

Marianne Vollan, 04.09.2014

"The High Risk Offender as a subject - the individual approach"

0. Introduction

Good morning, Warnemünde!

I have been looking forward to addressing today's topic, because it truly is among the most difficult we face as correctional services: How do we execute sentences in a way that can reduce recidivism among those who represent the highest risk of committing serious offences? And let me conclude already: No, I don't hold the full answer to this difficult question. I see that also the four countries involved in the JCN-project have different models – because there is no “quick-fix”. My intention is merely to contribute with - hopefully - some food for thought in this complex field.

In my presentation I will touch upon - from a Norwegian perspective - all the four key areas the project has concentrated on: Legislation, Sentence Planning, Release – and Re-Integration.

Categorizing high risk offenders might in itself represent a 'risk'. My presentation will focus on "the individual approach" - from two angles: how do we as a service make the best assessments in order to identify what risks the individual offender represents? Secondly, how to establish a system where the offender himself is an active subject, not a passive object on the path to a safe release?

I will concentrate on three main pillars in the Norwegian general approach in the execution of sentences, and examine how they can be applied in the management of high risk offenders (bilde):

- the principle of normality
- the import model
- a “seamless” correctional service

But before doing so, I need to spend a minute on the project's definition of high risk offenders in a Norwegian context.

The updated definition from the project reads:

“A high risk offender (a violent or sexual offender) is someone who presents a high probability to commit crimes which may cause very serious personal, physical or psychological harm.”

According to the penal legislation in Norway, some in this group will fall under the scope of a penalty called preventive detention, seen as the strictest Norwegian

penalty. Preventive detention is imposed for a certain time, but can be prolonged as long as it is deemed to be necessary to protect the society, if necessary for life. The criteria is that there is an imminent risk that the offender will again commit a serious violent felony, sexual felony or other serious felony impairing the life, health or liberty of others. According to the definition from the project, I assume that some of the “high risk offenders” under Norwegian legislation will be sentenced to preventive detention, others to an ordinary time-fixed sentence. I will sometimes refer to these two different groups in the following, as different regimes may be imposed.

Now – let’s move north to the three pillars.

1. The principle of normality

In the Norwegian correctional approach, the principle of normality is a guiding star.

The basic principles in the Council of Europe’s recommendation on Prison Rules include the principle of normality.

Number 5 reads:

5. “Life in prison shall approximate as closely as possible the positive aspects of life in the community.”

But also some of the other principles are related to – and support – the principle of normality, like for instance number 2:

2. “Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.”

What is normality? That is an interesting and complex question, which we don’t have the time to elaborate further on today. But for today’s topic we should bear in mind that the “normal” life of the average convict may differ from the general population’s normality – in terms of health issues, employment, drug addiction, relations, etc.

Now: The principle of normality can be discussed from several angles. In my view, the principle is valid in it self for many reasons, but can also be an important measure in the constant ambition to achieve a safer release and thus reduce reoffending.

The principle is valid in it self because it supports a humane approach in the execution of sentences. The penalty shall be felt as a penalty, but still being executed in a way that reduces the negative impact of being incarcerated.

The normality concept is closely linked to the principle that deprivation of liberty is the actual penalty, and that other rights are in behold.

Inmates should be seen as citizens, with the same individual rights as other citizens except the right to liberty; that is for instance with a right to access to society in terms

of voting rights, media access, organizational rights; access to public services like health, school, social benefits, etc.; the right to execute basic elements of a private life, in terms of family life and religion.

But citizens also have duties, which are equally important! I will come back to that.

As I mentioned, the principle can also be a measure for a safer release. The smaller the difference between life inside and outside prison, the easier the transition from prison to freedom.

Strengthening the principle of normality means organizing a daily routine in prison that as far as possible reflects the society outside the walls. The ambition is that the prison can be a training arena for the mastering of life skills. The work training should be done in a more realistic manner – that challenges our work shop philosophy, because we need to be more in line with what type of working skills that are required in today's society, and not only offer yesterday's kind of occupations. Or what about this lamp, produced in a Norwegian prison?

It is called *Bake me a cake*.

- The lamp is manufactured and quality controlled by inmates of Bergen Prison, through a unique collaboration between the designers, the Norwegian correctional service and Northern Lighting. The goal is to create a high quality design production inside Norwegian prisons, where we challenge the inmates' thoughts and actions.
- The project's name originates from the classic story about "The cake with the file", from the cartoon world where a mum adds a file inside of a cake she bakes for her beloved, imprisoned son to help him escape.
- The project aims to create meaningful activities for the inmates, whilst they are still in prison.
- The lamp has been very popular and awarded, also internationally

I mentioned duties earlier. Also in that respect the work shops can be training arenas: The prisoner should be responsible for making appointments with his employer, like asking for permission to go to the doctor and so on. The inmate should also pay bills and buy food; in short practicing in being a citizen responsible for his or her own life. This is a way of bringing the concept of a normal society into corrections, and prepare for a safer release.

The principle has limits. When we claim that the actual penalty is the deprivation of liberty, and that all other rights are in behold, we have to nuance a bit. Security reasons can be a limitation, and that is in particular relevant when it comes to the group of offenders we discuss in this conference. Our main task as a correctional service is to provide safety for the public, the victims, the staff, the inmate/convict himself, and the co-inmates. When an inmate serves a sentence under the strictest regime, like for instance the one convicted for the terrorist attacks 22 July 2011 at present does, his daily life is quite different from mine and yours.

A limitation of another sort is of course the architectural limitations of most prisons. We encourage the prisoners to pursue hobbies and participate in sports, but if your favourite is parachuting or scuba-diving, there might be some limitations as to at least the frequency of engaging in such activities. But we have examples of offering horse-back-riding as an activity under a preventive detention-regime; here the horse was brought into the prison area.

So to sum up: the principle of normality is valid also when the offender falls under the scope as “high risk”, but due to the restrictions that may prove necessary, the everyday-life during the serving of a sentence may be less similar to the life outside the walls than in other cases. The individual approach is however important. Even in cases of preventive detention, where the court has deemed the convicted person to pose an imminent risk of committing new, serious crime, it will always be assessed individually which daily routine that is suitable.

It is the exceptions from – and modifications of – the principle of normality that need to be argued for, not the principle it self.

A “normal” daily routine can also be a valuable source of information relevant to the risk assessments and at the same time give the offender the possibility to demonstrate a positive development. How does he deal with conflicts? How does he communicate with others?

I sometimes think that we reduce the impact of the offender himself, and look upon him as a passive object that WE shall help, treat, reintegrate, resocialize. We have an important role in motivating and to create a path to reduced recidivism. But the choice to change and to walk that path, lies with the active individual. For me this is also a matter of respect! And that is what we expect from other citizens, so in fact it is the ultimate application of the principle of normality.

2. The import model

Another important principle in the Norwegian approach, and strongly connected to the principle of normality, is the import model.

Our aim is that everyone who is to be reintegrated in the Norwegian society after serving a sentence, should have an offer of employment, education, suitable housing, some type of income, medical services, debt counselling, and preferably a social network. This approach was under the previous government called “the reintegration guarantee”, and I noticed it was mentioned yesterday. This was a political, not a legal guarantee. The system is followed up under the current government, but is now called “good reintegration”, based on a close cooperation between the Correctional service, other relevant public services, NGOs and not least the offender himself.

What have we accomplished so far? Is this picture no longer representative, the released person with two plastic bags? There is still a way to go, but we see results in terms of an acceptance of a joint responsibility for the inmates. Who “owns” the convicted person? Previously, the attitude seemed to be that the Correctional service had this role. Other public services experienced maybe a relaxing break when their clients were in prison. But the reality is that the convicted person is society’s “property”. And many public services could have a unique chance to get in touch with their clients when they serve a sentence; they are at hand, preferably drug-free and probably more motivated than usual.

This is 'the import model' – we want the public service providers to be in the corrections! Prisons do not have their own staff delivering medical, educational, employment, clerical and library services. These are imported from the community. The advantages are:

- * A better continuity in the deliverance of services – the offender will already have established contact during his time in prison.
- * Involvement from the community with the prison system – more and better cross-connections and an improvement of the image of prison and prisoners
- * The service in question are financed by other bodies as they are part of the rights of any inhabitant of Norway
- * Someone from the outside “look us in the cards” every day

What is the role of the corrections under the import model? I often compare our role towards the cooperating agencies with being a good host, here illustrated by a dinner party in my home last week; we should facilitate for the guests to play their role, by giving them a place to sit – that is: good working conditions, having a nice conversation – that is keeping up a good dialogue and exchange information. The best guests are the ones who respect the house rules; we in corrections need to be clear on what security rules and precautions that apply for the imported services. And what is on the menu? The prisoner and our common goal to reduce recidivism.

What about the high risk offenders under this model? How do they fit in?

The general answer is that the same principle is applied. This category of offenders needs a multi-agency approach. Offenders under preventive detention will start their sentence in special facilities, where the ratio of psychologists and other health personnel is higher than in ordinary prisons. On the other hand, one general aspect of the import model and reintegration policy, where we plan for the release from “day one” of a sentence, and focus on the path out of imprisonment, needs to be modified

in cases of preventive detention. A sentence plan will be more appropriate than a release plan. Having said that, the general aim is that most of the preventive detainees someday should live a life outside the walls. And for high risk offenders that undergo a time-fixed penalty, and not preventive detention, the sentence plan should be complemented by a release plan, where the continuity in the deliverance of public services is an important element.

If for instance a person tends to reoffend under the influence of alcohol, it is more reassuring that there is established a following-up scheme for him while in prison than if such a scheme was not in place.

3. A “seamless” correctional service

The third principle I would like to present, is what we call “a seamless correctional service”.

For those of us devoted to clothes and design, we know that it is a sign of perfection when the seam in a piece of clothing is invisible. I use this as a metaphor for the ambition of a smooth transition from prison to community. I want to focus on avoiding “seams” between the prison and probation service.

I am fully aware of the fact that there are many ways to organize the correctional service, and that many countries prefer to have two separate entities dealing with probation and prison matters. That was also for a long time the case in Norway.

From my perspective, I find it satisfactory to be in charge of both the prisons and the probation offices, because I think that supports the offender’s transition from prison to community. A “successful” transition is even more important in cases where there is a high risk of reoffending to serious crime than in other cases. Let me give you a couple of practical examples of the advantages of a combined service:

- The staff dealing with electronic monitoring in Norway, consist of both prison officers and social workers, it is formally a prison penalty, but executed under the auspices of a probation office.
- We have recently adopted a new strategic plan for the correctional service, and it is crucial that we share the same vision, values, goals and objectives in the whole correctional chain.

An organisational choice is of course no guarantee of a safe release in difficult cases, but at least we are one service, sharing the same vision, values and ambitions. And I have organisational measures at hand to deal with difficulties that might occur. Regardless of organisational preferences, there needs to be a close cooperation because the damage of reoffending is so devastating.

The transfer from closed facilities to the community is, as this project also has illustrated, often very challenging when the offender represents a high risk of reoffending to serious crime. In my view, it is however inappropriate to characterise the offender as “victimised”, as it was done in some of the preparatory material. I think this term should be reserved for the victims of the crime, and in these serious cases they will often be scarred for life. The “label” high-risk offender is based on very serious offences that the offender himself is responsible for.

Anyways, the question of how and when high risk offenders should return to society is the crucial one. In my view, it is at this point there is a particularly strong need for an individual approach. Under the Norwegian regime, the competence to release on probation high-risk offenders who are under preventive detention, lies with the judge. The judge will examine the case, and the correctional service will present our view in the hearing. Under preventive detention we have had some cases where the court is not satisfied with the progression, or should I say the lack of progression, and released on parole persons against our advice. This has led to a discussion in our own service as to how we can improve our own “menu” for this group of offenders. The well-known dilemma is as follows: How can an offender show that he has now reduced the risk of reoffending, when he has never been exposed to situations where it is possible? We have to look into ways of strengthening open facilities and halfway-houses so the path from the preventive facility to release on probation is not too steep.

For high-risk offenders serving a time-fixed penalty, it is possible to be released on probation after serving two thirds of the sentence. Here the competence lies with the correctional service. In general, we believe release on probation can be a good transition from prison to community, with a follow-up from our probation offices. Again, this is not an automatic procedure, but a case-to-case application that is thoroughly assessed. In approximately 30 per cent of the cases, release is denied. In a serious case not long ago, we had no other option than to deny release on probation, and the offender served the full 21 year long sentence. The reason for our decision of denying release on probation was that he had violated all the conditions set when we tried to move him to more open facilities. He committed new serious crime as soon as he was released from his sentence and is now in custody. The example illustrates how difficult – and serious – this part of our business is.

4. Concluding remarks

I have in my presentation commented the project’s main topics from a Norwegian perspective, by high-lighting the principle of normality, the import model and a “seamless” correctional service. I will conclude with the following remarks/questions (as I don’t have all the answers...):

* Thorough, individual assessments are crucial. But we need a multi-agency approach also in the assessment process – advanced IT-tools are helpful, but not

sufficient. The starting point is the verdict/legal documents from the criminal case – a lot of the risk factors, and the modus operandi, are assessed there – do we sometimes “forget” this information as soon as the offender start to serve the penalty? Secondly, the prison staff will have a lot of relevant information through the everyday-life, hence the principle of normality. Also other public service providers can shed light over the development of the offender; whether there is an import model or not.

* We must – under this individual approach – accept that some offenders are so likely to reoffend to very serious, harmful crime, that they never can be re-integrated. Our aim in these very rare cases must be to execute a humane regime.

* The daily routine should give room for the individual offender to be an active subject in his own life.

I am looking forward to interesting discussions on maybe the most difficult area in our service!

Thank you.