



# PRE-SENTENCE WORK IN CATALONIA: OPENING SPACES

Ester Blay

Universitat Pompeu Fabra

Oslo, 11 May 2012

# PRE-SENTENCE WORK IN CATALONIA: OPENING SPACES\*

- ✓ Introduction
- ✓ Organizational framework
- ✓ Legal and procedural framework
- ✓ Origins of report writing in Catalonia and current organization
- ✓ The EATP's work, particular attention to pre-sentece work
- ✓ Some data about pre-sentece reports
- ✓ Judges and pre-sentece reports
- ✓ Concluding remarks and questions for discussion

\* Many thanks to the professionals in the Catalan Justice Department who have patiently answered all my questions, and provided data and materials, and to Elena Larrauri for giving me access to her unpublished work and for discussing it with me.

# Organizational, legal and procedural framework

- ✓ Catalonia as an autonomous region with authority over the enforcement and supervision of prison and community sentences
- ✓ The three phases of criminal procedure: investigation, sentencing and enforcement:
  - ✓ Investigating judges
  - ✓ Sentencers
  - ✓ Enforcers
- ✓ Is there a legal basis for pre-sentence reports?
  - ✓ The 'old' 2005 Royal Decree and the 'social report'
  - ✓ Is there a legal basis in procedural law?

## Origins and current organization

- ✓ The beginnings (late 1980s): providing information and help to drug users in Girona's criminal courts
- ✓ The 1995 Criminal Code
- ✓ The option for specialization: supervision and judges' advisors as separate professionals

# The EATP's work

- ✓ Social workers and psychologists
- ✓ The various programmes:
  - ✓ Advising judges about victims and witnesses
  - ✓ Supporting judges in interrogating vulnerable victims and witnesses
  - ✓ Experts' reports about suspects
  - ✓ Experts' reports about suspension and substitution of prison sentences
  - ✓ Defending reports as evidence in court

# The EATP's work

- ✓ PSR I: Experts' reports about suspects:
  - ✓ Written at the request of the investigating judge
  - ✓ Provide the judge with information about:
    - ✓ Degree of criminal responsibility (mental or drug problems)
    - ✓ Dangerousness and risk of reoffending
    - ✓ Personal circumstances (pardon)
  - ✓ Experts' reports as evidence in trials
  - ✓ Contents of the report integrating the judicial file and eventually reflected in the sentence
  - ✓ The relevance of the aim of “promoting the judicial imposition of alternative penal sanctions”

## ❖ Content

# EATP's work

- ✓ PSR II: Advice on the application of suspended sentences and substitution (sentencers, enforcers and supervisors)
  - ✓ Written at the sentencer or enforcer's request
  - ✓ Aim: to analyse the personal and social context of the offender to evaluate the possibility of substituting or suspending a prison sentence
  - ✓ Contents

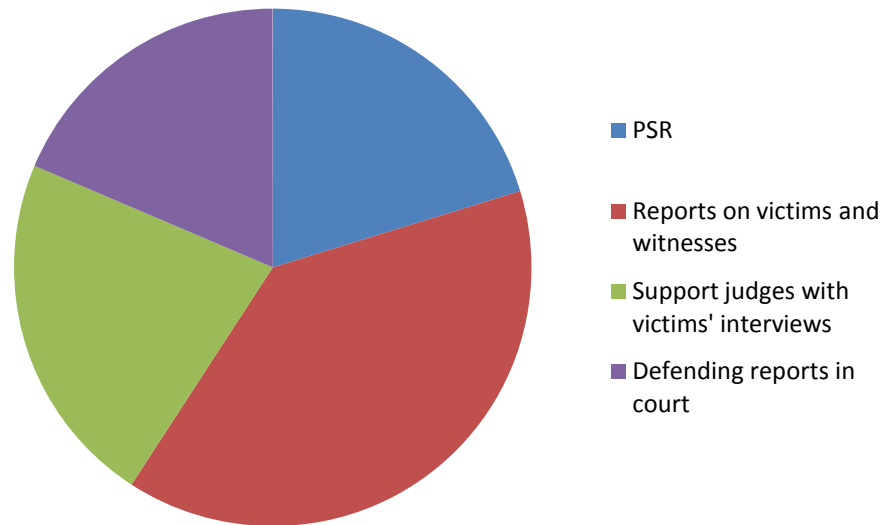
# Data on EATP's work (2011; Source: D. Justice)

PSR on suspects	347
PSR on offenders	178
Reports on victims	962
Reports on witnesses	48
Support for judges interrogating vulnerable victims	577
Defending a report in court	482



# Data on EATP's work

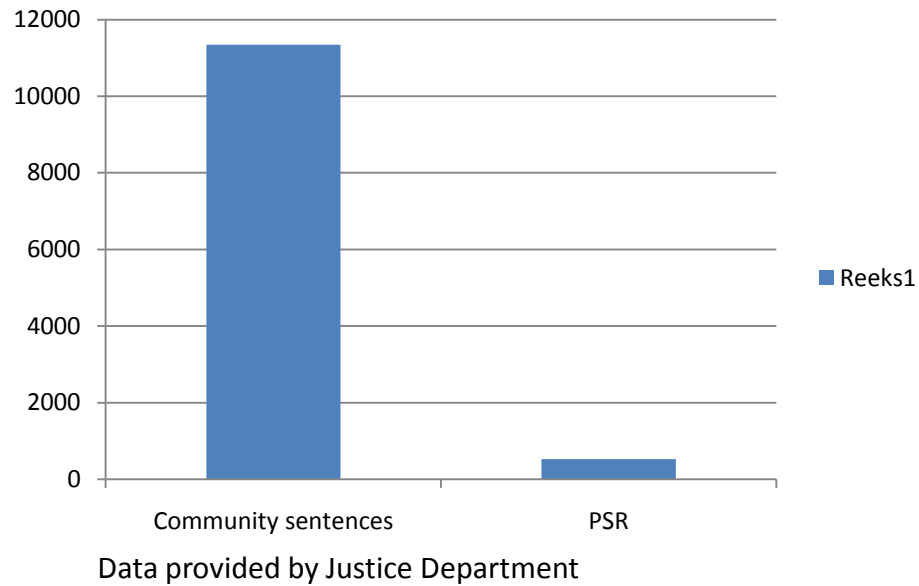
## 2011



With data provided by Justice Department

# Data on EATP's work

## 2011



# Judges and pre-sentence reports

- ✓ Research conducted by Elena Larrauri (Universitat Pompeu Fabra; forthcoming) and myself (Blay 2011)
- ✓ Focus: judicial decision making in the context of IPV (art. 153 CC)
- ✓ 15 interviews in Barcelona, 4 interviews in smaller cities
- ✓ Results (I):
  - ✓ Investigating judges:
    - ✓ “‘rapid procedures’ prevent us from requesting PSR”
    - ✓ “But... what are PSR?": experts’ reports as medical forensic reports... “so, shouldn’t defense lawyers be bringing them in as mitigating evidence?”
    - ✓ Agreements between prosecution and defense about charges and sentences
    - ✓ Investigation judges not feeling responsible for the content of sentences

# Judges and pre-sentence reports

- ✓ Results (II): Sentencing judges:
  - ✓ “We can not request experts’ reports!”
  - ✓ Relevant “personal circumstances” when sentencing: criminal records and drug problems
  - ✓ “This information should be provided by the defense” (during the investigation phase); “the law is very clear about the penalty to be imposed”
  - ✓ The pressure of numbers
  - ✓ “We just write the ruling”

# Judges and pre-sentence reports

- ✓ Results (III): Enforcement judges:
  - ✓ The need for more information than that which is available in the file and the ruling
  - ✓ (again) Confusion with expert's report in the investigation phase
    - ✓ “If a need is not reflected in the dossier or the ruling, we cannot take it into account”: the (legal) irrelevance of social problems
  - ✓ The feeling there is limited judicial discretion
  - ✓ Even enforcement judges distance themselves from supervision: the “legal” vs the “social”

# Judges and pre-sentence reports

- ✓ Summing up:
  - ✓ Confusion between experts' reports and medical forensic reports
  - ✓ Confusion as to what judge may request a report and when
  - ✓ Context I: an overburdened system
  - ✓ Context II: neoclassical judicial culture (Beyens and Scheirs 2010)
  - ✓ Context III: from a continental system of alternatives to prison (suspension and fines) to a mixed community sentences system

# Concluding remarks and questions for discussion

- ✓ The problem with the legal basis
- ✓ PSR/Social reports or experts' reports:
  - ✓ Implications for judges
  - ✓ Implications for practitioners: not probation officers but experts (and social workers/psychologists)
- ✓ Neoclassical judicial culture and PSR: an 'odd couple'?
- ✓ An overloaded criminal justice system vs individualization
- ✓ Restrictions with public expenditure and political interest in PSR by central government

## Materials quoted

- ✓ Beyens, K.- Scheirs, V. 2010. Encounters of a different kind: Social enquiry and sentencing in Belgium. *Punishment and Society* 12:309
- ✓ Blay, E. 2011. La supervisión judicial de las penas comunitarias. In Larrauri/Blay (eds.) *Penas comunitarias en Europa*. Madrid: Trotta.
- ✓ Larrauri, E. (forthcoming). ¿Es necesario un informe judicial para decidir acerca de la pena?... Una aproximación a la toma de decisiones judiciales. *Jueces para la Democracia*.