

European treatment and transition management of high-risk offenders

Presentation of project results and introduction
to **Forum 1:**
Legislation and court practices (jurisprudence)

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Project results on „Legislation“

- Why and under what perspective is legislation so important?
- The Findings of work-stream 4 – the Schwerin conference in April 2014 – state as regards legislation:
“It is agreed upon that the following results alongside the phase of execution of the sentence should be laid down by substantive law. Only an appropriate quality of juridical rules can reach the necessary commitment.”

Background for the necessity of substantive law regulations

- Imprisonment and Human Rights
- Rehabilitation as a human right also for high-risk offenders
- Examples of the ECtHR (*Vinter et al. vs. UK*)
- Examples of the German Federal Constitutional Court (FCC) (*preventive detention*)

Identifying good practices with regards legislation and court practices (1)

- Good practice of legislation – Definition
- Principles of certainty, proportionality, preserving human rights and
- Aims of punishment:
- Rehabilitation (++)
- Retribution (+)
- (General) Deterrence (+/-)
- Incapacitation (-)
- The role of victims in the sentencing procedure
- Should victims have an impact on sentencing? (-)

Identifying good practices with regards legislation and court practices (2)

- Human rights standards
- Council of Europe “legislation” and the importance of human rights standards for national legislation
- “Hard” and “soft” law
- ECHR
- EPR
- Specific recommendations related directly or indirectly high-risk offenders (Rec. on Conditional Release 2003, for Life-sentence and other Long-term Prisoners 2003; for Dangerous Offenders 2014; on Electronic Monitoring 2014).

Topics for the discussion in Forum 1 – Part I: Issues of criminal law (legislation)

- **Sentences** for high risk offenders:
- The role of **long-term prison sentences**, extended sentences etc.
- **Life imprisonment**, “life without parole” (?)
- The question of **preventive detention**:
- How can a society “survive” without preventive detention?
- **Post-custodial supervision orders** (supervision of conduct) – Clear legal regulations legitimising and limiting supervision
- Life-long supervision?

Topics for the discussion in Forum 1 – Part II: Structuring examples of “good” (or better to say “promising”) practices

- The discussion of previous workshops of the JCN-project resulted in structuring the examples alongside the **phase of execution of the sentence (the custodial part)**, the **phase of transition** (preparation for release and decision on early release) and the **situation after release**. In conclusion we should discuss the proposed examples of “good practice” with special regards to **legislation** under the following 5 topics:

Topics for the discussion in Forum 1 – Part II

1. **Sentence planning and specific prison regimes** (specific treatment programmes, socio-therapy etc.),
2. **The preparation for release** (prison leaves, relaxation of prison regime, temporary release to half way houses etc.),
3. **The decision on release** (early/conditional/automatic release), in case the extension of custody by preventive detention and the role of legislation and jurisprudence to avoid preventive detention,
4. **The supervision after release** including exchange of information and cooperation of agencies involved at the post-release period (probation service, after-care services, police), the role of **control mechanisms** (intensive supervision and care, electronic monitoring etc.) and
5. **The responsibility of local/community agencies (community guarantee).**

Results of the project

1. Specific treatment regimes (Socio-therapy)

- It is agreed that socio-therapy for high-risk offenders is a promising model of preventing re-offending. There is empirical evidence that socio-therapy “works”.
- Socio-therapy is an integral part of a prison system based on the goal of rehabilitation (“resocialisation”). Sentence planning, risk assessment, socio-therapy, preparation of release, early (conditional) release, continuity of care are core elements of such an approach, which should be laid down by law (substantive prison law).

Specific treatment regimes (Socio-therapy)

- Socio-therapy is executed in special units and comprises a range of rehabilitative measures described below. Other principles of punishment such as incapacitation and deterrence also for high-risk offenders are no solution (see above).
- High-risk offenders should be subject to a specific prison regime with a therapeutic approach. In this, their specific risk of reoffending, criminogenic needs and responsivity to certain treatment modalities should be considered and an increased effort towards rehabilitation (“resocialisation”) through (preferably) cognitive-behavioural therapy in a milieu-therapeutic environment should take place. This includes provisions for a gradual return of the prisoner to life in the free society by prison leaves, work release, open facilities and other temporary release schemes and the orientation at early/conditional release with an intensive after-care.

2. Preparation for release (prison leaves, relaxations of the prison regime)

- It is agreed that an intensive preparation for release for high-risk offenders is a promising model of preventing re-offending and improving social reintegration.
- There is **empirical evidence** that a **gradual transition scheme of preparation for release combined with early release (see below) and aftercare “works”**.
- The following principles should be laid down by law:

Preparation for release (prison leaves, relaxations of the prison regime; temporary release, half-way houses)

- The planning for (early) release must be organised in due time and give also for high-risk offenders a concrete perspective for the time of release and for the period of aftercare supervision.
- Prison leaves and other forms of temporary release are an essential part of a gradual return of the prisoner to life in free society. The criteria for granting such releases should be less restrictive the longer the stay in prison lasts.

Preparation for release (prison leaves, relaxations of the prison regime)

- Particularly in the **last phase of the sentence** the prisoner should have the **right to be granted temporary releases, except if** he/she presents a **serious danger** of committing very serious crimes against other persons. These principles should apply also to high risk offenders.
- The **criteria** and **legal conditions** should be regulated by **substantive prison law**. The competence of decision-making should be given to prison governors or prison authorities in general (with the requirement to consider the expertise of psychologists or psychiatrists).
- There must also be a **right to immediate judicial review** if such necessary forms of preparation for release are denied.

3. Early/Conditional/automatic release

- It is agreed that **early release** for high-risk offenders is a **promising model of preventing re-offending**. There is empirical evidence that a systematic preparation of release combined with early release schemes, support, and control by aftercare services “works”.

Early/conditional/automatic release (2)

- There are different models of early/conditional release in Europe
- The advantage of a quasi-automatic release system is that it enables the prison administration to plan the sentence in an appropriate time and gives the offender a sense of predictability about the termination of his stay in prison, which might motivate him.
- Furthermore it allows for post-custody supervision by the probation services, in particular in countries which do not provide supervision of conduct orders after having fully served the sentence

Early/conditional/automatic release (3)

- On the other hand, the automatic release system might be inappropriate for high-risk offenders, which may present a serious danger to other persons.
- Therefore the release system should allow **some flexibility** in the way that early release for high-risk offenders should **regularly be granted and only be denied** if concrete facts justify a high likelihood that serious further violent or sexual offences be committed.

Early/conditional/automatic release (4)

- Legislation should define the competent authorities for granting an early/conditional release.
- **Preferably a judge**, e. g. the judge for the execution of sentences **should be responsible**. For continental European countries parole boards with non-lawyers are not acceptable (or in the case of Germany even outlawed by the Constitution) as the decisions are based to a large extent on normative criteria beyond scientific methods of predicting future behaviour (the larger part of decisions have to be done on the base of uncertain prognoses).

Early/conditional/automatic release (5)

- **Legislation should also define the criteria for “good prognoses”, preferably in a way that gives priority to an early release in the situation of uncertain prognoses (*“in dubio pro libertate”*).** This would draw the discretionary system nearer to the automatic release system. It allows the supervision and control after release through directives including – if necessary – electronic monitoring etc.
- The Finnish legislation and practice can be seen as a model of “good practice”

4. Post-release supervision and support

- It is agreed that post release supervision for high-risk offenders is a promising model of preventing re-offending and improving the social integration of high-risk offenders.
- There is empirical evidence that aftercare support schemes can “work”.

Post-release supervision and support (2)

- **Legal provisions should allow for the supervision of high-risk offenders after release.** Post-release supervision has to be based primarily on the support of the probation and/or aftercare services. These provisions should **clearly determine the range of supervision, the competent authorities for its execution as well as possible directives and obligations to be imposed** on the supervised person. The intensity of supervision should decrease in the course of time.
- Life-long supervision should be excluded!

Post-release supervision and support (3)

- Furthermore, legal provision should regulate the dissemination and exchange of information regarding the supervision as well as **clearly define obligations of the person under supervision** to submit information to the competent authority for this purpose. When acting upon this information, **authorities** should be **legally obliged to consider the effects** on the **rehabilitation** of the supervised person and the **protection of potential or former victims**.

Post-release supervision and support (4)

- **All obligations and directives** imposed on the offender under supervision must have the **primary aim of rehabilitation**.
- **Pure control measures** should be **excluded**.
- **Electronic monitoring** is only advisable as an exceptional measure and only if it is combined with intensive support and care by the probation and aftercare services.
- A revocation of early release or other possibilities to remove an offender to prison should only exceptionally be allowed for only technical violations.

Post-release supervision and support (5)

- **Police supervision** should never be a stand-alone measure of control.
- It must be **combined or as far as possible replaced by forms of support and control by the probation and aftercare services.**
- Police supervision must be **based on substantive criminal or procedural law** (not police-law).
- The **aim of rehabilitation** and **possible negative effects by stigmatising ex-prisoners** demand a very **sensitive use of police control.**

5. Community guarantee

- It is agreed that the **delivering of post-release services concerning accommodation, employment, social welfare aid, etc.** for high-risk offenders is a **promising model of preventing re-offending and improving social integration.**
- There is empirical evidence that such aftercare services can “work”, particularly if they are structured by a net-work of intensive co-operation (**multi-agency approach**).

Community guarantee (2)

- All **competent authorities** on the **local level** (state and municipal institutions) **should be obliged by law to provide the necessary services to released prisoners according to their needs.**
- Legislation shall define the necessary measures, the competent authority and the right of the released person to demand these services right in advance, i. e. already during the custodial phase.

Community guarantee

- **Legislation should set out such guarantees** in the **laws** regulating communal/local competences and duties and also in laws regulating the obligations of after-care services (e. g. probation services) as well as of local agencies involved in the reintegration of released prisoners (job centres, accommodation services, health care services etc.).
- How and by what kind of legislation can the local agencies be made involved?
- Experiences of Denmark, Norway and others?

Outlook

- Further discussion is needed!
- Final conclusions should be developed in Forum 1
- Come together !

Structure and time schedule for Forum 1

- 4 September, **14.30 h**: Questions and discussion on the introductory paper of Frieder Dünkel
- **14.50 h**: Alina Barbu, Ministry of Justice, Romania: *Managing high risk offenders – from sharing experiences to better understanding and furthermore improving the enforcement of European tools*
- **15.10 h**: Questions and discussion
- **15.30 h**: Break
- **16.00 h**: Tapio Lappi-Seppälä, National Research Institute of Legal Policy, Finland: *Preventive detention in the Nordic countries.*
- **16.20 h**: Questions and discussion
- **16.40 h**: Nora V. Demleitner, Washington and Lee University School of Law, USA): High-Risk Offenders in the United States: Imprisonment as the Dominant Response?
- **17.00 h**: Final Questions and discussion, working on the plenary presentation.
- **17.30 h**: End of Forum

Questions, which could be discussed in Forum 1

1. What kind of legislation do we need for sentence planning?
2. Is risk assessment an indispensable element of sentence planning and the execution of sentences for high-risk offenders? Are there alternative promising concepts (good lives-approach etc.) to be legally considered or implemented?
3. How can high-risk offenders be integrated in a gradual system of temporary release? Should the steps be regulated by law? Should the system of supervised probationary freedom (see the example of Finland) be an integral part of preparation for release?
4. Should a system of socio-therapeutic or other intensive treatment be an integral part of treatment of high-risk offenders?
5. What other forms of promoting desistance can/should be legally provided (good lives model etc.)?

Questions, which could be discussed in Forum 1

6. What are the criteria and legal conditions for temporary releases? Should they change over time having served in prison, e.g. be more permissive at the end of the sentence?
 7. What system of early release (automatic, quasi-automatic, conditional) is to be recommended for high-risk offenders?
 8. How can the involvement of aftercare services and the community with regards the preparation for release legally be guaranteed?
 9. What are the legal requirements for establishing effective transition management systems?
 10. What can we learn from the latest American and European Court of Human Rights jurisprudence outlawing life without parole, which is just one of the groups of high risk offenders we are focusing on?
- **!! Remember:** We always have to focus on legislation in our discussion, including lessons that can be made from jurisprudence !!

Thank you!

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