

The impact of the criminal and social context on Probation systems in Europe

The Council of Europe Probation Rules in Context

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Malaga, 28-29 May 2010

I. 'Probation' ?

- **Different definitions and organization in different European countries !**
- **Council of Europe Probation Rules R (2010) 1: 'Probation'** relates to the implementation of *community sanctions and measures*, 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.
- **'Probation agency'** is any body designated by law to implement one or more of the above tasks and responsibilities.

II. Short history of probation in Europe

First generation of non-custodial sanctions

- 19th century: criticisms short term imprisonment
 - **Suspended sentence:** deterrence
 - **Fines:** imprisonment for fine defaulters
 - European penal systems: prison, fines, suspended sentences
- 1950-1970: 'resocialisation'
 - **Probation:**
 - Autonomous sanction (ex. Sweden, Malta, Luxembourg, Great Britain): individual supervision and treatment
 - Condition of suspended sentence (ex. Belgium): treatment and deterrence
 - **CSO ('70):** Retribution, resocialisation/reintegration, deterrence

First generation: application

- Anglosaxon and Scandinavian countries:
 - Treatment: Disproportionality, « Nothing works » ('70s)
- Southern Europe:
 - Dictatorships Spain, Greece, Portugal ('70)
 - Introduction probation: Italy 1975, Portugal 1983, Spain 1995
- Eastern Europe:
 - Communist prison = treatment
 - Recent introduction of CSM, see A. van Kalmthout & I. Dornescu (eds.) *Probation in Europe*, Wolf Publ, 2008, 1180p., 32 countries

First generation: problems

- Limited application: reasons:
 - Legislation: offences, criminal record
 - Judges: « favour », tariff?
 - Organisation: information, preparation, time, follow up, workload (ex. preliminary social report)
 - Selectivity: foreigners, ethnic minorities, social vulnerability..
- Perverse effects:
 - Increased length of suspended sentences
 - Longer imprisonment in case of failure
 - Net widening and thinning of the mesh

1980s

- Selection and bifurcation: first offenders, petty offences v drugs, violence, sex offences
- Penal inflation: several Western countries (The Netherlands, Belgium, France, England)
- Prison overcrowding: inhuman and degrading treatment (CPT, ECHR)

Second generation: intermediate sanctions

- More punitive sanctions : between probation and prison
 - Credibility and control
 - Ex. electronic monitoring, boot camps, intensive probation
- High risk populations: avoid prison, avoid recidivism
- Effectiveness?
 - Recidivism: -
 - Technical revocations: more imprisonment
 - Net widening
 - Financial gains?

Third generation: restorative sanctions

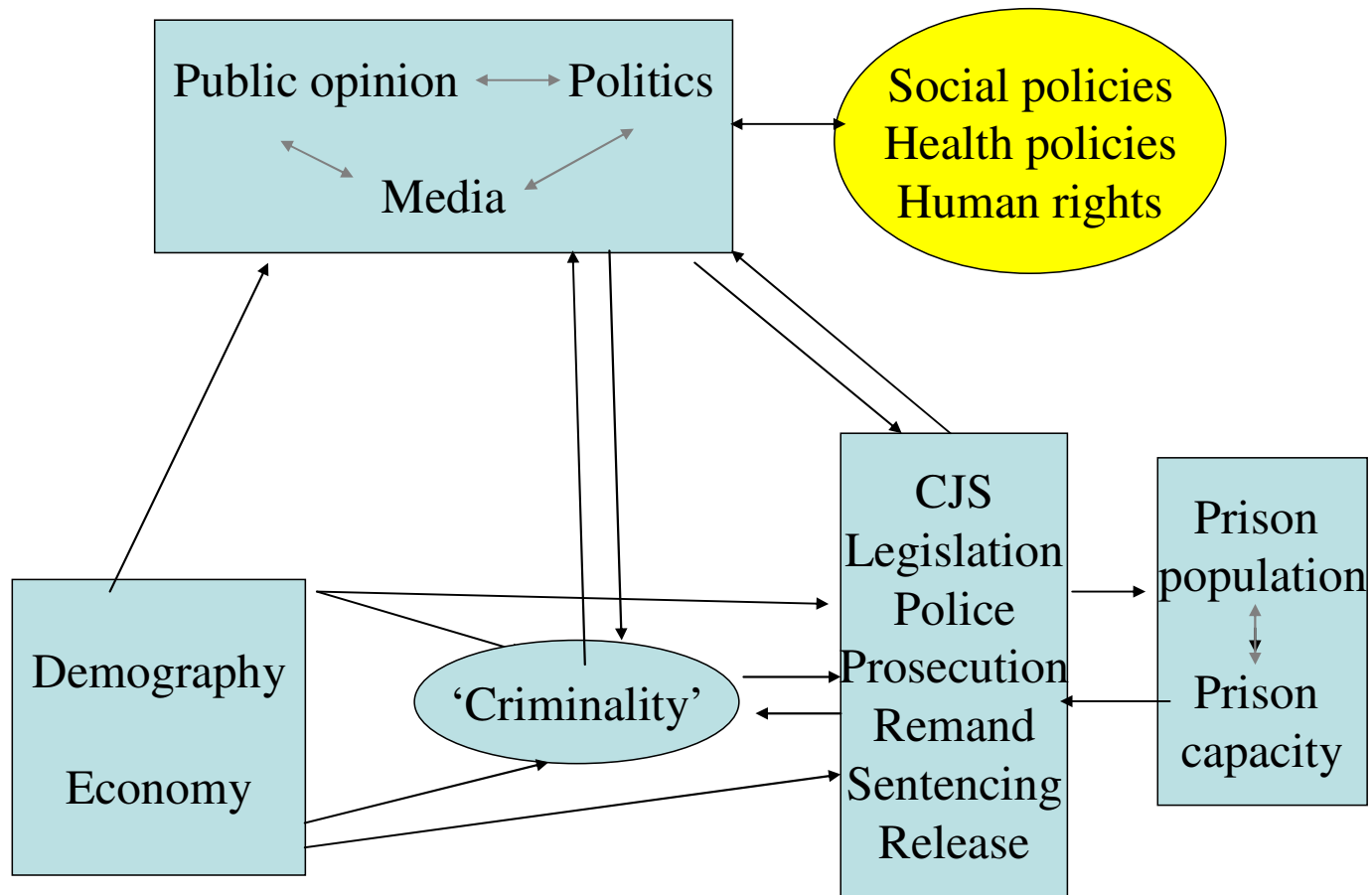
- Reparation of harm to (real or symbolic) victim:
 - **Mediation**
 - **Community service:** symbolic reparation, financial compensation
 - « Reintegrative shaming », « family group conferences »

Diversity of penal policies

- Prison rates (2008): 64 – 760/100.000; tendencies: +/-/=
- Policies of selection and bifurcation: alternative sanctions at lower end, longer prison sentences at upper end (violence, drugs, sex offences)(ex. Belgium, France, Germany)
- Reductionist policies: real scepticism prison, no expansion, front- and back door strategy (ex. Finland)
- Expansionist policies: belief in prison, expansion of prison capacity (ex. USA, England)

National differences: Prison populations 2000-2005-2008

USA	700	738	760	Russ Fed	635	611	628
Portugal	130	121	104	Latvia	353	292	288
UK (EW)	125	148	151	Slovakia	297	172	151
Spain	115	145	163	Lithuania	240	240	234
Italy	95	104	97	Romania	221	175	126
Germany	95	95	88	Czech Rep	219	185	206
Netherlands	85	128	100	FYROM	75	99	107
Belgium	84	91	93	Serbia	76	104	143
France	80	85	96	Croatia	59	81	93
Denmark	61	77	63	Slovenia	57	65	65
Norway	59	66	69				
Finland	52	75	64				



III. Current context for Probation services

- Increased complexity population CJS (mental health, social problems)
- Increased mobility (foreign nationals)
- Increased level of judicial interventions versus fundamental human rights of offenders (and victims)
- 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 (W, C, E Europe), 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)

Hence: increased quest for legitimacy

Legitimacy?

Criteria?

Effectiveness? Recidivism?

Effectiveness? Social integration or exclusion?

Social acceptance ('public opinion')?

Victim satisfaction?

Offender? Reduction of individual and social harm caused by penal interventions?

1. Recidivism: « What works ? »

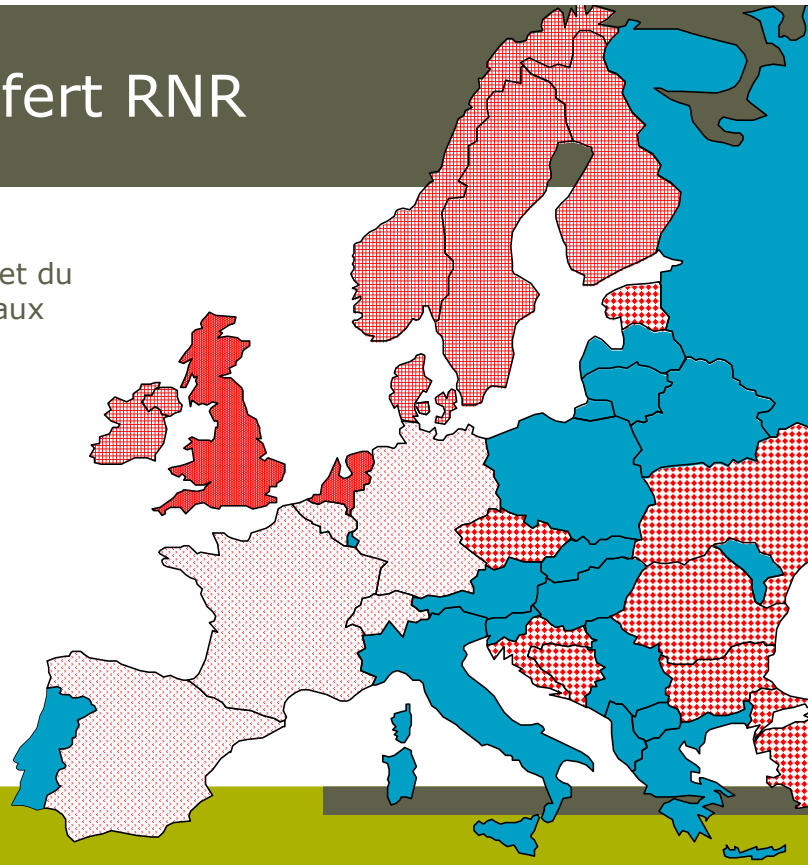
- Return of treatment and (transformed) rehabilitation
 - What works for whom in which circumstances?
- RNR model: Risks, (criminogenic) Needs, (individual) Responsivity, (programme) Integrity
 - Risk assessments:
 - Static factors (age, criminal record, offence)
 - Dynamic factors (addictions, employment, social networks)
 - Interventions proportionate to level of risk (not limited low risks)
 - Cognitive behavioural treatment programmes: from social work to correctional psychology

RNR: Policy transfer

(A. Bauwens & S. Snacken, 2010 in press)

Le transfert RNR

De l'Angleterre et du
Pays de Galles aux
autres pays
européens



Criticisms: 'desistance'

- Longitudinal studies of criminal careers (quantitative & qualitative):

Farrington (Cambridge longitudinal career studies)(1990)

Sampson & Laub (1993)

Bottoms & Shapland (Sheffield studies)

Farrall (2004), Maruna & Immarigeon (2004)

- 'Desistance research':

To desist from crime without judicial intervention or where the intervention has not been the direct cause (Maruna et al, 2004)

Desistance

- Different theories:
 - Theories of maturation and developmental psychology: age-crime curve, independent of judicial interventions
 - ‘Desistance’ as consequence of social ties, social and psychological events, cognitive processes and the role of the offender (constructive self image, changing life style)
- Primary goods (e.g. happiness) and secondary goods (means)

Desistance

- ‘Positive psychology’: emphasis on protective factors, skills and strengths, possibilities for reinforcement
- Importance of human capital (reinforce responsibility and individual capacities) + social capital (social and family ties, employment, ‘generativity’ influencing quality of life and self image)
- *Process* of ‘desistance’: intensity and frequency of offending
- Good Lives Model (Ward & Brown, 2004):
 - How to promote both the well being of the offender and limit the risks of recidivism? How to enhance constructive meaning of life which helps the offender to change?
 - Social inclusion

Other approaches

- Integration of RNR and GLM
- Psychodynamics
- Systems theory
- Restorative justice
- ...

Legitimacy with penal actors, politicians:

- Professionalism, expertise, evidence, information
- Long standing legitimacy of other approaches, less emphasis on direct link with or effect on recidivism?
- Not only low risk offenders
- Special groups special needs

2. Legitimacy: public opinion

- « Multiple ignorance» between ‘P.O’ and CJS
 - Public overestimates seriousness of crimes
 - Public underestimates sentence severity
 - Penal actors underestimate public support for CSM (CSO and mediation)
 - Variations in punitive feelings in ‘P.O.’
 - Ambivalence of public attitudes (retribution and rehabilitation, imprisonment and CSM: ‘polycentric consistency’)

3. Legitimacy: Victims

- Procedural justice:
 - Respect, information, fair procedure, participation
 - Legitimacy more important than severity
- Expectations from sanctions:
 - Compensation, safety, treatment
 - Victims same variations in punitive feelings as general public, not more punitive
 - Participation?
 - Privatization of criminal law, legal certainty and equality, proportionality?
 - ‘Partie civile’ tradition versus ‘victim impact statement’?
 - Secondary victimisation?
 - Special groups special needs

4. Legitimacy: Offenders

- ‘Supervision’: balance between guidance, assistance, motivation, control
- Responsibility versus social vulnerability:
 - Risk of infinite intervention
 - Risk of infinite responsibility
- Human rights and human dignity:
 - Harm resulting from penal interventions
 - Transparency, complaint procedures
- Special groups, special needs

4. Legitimacy: Offenders

- Foreign nationals, ethnic minorities: language, culture, socioeconomic situation
 - Transfer of implementation of sentences (EU):
 - FD 2008/909/JHA of 27 November 2008 on custodial sanctions
 - FD 2008/947/JHA of 27 November 2008 on supervision of probation measures and alternative sanctions
 - FD 2009/829/JHA of 23 October 2009 on supervision measures as alternatives to provisional detention).

IV. Council of Europe Probation Rules R(2010)1

- Terms of reference Penological Scientific Council:
 - Extension of probation en after care services in Europe
 - Extension of tasks at all levels of CJS
 - In some countries victim support, mediation, primary prevention
 - Imprisonment as last resort: Rec (99)22 prison overcrowding, EPR 2006, Rec (2006) 13 remand custody
 - Countries with a long tradition: risk assessment, supervision and control versus social (re-)integration, rehabilitation and needs offenders and victims
 - Countries recently introduced: content of ‘probation work’?

Penological Council

- 9 members, different regions Europe:
 - Russian Fed, Lithuania, Czech Rep, Spain, Italy, Switzerland, Austria, UK, Belgium
- Experts:
 - Prof. Anton Van Kalmthout, Universiteit Tilburg
 - Prof. Rob Canton, De Montfort University, Leicester
- CEP (European Organisation for Probation)
 - Leo Tigges

Structure Recommendation

Part I: Basic principles: R 1-17

Part II: Organisation and staff: R 18-34

Part III: Accountability and relations with other agencies: R 35-41

Part IV: Probation work: R 42-66

Part V: Process of supervision: R 67-94

Part VI: Other work of probation agencies: R 95-100

Part VII: Complaint procedures, inspection and monitoring: R 101-105

Part VIII: Research, evaluation, work with the media and the public: R
106-110

Appendix: Glossary of terms used

Legitimacy

- General aim: reduction offences and fairer justice; specific aim: social inclusion (BP 1)
- Human rights (BP 2), proportionality (BP 5), presumption of innocence (BP 7), avoid stigmatization (R 47 CSO)
- Expertise (BP 11):
 - Causes of delinquency
 - Prevention of recidivism
 - Implications of different sanctions or interventions
 - Imprisonment as last resort

Legitimacy

- Characteristics of probation work:
 - Supervision: not only control, also motivation (BP 1, R 55)
 - Guidance and assistance (BP 1)
 - Informed consent and cooperation (BP 6)
 - Social inclusion through inter-agency and interdisciplinary partnerships (BP 12)
 - Variation in Europe: expertise, treatment programmes in probation service or in cooperation

Legitimacy

- Appropriate standing, recognition, resources (BP 10)
- Highest national and international ethical and professional standards (BP 13)
- Complaint and inspection (BP 14-15, R 99-103)
- Research effectiveness, media, public (BP 16-17, R 104-108)

Effectiveness

- Training (R 26, 27, 28)
- Professional discretion (R 26)
- Professional judgement (R 71: value and limitations of assessment instruments, where used)
- Individual interventions aiming at rehabilitation and desistance, constructive and proportionate (R 51 CSO, R 58 EM, R 76); compliance through cooperation (R 85)
- Variety of methods (R 77: interdisciplinary approach, relevant research)
- Volunteers (R 34)
- Coordination (R 80: one responsible staff member)
- Continuity of care (R 62: resettlement)

Process of supervision

1. Different stages:

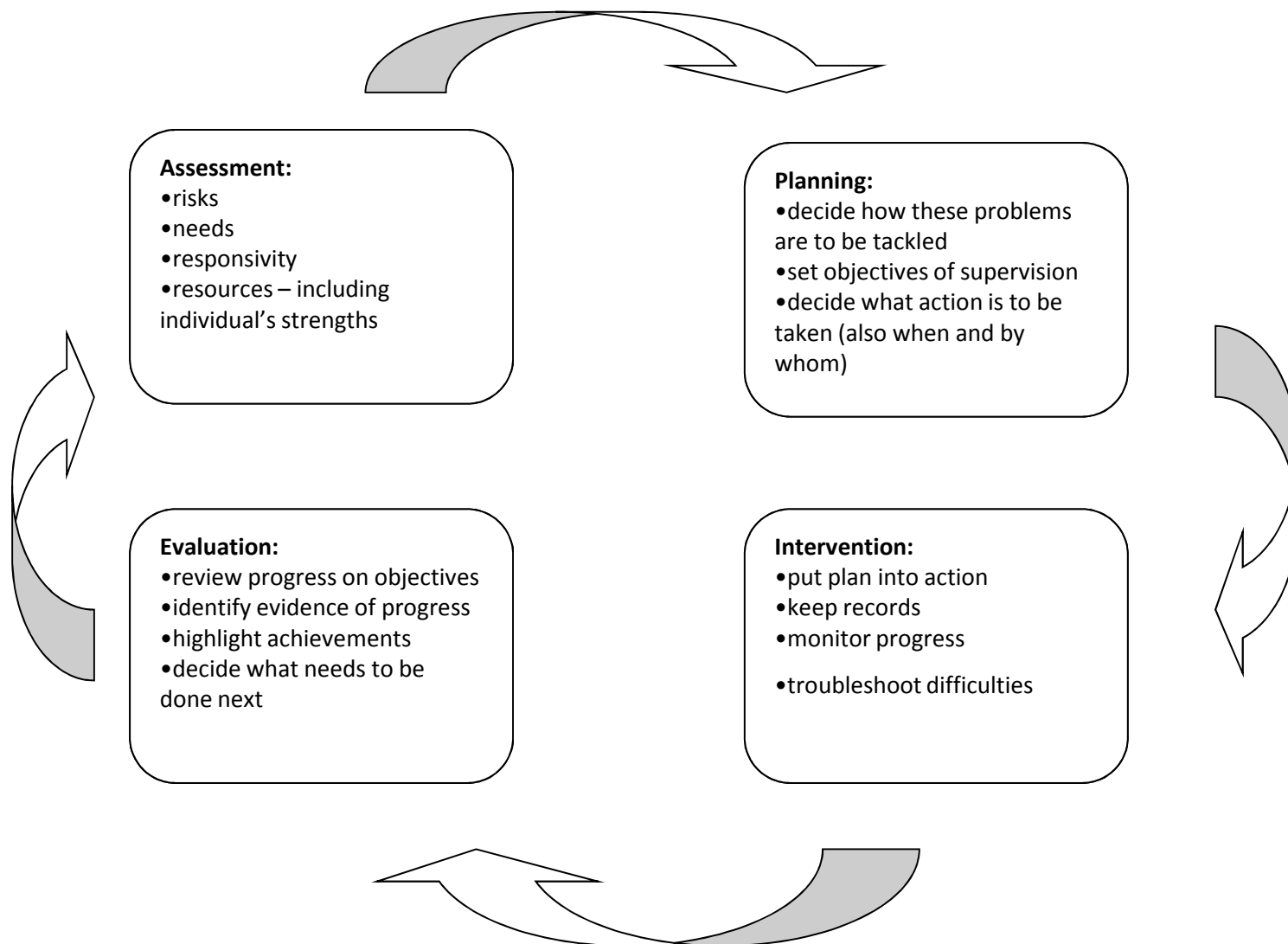
- Assessment
- Planning
- Intervention
- Evaluation

2. Continuing process, regular evaluations (R 81)

3. Reference to different models in Europe:

- ‘RNR – GLM’ models, trend towards integration
- Actuarial – clinical assessments
- Instruments based on static and/or dynamic factors
- Recidivism – ‘desistance’

4. Professional judgement!



Adapted from Carole Sutton 'Aspire' in Rob Canton and David Hancock (eds.) (2007) *Dictionary of Probation and Offender Management*, Cullompton: Willan

Conclusion: 'legitimacy'

- Credibility of probation services with
 - Professional actors
 - Offenders
 - Victims
 - Politicians and general public
- Through professionalism: expertise, research
- Through respect for fundamental rights
- Emphasizing imprisonment as last resort: legitimacy of sanctions and measures in the community

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