



Criminal Justice Platform Europe

Alternatives to Detention – Barcelona, 3rd November 2016

Chair: John Scott

Experts: Vivian Geiran, Jo Tein, Annemieke Wolthuis, Peter van der Sande, Gerry McNally, Eric Nijman, Daniel Wolter, Ana Voiculet, Helen Wakeling, Virna van der Elst, Bart Claes, Cristina Blasco Romera, Esther Luna and Christa Pelikan.

Participants: 49

Welcome and Introduction

Mr John Scott, as Chair of the International workshop, welcomed all participants and introduced Mr Gabriel Capilla i Vidal, Director of the Centre for Legal Studies and Specialised Training from Catalonia, who opened the International workshop and welcomed the participants at the Centre for Legal Studies. He mentioned that Catalonia is very much committed to the European criminal justice agenda and is seeking the correct balance between security, justice and re-socialization. That's why it's so important to develop joint efforts on working for desistance, resettlement and, at the end, to create a better and safer society.

Alternatives to Detention: the big picture - Vivian Geiran, Chair of PC-CP, Council of Europe

Mr Geiran spoke as president of the CoE's Council for Penological Co-operation (PC-CP), but also as the director of the Irish Probation Service.

He said that there are about 1.6 million people in prison in Europe. That's a big picture in terms of potential alternatives to custody, but we also must think that for each individual, their own situation is the bigger picture that matters. So while we have to look into the *macro*, we also need to consider the *micro* points of view.

Regarding the big picture, he pointed out that there are some important areas that we have to keep in mind: having a clear vision for the future and an understanding of the present (what can we change?). We also need to consider the balance between standardisation and individualisation, why there are so many people in prison, as well as on supervision in the community.



A good probation system works to help achieve a safer and fairer society. We operate from a community perspective in a triadic system involving the community and its relationship with the offender and the person who has been offended against (victim). For us, the person who is the main focus, as target for our change efforts, is the offender. Fundamentally, we are working to achieve changes in the offender, helping them to change for the better, avoid re-offending and to reintegrate into society.

Mr Geiran explained that there have been various models or frameworks developed about what we should do with offenders: we focus on working with offenders through professional relationships (advise, assist, motivate), systems for assessment of risk and needs, appropriate programmes/interventions (plus controls, supervision, surveillance as well as practical help)... And there should be a beginning, middle and end to supervision, considering compliance, restoration and evaluation, and ending.

But regarding the macro aspects, the speaker specifies we must look into what the supranational bodies (EU, Council of Europe, CEP, Europris, European Forum for Restorative Justice...), who have assumed increasing importance over the past few decades, say. We need to forge a middle ground between being subordinated to such bodies and being “seduced” by the wider reality.

Nowadays, the Council of Europe’s PC-CP is generating, developing and revising penological standards such as the Rules on Community Sanctions and Measures, a Handbook (+ guidelines) on Radicalization to Violent Extremism, White Paper on Prison overcrowding, and Review of CoE prison and probation Guidelines, among others.

Mr Geiran thinks that over the coming years there’s a lot of work to do about items like updating the European Prison Rules commentary, children of prisoners, Restorative Justice, mental illness and offenders, sex offenders and resettlement and reintegration.

He pointed that a really critical issue is that of having appropriate data, research and evaluation, to develop policies and interventions. There are many projects and work on-going regarding research (such as SPACE I and II), but not everything we want to achieve is measurable. The costs of research may also be a challenge.

In addition, there are some aspects of the current context that we have to keep in mind: the demography of countries is changing, different ideologies and approaches, Brexit, the emergence of new systems, radicalisation to violent extremism, etc. But we have to hold on to our core values, belief in positive potential to change, and make better, second chances – focused on rehabilitation, through professional relationships, incorporating flexibility and prioritisation, and all based on evidence-based practice.

In conclusion, we have to look to the future, being conscious of current challenges, and with hope and working to improve, to share, develop networks and improve co-operation towards more effective implementation.



Alternatives to Detention: our perspective, developments and practice issues -
Annemieke Wolthuis, Vice-chair of EFRJ; Peter van der Sande, Board member of EuroPris and
Gerry Mc Nally, President of CEP

Restorative Justice - Ms Annemieke Wolthuis, Vice-chair EFRJ

Ms Annemieke started his speech by identifying the joint priorities of the European Forum for Restorative Justice (EFRJ) with the CJPE. She mentioned that the CJPE work programme focusses on protection of victims of crime, suspects, offenders & society in the aftermath of crime and the harm caused, practical impact in the sectors of prisons, probation & restorative justice, alternatives to detention / in detention, radicalisation and efficiency of justice. She also mentioned the particular priorities of the EFRJ, it aims to help establish and develop victim-offender mediation and other RJ practices. She continued by giving a general overview of the Restorative justice as an alternative to detention, talked about international standards as well as restorative justice practices in detention. She ended her speech by highlighting five main conclusions to bear in mind when working for Restorative Justice: to understand RJ as a priority and as a community sanction or measure as well as an alternative to detention, restorative justice as a way to change the criminal justice in a more human treatment and that access to restorative justice practices should be self-determined: *“part of RJ's autonomy right of parties – mere referral-based access is a clear contradiction/restraint of parties' autonomy”*.

Prisons - Mr Peter van der Sande, Board member EuroPris

Mr Peter van der Sande pointed out that EuroPris was the youngest of the Platform members having been formed two and a half years ago. He stressed the size and importance of the penal sector which held 1.7 million prisoners across Europe and for example just one country, The Netherlands, had 15,000 prison staff. Prisons had many similarities across jurisdictions but also marked differences. EuroPris exists to share the many experiences between European prison services and to exchange knowledge between practitioners. It is non-government, non-political and has a secretariat in Brussels with a Head Office in The Hague. Its ambition is to be the recognised authority for prisons expertise, the voice of prison professionals and to progress the rights agenda across Europe

After the preamble, he continued with a consideration of the American author and Judge Dennis Challeen. Once he wrote the following words:

“We want prisoners to be responsible. So we take away all their responsibilities. We want them to be a part of our communities. So we isolate them from our communities. We want them to be positive and constructive. So we degrade them and make them useless. We want them to be trustworthy. So we put them where there is no trust. We want them to be non-violent. So we put them where there is violence all around them. We want them to be kind and loving people. So we subject them to hatred and cruelty. We want them to quit being tough guys. So we put them where the tough guy is respected. We want them to stop hanging around losers. So we put all the losers in the state under one roof. We want them to quit exploiting us. So we put them where they exploit us. We want them to take control of their lives, own their own problems and quit being a parasite. So we make them totally dependent on us”. The poem consists of words that encourage thinking about the work that we are dealing with.



He pointed that in various countries around Europe more and more prisons are used to solve essentially political and social problems. He expressed he was concerned that the leaders of some countries have downgraded the issue of human rights to an empty shell, and that these leaders use the term HUMAN RIGHTS, as well as the terms reconciliation and compassion, without attributing some content to these fundamental terms.

The most fundamental question is not asked. Do we achieve our goal of creating law abiding citizens by this way of punishing people and do we ultimately achieve a more secure society?

Even if we are talking about minor offences, we often find a judicial reaction in the form of imprisonment, while other solutions are available. The fact is that there exist societies who spend more money on a failing prison system than on probably more effective system of higher education. I firmly believe that we have to tackle this type of exclusion, and that we must strive for a social inclusion oriented model. It is also essential for prison services to work on alternatives to detention issues. Europris and ICPA do emphasize 'the use of imprisonment only as a last resort', the use of imprisonment as an *ultimum remedium*. The classic thinking should be replaced by a brand new approach based on a 'thinking outside the cell'.

Mr van der Sande said he's not only concerned about the unlimited growth of the volume, also about the detention conditions in prisons.

We should act because incapacitation by incarceration has a certain boundlessness and it's to say that there is a self-reinforcing effect. Because scientific research has shown that a climate with positive, supportive treatment contributes to a positive behavior and reduces the risk of recidivism, as opposed to a repressive treatment.

And finally, he highlighted that inspirational leaders can change things and often they are capable of changing organizations and the respect for human rights is a prerequisite for change rather than change a condition for the respect of human rights.

Probation - Mr Gerry McNally, President CEP

Mr Gerry McNally said CEP began in 1981 with ten countries from Western Europe – now there are 59 organisations in membership from 34 countries and 38 jurisdictions. The original purpose for meeting was professional concern for working with foreign nationals but the aim of exchanging knowledge has led to the expansion of the scope of CEP to include Universities and the mounting of conferences (17 in the last 2 years) and the operation of 15 websites. 1650 people receive the CEP newsletter and there are over 370 documents available on line. The goals of CEP are to unite probation, to focus on practitioners and the quality of practice and to raise the profile of the work done in the community to reduce re-offending and the number of victims. He also highlighted that CEP members truly believe that community sentences are a good alternative to custody.

He continued by mentioning the issues for Probation 2016-2017, which were: Multi-Agency co-operation and joint working, European co-operation and development, Framework Decision 947/2008 (Transfer of supervision) and FD 809/2009 (Pre-trial supervision) in practice, (De)Radicalisation, Evidence-Based Practice (Research and Development) and the Net-widening effect. Last but not least, Mr Gerry McNally finished his speech by informing the participants about the actions for Probation and in particular in which CEP will be involved:



Collaborative relationship with EC and CoE, developing and continue improving the probation knowledgebase using the CEP website, organizing conferences, Workshops and Expert meetings, Participation in EC and other projects, Strengthening and supporting member networks and actions, 3rd World Congress on Probation (Tokyo, Japan) and dissemination and sharing of knowledge and expertise.

Alternatives to imprisonment for young refugees that offended the law - Jo Tein, Ministry of Justice, Schleswig-Holstein

Political background and implications

He started his presentation with a basic and at the same time interesting definition of what is a refugee. The first definition is a common and wider approach from the Cambridge dictionary, and it says: "A person who has escaped from their own country for political, religious, or economic reasons or because of a war." And the second definition from the UN Refugee Agency: "Someone who has been forced to flee his or her country because of persecution, war, or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they cannot return home or are afraid to do so. War and ethnic, tribal and religious violence are leading causes of refugees fleeing their countries."

The new community sanctions for young refugees in Schleswig-Holstein refer to the wider definition and will not exclude young offenders who do not meet the UN criteria. The idea is basically to meet the demands of young offenders who come from non-German backgrounds concerning language, culture, legal values and perhaps religion.

Then he went through some statistics regarding the phenomenon of refugees in Germany and followed by a quote of Chancellor Angela Merkel in a press conference of the Federal Government in Berlin in 2015, defining a positive perspective regarding receiving and resettling refugees.

Criminological expectations

Jo Tein emphasized that the national, ethnic, cultural background does not lead to any specific criminological expectation. But the general profile of refugees in Germany is: male (approx. 66%), young (approx. 72% under the age of 30) and in a vulnerable legal, social and financial position. According to criminological research these are three major risk factors for criminal offences. Therefore many German jurisdictions expect a considerable number of criminal offences to be committed by refugees in the (near) future.

Criminal policy in Schleswig-Holstein

Ambulant sanctions vs. detention

Imprisonment is the severest intervention that the state can inflict on the personal rights of individuals. Research on reconviction rates shows that prisons are less successful in



reintegrating offenders into society compared to community sanctions therefore prison sentences should only be the ultima ratio in a criminal justice system.

Schleswig-Holstein reflects this approach with a very low imprisonment rate of 40 to 100.000 inhabitants.

In order to make it possible for judges and public prosecutors to take responsibility for inflicting less severe, community sanctions instead of prison sentences, a highly skilled, differentiated and easily accessible system of ambulant measures must exist within a jurisdiction.

Strategy of the Schleswig-Holstein MoJ towards delinquent young refugees

In order to develop a strategy they developed an analysis of demands. Experts from prison, probation, youth care and RJ institutions were consulted. Structured questionnaires were answered by all juvenile courts, public prosecutors in juvenile cases, police inspections. There was also a Literature review and a concept was drafted, based on all findings.

Concept / Findings: The number of cases involving criminal offences of young refugees has been low so far. The crime level is low as well (typical juvenile offences such as bodily harm, theft, property damage).

Proposed meta-level-activities:

- ✓ PR activities should influence the public discussion on migration and crime.
- ✓ The relevance of integration in a broader sense of the word should be focused.
- ✓ Intercultural trainings should be offered to judicial staff and to youth care experts.
- ✓ Apart from the enhancement of individual expertise intercultural aspects should also be brought on the structural agenda of institutions that are involved.
- ✓ A cooperation and discussion with Muslim religious communities should be facilitated.
- ✓ The enhancement of existing structures and measures needs to be considered prior to the development of completely new activities.
- ✓ The coordination of all relevant actors is a crucial success-factor.

Specialized (or enhanced) community sanctions should meet as many of the following criteria as possible: language, cultural orientation – including legal system and gender equality, ethnos, culture and religion – promotion of mutual tolerance, legal, social and financial position/situation of the client, individual biography – respect for the individual, restorative justice approaches

Specialized measures should address the following challenges: German language, development of daily routines, vocational training / jobs, integration in sports clubs or other voluntary organizations, the individual resources of every young client, identification with positive role models and possibly the chance to turn into a role model, interaction also with young Germans and reflection of western norms and values as well as of own norms and values.



Actions to be taken:

Coordination of activities

Regarding the cooperation and coordination with other NGOs the Schleswig-Holstein Association for Social Responsibility in Criminal Justice; Victim- and Offender Treatment (NGO) was contracted by the MoJ as the coordinating body for “alternatives to imprisonment for young refugees who offended the law“. They were asked to develop the following tasks: Building a network among all relevant actors (NGOs, GOs), Promotion of communication and where possible formal cooperation agreements, arrangement of workshops and further education that enhances intercultural competence of practitioners and institutions, assistance/support for institutions in developing and delivering specialized community sanctions or in enhancing intercultural competence within existing community sanction measures and an evaluation of the activities.

Concrete ambulant measures

A large number of proposals for concrete community sanctions was made by NGOs (Background: possible sanctions according to German Juvenile Court Bill, especially § 10: “Orders” / “New ambulant Sanctions”). These proposals addressed 3 categories of measures:

1. Local and regional projects delivering individual counseling
2. Local and regional projects involving volunteers
3. Local and regional projects delivering social trainings

Two of these proposals will be brought into action in early 2017:

- A) Well integrated volunteers with migrant backgrounds are educated and counselled in practice by professional NGOs. Potential tasks for volunteers are securing intercultural competence within community sanction measures – taking part in e.g. social trainings, assisting German probation officers (in a wider sense of the word) in intercultural cases and potentially fully responsible supervision of clients executing a court decision / community sanction.
- B) Young refugees and other juvenile delinquents are sentenced to a specialized social training that is delivered by the Schleswig-Holstein Football Association in cooperation with a number of other NGOs. The social training will use football as a means of nonverbal communication in combination with trainings that convey knowledge about German culture and legal systems. Additional individual counseling is delivered in order to secure a sustainable integration of the young offenders into football clubs as players or assistant managers all over Schleswig-Holstein.

Jo Tein ended his presentation with a quote of the German criminologist Prof. Heinz Cornel:

“The integration into society is the main precondition to prevent people from slipping off into criminal offending – this prevails for natives as well as for new members of our society, and especially for young people.”



Concrete ambulant measures

Proposals (Background: possible sanctions according to German Juvenile Court Bill, especially § 10: “Orders” / “New ambulant Sanctions”):

4. Local and regional projects delivering individual counseling
5. Local and regional projects involving volunteers

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3. Local and regional projects delivering social trainings

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Workshops

During the afternoon session the focus was on practice and learning between agencies and countries. With this regard four workshops took place on the following topics: Transition management, Rehabilitation, Restorative Justice Interventions and Young and Young Adult offenders.

[For detailed information on the workshops content please see the workshop summaries.]



Plenary Panel – Feedback from the workshops

During the plenary panel the workshop chairs identified and shared with the plenary group the main key points raised in the workshops.

- Workshop 1 Transition Management (Chair: Kirsten Hawlischek)
 - When working for the inmate transition to the community the cooperation between agencies becomes essential
 - The transition moment is a high risk moment: to assess the needs and develop a plan
 - To combine care and punishment. Offenders have needs that we all have so it's important to have a good assessment and identify what we have to work with to ensure a real reintegration and work for desistance

- Workshop 2 Rehabilitation (Chair: Willem van der Brugge)
 - To have a balanced treatment plan which can include the identified clinical protocols
 - The professionals selection plus the training is very important
 - To bear in mind and spread the message that rehabilitation is much more effective than punishment
 - Importance to promote the participation to treatment programmes outside the prison in the community in order to work for desistance and positive reintegration

- Workshop 3 Restorative justice interventions (Chair: Annemieke Wolthuis)
 - To be a believer and to have a real dedication and motivation to do this work
 - To do it well and prepared. To facilitate RJ process well and with commitment
 - To pay attention to inmate emotions and use them as a key element for motivating the positive change of inmates

- Workshop 4 Youth and Young Adult offenders (Chair: Marta Ferrer)
 - Look for more and new alternatives to pre-trial detention
 - To promote the use of research and linked it to practice
 - Staff training and motivation
 - To look for methodologies that promote the real involvement of the community in solving the crime.

Concluding remarks and thanks

Gerry Mc Nally, CEP President, closed the event and stressed the need for more exchange of knowledge, practices and network cooperation. There is also much to learn and to exchange from one country to another and from one organization to another and that this is the main value of the Criminal Justice Platform, to exchange good practices between countries as well as between the organizations of the Criminal Justice chain: prison, probation and restorative justice agencies. He finished his speech by thanking the participants and all the expert presenters for their attendance and contributions.

