



**“GCTF Life Cycle of
Radicalization to Violence
Workshop”**

***Session 1: Pre-Trial Detention and
Realities on Terrorism-Related Cases;
Pursuing Benefits Beyond
Contradictions***

La Valletta, Thursday 18th February 2016



Pre-trial detention should be 'last resort,' CoE says





Pre-trial detention has multiple negative effects both on the detainee and on society as a whole.

Negative effects of pretrial detention on detainees:

Risk of job loss or bankruptcy; their families suffer economic hardship in addition to the human consequences of prolonged separation

Negative effects of pretrial detention on society as a whole:

The high budgetary cost of detention in comparison with other measures of restraint, such as **bail, house arrest, curfews or restraining orders, with or without electronic supervision.**



Pre-trial detention has multiple negative effects both on the detainee and on society as a whole.

Negative effects of pretrial detention on society as a whole:

The **resources spent** on pretrial detention could be put to better use for crime prevention, increasing the rate of elucidation of crimes, and the re-socialisation of offenders;

The **loss of the economic contribution of pretrial detainees**, the de-socialising effect of detention on the detainees' family;



***Terrorism-Related
Cases must be “per
se” and exception to
this principle?***



THE ETHIC COMPONENTS

Which are the limits for action before trial when applying a non-custodial measure?

With the offender

With the family

In the community

In terms of interventions (for instance, RJ)

How to balance controls-interventions-and the presumption of innocence?



MAIN PROFILES TO THINK ABOUT WHEN APPLYING COMMUNITY DIVERSION AT PRE-TRIAL STAGES

**PEOPLE WITH FEW ELEMENTS FOR PROVING THEIR
IMPLICATION IN VIOLENT INCIDENTS AND:**

Young and vulnerable, followers rather than leaders

With psychiatric problems and/or with addiction problems

**Men or Women Foreign fighters returning home with “fire-
traumas” or sexually abused**



PROBATION?

Council of Europe Probation Rules R (2010) 1: ‘Probation’ relates to the implementation of *community sanctions and measures* (850.737, *Space II*; 2007), defined by law and imposed on an offender. It includes a range of activities and interventions, which involve *supervision, guidance and assistance* aiming at the *social inclusion* of an offender as well as at contributing to *community safety*. It may also involve providing *information and advice* to judicial authorities to help them reach informed and just **decisions**; providing guidance and support to offenders while in *custody* in order to prepare their *release and resettlement*, monitoring and assistance to persons subject to early or conditional release; *restorative justice* interventions; and offering assistance to *victims* of crime.



CURRENT CONTEXT

Increased complexity of the population (mental health, social problems)

Increased mobility (foreign nationals)

Increased level of judicial interventions

Increased demands for effectiveness of penal interventions
(evidence-based policies)

Varying/increasing public, media and political attention to crime and insecurity

Varying/increasing emotional context of penal policies (incidents, 'return of the victim')

Varying social/health policies, availability of social/health services

Varying prison populations, search for alternatives (middle-high risk; foreigners, ethnic minorities, mentally ill; drugs, violence, sex offenders) versus

Varying/increasing risk-aversion (the myth of zero risk)



PROBATION WORK AT DIFFERENT STAGES OF THE CRIMINAL JUSTICE PROCESS

- **In few cases (for instance, The Netherlands) presence of Probation immediately after the police detention**
- **In many jurisdictions: presence at Pre-Trial Stage**
 - **Traditional way: Pre-Sentences Reports**
 - **Newer implication: Supervision of conditions associated with diversion. Two goals**
 - **Try to avoid the extension of prison effects**
 - **Reduce the prison population**



CATEGORIES OF TASKS

- **Reports:** Provide judicial authorities and others high quality information. Use of assessment tools: Risk, Needs and Responsivity.
 - In few jurisdictions: probation services provide information also of victims and witnesses, in particular those vulnerable.
- **The enforcement of sanctions (or obligations attached to diversion), including supervision of offenders**
 - **Stages**
 - **Assessment**
 - **Planning**
 - **Intervention (Importance of case management*)**
 - **Evaluation**

See the outcomes of the DOMICE project www.domice.org

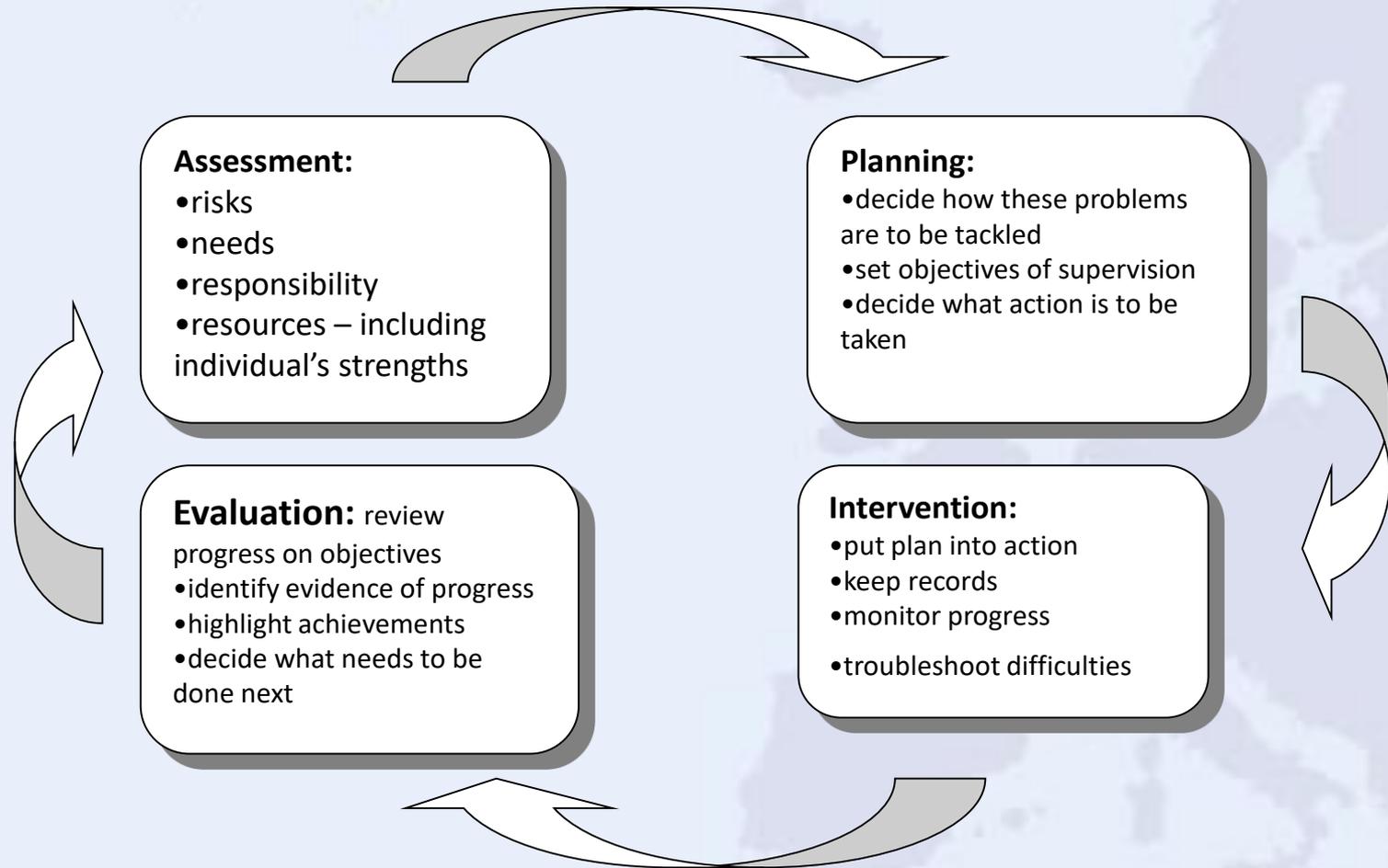


THE ASSESSMENT: THE RNR APPROACH

1. **Risk principle** – the intensity of intervention should increase with the risk of reoffending
 2. **Needs principle** – intervention should focus on criminogenic needs such as drug misuse, anti-social attitudes, problem solving skills, etc.
 3. **Responsivity principle** – programs should be multi-modal and delivered according to the learning style of the offender
- Up to 60% reduction of recidivism when all three R-N-R principles present
 - Smaller effect when 2 or 1 principle present; slightly negative effect when no R-N-R principle addressed
 - Problems of R-N-R approach: some circularity; risk not individualized



THE INTERVENTION: THE RNR APPROACH





Effectiveness of probation programs (with thanks to Prof Friedrich Lösel and David Perry). Adjustment of expectations

In total ca. 10% - 30% reduction in reoffending

Statistically and practically significant

- Benefit-cost ratios: 1 – 7 € payoff for each € invested
- Lifetime costs for 1 persistent offender ca. 1 M €

Effect sizes in medicine:

- Radiation + chemotherapy of brain tumours: ca. 10%
- Aspirin therapy of cardiovascular events: ca. 13%
- Passive smoking and lung cancer: ca. 22%
- Drug treatment of depression: ca. 56%



THE ASSESSMENT: THE DESISTANCE APPROACH

Better understandings of **how and why people stop offending** (the desistance process).

Evidence about the process of desistance has led some to identify a range of **principles for criminal justice practice**, including: being realistic about the complexity and difficulty of the process; individualising support for change; building and sustaining hope; recognising and developing people's strengths; respecting and fostering agency (or self-determination); working with and through relationships (both personal and professional); developing social as well as human capital; recognising and celebrating progress

Desistance is about more than criminal justice. **Desistance requires engagement with families, communities, civil society and the state itself.**



THE ENFORCEMENT OF SANCTIONS: THE DESISTANCE APPROACH

Dr Fergus McNeill, Professor of Criminology & Social Work
Universities of Glasgow

- **Not just about offenders**

- About families, communities, the state etc.

- **Not just about needs and risks**

- About strengths, rights and duties

- **Not just about crime control (reducing reoffending)**

- About justice (criminal **and** social)

- **Not just about rehabilitation**

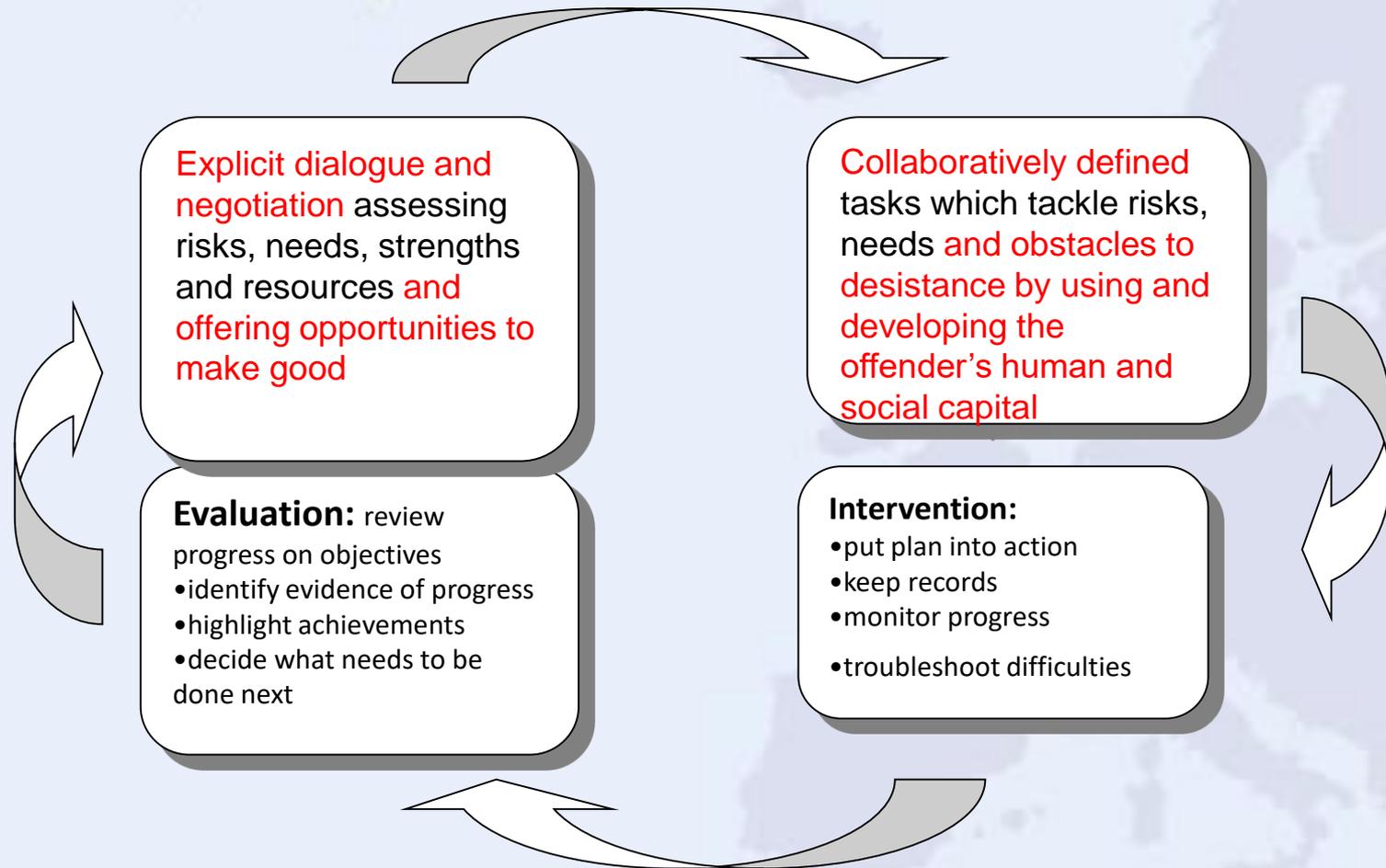
- About (mutual) reparation, redemption and 'making good'

- **Not just about desistance**

- About social inclusion integration, citizenship, mobility



THE INTERVENTION: THE DESSISTANCE APPROACH





FINAL REMARKS

The use of the Council **Framework Decision 2009/829/JHA** on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (European Supervision Order)

It enables a non-custodial supervision (e.g. an obligation to remain at a specified place or an obligation to report at specified times to a specific authority) to be transferred from the Member State where the non-resident is suspected of having committed an offence to the Member State where he is normally resident. **This will allow a suspected person to be subject to a supervision measure in his home Member State until the trial takes place in another Member State, instead of being placed into pre-trial detention**



FINAL REMARKS

The practitioners working paper of the RAN “Prison and Probation” Group “Dealing with radicalisation in a prison and probation context”

The work of the Council for Penological Co-operation on the elaboration of “Guidelines for prison and probation services regarding radicalisation and violent extremism”



THE EUROPEAN ORGANISATION FOR PROBATION

WWW.CEP-PROBATION.ORG