to a great variety of parties involved in managing offenders all over Europe and also encouraged parties from other countries to join the conference. The conference, which took place on the 3 – 5 September 2014 in Warnemünde (Germany), was visited by over 400 participants from 34 countries. The conference offered, next to the presentations in the plenary session, four forums for the presentation and discussion of the project results. The presentations were greatly welcomed and the results endorsed by the audience.

The scope of the conference in regards to number and heterogeneousness of the participants can be said to present a great success in terms of dissemination. The forums offered the possibility to explore the results in depth and the organisational framework of the conference left enough room for the participants to discuss the input among themselves.

9.9 Summary and conclusion

The Justice Cooperation Network has analysed and compared four different states with their respective jurisdictions and prison regimes, trying to find common denominators in the transition management of high-risk offenders.

While it became apparent that the approach towards high-risk offenders differs throughout the countries involved, resulting in a variety of practices in regard to the transition management of those offenders, there was a unanimous agreement on many core principals in this field among all parties. It is those principles that are reflected in the best practices that have been developed and discussed in this project. It is the hope of the project partners that these principles, through the implementation of the best practices, may find its way in many more transition systems in Europe.

The project, however, benefited not only from its transnational composition, but also the experience of the practitioners involved in this project. The Justice Cooperation Network created a unique room for the exchange of staff from prison and probation services across borders and allowed them to openly challenge each other's assumptions and conceptions on this matter. It is without doubt that each project partner has gained much valuable knowledge during the course of the project.

Yet, the end of the project marks only the beginning of the implementation of its recommendations. As a result of this project, legal provisions for the management of high-risk offenders within prison and in the community should be enacted, cooperation between responsible services in the transition process should be enhanced and the supportive side of aftercare should be strengthened, as reflected in the best practice of the 'community guarantee'.

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Annex: Table 1: Answers to the JCN-questionnaire from the project partners

			Estonia	Finland	Germany (M-W P)	Ireland
I.	**Legal issues**					
	1.	How is the legal concept of “dangerousness”/high-risk addressed in Criminal Law, in your country? Is there a difference between “dangerous” and high-risk offenders? If yes, please outline it briefly. (Legal conditions of criminal sanctions, preventive/security measures)	The legal concept of “dangerousness” / high-risk is *not addressed* in Criminal Law. *No legal separation* between “dangerous” and high-risk offenders	The legal concept of “dangerousness” / high-risk *is addressed* in Criminal Code, c 2c, s 11, providing for the possibility of a court order to prevent early release for a high-risk offender.	The legal concept of “dangerousness”/high-risk *is addressed* in the legal requirements for preventive detention (Penal Code, ss 66-66b) and furthermore referred to in the legal provisions for early release, youth custody and remand *No legal separation* between “dangerous” and high-risk offenders.	The legal concept of “dangerousness”/high-risk is *not addressed* in Criminal Law.
	2.	What kind of offenders are defined, in law or in practice, as “dangerous” / high-risk in your country? (Offences, recidivist offenders in general or concerning specific offences, length of imprisonment?)	*No legal definition* Identification in *practice* by assessment of risk and dangerousness after conviction. Mostly sexual/violent offenders, as well as offences against public safety	Legal *definition*: “Deemed to be particularly dangerous/ a particular danger to the life, health or freedom of another” (Criminal Code, c 2c, s 11; Code of Judicial Procedure, c 17, s 45)	*No legal definition* In *practice*: Recidivist sexual offenders and offenders convicted for violent crimes, who have to fully serve their sentence	*No legal definition* In *practice*, identification by the use of assessment instruments and practice guidance

			Estonia	Finland	Germany (M.-W. P.)	Ireland
	3.	Please describe the boundaries and interacttion of criminal sanctions (based on the guilt of the offender) and preventive/security measures (based on the concept of dangerousness) and how these are dealt with in practice on a day-to-day basis.	Probation supervision *preventive imprisonment* (*declared incompatible with the constitution)*	-	-	No sanctions or measures with relation to "dangerousness" or "high-risk"
	4.	Does the law on sentencing in criminal cases provide for specific risk assessment and, if yes, how is the procedure of assessment legally regulated?	No legal provision for risk assessment in the law on sentencing *Risk assessment only after conviction, if sentence exceeds one year*	Risk assessment prior to sentencing only in case of a possible court order to prevent early release of a high-risk offender (Code of Judicial Procedure, c 17, s 45) *Risk assessment after conviction for allocation and for sentence planning on prisoners, who are at risk of re-offending and in case of an application for parole of a prisoner serving a life sentence*	*No legal provision* for risk assessment in the law on sentencing.	*No legal provision* for risk assessment in the law on sentencing.

			Estonia	Finland	Germany (M.-W. P.)	Ireland
	5.	Does the law provide for a redefinition of risk or a risk assessment during the execution of the prison sentence? (e. g. after certain periods of time?)	Legal provisions for a redefinition of risk of all prisoners with a term of imprisonment exceeding 1 year (*once a year*) *and before release on parole*	Legal provisions for a redefinition of risk for prisoners: - placed in a high-security unit *(every 3 months)* - segregated from other prisoners *(every 30 days)* - serving life sentence (*before release*) - serving full sentence (*before release*)	Legal provisions for a re-definition of risk for prisoners: As part of the review of the sentence plan "*every 6 months*" (Prison Act, s 8(4)).	There are no legal provisions for a redefinetion of risk or a risk assessment during the execution of the prison sentence.
II.	**Early*/conditional release** * The term *early release* refers to automatic or unconditional release schemes that exist in some countries, see *Dünkel/Padfield/van Zyl Smit* 2010; *Dünkel* 2014.					
	1.	Please describe the legal provision and conditions of early/conditional release from *prisons* in general and any particular legal conditions or requirements applying in the case of dangerous/high-risk offenders.	*Conditional release* (parole): a) Criminal offence in the second degree <u>or</u> criminal offence in the first degree through negligence: aa) At 1/3 ≥ 6 months + prisoner agrees to electronic surveillance bb) At 1/2 ≥ 6 months b) Intentional criminal offence in the first degree: aa) At 1/2 ≥ 6 months +	*Conditional release* (parole): - At 1/2 (2/3 if recidivists) - At 5/6 for full serving inmates, if not considered dangerous or a fine defaulter - *Lifetime prisoners*: earliest after 12 years *Supervision after release* is ordered, if: - the part of the sentence *not* served in	1. *Conditional release* (parole): a) At 1/3 ≥ 2 months (obligatory), if - the release can be justified with regards to the interests of public safety and - the prisoner agrees. b) At 1/2 ≥ 6 months (discretionary), if - the release can be justified with regards to the interests of public safety,	1. *Early release*: - At 3/4 without further restriction unless restrictions or requirements have been imposed by the sentencing court 2. *Temporary release* (conditional release/ parole) is granted at the discretion of the Minister for Justice and Equality (no right or entitlement) for certain

	Estonia	Finland	Germany (M.-W. P.)	Ireland
	prisoner agrees to electronic surveillance bb) At least at 2/3 c) *Life imprisonment*: earliest after 30 years *Supervision after release* is ordered, if: - the offender has fully served a term of imprisonment of at least 2 years - the offender has previously been convicted for an intentional offence with a term of at least 1 year of imprisonment and - there are "solid grounds" to believe that the offender will reoffend.	prison is > 1 year; - the offence is committed when under 21 years; or - the prisoner so requests	- the prisoner agrees and aa) the prisoner is serving a sentence not exceeding 2 years for the first time in his life *or* bb) the evaluation of the offence, the personality of the offender and his development during the execution of the prison sentence show special circumstances. 2. *Conditional release* (parole) from *life imprisonment*: Earliest after 15 years, if - the gravity of the offender's guilt does not necessitate that he continue to serve his sentence - the release can be justified with regards to the interests of public safety - the prisoner agrees. *Supervision of conduct* after release may be imposed either by the	purposes and does apply to all prisoners except for those who are on remand. Review for recommendations on an early release by the Parole Board after: - 1/2 of the term of imprisonment for prisoners with a sentence of 8 years and more (but less than > 14 years) - 7 years for prisoners with a sentence of 14 years and more (including *life*) Prisoners guilty of certain kind of murder are not eligible for review *Supervision* may be imposed by the sentencing court when convicting a person of a scheduled sexual offence *or* as a condition of a temporary release order (obligatory for life sentence prisoners) *or* as a condition to a court or-

			Estonia	Finland	Germany (M.-W. P.)	Ireland
					sentencing court when convicting a person to imprisonment of not less than 6 months for an offence, for which the law specifically provides for the availability of a supervision order, if there is a danger that the person will commit further offences, or as a consequence of statutory provisions providing for supervision (e. g. after release from preventive detention).	der to suspend a sentence fully or partially under Criminal Justice Act 2006 s 99(1).
	2.	What kind of conditions or requirements (supervision orders, curfews etc.) can be imposed as a condition of early release?	General requirements while under probation supervision: - to reside in a permanent place of residence designated by the court; - to report at intervals determined by the probation supervisor at the probation supervision department; - to submit, and provide the probation officer with information relating to the perfor-	The parolee ordered to supervision is: - obliged to participate in the preparation of the supervision plan and keep in contact with the supervisor - required to give the supervisor necessary contact information as well as information related to his or her work, accommodation, training, studies, and financial situation	A conditional release may be combined with one or more of the following directives and obligations: - to recompense damages originating from the offence to one's best endeavours - to pay an amount of money to a charitable organization, if this is advisable with regard to the offence and the offender's personality	A Temporary Release Order may include as a condition: (a) an obligation for the sentenced person to inform a specific authority of any change of residence or working place; (b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;

	Estonia	Finland	Germany (M.-W. P.)	Ireland
	mance of the offender's obligations and his or her means of subsistence (in his or her place of residence) - to obtain the permission of the probation officer before leaving the place of residence for longer than 15 days (in Estonia) - to obtain the permission of the probation officer before changing residence, employment or place of study. - to obtain the permission of the probation officer to leave the country Additional responsibilities (imposed by the court): - to remedy the damage caused by the criminal offence within a term determined by the court; - not to consume alcohol or narcotics; - not to hold, carry or use weapons; - to seek employment,	- has to inform the supervisor of major changes concerning parolee's situation on his or her own initiative - has to comply with the orders given by the supervisor necessary to implement the supervision - cannot be under the influence of alcohol or other intoxicating substances at the supervision appointments Additional requirements (such as attendance of an anti-aggression training) *can* be ordered by the Criminal Sanctions Agency by stating them in the super-vision plan.	- to render community service - to pay an amount of money to the treasury - to obey orders which refer to residence, education, work or spare time or to the order of his economic conditions, - to contact the court or any other places/persons at certain times, - to refrain from contact to the injured person, certain people or a certain group of people who can offer him an opportunity or incentives for other criminal offences - not to own, to carry or to let somebody else store certain objects which can offer him an opportunity or incentives for other criminal offences - not to drink any alcohol or use drugs - to follow obligations to pay alimony.	(c) an obligation containning limitations on leaving the territory of the executing State; (d) instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity; (e) an obligation to report at specified times to a specific authority; (f) an obligation to avoid contact with specific persons; (g) an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing criminal offences; (j) an obligation to co-operate with a probation officer or with a representative of a social service having responsibilities in

			Estonia	Finland	Germany (M.-W. P.)	Ireland
			acquire general education or a profession within the term determined by the court; - to undergo the prescribed treatment if the offender has previously consented to such treatment; - to perform the maintenance obligation; - not to stay in places determined by the court or communicate with persons deter-mined by the court; - to participate in social assistance programmes; - to submit to electronic surveillance if the offender has consented to such surveillance.		With the probationer's consent the court may order the probationer: - to participate at a drug or alcohol withdrawal treatment (in case of drug addiction) or - to take residence at a suitable home or a suitable institution.	respect of sentenced persons; (k) an obligation to undergo therapeutic treatment or treatment for addiction. A Temporary Release order may contain any additional condition, restriction or requirement considered necessary by the Minister of Justice and Equality in granting such a form of leave.
	3.	What is the length of the post-custody supervision period provided by law? (Are there indeterminate periods, e. g. for life-time, or long-term determinate periods of supervision provided by law? Is the	*Probation term*: Extent of the *unserved part of the term* of imprisonment, but *not less than 1 year* Conditional release from *life imprisonment*: *5-10 years*	*Probation term*: Extent of the *unserved part of the term* of imprisonment, but *not more than 3 years* Conditional release from : *3 years*	*Probation term*: *2-5 years*, shall *not* be *less than unserved part of the term* of the sentence Conditional release from *life imprisonment*: *5 years* *Duration of supervision* of conduct: *2-5 years*,	*Supervision* cannot exceed the maximum custodial sentence Supervision for *life sentence prisoners*: *lifelong*.

			Estonia	Finland	Germany (M.-W. P.)	Ireland
		period of supervision equivalent to the rest of the sentence not served in prison or independent of it? i.e. like in Germany 2-5 years, independent of the 1/2 or 1/3-period not served in prison)	*Duration of supervision*: from *12 months to 3 years*	*Duration of supervision*: *equal to probation term*	independent of the length of the remaining sentence.	
III.	**Transitional phase**					
	1.	How is the preparation for release legally and practically organised? (sentence and release plan, transfer to open prisons, prison leaves etc., specific plans for "dangerous"/high-risk offenders)	*Sentence plan:* - obligatory for all offenders with a sentence exceeding one year - includes risk assessment and planning on all necessary measures *Early release process*: a) if released on parole: - process starts *automatically 2 months prior* minimum serving *time* for *early release* - Prison prepares a report based on risk-assessment and progress of the sentence. Probation officer's view is asked.	*Sentence plan*: - includes planning on supervised probationary freedom, conditional release and on granting a permission of leave *Release plan*: - set up by the prison *well in advance* of the probable release date - therefore preconditions of the prisoner to cope outside prison as well as his or her needs for services shall be assessed - Decisions about conditional releases are being taken by the pri-	*Sentence plan*: - includes planning on treatment measures, relaxation of conditions of imprisonment and measures necessary to prepare release. *Release plan* (InStar): - *beginning 6 months prior to release* - Prisoners are either transferred to a special preparation station of release or, should they be suitable, to an open prison. *Prison leave* for up to 21 calendar days per year may be granted generally not before the	*Personal Integration Plan:* - part of the Integrated Sentence Management - compiles assessments of needs and referrals to services within the prison *Community Integration Plan:* - developed *approx. 9 months prior to release* - addresses issues such as accommodation and employment or education Newly committed prisoners with a sentence > 1 year are eligible to take part in ISM.

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	- Report and a personal file are sent to the court. - Court announces a hearing with presence of an offender (usually video conference). - Court will reach a decision on release. b) if released on parole + electronic monitoring / addiction treatment: - agreement for treatment/electronic monitoring (in case of EM: also application for EM by the prisoner) - Prison prepares a report based on risk-assessment and progress of the sentence - Probation officer's view is asked with extra focus on the suitability for treatment/ electronic monitoring - Report and a personal file are sent to the court - Court announces a hearing with presence of the offender (usually	son governor according to the deadlines defined in law - *New transitional procedure* called "supervised probationnary freedom" (since 2006): A prisoner serving - a determinate sentence or - life imprisonment can be placed in *probationary freedom a maximum of six months before his or her release on parole* The prisoner must comply with abstinence from substances and other conditions. A plan is required, which includes - information on, e. g., the housing and livelihood of the released offender, - the obligation to participate in an activity, - the daily schedule and the supervision. The prison is responsible	prisoner has served at least six months of his sentence. Furthermore a special leave for up to one week within three months prior to the release may be granted. Prisoners who are on work release may be granted special leave for up to six days per month within nine months prior to their release. A prisoner *should* be transferred to an open prison or unit if this serves to prepare his release. Further conditions: - no risk of serious reoffending - transfer must be "justifiable" concerning the public - offender must be able to cope with the live conditions outside prison and its temptations	*Review meetings*: - Regular review meetings concerning the sentence management of individual cases - The Governor, members of the senior management and representtatives from the professional/therapeutic services as well as an official from the Prison Service Headquarters are participating - Recommendations of the meeting may include that a prisoner engage in the school, work with the addiction services, be considered for transfer to an open centre, etc. For *Temporary Release*: see II.1. *Transfer to open centres*: - Prisoners with short sentences (> 12 months) may be moved to an open centre shortly after committal pro-

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	video conference). - Court will reach a decision on release - Period of treatment: 18 months-3 years / EM period: 1 month-1 year + probation order during and after the period of EM (minimum 1 year) Prison may grant an offender a *short time leave* from prison for up to 21 days a year, if the offender: - has served at least 1 year of imprisonment or 1/2 of his/her term of imprisonment, if he/she was convicted for a first degree offence for at least the second time - is not convicted to life imprisonment - is not a risk for escape *Transfer to open prison*, if: - no disciplinary punishment - not on the "escape list" - no need for placement	for the supervision in this case. In practice, the supervision is organised by support patrols. Elec-tronic monitoring is also used. Supervised probationary freedom of at least 3 months is obligetory for prisoners serving the full sentence. - *Transfer to open prison* on the basis of an assessment by the Assessment Centre subsequent to an application to be transferred by the offender. Main points for consideration are the consistency of a transfer with the sentence plan as well as an evaluation of the necessary level of control. The decision is taken by the director of the Assessment Centre		vided that they are assessed as suitable - Longer-term prisoners may be considered for a move to an open centre with about 2 years left in their sentence (4 years for exceptional prisoners) - Prisoners serving sentences of more than 8 years may recommended for a transfer to an open centre by the Parole Board to the Minister

			Estonia	Finland	Germany (M.-W. P.)	Ireland
			to extra security unit - currently not a suspect or accused in criminal case - residence permit has been issued (foreigner) and one of the three categories is fulfilled: - Short sentence (≤ 1 year, intake phase over, dangerousness not high, no addiction) - Prior to release (unserved sentence ≤ 18 months, early release date reached, dangerousness not high, no addiction) - on the basis of the individual sentence plan			
	2.	What services are involved in release preparation? What are the roles and tasks of the services inside the institution?	- *Case manager*: collects necessary information, involves other specialists; in case of a fully served sentence he sends a letter with the necessary information to the local municipality social worker	- *Senior criminal sanctions official*: is in charge of drawing up the release plan, when necessary in co-operation with: - prison's social worker - worker for alcohol and drug abusers - guidance counselor - health care	- *Prison*: reports to the Court on the necessity of directives and obligations concerning conditional release. Within the prison: *Division manager*: coordination, establishes the sentence and release plan	Irish Prison Service, Custody Management, Health and Nursing Service, Psychology Service, Addiction Service, Training Service and chaplaincy participate in the ISM system along with external providers including statutory

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	- *Probation officer* (only by request of the case manager): compiles pre-release report, controls the place of residence	- The release plan is drawn up, where necessary and with the consent of the prisoner, in cooperation with the *local authorities of the municipality* of residence of the prisoner - The *Psychiatric Prison hospital* makes assessments on the dangerousness of prisoners serving the full sentence before release and evaluations of the risk of committing violent crimes for life prisoners prior to release	*Psychological service*: consulting, treatment *Prison officers*: accompanying the prisoners for preparation of release - *Supervisory office*: controls directives and obligations, on the basis of reports by probation officers; initiates warrants of arrest if conditions are seriously violated, reports to the Court - *Probation officer*: control of directives and obligations, responsible for the process of reintegration into society, supports, advices and helps in dealing with problems, reports to the Court - *Court for the Execution of Sentences*: decision of (early) release, imposes directives and obligations - *Police*: control of directives, support of supervisory office and	services such as the HSE Forensic Psychiatric Service, the Probation Service and the Education Service. Statutory Homeless and Social Protection services provide an in-reach service in each prison. Additional in-reach service in the prisons and support are provided by community and voluntary bodies. The Irish Prison Service provides funding to specific community based organizations to support their work in prison.

			Estonia	Finland	Germany (M.-W. P.)	Ireland
					of the responsible probation officer - *Forensic psychologist*: risk assessment (involved only in certain cases) - *Prosecution*: demands (early) release, control of imposing directives and obligations For *juveniles*: the youth court service is involved, if provision and financial help is required. Links to the public youth welfare.	
	3.	What services are involved in the community after release? What are the roles and tasks of aftercare services such as the probation service?	Aftercare is provided by *local municipalities*, not the probation service	If the prisoner is subjected to supervision, the social worker of the prisoner's municipality of residence takes will take care of planning what services the released prisoner needs and guide him or her to the services	After release, the following services in the community are involved: *half way houses* run by social institutions, *debt regulation*, *counseling*, *clinics for therapy*, *social assistance office*, *employment agencies* etc. All these services cooperate with the probation service.	Assessment and management of offenders in the community is provided by the *Probation Service* (an agency within the Department of Justice) The Probation Service works closely with the Prison Service, Courts Service and An Garda Síochána as well as with other Government Departments, statutory agen-

			Estonia	Finland	Germany (M.-W. P.)	Ireland
						cies and local service providers. A joint model of sex offender management (SORAM) has been initiated by the Probation Service and An Garda Síochána and includes local authority accommodation providers, the health service and the Prison Service in the full national implementation.
	4.	When does the preparatory stage for release begin? (Is it defined by law? Are there standards, guidelines?)	Law: *At least 2 months prior to release* General practice: With the *beginning of the sentence*	Law (Prison Act): *Well before probation or conditional release.* The Criminal Sanctions Agency has specified the begin of the preparatory stage in their instructions to be *at the latest 6 months before release*.	Law (Prison Act): Formal release preparation begins *6 to 12 months before the prospective release*, depending of the length and kind of the sentence. The *probation service* has to be involved *one year before the release* of the offender.	In practice the release planning begins *12 months prior to release* with preparing a pre-release case management plan by the prison-based Probation Officer including a risk assessment for offenders serving a term of imprisonment of more than 2 years. *9 months prior to release* a Community Integration Plan (CIP) is developed.

		Estonia	Finland	Germany (M.-W. P.)	Ireland
5.	Do the probation officers visit the prisoners in prison? How often? When do they start? Is continuity of care provided by law or practice?	*Yes, if needed.*	*Yes, once or twice a few months before release.* Continuity of care is provided by law for those who are placed under supervision.	Depending on the needs of individual prisoners, probation officers can visit the persons they will be responsible for also during detention. This is usually done at least 6 months prior to the scheduled time of release. In general, the probation officer meets the responsible prison officer and the prisoner *at least once*. They co-ordinate the release together. The *frequency* of contact *is set individually*. If a former probationer is in detention, the probation services are informed and involved in the preparation of release according to InStar. The frequency of contact is set individually. Continuous service and care are provided by law.	Probation Officers, based in each prison, work with designated prisoners. Where prisoners are subject post custody supervision there are protocols in place for visits by their community supervision Probation Officers and preparation of a post custody supervision plan. There is *no legal provision* for aftercare or obli-gation underpinning practice apart from the requirements for post custody supervision and supervision as a condi-tion of a temporary release order.

			Estonia	Finland	Germany (M.-W. P.)	Ireland
	6.	Is there a case manager in the prison and/or in the community? If yes, who are the case managers and what are their responsibilities?	In *prison*: Prison officers/contact persons In the *community*: Probation officer Each of the responsible persons provide every-day case management work, conduct assess-ments, sentence plans, deliver programmes and carry on control activities	In *prison*: Senior criminal sanctions official is in charge of the sentence plan and the release plan In the *community*: The supervisor at the Com-munity Sanctions Office or in some cases the social worker of the municipality may be viewed as the released prisoner's case manager	In *prison*: The manager of a division fulfills the tasks of case manager. He controls the process of imprisonment and release and coordinates the transition to the outside society. He decides additional measures, if necessary. In the *community*: The probation officer is the case manager for the time of supervision. The probation officer oversees the process of supervision and reports to the criminal judge and the supervisory agency about the pro-cess of supervision and – in case of non-compliance – about measures to be taken. He cooperates with other services and recommends the end, change or imple-mentation of (new) directives and obliga-tions, if necessary.	In *prison*: The case manager of the Integrated Sentence Management is responsible for release preparation for long sentence and high-risk prisoners In the *community*: The supervision case mana-ger is the assigned Probation Officer who liaises with all other service providers and agencies involved

		Estonia	Finland	Germany (M.-W. P.)	Ireland
7.	Please describe the system of prison/institutional leave (absence or release during sentence) in general and for "dangerous"/high-risk prisoners in particular. Does the law provide for a transfer to open prisons for "dangerous"/high-risk prisoners and what are the procedures for such a transfer?	Short time leave from prison: up to *21 days per year*, if: - ≥ *1 year of imprisonment is served* (1/2 of sentence served, if convicted for a first degree offence at least for the second time) - not sentenced for life or presenting a risk of escape For open prisons: see III.1	Leave for *maximum 3 days in every two months* may be granted *if 2/3* of the sentence (but ≥ *2 months*) have been *served* For *life prisoners*: if found ineligible for leave due to sentence length, he/she shall be granted a permission of leave under escort at least once/year For open prisons: see III.1	A non-restricted number of days of prison leave (before 2013 only up to 21 calendar days per year) may be granted, generally not before the prisoner has served at least six months of his sentence. Offenders assessed as dangerous or high-risk prisoners are eligible to relaxations after a special assessment excluding "considerable" risks of further serious reoffending. In these cases, they also can be transferred to open prisons. For open prisons: see also III.1	For *temporary release*: see II.1 In case of "dangerous"/high-risk offenders any decision on transfer within the prison system, granting of temporary release and decision on specific conditions or restrictions will be informed by assessment of risk of re-offending, serious harm and security and safety priorities. There is no legislation providing for transfer within the prison system. Prisoner management within the prison system is subject to the Prison Rules of 2005
8.	Does the national law provide for halfway houses and/or electronic supervision for "dangerous" or high-risk prisoners in the preparatory stage for release or on release?	No	- *Electronic supervision* is used in the context of "Supervised probationnary freedom" - *Halfway houses* in connection with prisons	- National law provides the *possibility of electronic supervision for "dangerous" or high-risk prisoners* under supervision of conduct	No

		Estonia	Finland	Germany (M.-W. P.)	Ireland
			in Kuopio and Oulu - Halfway houses as an outsourcing service in Tampere and Helsinki The prisoners are placed in these units some weeks or a couple of months before release.	- State law (Prison Acts of the "*Länder*") provides for the use of *halfway houses*	
9.	Are NGOs or private after-care services involved during the prison sentence, in the transitional phase or in the community following release? What is their role and to what authority are they accountable?	NGOs are involved in providing rehabilitation services to offenders, where there is a need and options for certain services e. g. support person, self-help groups for addicts, anonymous alcoholics, drug treatment services etc. Every prison and probation department has its regional partners. Usually NGOs are *not funded by the prisons* but are operating on project grants awarded from elsewhere.	Prisoners are supported by peer groups, self-care groups (AA, NA), spiritual groups (congregations) and other voluntary organizations during and after the sentence. Cooperation is done also with the Probation Foundation KRITS and C.R.I.S (a peer group support association). During the sentence the support work is supervised by the Criminal Sanctions Agency and after release by different authorities.	Prison work together with external services – private and public institutions – which are active within the prison as well as in the community, e.g. in the areas of vocational training, school, social training, consultation, counselling and treatment programmes. However, *all decisions related to the development of the offender* before and after release are to be made by the prison and the probation service.	Support to the statutory services in prisons is provided by community and voluntary bodies providing in-reach service in the prisons. The Irish Prison Service provides funding specific community based organizations to support their work in prison. These include accommodation support services, addiction service and resettlement support. These bodies are accountable to the Irish Prison Service.

			Estonia	Finland	Germany (M.-W. P.)	Ireland
IV.	**Aftercare**					
	1.	Please describe the system and forms of control/supervision after release. Are there particular legal requirements or restrictions for certain types of offenders? (Registration etc.) Please outline them briefly. Please explain any different requirements applying to offenders conditionally released and those having fully served their sentence.	See II.1 • Probation supervision (on parole or after having fully served the sentence) • Probation supervision and electronic monitoring (on parole) • Probation supervision and placement to an addiction treatment center (on parole)	See II.1 A prisoner cannot be subject to supervision after he has fully served his/her sentence	See II.1 • Probation supervision: - Differentiated structure of service. Three "risk groups" with different case loads for probation officers - FoKuS. For details: see remarks on the supervision of conduct measure	See II.1 Requirements of a released sex offender to notify the police about change of name, address or intent to reside elsewhere for > 7 days under the Sex Offenders Act 2001
	2.	Are there legal and practice provisions or guidelines/standards for the definition of risk, risk assessment during the probation/aftercare period? If yes, please outline them briefly.	*Legal provision* for the use of a risk assessment tools for probationers with a sentence exceeding 1 year (Probation Supervision Act) See also I.2 and I.4. The risk assessment tool is used with a respective handbook.	*No legal provisions* *Risk assessments* (static factors, SIR-R1 and ARAT) and *risk and need assessments* are *available for supervisors*, but supervisors have no own guidelines/standards for the definition of risk.	*Legal provisions* allowing the court to impose, as a directive to an order for supervision of conduct, the duty to undergo psychotherapeutic or psychiatric treatment (Criminal Code, s 68b(2)) There are *standards for procedures of risk assessment in prison and in probation service*. Lifetime	*No legal provisions*

		Estonia	Finland	Germany (M.-W. P.)	Ireland
				prisoners, violent and sex offenders have to be assessed before relaxation of the prison regime (prison leaves etc.) or release by a specialized team of psychologists. The *probation service* also *uses test procedures for risk assessment*: LSI-R, FAF and special tests for sexual offenders.	
3.	What services are involved, with legal responsibilities, in aftercare supervision? What other services are involved? (See Q9 below)	-	No other services are involved with legal responsibilities	*Supervisory agency*, *probation officer*, *criminal judge* (Court for the Execution of Sentences), *Forensic psychologist*, *Prosecutor*, *Non-profit organizations*	*Probation Service*, Irish *Prison Service*, *Courts Service*, *An Garda Síochána* (*Police*)
4.	Please briefly describe their tasks and working practice.	-	-	*Supervisory agency*: control of directives and obligations set by the Court for the Execution of Sentences on the basis of reports by the probation officer; initiates the demand for prosecution because of	The Probation Service has responsibility for the supervision of offenders, where supervision has been imposed by the sentencing court (Post Release Supervision Order) or is a condition to a court

	Estonia	Finland	Germany (M.-W. P.)	Ireland
			violation of the setting or because of a new offence. *Probation officer*: control of directives and obligations set by the Court for the Execution of Sentences, supports the reintegration process into society, reports about the process of supervision to criminal judge and supervisory agency *Criminal judge* (Court for the Execution of Sentences): imposes directives and obligations *Police*: control of orders and conditions, supports supervisory agency and the responsible probation officer *Forensic psychologist*: risk assessment *Prosecutor*: treats demands for prosecution, controls directives and obligations	order to suspend a sentence fully or partially under Criminal Justice Act 2006 s 99(1). The Probation Service has responsibility for the supervision of offenders where supervision is a condition of a Temporary Release Order.

	5.	What is the role and interplay/cooperation of state and private aftercare services?	NGOs *can be involved* by local municipalities *in the process of rehabilitation* in cooperation with special services, e. g. support persons, anonymous addicts and alcoholics, drug treatment centers, etc. This option of cooperation is, however, *hardly used*	NGOs *provide support services* such as housing services, contact points or programmes focusing on street violence (KRITS, Aggredi, C.R.I.S, etc.)	*Probation service*: control of directives and obligations set by the Court for the Execution of Sentences, control of lifestyle, supply support for reintegration into society, cooperation with other services, case management *Private institutions* are supplying support for reintegration into society on a voluntary basis.	The *Probation Service* works in partnership with communities, local services and *voluntary organizations*. The Probation Service provides funding, almost 30% of the Service budget, to over 60 community based organizations. These bodies are accountable to the Probation Service.
	6.	How, to what extent and on what legal basis, the *police* are involved?	- The local *police is informed* about offenders in its region - The *probation officer* is entitled to receive and *request information from police* regarding the probationer	- The *police can assist the supervisor* with appointments by providing safety, neutral rooms, etc. - Police officers are also *used as assistant supervisors with high-risk offenders* - In case of a suspected breach of obligations the supervisor can receive information on the parolee from the police	- The *police has to share any information about the offender with the probation officer* and to the supervisory agency. The *police visits the offender at home and controls* if the offender complies with the implemented directives and obligations. These measures have been conceptualized in the FoKuS regulation (Administrative Act), which does, however, not provide additional competences	- Involvement only in relation the requirements of sex offenders under the Sex Offenders Act 2001 and a joint model of sex offender management (SORAM) - Legal basis: Sex Offenders Act 2001

					for the authorities involved.	
	7.	Is electronic monitoring applied? Please describe the legal basis (which offenders, offences?)	Yes, since 2007 in the following cases: - *Release on parole with electronic monitoring.* - *Electronic monitoring as an alternative to arrest in pretrial phase* - Electronic monitoring *as a supplement for short sentences* (up to 6 months)	Only in *supervised probationary freedom*	Yes, but only *for offenders under supervision of conduct*	Not generally. It is used *in prisoner management during hospitalization and similar circumstances* only.
	8.	Which form of electronic supervision is used? (House arrest, GPS?)	EM is mostly used for house arrests. GPS is used only in very few cases (supplement for short sentences).	-	GPS is used. In regions with tunnels and buil-dings LBS is used addi-tionally. There is no electronic supervised house arrest.	-
	9.	Are NGOs or private aftercare services involved in the aftercare phase?	*In some cases accor-ding to the regional possibilities;* e. g. addiction treatment ser-vices or housing. Usu-ally they operate on grants or contracts with local municipalities.	*Yes*, but not with legal responsibilities.	*Yes*. Cooperation is fixed with non-profit organisations and local authorities.	See IV.5

Table 2: Answers to the JCN-questionnaire from the associate partners

			Belgium	Slovakia	Slovenia
I.	**Legal issues**				
	1.	How is the legal concept of "dangerousness"/high-risk addressed in criminal law in your country? Is there a difference between "dangerous" and high-risk offenders? If yes, please outline it briefly. (Legal conditions of criminal sanctions, preventive/security measures)	The concept of dangerousness / high-risk is not addressed directly by criminal law, but merely by certain exceptions to the rules for conditional release for some categories of offenders (see answer to Q I.2)	The legal concept of "dangerousness" / high-risk offenders is not defined in statutory law. Dangerousness is generally understood by judicial practice as a possible threat to interests protected by the Penal Code.	There is no reference in legislation to "dangerousness" or "high-risk" in criminal law or law on sentencing. However, Penal Sanctions Enforcement Act, ss 98, 206 refer to dangerous offenders for the purpose of disciplinary and security measures during imprisonment.
	2.	What kind of offenders are defined, in law or in practice, as "dangerous" / high-risk in your country? (Offences, recidivist offenders in general or concerning specific offences, length of imprisonment?)	The following types of offenders are indirectly defined as high-risk offenders by exceptions to the rules for conditional release: a) Offenders considered by the Correctional Court (or the Court of Appeal) as recidivists, given they have committed certain (more serious) offences after having been convicted for certain	In practice offenders are defined by prison staff as high-risk offenders if certain characteristics apply to them, which are mostly related to the crime committed (e. g. crimes, for which life sentence can be applied, severe crimes, drug-related crimes, being part of organized crime, terrorism, etc.) or to certain previous behaviour (escape attempt).	In Penal Sanctions Enforcement Act, ss 98, 206 a dangerous offender is defined as a convict who endangers the lives or health of others.

			Belgium	Slovakia	Slovenia
			(more serious) offences b) Offenders under the "TBS-maatregel" (an additional sentence, between 5 and 15 years, that can or must be im-posed by the Correctional Court (or Court of Appeal) for the protection of the integrity of persons in society (it is a measure comparable with the German preventive detention) c) Prisoners sentenced to 30 years or life imprisonment.		
	3.	Please describe the boundaries and interaction of criminal sanctions (based on the guilt of the offender) and preventive/security measures (based on the concept of dangerousness) and how these are dealt with in practice on a day-to-day basis.	-	-	The following safety measures may be imposed in addition to the sentence: - compulsory psychiatric treatment, - confinement in a health care institution - compulsory ambulant psychiatric treatment - ban on the performance of profession; - revocation of the driving licence; - confiscation of items.

			Belgium	Slovakia	Slovenia
	4.	Does the law on sentencing in criminal cases provide for specific risk assessment and, if yes, how is the procedure of assessment legally regulated?	Law on sentencing does *not* provide for specific risk assessment in general. At the stage of sentencing by the Correctional Court or the Court of Appeal, a psychiatric assessment can be requested, but is not mandatory by law.	Law on sentencing does *not* provide for specific risk assessment. During the trial the court can, however, examine the mental health of the accused.	Law on sentencing does *not* provide for specific risk assessment.
	5.	Does the law provide for a redefinition of risk or a risk assessment during the execution of the prison sentence? (e. g. after certain periods of time?)	There are no legal provisions for a redefinition of risk or a risk assessment during the execution of the prison sentence.	Legal provisions for a redefinition of risk for prisoners: - placed in a security unit (*every 6 months*) - being conditionally released (*before release*)	Though there are no legal provision for a specific risk assessment, Penal Sanctions Enforcement Act, s 30, regulates the setup of an individual treatment plan including a security classification as well as the identification of criminogenic needs. This treatment plan is reviewed throughout the execution of the sentence.
II.	**Early*/conditional release** * The term *early release* refers to automatic or unconditional release schemes existing in some countries, cf *Dünkel/Padfield/van Zyl Smit* 2010; *Dünkel* 2015.				
	1.	Please describe the legal provision and conditions of early/conditional release from *prisons* in general and any particular legal conditions or requirements applying for dangerous/high-risk offenders.	*Conditional release* for offenders sentenced to > 3 years of imprisonment: ** At 1/3 on the basis of the	*Conditional release* (Penal Code, ss 66, 67): a) at 1/2, if convicted for a minor offence (upper penalty limit < 5 years)	1. *Early release* (Penal Code, s 108): At 2/3 ≤ 3 months prior to end of term at the discretion of the prison

			Belgium	Slovakia	Slovenia
			following contra-indications: - no realistic plan for the time after conditional release (concerning accommodation and/or occupation, living, therapy, etc.) - risk for serious reoffending - a (negative) attitude towards the victim(s) - risk for disturbing the victim(s) * Please note that offenders with sentences < 3 years of imprisonment are generally subject to Electronic monitoring as a new standard "front-door" measure in Belgium (regulated in the Ministerial Circular of 12 March 2013)	b) at 2/3, if convicted for a felony (upper penalty limit > 5 years) c) at 3/4, if convicted for a particularly serious felony d) earliest after 25 years, if sentenced to life imprisonment. Offenders who are repeatedly sentenced to life imprisonment are excepted from conditional release.	governor, if the prisoner: - behaves properly - makes an effort in his or her work - participates actively in other useful activities 2. *Conditional release* (Penal Code, s 88): a) at 1/3, if special circumstances referring to the offender's personality indicate that he/she will not repeat the criminal offence (exceptional) b) at 1/2 (standard) c) at 3/4, if sentenced to > 15 years d) earliest after 25 years, if sentenced to life imprisonment.
	2.	What kind of conditions or requirements (supervision orders, curfews etc.) can be imposed as a condition of early release?	After a conditional release an offender is always (i. e. stated by law) subject to the following conditions: - not to commit new crimes; - to have a fixed address, and communicating a change in address imme-	When conditionally releasing an inmate, the court may simultaneously issue a directive of probationnary supervision and shall im-pose appropriate restric-tions or obligations. Penal Code, ss 68(1), 51(3):	The court's instructions for a conditional release may include the following tasks to be performed by the offender: - to submit himself to a course of medical treatment at an appropriate institution, also treatment

	Belgium	Slovakia	Slovenia
	diately to the public prosecutor and the parole officer - follow the summoning of the public prosecutor and the parole officer. Other general conditions are for example: - no contact with co-offenders - no contact with the victim(s) / region ban (if demanded by the victim(s)) - paying compensation to the victim(s) - not carrying weapons Other conditions are more case specific and are the result of the assessment by the Psychosocial Service: - no misuse of alcohol - following therapy (for problems with aggression, sex, drugs, personality, etc.) - financial guidance - following vocational training	Restrictions to - visit sporting or other mass events - use alcoholic beverages and other habit-forming substances - meet persons who have a negative influence on the offender or who were his co-offenders - enter certain places or premises whereat he committed the offence - gamble, play slot machines and bet Penal Code, ss 68(1), 51(4): Obligations - not to go within a distance of less than five meters of the injured party and not to stay in the vicinity of his dwelling - to move out from the apartment or house wherein he unlawfully dwells or which has been occupied by him unlawfully - to compensate the caused damage within the probationary period	of alcohol or drug addiction with his consent - to attend sessions of vocational, psychological, or other consultation - to qualify for a job or to take up employment suitable to his health, skills, or inclinations - to spend income according to the duties relating to family support - prohibition of association with certain persons - restraining order to keep the perpetrator away from the victim or some other person (Penal Code, s 88(7)) An offender, who shall be released on parole, may be put under post-custodial supervision by the court.

			Belgium	Slovakia	Slovenia
				- to pay off the debt or delayed alimony within the probationary period - to make apology to the injured party personally or publicly - to acquire a certain level of vocational qualifica-tion or to take part in a qualification course with-in the probationary period, - to undergo a social skills training programme or other educational pro-gramme in cooperation with a probation or me-diation officer or other professsional - unless protective treat-ment has been imposed to undergo the treatment of addiction to habit-forming substances - to undergo psychothera-py, or make use of psy-chological counselling services - to get employed or actively seek employment in a provable way	

			Belgium	Slovakia	Slovenia
	3.	What is the length of the post-custody supervision period provided by law? (Are there indeterminate periods, e. g. for life-time, or long-term determinate periods of supervision provided by law? Is the period of supervision equivalent to the rest of the sentence not served in prison or independent of it? (i.e. like in Germany 2-5 years, independent of the 1/2 or 1/3-period not served in prison)	- General: Extent of the unserved part of the term of imprisonment, but not less than 2 years - For convictions to criminal sentences or one or more correctional convictions that sum up to > 5 years of imprisonment, the length of post-custody supervision is ≥ 5 and ≤ 10 years - For convictions to a lifelong sentence, the length of follow-up is always 10 years	Probation term: 1-7 years - Protective supervision: 1-3 years / ≤ 5 years for recidivists	Extent of the unserved part of the term of imprisonment
III.	**Transitional phase**				
	1.	How is the preparation for release legally and practically organised? (sentence and release plan, transfer to open prisons, prison leaves etc., specific plans for "dangerous" / high-risk offenders)	*Sentence planning* is in preparation in Belgium, it is not structurally implemented, yet. Sometimes specific prisoners (e. g. prisoners with a long sentence) are relocated to more open prisons to see how they behave and cope in a more open environment. *Release planning* starts with the release plan that the offender has to for-	A *sentence plan* is set up for each convicted person with a sentence exceeding 9 months of unconditional imprisonment. The plan focuses on five areas – education, leisure time activities, work, relationship with the outside world, and the use of other methods and means of treatment. For a convicted person with a sentence not exceeding this	A personal treatment plan (*sentence plan*) is set up for each prisoner, defining all the activities and program-mes, in which the prisoner shall participate, security classification, privileges, work, education, contacts with persons outside the prison, cooperation with relatives, *preparation* for the *release* and the inclusion in small training

	Belgium	Slovakia	Slovenia
	mulate in the procedure of conditional release. This release plan is being evaluated by the Psycho-social Service (please see the answer to the next question). Depending on the advice of the Psychosocial Service and the Prison Governor, the following measures can be used in the preparation of conditional release: - (un)supervised *prison leaves* (provided by the Minister of Justice) to strengthen familial ties, and/or to test the environ-ment, to follow intake pro-cedures for therapy, to search for a job, etc. - *limited detention* (provi-ded by the Court of Im-plementation of Senten-ces), whereby the offen-der works outside the pri-son and sleeps there at night - electronic supervision. Offenders with a longer sentence and/or those	limit only short-term goals are defined, which concentrate on the rein-tergration in-to society of this person. During the sentence, and especially towards the end of the sentence, if the prisoner complied with the Service of Imprison-ment Act and other rules, the transfer to an *open prison* and granting *prison leaves* become more probable / frequent. However, only a prisoner serving his sentence in a low security prison may be transferred to an open prison. High-risk offen-ders are generally not placed in an open prison or allowed prison leaves.	groups. It will take into account recommendations contained in social work, psychological and peda-gogic reports, as well as other specialized assess-ments, if available. Since 2003 every inmate is also assessed with a Suicide Risk Screening Tool upon admission.

			Belgium	Slovakia	Slovenia
			considered to be high-risk offenders generally undergo limited detention and/or electronic supervision before a conditional release.		
	2.	What services are involved in release prepa-ration? What are the roles and tasks of the services inside the institution?	- The *Psychosocial Service* is part of the Prison Service and consists of psychia-trists, psychologists and social workers. Their main task is giving advice to pri-son governors, who in turn advice the Minister of Jus-tice and the Court about the different modes of appli-cation of sentences (peni-tentiary leaves, limited detention, electronic super-vision, conditional release, etc.). The Psychosocial Service conducts risk assessments, evaluates release plans of the offenders and (if deemed neces-sary) suggests modifica-tions to minimize the risk for reoffending.	Mostly only Corps of Prison and Court Guard officers: educationists, psychologists, social workers, etc.	Competent centres for social work, institutions responsible for employment, bodies, organisations providing accommodation opportunities, public health care and educational institutions shall be involved in planning and carrying out activities and programmes of social inclusion. In addition, assistance to a convict may also be provided by societies, charity organisations, self-help organisations and other civil society organisations. Social Services provide re-integration programmes in prisons, starting immediately after imprisonment by defining individual needs and

			Belgium	Slovakia	Slovenia
			- The *French* and *Flemish Community* is working in the prisons, but is not part of the Prison Service. Besi-des other tasks, they can also take part in re-lease preparation, but this is strictly on a voluntary basis with-out reporting to the responsible agen-cies. They can work in collaboration with the Psychosocial Service, but can also prepare an alter-native release plan with the offender if he/she does not agree with the release plan suggested by the Psychosocial Service.		aims. The most common aids provided are help in coping with imprison-ment, stress management counselling, social coun-selling, family skills and employment support du-ring the imprisonment and after release. Prison experts (social workers) work with the prisoners individually, searching for different possibilities to help and support them according to their needs.
	3.	What services are involved in the community after release? What are the roles and tasks of aftercare services such as the probation service?	The Probation Service is integrated in the Direc-torate General 'Houses of Jus-tice', a department of the Federal Public Ser-vice of Justice (formerly called Ministry of Jus-tice). Every court district has a House of Justice (28 in total) with justice as-sistants to carry out the actual fieldwork. The aim of the justice assistant is	Probation and mediation officers are carrying out the main work in the community after release. Due to a lack of state after-care programs, however, their tasks are limited to monitoring and supervision, such as the control of com-pliance with the imposed restrictions and obligations.	There are 62 social work centres as services within the Ministry of Labour, Family and Social Affairs and equal opportunities. All of them are involved in the coordination of the organizations in the local community area (employ-ment, health care, educa-tion, NGOs). After re-lease they carry out social services and provide

			Belgium	Slovakia	Slovenia
			to give guidance to the conditionally released person in order to avoid re-cidivism, to limit the da-mage caused by the judicial intervention and to work with a restorative approach. The duration of guidance is limited by law or by the judicial authority that ordered the guidance.		assistance to ex-prisoners, if they re-quest it. There is no oblige-tion to supervise and help them after release with the exception if he/she is re-leased with the condition of post-custodial supervision.
	4.	When does the preparatory stage for release begin? (Is it defined by law? Are there standards, guidelines?)	The beginning of the preparatory stage for release is <u>not defined by law</u>. In practice, at least the assessment of the Psycho-social Service starts a few months before the offen-der can ask for unsuper-vised leaves (2 years before the date of condi-tional release, which is generally at 1/3 of the im-posed sentence. This im-plies that in many cases the assessment starts at the beginning of the sen-tence, or at the moment the sentence is definitive).	The beginning of the preparatory stage for release is *not defined by law nor* are there any standards or *guidelines* for it.	The responsible centres for social work and other such entities must prepare a programme of necessary measures for assisting convicts in cooperation with the prison *at least 3 months before release from prison.* In practice, the prepar-atory stage for release begins at the start of the sentence.

			Belgium	Slovakia	Slovenia
	5.	Do probation officers visit the prisoners in prison? How often? When do they start? Is continuity of care provided by law in practice?	The justice assistant is given a mandate by the Court of Implementation of Sentences at the moment of granting conditional re-lease. This means that the offender in general will already be released when the justice assistant receives his mandate. Therefore a vi-sit in prison does not take place. There *are no legal or practical provisions for the continuity of care.*	Probation and mediation officers usually do not visit prisoners in prison. They supervise the conduct of the accused during the probation period in relation to their respective restrictions and obligations.	Prisons must enable pro-fesssional staff of the social work centre direct contact with the prisoner during the implementation of the programme of individual treatment or when they are arranging what the neces-sary measures for reintegra-tion into society. The amount of visits by a social worker to a prisoner de-pends on the personal circumstan-ces or needs.
	6.	Is there a case manager in the prison and/or in the community? If yes, who is the case manager and what are their responsibilities?	In *prison*: The case mana-ger is a member of the Psychosocial Service. His/her main task is to advice the deciding agen-cies (Minister of Justice and the Court) about the different modes of appli-cation of sentences. In the *community*: During conditional release the case manager is a justice assistant. His response-bilities are: - to offer assistance and	There are no case managers. Educationists and social workers are mostly trying to prepare the prisoners for their release, e.g. they may contact external service providers, NGO's, etc.	In prison: Case managers (called Adviser-pedagogues) are usually pedagogues, psychologists or social workers. Mostly tasks and activities defined in the personal treatment plan are carried out by a case manager. In the *community*: -

			Belgium	Slovakia	Slovenia
			guidance in ensuring compliance with the imposed conditions - to gain all relevant information according to his mandate, analyse it and inform the judicial authority		
	7.	Please describe the system of prison/institutional leave (absence or release during sentence) in general and for "dangerous" or high-risk prisoners in particular. Does the law provide for a transfer to open prisons for "dangerous" or high-risk prisoners and what are the procedures for such a transfer?	See answer to Q III.1. The procedure for high-risk offenders is identical, but the demand of prison leave is being evaluated more carefully and granted less easily. The same holds true for transfers to open prisons.	Institutional leave (for a maximum period of 5 days) is a disciplinary reward, which can be awarded to the prisoner by the prison governor (also repeatedly). It cannot be awarded to a prisoner placed in a maximum security prison. There are no other restrictions/guidelines for dangerous or high-risk prisoners. Only a prisoner serving his/her sentence in a low security prison can be transferred to an open prison. It is generally avoided to place high-risk offenders into open prisons; therefore there are internal regulations -	Prison leave is granted by the prison governor on the basis of the opinion of professional staff as a disciplinary reward and can take the following forms: - unsupervised visits outside the prison - leave from prison accompanied by an authorised official - unsupervised leave from prison (with the possible exception of the former site of the crime) - partial or complete use of annual leave outside prison Unsupervised leave may be granted up to 5 times per month and may not exceed 53 hours. Any grant of prison leave is subject to an assessment

			Belgium	Slovakia	Slovenia
				lists of legal, psychological and other criteria and contraindications - which should be revised before the transfer of a prisoner to an open prison.	of the risk of abuse of the leave as well as the response of the environment to it. In addition, all releases are subject to conditions, which in the vast majority of cases include a requirement to report, prepared by the Social work centre. The cost of leaves from prison accompanied by an authorised prison officer shall be paid by the convict, given he has sufficient funding. The transfer to an *open prison* depends on the assessment of the risk of abuse of this relaxation.
	8.	Does the national law provide for halfway houses and/or electronic supervision for “dangerous” or high-risk prisoners in the preparatory stage for release or on release?	There are no halfway houses. Electronic supervision is possible for each offender in the preparatory stage for conditional release, but there is no possibility to subject an offender to EM once he/she has been conditionally released.	There are no halfway houses. Electronic supervision is in progress, but not in practical use, yet.	There are no halfway houses. Electronic supervision is not used.

			Belgium	Slovakia	Slovenia
	9.	Are NGOs or private aftercare services involved during the prison sentence, in the transitional phase or in the community following release? What is their role and to what authority are they accountable?	Belgium is a federal state with different authorities (federal authority, regions, communities). Personal well-being falls under the competence of the communities. In *Flanders* help for prisoners is coordinated by a service (Afdeling Welzijn en Samenleving) embedded in the Flemish Government. The actual aid and assistance for prisoners is provided by a cooperation between various non-profit organizations and services.	While serving a prison sentence prisoners are often supported and educated by spiritual groups (churches). NGOs are generally not involved in the work with offenders during the prison sentence, but *after* prisoners have been released.	Prisoners are supported by different NGOs, self-care groups (AA, NA) and other voluntary organizations *during* and *after* the sentence. They also cooperate with the Social Work Centres. During the sentence, the support work is supervised by the social workers and after release by different authorities.
IV.	**Aftercare**				
	1.	Please describe the system and forms of control/supervision after release. Are there particular legal requirements or restrictions for certain types of offenders? (Registration etc.) Please outline them briefly. Please explain any different requirements applying to offenders conditionally released and those having fully served their sentence.	Every conditionally released offender is subject to the conditions described in II.2. Apart from these mandatory conditions the Court of Implementation of Sentences can impose specific individualized conditions to implement the release plan, to cope with the contra-indications stipu-	See answer to Q II.2.	-

			Belgium	Slovakia	Slovenia
			lated by law (e.g. recidivism) or when deemed necessary in the interest of the victims. Supervision or treatment can be imposed on sexual offenders. The Court of Implementation can impose two kinds of conditions: conditions related to guidance/supervision and conditions imposing Do's and Don'ts. The compliance with the first kind of conditions is followed up by the justice assistants (Houses of Justice). The second kind are monitored by the police services.		
	2.	Are there legal and practice provisions or guidelines/standards for the definition of risk, risk assessment during the probation/aftercare period? If yes, please outline them briefly.	No, there are *no legal standards for definitions* of risk or risk assessment during the probation period.	No, there are *no legal standards for definitions* of risk or risk assessment during the probation period.	n/a
	3.	What services are involved, with legal responsibilities, in aftercare supervision? What other services are involved? (See Q9 below)	Houses of Justice and police services. There is a specific cooperation agreement for the supervision of sexual offenders. Specific	The only persons with legal responsibility are the probation and mediation officers.	During the aftercare period, there are no services with legal responsibilities involved. Centres for social work provide help to released

			Belgium	Slovakia	Slovenia
			mental health outpatient services are being funded to carry out aftercare supervision for these kinds of offenders.		persons if he/she asks for it or if the plan for social inclusion is prepared in prison. Those centres are organized, supervised and co-financed by the state.
	4.	Please briefly describe their tasks and working practice..	Houses of Justice (justice assistants): see answers to Q III.3 and Q III.6. Mental health outpatient services: Treatment of sexual offenders and relapse prevention.	See answers to Q III.3 Probation and mediation officers also perform supervision over offenders with a community sanction.	Centres for social work provide financial and social assistance concerning personal, family and employment matters, coordinate programmes and provide social care.
	5.	What is the role and interplay/co-operation of state and private aftercare services?	-	State and private aftercare services do not specifically cooperate in this field.	State and private aftercare services do not specifically cooperate in this field.
	6.	How, to what extent and on what legal basis, the police are involved?	See answer to Q IV.1	Police take part in the control/supervision after release in cooperation with the probation and mediation officers, for example by checking the compliance with a house arrest.	n/a
	7.	Is electronic monitoring applied? Please describe the legal basis (which offenders, offences?)	See answer to Q III. 8 EM is only possible in the preparatory stage for conditional release.	Electronic supervision is in progress, but not in practical use yet.	EM is not used.

			Belgium	Slovakia	Slovenia
	8.	Which form of electronic supervision is used? (House arrest, GPS?)	-	-	-
	9.	Are NGOs or private aftercare services involved in the aftercare phase?	There are no specialized private aftercare services in Belgium. Involvement of NGOs/private aftercare services can take place if demanded by a condition to the release.	Yes, there are few NGOs and churches involved in the aftercare phase, but they follow their own aftercare programmes, mostly without any co-operation with state authorities. They have no legal responsibilities.	Yes, NGOs are involved.
V.	**Statistics/empirical studies on recidivism**				
	1.	How many and what kind of "dange-rous"/high-risk offenders are in prison? (Absolute and percentage numbers data) Please specify the categories, if available, of offenders or offence groups.	n/a	Since the term high-risk offender is not officially used, no statistical dataon this issue is gathered.	21 inmates (convicted prisoners) are recognized as dangerous and placed separately. This equals to 1 % of the whole prison population in 2012.
	2.	Please give longitudinal statistical data concerning question 1 for the time since 1995 (or for the period data is available)	n/a	n/a	n/a
	3.	How many and what kind of "dangerous"/high-risk offenders (see question 1) are under supervision of the probation and aftercare services?	No specific statistical in-formation on the supervi-sion of high-risk offen-ders is available.	-	In 2012 there were 25 ca-ses with conditional re-leases with an order for post-custodial supervi-sion, but there is no data on how many of them are high-risk offenders.

			Belgium	Slovakia	Slovenia
	4.	Please provide longitudinal data since 1995 concerning question 3 (or for the period data is available).	n/a	-	n/a
	5.	How many "dangerous"/high-risk offenders are under police surveillance or supervision as a legal condition or requirement?	n/a	-	There is no police surveillance or supervision as a legal condition or requirement.
	6.	Please provide any studies on recidivism and/or recall from early/conditional release. Are there any systematic studies on the reintegration/recidivism of "dangerous"/high-risk ex-prisoners? Please describe the main results or attach the relevant publications.	There are no data on recidivism available. A study was conducted on the degree of reincarceration during conditional release but this does not appropriately reflect recidivism, since someone can be incarcerated on the ground of violation of the conditions.	n/a	n/a
	7.	Have the risk assessment instruments used by the prison and probation services been evaluated? What have been the results? Please provide details of evaluation studies.	The predictive validity of the risk assessment tools used by the Psychosocial Service has not been studied within the Belgian offender population. Most tools however (HCR-20, static-99, VRAG, etc.) show internationally good predictive validity, but research in our own population is needed.	There has been no evaluation of risk assessment instruments.	There has been no evaluation of risk assessment instruments.

			Belgium	Slovakia	Slovenia
VI.	**Further issues**				
	1.	Has your country been subject of decisions of the European Court of Human Rights with regards the accommodation and treatment of "dangerous"/high-risk offenders?	Belgium has not been subject of decisions of the European Court of Human Rights regarding the accommodation and treatment of high-risk offenders.	Case of *Laduna v. Slovakia* (Application no. 31827/02)	Slovenia has not been subject of decisions of the European Court of Human Rights regarding the accommodation and treatment of high-risk offenders.
	2.	Please provide relevant information and the references of reports of the Committee for the Prevention of Torture (CPT) and the Government's answers to them in respect of "dangerous"/high-risk prisoners. Have there been policy or legislative amendments with regards to the CPT-reports?	-	For an extract of the list of the CPT's recommendations, comments and requests see original answer.	-
	3.	Is there a legal basis for information exchange between agencies dealing with "dangerous"/high-risk offenders in prisons and/or in the community? If yes, please outline them briefly.	-	The question and definetions require further clarification on high-risk offenders.	-
	4.	Please detail here any further important issues related to "dangerous"/high-risk offenders not considered in the questionnaire.	-	-	-

Justice Cooperation Network (JCN) - European treatment and transition management of high-risk offenders

Final Conference

Rostock-Warnemünde (Germany), 2-5 September 2014

"Re-Integration of High-Risk Offenders"

Project in the framework of the Justice Cooperation Network-programme (JUST/2011/JPEN/AG2943)

Agenda

Wednesday, 3 September 2014	
Time	**Content/Action**
from 11:00	Hotel Registration at the Yachting & Spa Resort Hohe Düne, Rostock-Warnemünde, Germany
11:00 - 15:00	Registration of delegates
13:30 - 15:30	Welcome Snacks, Coffee, Tee, Water
15:30	**Start Final Conference** **Opening addresses** *Uta-Maria Kuder* (Minister of Justice Mecklenburg-Western Pomerania) *Stefanie Hubig* (Secretary of State of the Federal Ministry of Justice and Consumer Protection of the Federal Republic of Germany, Berlin)

	Bärbel Heinkelmann (Team Leader of the Unit on Procedural Criminal Law in the Directorate-General for Justice and Consumers of the European Commission, Bruxelles, Belgium). *Willem van der Brugge* (Secretary General of CEP, Confederation of European Probation, The Netherlands) Dr. *Karin Dotter-Schiller* (Vice President, European Organisation of Prison and Correctional Services –EuroPris, Senior Public Prosecutor, Deputy Head of Department for Prison Service, Vienna, Austria)
16:30	**Keynote speeches** *Jörg Jesse* (Director General of the Department of Prison and Probation Administration, Ministry of Justice Mecklenburg-Western Pomerania, Schwerin, Germany; Co-ordinator of the JCN project)
17:00 - 18:00	Coffee break
18:00	Prof. Dr. *Benoit Majerus* (Faculté des Lettres, des Sciences Humaines, des Arts et des Sciences de l'Education, University of Luxembourg, Luxembourg) **"Historical genealogy of the concept of risk"**
18:30	*Christoph Krehl* (Federal Court of Justice of Germany, Karlsruhe) **"Rehabilitation of high-risk offenders needs courage – Balanced legislation and sentencing, preparation for early release and concentrated transition management"**
20.00	Dinner Buffet

Thursday, 4 September 2014

Time	Content/Action
08:30 - 09:00	Registration of delegates
09:00	**Keynote speeches** *Jörg Ziercke* (President of the German Federal Criminal Police Office, BKA, Wiesbaden, Germany) **"Victims of crime – the need of care, protection and strengthening their position in criminal procedure"**
09:30	Prof. Dr. *Stephen Farrall* (Professor of Criminology, School of Law, University of Sheffield, United Kingdom) **"The Long-Term Impacts of Probation Supervision"**
10:00	*Marianne Vollan* (Director General of the Prison and Probation Service, Oslo, Norway)

	"The High-risk Offender as a subject – the individual approach"
10:30 - 11:00	Coffee break
11:00 11:10 11:30 11:50 12:10	**Plenary Forum** *Jörg Jesse* (Director General of the Department of Prison and Probation Administration, Ministry of Justice Mecklenburg-Western Pomerania, Schwerin, Germany; Co-ordinator of the JCN project) **Presentation of project results** **"Lessons we have learnt"** **Forum 1 – Legislation** Prof. Dr. *Frieder Dünkel* (Professor of Criminology and Criminal Law, Ernst-Moritz-Arndt University of Greifswald, Germany), *Elina Ruuskanen* (Senior Planning Officer, Ministry of Justice, Helsinki, Finland) **Forum 2 – Sentence Planning and Treatment** Dr. *Jörg-Uwe Schäfer* (Governor, Bützow Prison, Germany), *Ethel Gavin* (Governor, Portlaoise Prison, Ireland) **Forum 3 – Transition Management and Release** *Tiina Vogt-Airaksinen* (Senior Specialist, Criminal Sanctions Agency, Helsinki, Finland), *Gerry McNally* (Assistant Director, The Irish Probation Service, Dublin, Ireland) **Forum 4 – Re-Integration, Aftercare and Monitoring** *Brian Dack* (Assistant Director, The Irish Probation Service, Dublin, Ireland), *Laura Kikas* (Deputy Governor Prison Tallinn and Probation Department, Estonia)
12:30 - 14:30	Lunch
14:30	**Working in Forum Groups** **Forum 1 – Legislation** Chair: Prof. Dr. *Frieder Dünkel* (Professor of Criminology and Criminal Law, Ernst-Moritz-Arndt University of Greifswald, Germany / *Elina Ruuskanen* (Senior Planning Officer, Ministry of Justice, Helsinki, Finland) **Speakers:** - *Alina Barbu* (Legal Advisor, Public Law Department, Drafting Legislation Directorate, Ministry of Justice, Bucharest, Romania) - *Tapio Lappi-Seppälä* (Director General, National Research Institute of Legal Policy, Helsinki, Finland) - *Nora V. Demleitner* (Professor of Law, Washington and Lee University School of Law, United States of America) **Forum 2 – Sentence Planning and Treatment** Chair: Dr. *Jörg-Uwe Schäfer* (Governor, Bützow Prison, Germany) / *Ethel Gavin* (Governor, Portlaoise Prison, Ireland)

	Speakers: - *Attila Juhacz* (Governor, Heves Country Penitentiary Institute, Prison Service, Hungary) - *Steven Feelgood* (Director of Social Therapy Unit, Brandenburg Prison, Germany) - *Annette Keller* (Director, Hindelbank Prison, Switzerland) "Sentence planning as a multidisciplinary and joint task" **Forum 3 – Transition Management and Release** Chair: *Tiina Vogt-Airaksinen* (Senior Specialist, Criminal Sanctions Agency, Helsinki, Finland), *Gerry McNally* (Assistant Director, The Irish Probation Service, Ireland) **Speakers:** - Dr. *Ineke Pruin* (Senior Researcher, Department of Criminology, Ernst-Moritz-Arndt University Greifswald, Germany) - *Sally Lewis* (Chief Probation Officer, Avon and Somerset Probation Trust, U.K.) - *Rait Kuuse* (Deputy Secretary General on Social Policy, Ministry of Social Affairs, Estonia) "Structure Estonian Transition Management"? **Forum 4 – Re-Integration, Aftercare and Monitoring** Chair: *Brian Dack* (Assistant Director, The Irish Probation Service, Dublin, Ireland), *Laura Kikas* (Deputy Governor Prison Tallinn and Probation Department, Tallinn, Estonia) **Speakers:** - Dr. *Mikko Aaltonen* (Researcher, Criminological Research Unit, National Research Institute of Legal Policy, Criminological Unit, Helsinki, Finland) - *Paddy Richardson* (Chief Executive at Irish Association for the Social Intregration of Offenders Ltd –IASIO, Ireland) - *Ali Reunanen* and *Christer Karlsson* (Criminals Return into Society-KRIS, Sweden)
15:30 - 16:00	Coffee break
16:00 - 17:30	**Forums 1 – 4, continued** Forum 1. Legislation Forum 2. Sentence Planning and Treatment Forum 3. Transition Management and Release Forum 4. Re-Integration, Aftercare and Monitoring
20:00	Formal Conference Dinner

Friday, 5. September 2014	
Time	**Content/Action**
08:30 - 09:00	Registration of delegates
09:00	**Plenary: Presentation of Results** **Forum 1 – Legislation** *Elina Ruuskanen* (Senior Planning Officer, Ministry of Justice, Helsinki, Finland), Prof. Dr. *Frieder Dünkel* (Professor of Criminology and Criminal Law, Ernst-Moritz-Arndt University of Greifswald, Germany) **Forum 2 – Sentence Planning and Treatment** *Ethel Gavin* (Governor, Portlaoise Prison, Ireland), Dr. *Jörg-Uwe Schäfer* (Governor, Bützow Prison, Germany) **Forum 3 – Transition Management and Release** *Gerry McNally* (Assistant Director, The Irish Probation Service, Dublin, Ireland), *Tiina Vogt-Airaksinen* (Senior Specialist, Criminal Sanctions Agency, Finland), **Forum 4 – Re-Integration, Aftercare and Monitoring** *Laura Kikas* (Deputy Governor Prison Tallinn and Probation Department, Estonia)
10:30 - 11:00	Coffee break
11:00	**Final concluding remarks** Prof. Dr. *Mary Rogan* (Dublin Institute of Technology, School of Sciences and Law, Dublin, Ireland) *Beate Lakotta* (Journalist, „Der Spiegel“, Germany) *Elisabeth Kotthaus* (Deputy Head of the Political Section of the Representation of the European Commission, Berlin, Germany) *Jörg Jesse* (Director General of the Department of Prison and Probation Administration, Ministry of Justice Mecklenburg-Western Pomerania, Schwerin, Germany; Co-ordinator of the JCN project)
12:30	Conference close
12:30 - 13:30	Lunch
	Departure of the delegates
13:30 - 14:30	Press conference

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Jörg Ziercke was President of the German Federal Criminal Police Office (BKA) until November 2014.

Reihenübersicht

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Hrsg. von Prof. Dr. Frieder Dünkel, Lehrstuhl für Kriminologie an der Ernst-Moritz-Arndt-Universität Greifswald

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