



Perspectives from the Council of Europe on community sanctions

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Criminal justice and probation

- A criminal justice system should be seen primarily as an institutionalised means of doing justice - not only as a means of reducing crime
- The ethical and the personal should be the beginning and not an after-thought, guiding governance, policy and practice
- Probation makes a distinctive contribution to criminal justice

“... the pursuit of values such as justice, tolerance, decency, humanity and civility should be part of any penal institution's self-consciousness - an intrinsic and constitutive aspect of its role - rather than a diversion from its 'real' goals or an inhibition on its capacity to be 'effective'.”

David Garland

Human rights

- Justice requires respectful attention to people's rights
- European consensus founded on the European Human Rights Convention
- A common language in which ethical claims and responsibilities may be debated
- Human rights have legal authority and may be enforced through courts
- The Council of Europe and the European Court of Human Rights are the custodians of our shared Convention



The Council of Europe

- Sets standards – based on the European Convention on Human Rights
- Inspects - for example, the Committee for the Prevention of Torture
- Enables cooperation and development

Council Rules and Recommendations

- Drawing on expert advice and experience from several countries
- Attempt to set out the implications of the European Human Rights Convention for people in prison and for those subject to community sanctions and measures (CSM)
- ... and for the organisation, policies and practice of prison and probation agencies

Many probation tasks involve the implementation of community sanctions and measures

Community sanctions and measures are sanctions and measures which maintain offenders in the community and involve some restrictions of their liberty through the imposition of conditions and/or obligations. Prison should be seen as a last resort to be used only when nothing else is suitable.

Some Key Council of Europe Texts

- European rules on community sanctions and measures (CSM) - [No. R \(92\) 16](#)
- Improving the implementation of the European rules on CSM – [Rec \(2000\) 22E](#)
- European Probation Rules - [CM/REC 2010 \[1\]](#)
- [Compendium](#) ... relating to penitentiary questions
- Recommendation on electronic monitoring - [CM/Rec\(2014\)4](#)
- Each Recommendation has a useful Explanatory Memorandum / Commentary

Some CSM Principles

- The nature and the duration of CSM shall both be in proportion to the seriousness of the offence and take into account personal circumstances.
- Where the offender does not observe the conditions of a CSM, recourse to arrest and custody shall be regulated by law.

Other Basic Principles

- The nature, content and methods of implementation of CSM shall not jeopardise the privacy or the dignity of the offenders or their families, nor lead to their harassment.
- No provisions shall be made in law for the automatic conversion to imprisonment of a CSM in the case of failure to follow any condition.

More Basic Principles

- The imposition and implementation of CSM shall seek to develop the offender's sense of responsibility to the community in general and to victim(s) in particular.
- Any conditions or obligations of a CSM shall take into account both individual needs, possibilities and rights as well as social responsibilities.

The European Probation Rules

- Preamble; Scope and definitions
- Basic Principles
- Organisation and staff
- Accountability, relations with other agencies
- Probation work
- Complaints, inspection and monitoring
- Research, work with media and public
- A Glossary
- A (long) Explanatory Memorandum

European Probation Rules

Some Basic Principles

#1. Probation agencies shall aim to reduce offending by establishing **positive relationships** with offenders in order to supervise, guide and assist them and to promote their successful **social inclusion**. Probation thus contributes to **community safety** and **fair justice** process.

#2. Probation agencies shall respect the human rights of offenders. All interventions shall have due regard to the dignity, health, safety and well-being of offenders.

#3. In all cases where probation agencies deal with issues related to victims of crime they shall respect their rights and needs.

#4. Probation agencies shall take full account of the individual characteristics, circumstances and needs of offenders in order to ensure that each case is dealt with justly and fairly. ...

#6. As far as possible probation agencies shall seek offenders' informed consent and cooperation regarding interventions that affect them.

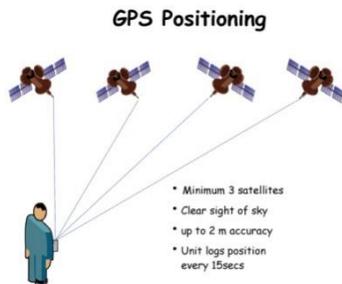
#7. Any intervention before guilt has been established shall require the individual's informed consent and shall be without prejudice to the presumption of innocence.

#12. Probation agencies shall work in partnership with other organisations and local communities to promote the social inclusion of offenders. Co-ordinated and complementary inter-agency and inter-disciplinary work is necessary to meet the often complex needs of offenders and to enhance community safety.

The New Recommendation on Electronic Monitoring



- Proportionate – duration, hours, impact on life – including other members of the household
- Can be ‘stand alone’ sanction or measure, but better used to support constructive interventions like probation



Recommendation

- It is an external control but eventually internal controls need to take its place
- Exclusion areas should not block legitimate activities (finding a job)
- Risks of isolation – there should be a right to leave a residence
- Need to understand limitations: EM can't replace human intervention and support
- Evaluation should take place

Questions



- Will EM add to or replace personal relationship?
- Council of Europe prefers to see EM to be used in support of rehabilitation ...
- although some offenders may prefer an impersonal intervention
- Risks of over-use
- Push of commerce
- Make sure the technology supports what you are doing and that policy and practice are not led by the technology

Challenges for probation

- Confidence of public, politicians and judiciary
- Responding to popular punitiveness
- Meeting the needs of non-nationals
- Improving quality of service to victims
- Fair access to services available to the rest of the community
- Trying to make sure that more demanding CSM and tougher enforcement do not lead to more imprisonment
- Rise and rise of **risk**

Probation can help to ...

- Rehabilitate offenders
- Reduce the prison population
- Protect the public

But a large part of its importance lies in the values it represents – especially

- the belief that people can change
- social inclusion

