

Evaluation Report

Justice Cooperation Network (JUST/2011/JPEN/AG2943)



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Content

Introduction

A. Findings on existing legal provisions and current practices

1. Overview of the legal implementations of the concept of high-risk offenders in Criminal law
 - 1.1 Estonia
 - 1.2 Finland
 - 1.3 Ireland
 - 1.4 Germany
 - 1.5 Associated partners (Belgium, Slovakia, Slovenia)
 - 1.6 Summary

2. National legal provisions on (early) release from prisons and security institutions (in regard to high-risk offenders)
 - 2.1 Estonia
 - 2.2 Finland
 - 2.3 Ireland
 - 2.4 Germany
 - 2.5 Associated partners (Belgium, Slovakia, Slovenia)
 - 2.6 Summary

3. Overview on penitentiary practices (concerning high-risk offenders)
 - 3.1 Estonia
 - 3.2 Finland
 - 3.3 Ireland
 - 3.4 Mecklenburg-Western Pomerania
 - 3.5 Associated partners (Belgium, Slovakia, Slovenia)
 - 3.6 Summary

4. Preparation for release and transition to the community for high-risk offenders
 - 4.1 Estonia
 - 4.2 Finland
 - 4.3 Ireland
 - 4.4 Mecklenburg-Western Pomerania
 - 4.5 Associated partners (Belgium, Slovakia, Slovenia)
 - 4.6 Summary

5. Aftercare (supervision and support) for high-risk offenders
 - 5.1 Estonia
 - 5.2 Finland
 - 5.3 Ireland
 - 5.4 Mecklenburg-Western Pomerania
 - 5.5 Associated partners (Belgium, Slovakia, Slovenia)
 - 5.6 Summary

B. Evaluation of the proposed best practices

1. Legislation
 - 1.1 Work of the project group on this topic
 - 1.2 Proposed best practices
 - 1.3 Comparative analysis
 - 1.4 Conclusion and recommendations

2. Court practices
 - 2.1 Work of the project group on this topic
 - 2.2 Proposed best practices
 - 2.3 Comparative analysis
 - 2.4 Conclusion and recommendations

3. Assessment
 - 3.1 Work of the project group on this topic
 - 3.2 Proposed best practices
 - 3.3 Findings from scientific research
 - 3.4 Conclusion and recommendations

4. In Custody
 - 4.1 Work of the project group on this topic
 - 4.2 Proposed best practices
 - 4.3 Findings from scientific research
 - 4.4 Conclusion and recommendations

5. Preparation for release
 - 5.1 Work of the project group on this topic
 - 5.2 Proposed best practices
 - 5.3 Findings from scientific research
 - 5.4 Conclusion and recommendations

6. Community setting
 - 6.1 Work of the project group on this topic
 - 6.2 Proposed best practices
 - 6.3 Findings from scientific research
 - 6.4 Conclusion and recommendations

7. Conclusion

C. Process evaluation

1. “Working out the Common Basis” (WS1)
2. “Transnational Comparative Analysis” (WS2)
3. “Best Practice in Transition Management” (WS3)

4. "Development of Minimum Standards and Best Practice Models" (WS4)
5. Final conference (WS5)

Summary and conclusions

Appendix

I. Answers of the project partners

1. Overview over the answers to the questionnaire by the project partners (Table A)

II. Answers of the associated project partners

1. Overview over the answers to the questionnaire by the associated project partners (Table B)

III. Progress Evaluation Reports

1. First Progress Evaluation Report of 30 June 2013
2. Second Progress Evaluation Report of 25 March 2014

IV. Overview on early release and maximum sentences in Europe

1. Overview on early release from determinate sentences of imprisonment in Europe (Table C), from: *Dünkel, Mandatory release versus discretionary release - a comparative approach*
2. Overview on maximum sentences in Europe (Table D)

Introduction

This evaluation report shall provide information on the work of the Justice Cooperation Network (JCN) project in regard to the scientific findings produced in the course of the evaluation of this project. The evaluation process is part of the JCN project under workstream 0.D) of the project's agenda and has been conducted by the Department of Criminology of the University of Greifswald under the direction of Prof. Dr. Frieder Dünkel.

Previous results of the evaluation of the JCN project can be found in the First and Second Progress Evaluation Report, which have been produced by the evaluators throughout the course of the project and feature preliminary results of the evaluation process.¹ The results produced in this report stem from a survey including the project partner countries as well as the associated project partner countries, the results from the questionnaires handed out before each workshop, the workshop reports and the observations made throughout the project's work as well as additional research carried out by the team of the Department of Criminology.

A. Findings on existing legal provisions and current practices

The first part of this report focuses on the existing legal provisions and the current practices in regard to high-risk offenders, which can be found in the countries that are partners or associated partners of the JCN project.²

1. Overview of the legal implementations of the concept of high-risk offenders in Criminal law

In reviewing the current legal situation in the participating countries of the project, it became apparent that in most of the countries there is no direct reference or definition of the concept of "dangerousness" or high-risk offender in the national criminal law. This lack of statutory provisions does not mean that this concept is not otherwise implemented in the process of imprisonment and release, but already highlights the dissimilarities in the national approaches towards a high-risk offender management. Likewise at the level of law on sentencing, provisions concerning risk assessment could scarcely be found. In contrast to this, however, legal provisions for a redefinition of risk or a risk assessment during the execution of the prison sentence are existent in the respective prison codes of all project member states except for Belgium and Ireland.

¹ The First and Second Progress Evaluation Report are attached to this report in the appendix and are also available for download on the project's website.

² For the purpose of comparability and to facilitate research, all legal citations in this report follow the Oxford University Standard for Citation of Legal Authorities (OSCOLA, www.law.ox.ac.uk/oscola).

1.1 Estonia

In Estonia the concept of dangerousness or a high risk of reoffending is not laid down in criminal law. The only reference to an increased risk of an offender at this stage could be seen in the provisions for sentencing in cases of aggravating circumstances.³

The Estonian Prison Code refers to the matter of risk two times: Firstly it does so indirectly by stipulating the requirement of a set-up of an individual treatment plan for prisoners with a term of imprisonment exceeding one year, covering inter alia the transferability of the prisoner to an open prison and thus the risk of the offender, and secondly explicitly in regard to release on parole.⁴ While the legal text does not define dangerousness or risk itself, in practice those terms are defined by the manual of the assessment tool, which is used in the aforementioned circumstances. Therein risk is described as the probability that a person's behaviour will cause material, physical or moral damages. Dangerousness, on the other hand, is defined as a person's ability to cause events, which are life-threatening and with severe consequences and from which a recovery will take time or is impossible.

1.2 Finland

Finland is one of two participating countries which has a reference to the concept of dangerousness / high risk in its national criminal code and which possesses a kind of legal definition for a dangerous / high-risk offender. The Criminal Code of the Republic of Finland provides in chapter 2(c) section 11 for the possibility of a court order (at the sentencing stage) to prevent the early release of a prisoner, who fulfils certain criteria (commission of an enumerated serious crime and the assessment that the offender is "to be deemed particularly dangerous to the life, health or freedom of another [person]"⁵), thereby giving a quasi-definition of a high-risk offender.

Another reference to risk is made in the provision for assessment prior to the decision about parole for a prisoner serving a life sentence in the Act on the Release Procedures of Long-term Prisoners, section 1.

³ Criminal Code (Estonia), s 58.

⁴ Imprisonment Act (Estonia), s 16(1)(2) and s 76.

⁵ This wording is reiterated in the Code of Judicial Procedure (Finland), c 17, s 45 in regard to the assessment mentioned in Criminal Code (Finland), c 2(c), s 11.

1.3 Ireland

The concept of dangerousness or a high risk of reoffending is not addressed in the Irish Criminal or Penitentiary law. This reflects, on the one hand, the structural reluctance of a Common law system to regulate details of sentencing and the execution of sentences in parliamentary legislation, but also an Irish aversion against fixed minimum terms or detention solely based on the estimated risk of reoffending.⁶

1.4 Germany

German Criminal law refers to the concept of dangerousness / high risk at multiple points. The main reference is made by section 66 sub-section 1 of the Criminal Code, according to which a preventive detention can be imposed for the commission of certain offences, if the offender has been repeatedly convicted for at least two of these offences to a sentence of at least one year each and has served at least one of those sentences for at least two years or has been subject to a measure of rehabilitation and incapacitation and a comprehensive evaluation of the convicted person and his offences reveals a disposition for the commission of serious crimes and he has been deemed to pose a danger to the general public. This provision provides, like in Finland, a quasi-definition of a high-risk offender.

Other references to the concept of high risk or dangerousness can be found in the legal provisions for early release⁷, release from a measure of rehabilitation and incapacitation⁸, imposition of post-custodial supervision⁹ and remand¹⁰. There is, however, no legal differentiation between the terms dangerous and high risk.

The law on sentencing in Germany refers to the aforementioned concept insofar, as the future effects of the imprisonment have to be considered by the judge when imposing the sentence.¹¹ This principle of special prevention also encompasses the level of risk of the offender and its estimated development through imprisonment.

⁶ cf The Law Reform Commission, *Report on an examination of the law of Bail* (1995) 16.

⁷ Criminal Code (Germany), s 57(1).

⁸ Criminal Code (Germany), s 67d(2).

⁹ Criminal Code (Germany), s 68(1).

¹⁰ Code of Criminal Procedure (Germany), ss 112a, 454(2)(2).

¹¹ Criminal Code (Germany), s 49(1)(2).

1.5 Associated partners (Belgium, Slovakia, Slovenia)

In all three associated partner states there are no direct references to the concept of dangerousness / high risk in Criminal or Sentencing law. In Belgium certain types of offenders are indirectly defined as high-risk offenders by exceptions to the rules for conditional release. On the level of Prison Acts, the Slovenian Penal Sanctions Enforcement Act refers in sections 98 and 206 to dangerous offenders for the purpose of disciplinary and security measures during imprisonment.

1.6 Summary

While the concept of high risk has found its way into practice in regard to prison regimes at least to some extent in all participating countries, the amount of statutory law referring to this concept at an early stage of the criminal process (Criminal law, Sentencing law) is low. Only two states have defined a type of offender, who is subjected to restrictions or additional detention on the basis of his/her estimated dangerousness. The most common applications of the concept of high risk are provisions for an early/conditional release, which indicates that legislators are especially sensitive to matters of risk at this point.

2. National legal provisions on the early¹²/conditional release of high-risk offenders from prisons and security institutions

National criminal law generally provides for the possibility of a release prior to the full service of sentence, either as a discretionary or as a mandatory release scheme.¹³ Mandatory release schemes are rare and are, in fact, used only by two states involved in this project. Discretionary release schemes¹⁴, on the other hand, are existent in every of the project member states and the associated project member states, but differ significantly in their prerequisites and the degree of discretion granted to the administrative body or court. Discretionary release schemes themselves can be broadly divided into two groups, those that require the satisfaction of some kind of prognostic threshold and those, which do not refer to any prognosis in their requirements. By definition, high-

¹² The term „early release“ refers to automatic or unconditional release schemes (cf Padfield/van Zyl Smit/Dünkel, *Release from Prison – European policy and practice* (2010)).

¹³ For a tabular overview on the legal provisions on early/conditional release in the states involved in this project as well as a comparative analysis for Europe, please see I.1, II.1 and IV.1 of the appendix.

¹⁴ Also referred to as „conditional release“ or „release on parole“.

risk offenders have a negative prognosis and are thereby excluded from that first group of discretionary release options.

Release under a discretionary release scheme typically subjects the former prisoner to probation, usually for a period equal to the length of the unserved part of the sentence. Post-custodial supervision is either obligatory or may be ordered by the releasing court.

2.1 Estonia

The Estonian Penal Code provides for a discretionary release scheme in section 76 (release on parole). Prisoners can be released after having served half¹⁵ of the sentence respectively two thirds¹⁶ of the sentence. While prognostic elements are included in the consideration for conditional release, high-risk offenders are not excluded, as subsection 3 explicitly only refers to “the consequences which release on parole may bring about for the convicted offender”.

The probation term after conditional release is equal to the extent of the unserved part of the term of imprisonment, but not less than one year. Post-custodial supervision is ordered, if the offender has fully served a term of imprisonment of at least 2 years, has previously been convicted for an intentional offence with a term of at least 1 year of imprisonment and there are solid grounds to believe that the offender will reoffend. The supervision can last from 12 months to three years.

Release from life imprisonment is possible earliest after 30 years.

2.2 Finland

Finland uses a mandatory¹⁷ release scheme with releases at one and two third of the sentence respectively (five sixth in cases, where the offenders has been ordered to fully serve the sentence).¹⁸ High-risk offenders are therefore fully eligible for release under this scheme.

The probation term after conditional release is equal to the extent of the unserved part of the term of imprisonment, but not longer than three years. Supervision after

¹⁵ In cases of sentences for a criminal offence in the second degree or criminal offence in the first degree through negligence. If the prisoner agrees to electronic surveillance the minimum served term is reduced to one third of the prison term.

¹⁶ In cases of sentences for an intentional criminal offence in the first degree. If the prisoner agrees to electronic surveillance the minimum served term is reduced to one half.

¹⁷ In exceptional cases (> 3 years of imprisonment for violent or sexual offenders who present a particular danger to society) the sentencing court can order the full serving of the sentence.

¹⁸ Criminal Code (Finland), c 2(c), s 5.

release is ordered, if the part of the sentence, which is not served in prison, exceeds one year, if the offence is committed at a time, at which the offender was under 21 years old or if the prisoner so requests. The duration of the supervision is the same as the probation term.

Release from life imprisonment is possible earliest after 12 years.

2.3 Ireland

The Irish law provides for both, a mandatory and a discretionary release scheme. The mandatory release takes the form of an automatic 25% remission of the prison term, without exclusions of high-risk offenders.¹⁹ The discretionary release scheme provides no entitlement to prisoners for conditional release, but merely grants the Minister for Justice and Equality the right to conditionally release a prisoner at his or her full discretion. While the statutory provisions do not explicitly exclude high-risk offenders from release under this scheme, they oblige the minister to consider the risk of further offences and the risk of non-compliance with conditions imposed, thus making a release of a high-risk offender unlikely.

Prisoners released under the mandatory scheme are not subjected to any kind of supervision. For prisoners released under the discretionary scheme, supervision may be imposed as a condition of the temporary release order (obligatory for life sentence prisoners), by the sentencing court when convicting a person of a scheduled sexual offence or as a condition to a court order to suspend a sentence wholly or partially under Criminal Justice Act 2006 s 99(1). The duration of supervision cannot exceed the maximum custodial sentence.

Release for prisoners serving a life sentence is possible earliest after 7 years of imprisonment.

2.4 Germany

Germany uses a discretionary release scheme, which makes a direct reference to the "interests of public safety".²⁰ While this hinders a conditional release of high-risk offenders at first glance, under a ruling of the Federal Constitutional Court conditional release options must be considered also for offenders with a higher risk of reoffending towards the end of their sentence.

¹⁹ Prison Rules 2007 (Ireland), s 59. While the statutory provision sets the requirement of a good conduct, the remission is, in practice, granted quasi-automatically.

²⁰ Criminal Code (Germany), s 57.

Prisoners released by conditional release are always subjected to probation, ranging from two to five years, but not less than unserved part of the sentence. Supervision of conduct after the release may be imposed either by the sentencing court when convicting a person to imprisonment of not less than 6 months for an offence to which the law specifically provides for the availability of a supervision order, if there is a danger that the person will commit further offences, or as a consequence of statutory provisions providing for supervision (e.g. for release from preventive detention).

Prisoners serving a life sentence can be conditionally released earliest after 15 years, if the gravity of the offender's guilt does not necessitate that he continues to serve his sentence, the release can be justified with regards to the interests of public safety and the prisoner agrees.

2.5 Associated partners (Belgium, Slovakia, Slovenia)

All three associated partner states have discretionary release schemes that require a negative prognosis and therefore bar high-risk offenders to be released under these schemes. In Slovenia, however, section 108 of the Enforcement of Penal Sentences Act also provides for an early release option of up to three months prior to end of the prison term at the discretion of the prison governor. Since this release scheme requires only a good conduct within prison, but makes no demands to the future behaviour, high-risk offenders can qualify for this as well.

In Slovenia and Slovakia the minimum term of imprisonment for offenders serving a life sentence before being eligible for conditional release is 25 years. Offenders who are repeatedly sentenced to life imprisonment are, however, exempt from conditional release in Slovakia.

In Belgium and Slovenia the probation term equals the extent of the unserved part of the term of imprisonment, but can not be less than 2 years in Belgium. Furthermore, in Belgium convictions or correctional convictions that sum up to more than five years of imprisonment lead to a post-custody supervision period of five to ten years, a lifelong sentence to a post-custody supervision period of ten years.

In Slovakia the probation term ranges from one to seven years, but an additional protective supervision of one to three years or up to five years for recidivists may be added.

2.6 Summary

Due to their nature, mandatory release schemes apply, where provided, automatically to all prisoners, regardless of their risk of reoffending. Discretionary release schemes, however, require a certain prognostic threshold regarding future behaviour on the majority, which excludes high-risk offenders from these schemes, who, by definition, have a high prognostic risk of serious reoffending.

Furthermore, it should be noted that the release of prisoners and of inmates of security institutions, who have committed serious offences, is generally viewed as a precarious issue. Public opinion does not favour the assumption of risk in regard to the release of prisoners or other inmates, which is clearly perceived on the decision-making level. This can easily lead to a growing reluctance to use release schemes that allow for a pre-dated release in cases of prisoners with a history of serious offending.

3. Overview on penitentiary practices (concerning high-risk offenders)

The project found that the execution of sentences for high-risk offenders, without prejudice to provisions and practices regarding the transition process, is influenced by their assessed risk only insofar as security measures and prison leaves are concerned, but does otherwise not fundamentally differ from execution of sentences for those prisoners, who are not deemed to be of high risk. On closer examination, three aspects became apparent as the major factors of penitentiary practices for high-risk offenders. Firstly, high-risk offenders can be subjected to segregation and accessory security measures, namely solitary confinement, either as a disciplinary sanction, a result of a court order or for preventative purposes. Secondly, high-risk offenders may be excluded from or only restrictively granted prison leaves due to an assessed risk of flight or committing new offences. And thirdly, high-risk offenders may not be transferred to open prisons or only at a late stage of their sentence.

3.1 Estonia

Under Estonian Prison law an offender who has served at least one year of imprisonment or at least half of his/her term of imprisonment, if he/she was convicted for a first degree offence for at least the second time, can be granted a short time leave from prison for up to 21 days a year. This, however, requires the

absence of a positive assessment for a risk of flight. Furthermore, prisoners serving a life sentence are exempt from this provision.

A transfer to an open prison requires an even stricter catalogue of prerequisites to be fulfilled, among which a negative assessment of risk of flight and an absence of a need for the placement in an extra security ward are the most relevant points for high-risk offenders. Because the length of sentences for these offenders regularly exceed one year, such a transfer is possible only 18 months prior to release, if the prisoner's dangerousness is not rated as being at the highest of the four-point scale and the prisoner is not currently abusing substances, or on the basis of a recommendation in the individual sentence plan. Given that currently less than nine per cent of all prisoners serving a sentence in Estonia are placed in an open prison, the probability of a transfer could be said to be rather low for a high-risk offender.²¹

Concerning solitary confinement, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has reprimanded Estonia for an "excessive use being made of solitary confinement at Viru Prison, in particular for disciplinary purposes".²²

3.2 Finland

In Finland all prisoners are eligible for a prison leave at some point of their sentence.²³ The prison leave, which is granted by the prison governor, can be based either on the served part of the prison sentence or on exceptional circumstances. A prison leave based on time served is seen as a normal part of the sentence enforcement and can be granted earliest after two-thirds of the mandatory time in prison, but not less than two months, have been served. Leaves may be granted for a maximum of three days in every two months. Life prisoners, who are not granted a permission of leave on the basis of the length of their sentence, shall be granted a permission of leave under escort at least once every year.

In addition, a prison leave can be granted for important reasons, such as contact with the family outside of prison, health care, subsistence, work, training, social or

²¹ Estonian Prison Service, Numbers of prisoners and probationers as of 15.09.2014, www.vangla.ee/41291.

²² Report to the Estonian Government on the visit to Estonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 May to 6 June 2012, published on 21.01.2014, CPT/Inf (2014) 1, No. 75-76.

²³ Lappi-Seppälä, „Imprisonment and Penal Policy in Finland" (2009) *Scandinavian Studies in Law* 54 333, 345.

housing issues of the prisoner or for other corresponding reasons. If needed, an escort may be used during the leave.

While security is always considered in the decision-making process before granting a prison leave, the general notion of a non-restrictive eligibility of all prisoners for leaves seems to lead to a handling of the issue with wider discretion and virtually no exclusions on the basis of risk.

Transfers to open prisons are conducted on the basis of assessments by the Assessment Centre subsequent to an application to be transferred by the offender. Among other requirements, the level of risk of the offender has to be assessed as being suitable for a placement in an open prison. The decision whether an offender should be transferred is taken by the director of the Assessment Centre. In Finland about 40 per cent of the prisoners and 44 per cent of prisoners with a prison sentence exceeding two years are transferred to an open prison before release.²⁴ There is no information, however, up to which risk category offenders are being transferred and it could be assumed that offenders with a high or very high risk are not allocated to an open prison during the course of their sentence.

3.3 Ireland

Prison leaves in Ireland are dealt with within the Temporary Release Scheme (see 2.3). Temporary release may be granted on compassionate grounds²⁵, such as important family occasions or other personal matters outside of the prison, or on a day-to-day basis. There is no statutory limitation to the number or length of leaves that can be granted. As mentioned before, considerations with regard to the risk of further offending and the risk of non-compliance with conditions imposed are obligatory before granting temporary release, which means that high-risk offenders are de facto more likely to be excluded from this scheme.

Prisoners with a term exceeding one year of imprisonment may be considered for a move to an Open Centre with about two years left in their sentence; in exceptional cases, where prisoners are engaging strongly with the therapeutic services, they can be considered for a transfer already with up to four years left to serve in their sentence. Prisoners serving sentences in excess of eight years may be recommended for transfer to an Open Centres by the Parole Board; however, the decision still lies

²⁴ Statistics of the Criminal Sanctions Agency 2013, 6.

²⁵ cf Prisons Act 2007 (Ireland), s 39.

with the Minister for Justice and Equality. There is no indication of what level of risk is generally seen as acceptable for a transfer to an open centre, but given then abovementioned standards, it is reasonable to expect a general exclusion of high-risk offenders from such transfers, especially as currently just over 8 per cent²⁶ of all prisoners in Ireland are placed in an open or semi-open facility.

Solitary confinement has decreased in Ireland since July 2013. The overall figures of prisoners on restricted regime went down by 26 per cent from 339 to 250 with a one-year period; the number of prisoners on 22/23-hour lock-up decreased by 80 per cent from 211 to 42 in the same time.²⁷ This reduction is mainly the result of the declared aim of the Director General of the Irish Prison Service to reduce the number of prisoners held on restricted regimes within a timeframe of twelve months and to introduce a minimum standard of „out of cell time“ of at least three hours per day.²⁸

The majority of prisoners were held in solitary confinement for protective reasons²⁹, while only just under 8 per cent were held for disciplinary reasons or on grounds of order. Given that one group of vulnerable prisoners are sex offenders, of whom a subgroup constitute high-risk offenders, it can be said that with a high probability high-risk offenders are impacted by solitary confinement in Ireland as well. The decreasing number in total as well as in hours out of cell are, however, a promising development.

3.4 Mecklenburg-Western Pomerania³⁰

According to section 38 of the Prison Act of Mecklenburg-Western Pomerania, prison leaves may be granted generally after a term of six months has been served, if it can be accounted for to put the prisoner to the test that he/she will not commit any offences or flee during the course of the prison leave. The number of days or the lengths of prison leaves are not limited. Prisoners serving a life sentence can be

²⁶ Prisoner Population on Thursday 18th September 2014, retrieved via: www.irishprisons.ie/index.php/statistics/daily-custody-figures.

²⁷ Census of Restricted Regime Prisoners July 2014, Irish Prison Service.

²⁸ Census of Restricted Regime Prisoners July 2014, Irish Prison Service; „Prison Service says solitary confinement numbers 'not acceptable“, RTÉ News, www.rte.ie/news/2013/0722/463861-solitary-confinement.

²⁹ Out of which 97% are listed as being on protective regime on their own request.

³⁰ Due to the federal structure of Germany the focus will be limited to the partner state of Mecklenburg-Western Pomerania, where the legislative competence rests with the states of the Federal Republic.

considered for prison leave after having served a term of ten years or if they have been transferred to an open prison.

Furthermore, prisoners may be granted a special leave of up to six months, if this is imperative for a successful preparation of reintegration and they have served at least six months of their sentence.³¹ Alternatively they may be transferred to a half-way institution.

A placement in or transfer to an open prison requires that the prisoner is found to be suitable for such a placement.³² The threshold for the acceptable level of risk is the same as in the case of a prison leave. While this allows for a wider discretion in each individual case, the majority of high-risk offenders would still not be likely to be considered for this. In this context it is worth noting, however, that currently 15,5 per cent³³ of prisoners in Mecklenburg-Western Pomerania are placed in an open prison.

3.5 Associated partners (Belgium, Slovakia, Slovenia)

In Belgium (un)supervised prison leaves may be granted by the Minister of Justice depending on the advice of the Psychosocial Service and the Prison Governor. Limited detention, which equals an open prison and is granted by the Court of Implementation of Sentences, is usually provided for prisoners considered to be of higher risk before conditional release. However, on the whole leaves as well as limited detention are being evaluated more carefully and granted less easily, when the prisoners has been assessed as a high-risk offender.

In Slovakia, high-risk offenders are generally not allowed prison leaves or placed in an open prison. To be admitted to an open prison, the prisoners also have to have been placed in a low security prison beforehand.

In Slovenia prison leaves are granted by the prison governor on the basis of the opinion of professional staff as a disciplinary reward and can take the form of a supervised or unsupervised leave from prison (with the possible exception of the former site of the crime). Unsupervised leave may be granted up to five times per month and may not exceed 53 hours. Any grant of prison leave is subjected to an assessment of the risk of abuse of the leave as well as the response of the environment to it. The transfer to an open prison is granted depended on the

³¹ Prison Act (Mecklenburg-Western Pomerania), s 42(3).

³² Prison Act (Mecklenburg-Western Pomerania), s 11(2).

³³ Strafvollzugsstatistik 2013, Fachserie 10 Reihe 4.1, 11.

assessment of the risk of abuse of this relaxation. However, it is not stated which level of risk is seen as acceptable.

3.6 Summary

In the vast majority of states, which have been examined, prison leaves and transfers to open prison require that the offender be assessed to be under a certain level of risk for reoffending as well as risk of flight. While this threshold is differently defined, it often appears unlikely that it would be met by any of the high-risk offenders. Finland differs from this insofar, as all prisoners are thought to be eligible for prison leaves at some point during their sentence, thus admitting high-risk offenders to this means of relaxation of prison regime as well.

While recognising the public and political concern, already referred under 2.6, it should nonetheless be pointed out that gradual release, i.e. the use of different forms of prison leaves after careful preparation as well as conditional release before the end of the sentence, have proven to be an effective tool in reducing recidivism among all groups of offenders, including those assessed as being of high-risk.

Though there are no numbers concerning the precise amount of high-risk offenders in solitary confinement, it appears to be likely that solitary confinement on the basis of disciplinary as well as protective grounds is also targeting high-risk offenders. Placing prisoners in solitary confinement on these grounds has been identified as a practice in some of the states involved in this project, albeit implemented to different degrees. No distinct pattern for the use of solitary confinement could be found, however; the missing evidence of solitary confinement in Finland for example, is not representative for a Scandinavian practice, since international critique has been expressed concerning solitary confinement in Denmark³⁴ and Norway³⁵. In general, solitary confinement is viewed as a measure of last resort, which should be limited in time and scale and provided with appropriate safeguards, so as to avoid an infringement of the prisoner's human rights. Solitary confinement, which might have once been legitimate, may, for example, become obsolete during the course of time or due to changes in the environment. Such a change of circumstances could be

³⁴ Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/63/175 (28 July 2008), 5.

³⁵ Report to the Norwegian Government on the visit to Norway carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 10 October 2005, published on 11 April 2006, CPT/Inf (2006) 14, 25.

seen in Spain where, with the declaration of a permanent ceasefire and cessation of armed activity by the ETA³⁶, the level of risk of the convicted members of this underground organisation should be reassessed. However, those prisoners continue to be subjected to the high security regime of the first degree in the Spanish prison system.³⁷

4. Preparation for release and transition to the community for high-risk offenders

The preparatory stage of release marks an important point in the transition process from prison to community. It is at this point that the organisational and personal foundations are laid for a smooth and seamless transition. Careful planning and early cooperation with public and private organisations outside the prison have been identified as one keystone in successful offender transition. Personal continuity and the extended use of half-way institutions or other methods of “normalizing” the execution of the sentence are known to be effective as well.

4.1 Estonia

A set-up of a sentence plan is obligatory for all offenders with a prison sentence exceeding one year and includes a risk assessment and the planning on all necessary measures for the execution of the sentence. During the sentence a case manager is responsible for the prisoner’s execution of the sentence. He/she liaisons with specialists inside and outside the prison and, in cases of a release after having fully served the sentence, informs the social worker of the respective municipality³⁸ about the prisoners release. In cases of a conditional release the law requires the prison to prepare a report with recommendations to the court, based on the risk-assessment and the progress of the offender during the sentence, two months prior to the earliest date for conditional release.³⁹ By request of the case manager a

³⁶ Euskadi Ta Askatasuna (*basque*: Basque Homeland and Freedom).

³⁷ By virtue of General Prison Law 1979 (Spain), s 10(1) and Royal Decree on the Adoption of the Prison Regulations 1996 (Spain), s 102(5)(a) and (c), specified under Royal Decree on the Adoption of the Prison Regulations 1996 (Spain), ss 89-95. cf Hogg, „Directing Dissent: Governing Political Dissidence in Spanish Prisons” (2012) 2(1) Oñati Socio-Legal Series <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1991742> accessed 18 September 2014; Dünkel/Lappi-Seppälä/Lazarus, Comments on the Report on the current state of penitentiary law and its application to crimes of terrorism by ETA (2014), 6.

³⁸ cf 5.1 (Aftercare in Estonia).

³⁹ In practice, this procedure has been reported to begin with the commencement of imprisonment.

probation officer can be involved in the preparation for release. If needed, the probation officer can visit the offender in prison.

There are no legal provisions for halfway houses and/or electronic supervision for “dangerous” or high risk prisoners in the preparatory stage for release or on release. There is, however, the possibility to agree to electronic monitoring in order to be admitted to an earlier conditional release.

Whilst imprisonment, NGOs are involved in providing rehabilitation services to offenders, e.g. support persons, self-help groups for addicts, drug treatment services, etc. Every prison and probation department has its regional partners. The NGOs are generally not funded by the prisons, but are operating on project grants awarded from third parties.

4.2 Finland

Next to a sentence plan a release plan has to be set up by the prison well in advance of the probable release date. The Criminal Sanctions Agency has specified the beginning of the preparatory stage in their instructions to be at the latest 6 months before release. A senior criminal sanctions official is in charge of drawing up the release plan and will, where necessary, cooperate in doing so with other officials, such as the prison’s social worker, a guidance counsellor or health care officials. If needed and with the consent of the prisoner, the local authorities of the municipality of residence of the prisoner can be involved in the drawing up of the release plan. Risk assessment is carried out by the psychiatric prison hospital, which produces dangerousness evaluations of prisoners serving the full sentence before release and evaluations of the risk of committing violent crimes for life prisoners prior to release.

A few months before release the prisoner is visited once or twice by his/her future probation officer, if he/she will be under supervision after release. In those cases continuity of care is provided by law.

Halfway houses exist in connection with the prisons in Kuopio and Oulu. Furthermore there are halfway houses as an outsourced service in Tampere and Helsinki. Prisoners are placed in these units some weeks or a couple of months before release.

Electronic supervision is only used in the context of the “Supervised probationary freedom” scheme.

In prison prisoners are supported by peer groups, self-care groups (AA, NA), spiritual groups (congregations) and other voluntary organizations. Furthermore, there is an existing cooperation with the probation work organisation KRITS and the peer group support association C.R.I.S. The support work of NGOs within prisons is supervised by the Criminal Sanctions Agency.

4.3 Ireland

In Ireland a case manager of the Integrated Sentence Management (ISM) is responsible for the release preparation of high-risk prisoners within prison. He liaisons with the prison-based officer of the probation service, who is in charge of drawing up a pre-release case management plan twelve months prior to release. At the same point, offenders with a term of imprisonment exceeding two years are subject to a risk assessment. The release phase begins nine months prior to release with the development of a Community Integration Plan (CIP), which addresses relevant issues for the resettlement in the community, such as accommodation and employment or education. A number of services are involved in the release planning, which are, besides for the Irish Prison Service, the Custody Management, Health and Nursing Service, Psychology Service, Addiction Service, Training Service and chaplaincy along with external providers including statutory services such as the HSE Forensic Psychiatric Service, the Probation Service and the Education Service. Statutory Homeless and Social Protection services as well as community and voluntary bodies provide an in-reach service in each prison for additional support. The Irish Prison Service provides funding to specific community based organizations to support their work in prison.

Half-way houses or electronic supervision are not provided for in the preparatory stage for release or on release.

4.4 Mecklenburg-Western Pomerania

Formal release preparations within the multi-agency framework of InStar (Integrated Offender Management) begin, depending of the length and kind of the sentence, twelve to six months before the prospective release. The division manager is functioning as a case manager in prison and is responsible for the release preparation process. One year before the release of the prisoner the probation service has to be involved. Prisoners are then either transferred to a special

preparation station of release or, should they be suitable, to an open prison. Depending on the needs of individual prisoners, probation officers can visit the persons they will be responsible for in prison. This is usually done at least six months prior to the scheduled time of release. In general, the probation officer meets the responsible prison officer and the prisoner at least once before release. They coordinate the release together. The frequency of contact is set individually. Continuous service and care are provided by law for those under probation or supervision of conduct. For released prisoners under supervision of conduct national law provides the possibility of electronic supervision. The use of half-way houses is laid down as an option in the prison code of Mecklenburg-Western Pomerania⁴⁰, but has so far not been implemented into practice.

Prisons work together with external services, private and public institutions, during the execution of the sentence and in the preparation process for release, e.g. in the areas of vocational training, school, social training, consultation, counselling and treatment programmes. However, all decisions related to of the prisoner's treatment before and after release rest solely with the prison and the probation service.

4.5 Associated partners (Belgium, Slovakia, Slovenia)

In Belgium, the beginning of the preparatory stage for release is not defined by law; however, in practice at least the assessment of the Psychosocial Service starts a few months before the offender can ask for unsupervised leaves, which implies that in many cases the assessment will start at the beginning of the sentence or shortly after. The release planning process begins with the release plan, which the offender has to formulate in the procedure of conditional release. This release plan is then being evaluated by the Psychosocial Service. The Psychosocial Service then advises the prison governor on the question of the release and its proposed conditions, who in turn is sending his/her advice to the Minister of Justice and the Court.

There are currently no halfway houses in Belgium. Electronic supervision can be applied as a conversion of the prison sentence into an execution of the sentence outside of prison under electronic monitoring six months before the earliest point of release on parole. The supervision is carried out by justice assistants⁴¹. There is

⁴⁰ Prison Act (Mecklenburg-Western Pomerania), s 42(3)(1).

⁴¹ Belgian equivalent to probation officers.

also a system of „home detention“, for which prisoners, serving a sentence of up to three years, are eligible two months prior to their earliest date for release on parole. In these cases the supervision is carried out by the prison administration in the first week and afterwards by the National Centre for Electronic Monitoring.

In Slovenia, sentence and release plan are combined in a “personal treatment plan”, which should take into account all recommendations contained in social work, psychological and pedagogic reports as well as other specialized assessments which are available. This means, that the preparatory stage for release starts at the beginning of the sentence. By law, the responsible centres for social work and other such entities must, in cooperation with the prison, prepare a programme of necessary measures for assisting convicts at least 3 months before release from prison.

During the prison sentence individual case managers (called adviser-pedagogues, who are usually pedagogues, psychologists or social workers) are responsible for the implementation of the personal treatment plan and the preparation of the prisoner for release. They are then assisted in the preparatory phase for release by staff of the social work centre, who are also engaging in direct contact with the prisoner. The amount of visits by a social worker in prisons depend on the prisoner’s personal circumstances or needs.

Half-way houses or electronic supervision are not provided for in the preparatory stage for release or on release.

During the sentence prisoners are supported by different NGOs, self-care groups (AA, NA) and other voluntary organizations and are supervised by social workers.

In Slovakia, the beginning of the preparatory stage for release is not defined by law, nor are there any standards or guidelines for it. As there are no case managers, educationists and social workers are mostly trying to prepare the prisoners for their release. Probation and mediation officers usually do not visit prisoners whilst they are in prison. There are also no halfway houses. Electronic supervision is currently being set up, but is not in practical use yet.

While NGOs are generally not involved in the work with offenders during prison sentence, prisoners are often supported and educated by spiritual groups (church congregations).

4.6 Summary

Release planning is reported to often begin at the start of the prison sentence, while the legal provisions only require it to begin some twelve to three months before release. Arguably, legislators have not correctly identified the necessary length of release preparation and should adjust statutory provisions to this good practice. Cooperation with public, and often also private, bodies outside the prison is existent, but should be further developed. To that end, a multidisciplinary approach, which is best pursued throughout the execution of the sentence, should be extended to a multi-agency approach towards the end, to allow for personal interaction between the parties involved. Personal continuity should also be emphasized in regard to the offender – early visits of his/her future case manager in the community are important for relationship building before the “release shock”. To reduce the latter, half-way institutions have long been recommended, but are so far only used in one of the seven examined states. However, there is a promising development in some European states to invest more into such institutions.

5. Aftercare (supervision and support) for high-risk offenders

Aftercare is the final step of transition management. It often consists out of the two elements of supervision and support, which should be sufficiently balanced, as there is clear evidence that a model of supervision which is solely directed towards control does not only not help to reduce recidivism, but also leads to an increase in the number of technical violations.⁴² Furthermore, aftercare should be obligatory for high-risk offenders and include private organisations as well as public institutions. Case management continues to be of importance, as it reduces complexity for the released prisoner and provides personal continuity throughout the process.

5.1 Estonia

The supportive aspect of aftercare is provided in Estonia by local municipalities, whereas the post-custodial supervision is carried out by the probation service. Estonia is one of two of the examined states, which have legal provision for the usage of a risk assessment tool during the probation/aftercare period. Probationers with a sentence exceeding one year are being risk-assessed according to the

⁴² Taxman, „No Illusion, Offender and Organizational Change in Maryland’s Proactive Community Supervision Efforts” (2008) *Criminology and Public Policy* 7(2) 275, 277f.

Probation Supervision Act. Upon return to the community the local police forces are informed about offenders in their district. Furthermore, the probation officer is entitled to receive and request information from police regarding probationers.

Since 2007 electronic monitoring is used after release on parole, where the prisoner has agreed to electronic monitoring; mostly for house arrests.

NGOs can be involved by local municipalities in the process of rehabilitation with services such as support persons, drug treatment centres, etc. This option of cooperation is, however, hardly used.

5.2 Finland

Only prisoners who have been ordered to undergo post-custodial supervision are covered by aftercare in Finland, which involves both control and support.⁴³ The supervisor at the Community Sanctions Office functions as the case manager in the community and supervises the fulfilment of the supervision orders. The social worker of the prisoner's municipality of residence takes care of planning the supportive aftercare and guides him/her to the services. Risk assessments (static factors, SIR-R1 and ARAT) and risk and need assessments are available for supervisors, but they have no own guidelines/standards for the definition of risk.

The police can assist the supervisor with appointments by providing safety, neutral rooms, etc. Police officers are also used as assistant supervisors with high risk offenders. In case of a suspected breach of obligations the supervisor can also receive information on the parolee from the police

Electronic monitoring is applied only within the "supervised probationary freedom" scheme.

NGOs provide voluntary support services on their own account, such as housing services, contact points or programs focusing on street violence (KRITS, Aggredi, C.R.I.S).

5.3 Ireland

The Irish Probation Service has responsibility for the supervision of offenders where supervision has been imposed by the sentencing court (Post Release Supervision Order), is a condition to a court order to suspend a sentence wholly or partially

⁴³ Lappi-Seppälä, „Imprisonment and Penal Policy in Finland" (2009) *Scandinavian Studies in Law* 54 333, 346.

under Criminal Justice Act 2006 s 99(1) or is a condition of a Temporary Release Order. It works in partnership with communities, local services and voluntary organizations and provides funding to over 60 community-based organizations, which are accountable to the Probation Service. The police are involved only in relation to the requirements of sex offenders under the Sex Offenders Act 2001 and a joint model of sex offender management (SORAM).

Electronic monitoring is only used in prisoner management during hospitalization and similar circumstances.

5.4 Mecklenburg-Western Pomerania

Due to the federal structure, various bodies with differing responsibilities are engaged in the rehabilitation process in the community. On the supportive side there are mixed federal-and-state agencies (employment agency), state bodies (schools, health institutions) and municipal organisations (social assistance office). The supervision is carried out by the probation service, if the prisoner is released on probation, and additionally the agency for supervision of conduct, if the prisoner has been ordered to supervision of conduct after release.

There are no provisions for risk assessment as such during the aftercare period, but federal law allows the court to impose, as a directive to an order for supervision of conduct, on an offender the duty to undergo psychotherapeutic or psychiatric treatment.⁴⁴

Cooperation between the police and the supervisory bodies (probation service, agency for supervision of conduct) has been established by a statutory regulation (FoKuS, "For optimized control and security"), in order to guarantee a swift exchange of information concerning the compliance with the imposed directives and obligations.

Electronic monitoring may be used where offenders are under supervision of conduct. In these cases GPS, and in regions with tunnels and buildings additionally LBS, is used. There is no electronic supervised house arrest.

There is an existing cooperation with non-profit organisations and local authorities on a contractual basis.

⁴⁴ Criminal Code (Germany), s 68b(2).

5.5 Associated partners (Belgium, Slovakia, Slovenia)

The Probation Service in Belgium is integrated in the Directorate General „Houses of Justice“, a department of the Federal Public Service of Justice. Every court district has a House of Justice with justice assistants to carry out the actual fieldwork. The justice assistant is being given a mandate by the Court of Implementation of Sentences at the moment at which the conditional release is granted. During the aftercare phase the justice assistant is the responsible case manager. He offers assistance and guidance in ensuring compliance with the imposed conditions and gains all relevant information according to his mandate, analyses it and informs the judicial authority. In doing so, he applies a restorative approach.

Behavioural rules imposed upon conditional release by the Court of Implementation are monitored by the police services.

Specific mental health outpatient services are being funded on the basis of a special agreement to carry out aftercare supervision for sexual offenders. Otherwise there are no specialized private aftercare services in Belgium. Involvement of NGOs/private aftercare services can take place, if demanded by a condition to the release.

In Slovakia, probation and mediation officers are carrying out the main work in the community after release. Due to a lack of state aftercare programs, however, their tasks are limited to monitoring and supervision, such as the control of compliance with the imposed restrictions and obligations. In this, they are assisted by the police. There is no link between state and private rehabilitation efforts.

In Slovenia, centres for social work, which are organised within the Ministry of Labour, Family and Social Affairs and equal opportunities, provide financial and social assistance concerning personal, family and employment matters, coordinate programmes and provide social care to released persons on a voluntary basis, except if the prisoner is released with the condition of post-custodial supervision. Those centres are organized, supervised and co-financed by the state.

NGOs, self-care groups (AA, NA) and other voluntary organizations are involved in the aftercare as well, even though the degree of their involvement is not specified.

5.6 Summary

In a number of states the tasks of supervision and support are split; while a state agency is responsible for the supervision, the support task rests with the

municipality⁴⁵. In this respect it is worth reminding that the respective bodies should be financially enabled to carry out their statutory task in order to prevent a lack of aftercare due to financial restraint.

Links to private organisations and NGOs have been found in the aftercare models of most of the examined states, but it appears that this cooperation could be intensified and structurally enhanced to maximize the rehabilitative potential.

The involvement of police forces is advisable only insofar as information exchange and a security support of supervisors is needed. There is no conclusive evidence, however, that would allow one to argue for an extension of competence of the police in this field.

B. Evaluation of the proposed best practices

In criminological research, the concept of “evidence-based” practices is oftentimes connected with the so called “what works”-movement, which focuses on experimental evaluations to proof whether a practice can be seen as effective or not.⁴⁶ One methodological challenge within this research line is that many programs or studies cannot be considered within this method of “synthetic review”⁴⁷, just because their evaluations do not employ some kind of control or comparison group. Therefore, we can only rely on an incomplete and inconclusive body of evidence when we look at resettlement programs and practices.

The public sector uses different concepts of “good practices”, for example stemming from international organizations. This methodology of identifying practices considered as being successful was initially put into work in the private sector under the name of “best practices”, with the objective of disseminating them in order to stimulate improvement.⁴⁸ This process has subsequently been extended to the public sector.

UNICEF, for example, defines “good practice” as “well documented and assessed programming practices that provide evidence of success/impact and which are valuable for replication, scaling up and further study”, adding that “they are generally based on similar experiences from different countries and contexts”.⁴⁹

⁴⁵ In relation to this, see B.6.2 for the best practice of a „community guarantee“.

⁴⁶ Sherman et al. 1997 and 2002, Farrington/Petrosino 2001.

⁴⁷ Petersilia 2004, 6.

⁴⁸ Brannan et al. 2008.

⁴⁹ UNICEF, „Evaluation and lessons learned“ (UNICEF, 3 October 2011)

<http://www.unicef.org/evaluation/index_49082.html> accessed 20 September 2014.

To translate this definition to the meaning of the JCN project would mean to define a program or project only as good practice, if there is evidence of success. Success in this regard can be public safety and prisoner rehabilitation or reducing recidivism.

Another more open definition for good practice stems from the identification of “good practices” in the field of education. Within the framework of the Decade of Education for Sustainable Development (DESD), the UNESCO has defined the concept of “good practices” as “initiatives, projects and/or policies”, closely related to the respective field, “that provide examples of practice, generate ideas and contribute to policy development”^{50,51} This definition does not rely on evaluation outcomes but is very wide on the other side.

As a definition of good practice for the scope of the JCN project, the decision was to label such programs, projects or strategies as “good practice” that mirror the results and principles of research on prisoner re-entry. That means that a “good practice” can be a program, a project or a strategy that implements the outcomes of re-entry research. Until the existence of positive and convincing evaluation outcomes programs or projects will be labelled as “promising”.

1. Legislation

The complex of legal matters in regard to the transition management of high-risk offenders was split into two subsections, of which “Legislation” is the first. Under this title the project partners discussed proposals for concepts they found necessary to be embedded in a legislative framework. Treatment of prisoners, their release and the organisation of aftercare were identified as necessary and respective proposals brought forward.

1.1 Work of the project group on this topic

There were a number of legal provisions from the project group member states, which were discussed during the workshops, concerning their potential to be formulated as a general recommendation. However, the different legal systems and unequal traditions in practice proofed to put a test to those proposals. In the end, the project group agreed on three concepts they found to be of such significance to the transition process that they should not be omitted and at the same time thought them to be transferable to the different legal systems.

⁵⁰ UNESCO, „ESD good practices“ (UNESCO, 19 September 2014)

<<http://www.unesco.org/en/esd/publications/good-practices>> accessed 20 September 2014.

⁵¹ UNICEF distinguishes between the concepts of „good practices“ and „lessons learned“ in that way that „lessons learned“, unlike „good practices“, result from “detailed reflections on a particular programme or operation” and can represent successes or failures.

1.2 Proposed best practices

The first concept proposed as a best practice in the field of legislation is the so called “community guarantee”. Community guarantee is a term used to describe statutory provisions in Denmark and Norway, which stipulate responsibilities of the competent state and municipal authorities to arrange services to released prisoners in the community according to their needs.⁵² The comparison between the participating partner states highlighted that in a majority of states the municipalities are, to a different extent, responsible for the prisoners support after release from prison.⁵³ Practice shows, however, that unclear responsibilities and a lack of cooperation from local institutions can constitute a significant hindrance in the process of rehabilitation in the community. This experience was shared by practitioners from all partner states and emphasised as a major problem.

To allow for a swift and comprehensive provision of released prisoners with the necessary services in the community, it is proposed to enact statutory provisions defining clear responsibilities for the aftercare of released prisoners and compelling the competent authorities to cooperate with the prisoners as well as all other agencies involved. At the same time the state should ensure that the responsible bodies are assigned the necessary funds to carry out their task as laid down in the law.

The second concept has been chosen from a proposal of the German project partner to include the so-called “socio-therapeutic units” into the model for transition management. This concept⁵⁴ combines a milieu-therapeutic prison regime with a wide range of psychotherapeutic, pedagogical and occupational therapy programmes as well as an inclusion of the social and personal environment of the prisoner. It is mainly directed towards the treatment of sexual and violent offenders.⁵⁵ While it was recognized during the discussions in the project that such a specialized form of treatment within prison could not reasonably be demanded as a minimum standard throughout all member states of the European Union, it should still serve as a “best practice” due to its desirable approach in the treatment of prisoners.

It is therefore proposed that legislator should define criteria for the treatment of offenders in prison, which should, ideally, be aligned with the concept of “socio-therapeutic units”.

Focussing on the end of the prison is the third concept, which has been introduced to the discussion by the Irish project partner. Temporary release is an Irish release scheme set up

⁵² In regard to accommodation: cf Danish Law on Social Services, s 80.

⁵³ cf A.5 (Aftercare)

⁵⁴ Reports of the project also refer to this concept as “specific treatment program”.

⁵⁵ Prison Act (Mecklenburg-Western Pomerania), s 17.

by the Criminal Justice Act, 1960⁵⁶ whereby the executive branch of government, namely the Irish Minister for Justice and Equality, is empowered to grant a (temporary) release from prison at his/her discretion at any time, without giving prisoners the right to claim early release.

1.3 Related research results

The effectiveness of the “community guarantee” has not been evaluated. According to desistance research supporting the released prisoner with good social structures such as housing, satisfying employment or drug treatment is seen as important. Building and strengthening environmental opportunities, resources and support should be as central to offender rehabilitation and reintegration as psychological treatment. It is seen as essential that the community outside supports and reinforces the desistance process of the released offender.⁵⁷

Evaluation studies have shown that the “socio-therapeutic units” have an at least moderate positive effect on reducing reoffending rates.⁵⁸

The concept of “temporary release” has not been evaluated yet. It is evident that building and strengthening environmental opportunities needs contact to the outside world. Contracts for work or rent can better be prepared outside the prison. In general evaluation results show that prison leaves and work release schemes can be efficacious in reducing recidivism and increasing employment rates.⁵⁹

1.4 Conclusion and recommendations

Community guarantee is a good example for how the responsibilities and measures in the community can be organized, structured and synchronized for a released prisoner. The aim is to avoid that anyone can fall through the social net. According to the experiences of the project partners such coordination is absolutely necessary and it helps to clarify the responsibilities for every stakeholder. Due to missing evaluation results, community guarantee cannot be labelled as “good practice” but from all we know we can label it as “promising”.

⁵⁶ Amended by the Criminal Justice (Temporary Release of Prisoners) Act, 2003.

⁵⁷ *Ward et al.* 2014, p. 1970.

⁵⁸ *Spöhr* 2009, 142 ff.; *Dünkell/Drenkhahn* 2001; *Lösel* 2001; 2012; *Lösel/Köferl/Weber* 1987.

⁵⁹ *Cheliotis* 2008, p. 166.

Socio-therapeutic units have positive research results and implement the RNR-model of *Andrews and Bonta*, which is seen as the “guiding principle worldwide” for prisoner treatment.⁶⁰ It can be labelled as “good practice”.

The temporary release scheme can also be labelled as “promising” according to research results that do see release schemes as effective. The Irish example allows for an increased amount of flexibility in the release planning process, while, in the absence of a fixed time for early release and a corresponding entitlement of prisoners, also causing danger of reluctance in the use of early release in regard to high-risk offenders. To reduce the risk of lowering existing standards of early release, it would be advisable to implement this concept only together with prescribed minimum terms for the consideration for early release as well as statutory provisions granting prisoners a right to early release on pre-set conditions as well as the right to a judicial review of the decision on this matter.

2. Court practices

“Court practices” forms the second part of the legal complex the project group was examining in order to find and formulate best practices. In this field the matter of release was revisited and concepts for supervision after release elaborated.

2.1 Work of the project group on this topic

Post-custodial supervision is a common denominator in the control-oriented part of aftercare in nearly all participating states. It was unanimously agreed during the discussions that high-risk offender should be placed under supervision after their release from prison and that sentence management should be directed at a form of release, which would allow for such supervision. There were, however, differing views on the point at which this kind of supervision should be ordered. While the Irish proposal is aiming at the possibility of ordering post-custodial supervision already at the sentencing stage, the majority of project partners objected a supervision order at such an early point and were in favour of taking such a decision only during the execution of the sentence, preferably towards the end of the prison term. Whether such a decision should be taken by prison administration or a judicial body was not agreed upon, as the legal systems and existing traditions were seen as being too different to formulate a uniform decision-making process.

⁶⁰ *Lloyd/Serin* 2014, p. 3303.

2.2 Proposed best practices

Firstly, it is proposed that a court should be able to subject prisoners to supervision after their release, if they are released after having fully served their sentence and given that they present a continuing danger to society. Provisions for such post-custodial supervision after a full execution of the sentence are existent in Estonia and Germany. In Estonia a court may order an offender, who has fully served a term of imprisonment of at least 2 years and has previously been convicted for an intentional offence with a term of at least 1 year of imprisonment, to undergo supervision in the community, if there are solid grounds to believe that the offender will reoffend. Similarly, in Germany an offender who has fully served a term of imprisonment of at least 2 years and has been convicted for an enumerated list of offences is subjected to supervision of conduct upon release. Here, however, the supervision is automatism as a consequence of statutory provisions requiring such supervision and not due to a court order.

As another court practice concerning supervision, the Irish model of the post-release supervision order was put forward as a proposed best practice. The post-release supervision order of the Sex Offenders Act, 2001, which can result in post-custody supervision of five years or more,⁶¹ is, however, imposed on an offender at the sentencing stage and does therefore contradict the project partners declaration to agree “that it is not timely for the court to take a standpoint on the dangerousness or need of intensive supervision of the offender at release because the risk of reoffending can change during a long prison sentence”⁶². The issue was revisited at the final conference of the project, where the inconsistency was resolved by confirmation of the aforementioned declaration and the subsequent de-listing of the post-release supervision order as a best practice.

The Finnish automatic release scheme⁶³ has been selected as third best practice of court practices. Automatic release is a release scheme whereby prisoners are released from prison after having served a fixed proportion of their sentence without individual assessment of risks or needs. This practice should be understood as an alternative to systems, in which the decision about an early release rests with a judge or parole board (or another competent authority) and based on individual risk assessment. The project group made no recommendation on whether such a system should be implemented discretely or along side a discretionary release system.

⁶¹ Irish Sex Offenders Act, 2001, s 16.

⁶² Report of the Third Workshop of the JCN project, p 3.

⁶³ cf A.2.2 (Early release in Finland).

The last best practice in the field of court practices are the information requirements set up by the Irish Sex Offenders Act, 2001. Under this legislation persons who are convicted of certain sexual offences are, once released, obliged to provide certain information, such as their name, address, residence, to the local police.⁶⁴

2.3 Related research results

In general, when implementing a model of post-custodial supervision states should consider a sufficient balance of control on the one hand and support and empowerment on the other hand. There is clear evidence that a model of supervision which is solely directed towards control does not only not help to reduce recidivism⁶⁵, but also leads to an increase in the number of technical violations.⁶⁶ Intensive supervision programs that are based on a human service philosophy and provide treatment to offenders offer more promising.⁶⁷

Scientific evidence shows that a prognosis of danger, which alone should give reason to post-custodial supervision, exceeding a relatively short prognostic period does not meet an acceptable level of accuracy.⁶⁸

Currently there is no empirical evidence supporting the transfer of information to local police service.⁶⁹

The Finnish automatic release scheme has not been evaluated as such. According to research results presented above (see 1.3) release schemes can in general be labelled as promising. Automatic release schemes are advantageous over discretionary release schemes when it comes to release planning. It is easier to plan the release and the transition to the community (including contracts for housing and work) if the day of release is predictable from the beginning of the prison sentence on.

2.4 Conclusion and recommendations

If prisoners present a continuing danger to society they must be supervised after their release. Research has shown that pure supervision in terms of surveillance is not effective in reducing criminality. Control has to be combined with support and personal contacts.

The implementation of a practice such as the information requirements set up by the Irish Sex Offenders Act, 2001 into other, especially civil law systems, would have to be subject to

⁶⁴ Irish Sex Offenders Act, 2001, s 10.

⁶⁵ Petersilia 2004, p. 6; Aos et al. 2006; McKenzie 2006.

⁶⁶ *Taxman* 2008, p. 277 f.

⁶⁷ *Lowenkamp et al.* 2010.

⁶⁸ *Nedopil/Müller* 2012, 363.

⁶⁹ For the negative effects of supervision entirely based on control, see footnote 58.

an increased scrutiny in regard to the competences of the agencies involved as well as to the indirect effects on the persons obligated by such legal provisions to ensure the protection of constitutional basic rights as well as the protection of data privacy of all persons involved. It would, therefore, in light of the aforesaid concerns be recommended to preferably examine the possibilities of an exchange of already existing information between authorities and the exhaustion of present competencies to acquire the necessary data before expanding those competencies.

3. Assessment

Assessment marks a cornerstone of high-risk offender management, because it provides the basis for the classification of risk in individual offenders and allows monitoring their risk level throughout the term of incarceration.

3.1 Work of the project group on this topic

Ever since the formulation of the RNR-model by *Don Andrews* and *James Bonta*, the identification of risks and needs have become a fundamental necessity in treatment-oriented sentence planning. With high-risk offenders, however, the emphasis tends to be more on the assessment of risks. The assessment of a “high probability [that an offender might in the future] commit crimes which may cause very serious personal, physical or psychological harm” constitutes what is referred to in this project as a high risk. The project partner discussed and brought forward proposals for an assessment process for high-risk offenders.

3.2 Proposed best practices

The core practice proposed and recommended for implementation in the field of assessment is a multidisciplinary risk and need assessment for high-risk offenders. To this end, the project partners have proposed the installation of a designated diagnostic centre for offenders having committed serious sexual offences, homicide or manslaughter and the use of a special assessment tool for sex offenders. Furthermore, the use of tools to assess the risk of harm, such as the Irish PS / Rosh⁷⁰, have been found to be of value in achieving valid and relevant risk assessments.

⁷⁰ Probation Service / Risk of Serious Harm.

3.3 Findings from scientific research

According to research, the most effective strategy for discerning offender risk level is to rely not on clinical judgments but on actuarial-based assessment instruments.⁷¹ Combining static and dynamic factors together gives the best picture of overall risk of recidivism and the most effective way to target criminogenic needs.⁷² But no assessment instrument has been proven to be perfect and there are always false positives and false negatives. Assessment tools can achieve better levels of reliability, if the staff is adequately trained on the instrument.⁷³ Risk assessment tools must be able to measure change over time.⁷⁴

3.4 Conclusion and recommendations

The use of risk and need assessment tools can in general be labelled as promising from a scientific point of view. A diagnostic centre with staff trained on the assessment instruments is insofar promising as a continuous occupation with this tool and the characteristics and developments of the specific group of high risk and long term prisoners will enable the staff to use the possibilities of the tools and make sure that change can be measured as well. Staff must be continuously trained on the tool and should be convinced on its effectiveness. It must be ensured that the results of the risk and need assessment are implemented into the planning and execution of the transition process and that prisoners receive the treatment they need.

4. In Custody

The treatment in custody is the first of the three stages of the phase-model of transition management. In-custody-treatment can support the reintegration process outside by preparing the prisoner for the challenges he or she will face after her release. Prisoners are oftentimes motivated to take part in such a treatment because they hope to earn privileges or early release. Long-term stays in prison may be used to qualify prisoners with several skills they might need in the community and to work on their deficits as well as resources in the areas of work or health. Several research approaches highlight that work after release might be seen as a protective factor against recidivism⁷⁵ and therefore schooling or vocational trainings, that are planned for a continuation outside prison, can increase the chances for a crime-free life after release. Transitional programs providing

⁷¹ Andrews/Bonta 2010.

⁷² Latessa/Lowenkamp 2005.

⁷³ Latessa/Lovins 2014, p. 4463.

⁷⁴ Andrews/Bonta/Wormith 2006.

⁷⁵ McKenzie 2006,

individualized employment preparation and services for high-risk offenders have been found to be “working” according to evidenced-based research approaches.⁷⁶

4.1 Work of the project group on this topic

Regarding the transition management for high-risk offenders, the project groups discussed a wide range of practices and ultimately focussed on sentence planning as well as multi-disciplinary treatment approaches for their proposals as best practices.

4.2 Proposed best practices

The first best practice is the set up of an overall sentence plan for the full length of the sentence and subsequently the development of a more detailed plan for a short-term phase, no longer than a one-year period, which is regularly updated. This could be achieved by implementing a system like the Irish Integrated Sentence Management System (ISM), in which an immediate first contact assessment and subsequent sub-assessments identify the needs of the prisoners and form the basis of a personal integration plan (PIP), which is reviewed every six months, and in which a community integration plan (CIP) is developed approximately nine months prior to release.

Quality standards⁷⁷ as part of a systematic and continuous diagnostic process for high-risk offenders during imprisonment form another best practice proposed for implementation.

Finally it is recommended that the process of transition from closed to open facilities should be managed by a multidisciplinary team.

4.3 Findings from scientific research

According to research results the continuity of services “through the gate” can be seen as important to follow up work begun in custody. Results suggest that pre-release work by professionals trained to address thinking skills and practical problems might be central to an effective resettlement strategy.⁷⁸ Therefore research results opt for resettlement programs that begin treatment in prison and provide continuity in the community.

⁷⁶ McKenzie 2006, Seiter and Kandela 2003, Lipsey et al. 1995.

⁷⁷ For a complete list of the proposed standards please see the answer of the German project partner in the questionnaire for the third workshop.

⁷⁸ Lewis et al. 2007, p. 34.

4.4 Conclusion and recommendations

Adequate planning structures enable to coordinate programs that start inside prison and continue after release. The Irish Integrated Sentence Management System (ISM) with different planning phases seems to be a promising practice and enables the staff to address the (changing) specific needs of the prisoner/released person at different levels. Comparable structures can be found in other countries. Quality standards make sure that the planning quality is not reduced to the good will of the single staff member and can be recommended as promising as well.

5. Preparation for release

The second of the three phases in the transition process is the preparatory stage of release. This stage is said to begin some time around one year to six months before release, but experts agree that a far earlier focus on the release process is necessary.

5.1 Work of the project group on this topic

There was a strong agreement in the project group that “all high risk offenders should be prepared for release gradually”. To this end, the use of prison leaves, open prisons, half way houses and conditional release schemes is strongly encouraged by the project group. Furthermore, the members of the project group highlighted the importance of a multiagency co-operation during the preparatory stage and provisions for continuity of care.

5.2 Proposed best practices

As a first best practice in this field it is proposed that preparation for release should be performed by a multidisciplinary team of specialists who were already involved in the sentence management, but should also be extended to a wider network of specialists and institutions outside of the prison in order to engage resources and means for cooperation. A pre-release consultation should take place and be carried out by the responsible case manager from prison and the corresponding probation officer. Furthermore, high-risk offenders should be subjected to a conditional release process involving the use of half-way houses.

This should be complemented by the second best practice; the supervised probationary freedom scheme from Finland. Supervised probationary freedom is a conditional release scheme under the responsibility of the prison and obligatory for prisoners serving full time for a period of at least three months. This scheme aims at allowing for the advantages of

conditional release even in those cases, where offenders have been ordered to serve their sentence until the end. Because the time spent under the supervised probationary freedom scheme counts as jail time, there is no legal difference to a sentence served fully in prison.

The third best practice is the German model for information exchange between prisons and probation service (InStar), which sets standards for the cooperation between both institutions to guarantee an easy and swift exchange of information. The probation service is involved already in the preparatory stage of release to coordinate the re-entry plan with the prison service and take responsibilities for the aftercare at an early stage.⁷⁹ The project also includes a multi-agency approach after release including different levels of supervision and support according to a continuous risk assessment.

The Irish concept of a multi-agency pre-release case management conference forms the fourth best practice in preparation for release. In it a case management conference involving all the competent authorities and institutions should serve as platform for a development of appropriate care and safeguards as well as interventions before the release.

5.3 Findings from scientific research

InStar could be classified as a „promising“ approach with regards to the evaluative literature in the United Kingdom, as well as the United States, concerning programmes such as the PPO strategy for prolific offenders⁸⁰ or the so-called MAPPA⁸¹, which include different supervision and monitoring arrangements of the Probation Services and the Police based on different risk levels of violent and sexual offenders.⁸²

Similar to InStar are a number of re-entry initiatives in the United States, among which is the so-called SVORI-project (Serious and Violent Offender Re-entry Initiative). In these initiatives the transition process is structured as a “a three phase continuum of services” beginning during the period of incarceration, with a peak of insensitivity just before release and during the early months after release and continuing for several years after release until “former inmates took on more productive and independent roles in the community”.⁸³

⁷⁹ Cf *Jesse/Kramp* 2008; *Koch* 2009.

⁸⁰ Prolific and other Priority Offenders Strategy, launched by the British Government in 2004, cf *Vennard* 2007.

⁸¹ Multi-Agency Public Protection Arrangements (Criminal Justice and Court Services Act 2000 [United Kingdom], s 67 and 68).

⁸² cf *Kemshall* 2007, 279ff.; Summary in: What works in prisoner reentry? *Petersilia* 2004; *Travis/Visher* 2005; *MacKenzie* 2006; *Moore et al.* 2006; *Solomon et al.* 2008; *Visher/Travis* 2012, 696f.

⁸³ *Visher/Travis* 2012, 697.

According to desistance research, the motivation to change is central for the desistance process.⁸⁴ Practitioners oftentimes report that offenders lose their motivation after their release from prison. Structures like the supervised probationary freedom aim to motivate offenders with an earlier release and then try to influence the rehabilitation while the offender lives “outside” or in a halfway house. This strategy can be seen as promising according to research results.

5.4 Conclusion and recommendations

Multidisciplinary team of specialists who offer a service “through the gate” by starting their work inside prison and continuing it in the community can be seen as very promising in terms of re-entry research results. The German structure of InStar can be seen as promising in this regard, so can the Irish concept of multi-agency pre-release case management conferences. The Finnish supervised probationary freedom scheme can also be seen as promising as it aims at motivating ex-prisoners who would possibly not have access to an adequate service outside or could have less motivation for receiving help after their release at the end of their sentence.

6. Community setting

The most important part for the resettlement process is the first time after the release from prison in the community. If released prisoners return to offending behaviour, they oftentimes do this within the first weeks after their release.⁸⁵ In case of high risk or sex offenders the community feels oftentimes very insecure if the ex-prisoner returns and state authorities want to monitor the first steps in freedom.

6.1 Work of the project group on this topic

The project partners greatly welcomed the Community Guarantee as an example of legal municipal responsibility for reintegration of former offenders and urged that local authorities should help released prisoners along this process. Furthermore, it was agreed that control and support should be well balanced in regard to post-custodial interaction with the released prisoner.

⁸⁴ McNeill, Maruna, Paternoster and Bushway.

⁸⁵ Jehle 2007.

6.2 Proposed best practices

The project group listed the concept of the “community guarantee”, previously mentioned under A.1.2, again in the section for community setting to highlight that both, legislation and practical implementation in the municipalities, are needed to reach the aim of this concept.

Another best practice is the German concept for optimized control and security (FoKuS). The “FoKuS”-concept aims at connecting courts, prisons, prosecutors, police and the state office for probation and supervision (including the department of probation services, agency of supervision of conduct and forensic ambulance) to allow for fast and direct exchange of information concerning the person under supervision, but does not provide additional competences for the authorities involved.

Post custody supervision as implemented in Ireland forms the third best practice example. This includes the post release supervision order, but also the post-custodial supervision as result of a partially suspended sentence.

The fourth example of best practice in aftercare is the Irish Sex Offender Risk Assessment and Management model (SORAM). In this model the risk assessment and management is carried out by a joint team of members from the police, the probation service, the children and family service (HSE) and the prison service. The aim is to create a joint approach in risk management and a common understanding of risk. Given its explicit focus on risk, this model causes considerable concern in respect to its effects on reoffending and its likely increase in the number of technical violations.

6.3 Findings from scientific research

Research results repeatedly highlight the importance of the reception by the society. In particular desistance research highlights the importance of social bonds and ties on the side of the offender and of positive attitudes towards the (ex-) offender on the side of the society and probation officers and/or prison staff.⁸⁶ Concepts like the community guarantee have not been evaluated so far but can be labeled as being promising because they support the continuity of care “through the gate” and make responsibilities and rights clear and comprehensible.

6.4 Conclusion and recommendations

Concepts like the community guarantee that seek to facilitate the offenders arrival in society and to make responsibilities comprehensible can be seen as promising approaches. The

86 Maruna, Paternoster and Bushway

strategy of FoKuS in Mecklenburg-Western Pomerania and the Irish SORAM aim at clearing responsibilities as well. But strategies like FoKuS, the Irish Post custody supervision program and SORAM also focus on surveillance. It might be inevitable in some cases of high-risk offenders to provide a functioning and elaborated system of control and surveillance, but the programs should consider the research results that are clear in manifesting that pure surveillance is not a promising practice and combine control with support wherever possible. Furthermore the programs have to avoid net widening effects or an increase of re-imprisonment due to technical violations. Evaluations of surveillance-led programs should carefully research such negative effects.

7. Conclusion

The working groups discussed a variety of practices on different levels of the reintegration process of high-risk offenders. What becomes clear is that in many aspects the estimated optimal transition management for high-risk offenders does not differ from the general concepts and structures for the reintegration of prisoners into the community. The mentioned programs and projects do all find a theoretical fundament in re-entry research. Because no project has been evaluated so far they can, according to the terminology of “what works” approach, be labelled as “promising” whereas according to the terminology of the public sector they can be labelled as “good practice”. The only question remains for concepts and structures in the community setting that concentrate on surveillance. Those projects must be combined with elements of support and safeguard the avoidance of net-widening unless they can be labelled as promising.

C. Process evaluation

The third part of this report will be reflecting the development throughout the course of the project and the implementation of the project’s agenda. For this, it will focus on the structure of each work stream and examine the methodological and organisational approach.

1. “Working out the Common Basis” (WS1)

The first workshop was designed to serve as a platform for the development of a common understanding. Room was given to present the definition and management of high-risk offenders in the partner states as well as to explain the execution of sentences and the release process in the respective states.

It quickly transpired that terminology and knowledge of existing penitentiary systems were important issues, as the project partners, given their respective national background, understood terms

differently or were not aware of current practices in other states. The project partners later acknowledged that this process had taken a lot of time.

In view of the fact that the time the project partners can spend together is a rather limited resource, it is recommended for further projects that information on existing practices and terminology, which is considered relevant to the subject of the project, be compiled and exchanged beforehand. This should help to identify the problematic issues whilst the planning phase and leave room to those critical points for the workshops.

2. “Transnational Comparative Analysis” (WS2)

The aim of the second workshop was to carry out a transnational comparative analysis of transition management strategies in the JCN partner countries. A pre-workshop questionnaire was used to gather information on the management of high-risk offenders from court to post-custodial supervision.

The participants reviewed the process of managing high-risk offenders with view to each national jurisdiction, thus allowing for a comparison of all existing practices in the partner states. This provided a better understanding of the differences in the management processes in all participating states and enabled the participants to articulate common needs and similarities in this field.

The working groups highlighted the areas and practices, which were seen as important by the participants for the development of a best practice model. Subsequently, a panel discussion examined the strengths and weaknesses in current practices, discussed needs for future development and explored concerns regarding certain practices. This provided the basis for the selection of specific practices at the third workshop.

3. “Best Practice in Transition Management” (WS3)

In the third workshop the project group aimed at identifying those practices that were both seen as effective and transferable to other states in order to later construct a common best practice model.

The project partners were asked by the hosting partner to bring forward one practice per each block, which was considered to be the best practice for this field, either of their own or of other countries’ practices. The hosting partner then listed those proposed practices as well as practices, they themselves had identified in the answers of the other project partners, as “good elements and principles” and put them on display for discussion during the workshop. Divided in working groups, the project partners then decided on which of the practices should be considered as “best practices” and therefore serve as basis for the development of a common best practice model in the next workshop.

From a scientific perspective, this process of determining “best practices” leaves room for improvement. At no stage was there a request for a minimum reasoning on why a certain practice should be considered as “good” within the framework of the project, nor was there any requirement to produce evidence for the assumed effectiveness of these practices. The lack of objective standards, to why a certain practice should be considered commendable, and the absence of minimum requirements for the proposal of practices result in a methodological weakness of the definition process.

It would be recommended that further projects refer set up such standards before the examination of practices and refer to the existing literature on best practices and transition management. It also should be clarified, if a “good practice” is based on evaluation research and empirical evidence or if theoretical knowledge and/or practical experience indicate that an existing practice might be judged as “promising”.⁸⁷

4. "Development of Minimum Standards and Best Practice Models" (WS4)

The fourth workshop focused on the development of a common best practice model and minimum standards for handling high-risk offenders.

Based on the results of the third workshop, the participants discussed the integration of the established best practices into a common European best practice model of high-risk offender management and the formulation of minimum standards for this management process. In four parallel working groups they expanded on the given best practices, put them into context and formulated principles deriving from these practices.

It should be critically noted, however, that the workshop did not differ between a best practice model and minimum standards, as originally aimed at. It would be favourable to distinguish between what the parties of the project see as being a best practice and where they draw the line of a minimum standard. This would help to implement the project's recommendations and separate the declared minimum methodologically from what has been defined as a preferable condition.

5. Final conference (WS5)

The final conference was directed towards the dissemination of the results of the project to a wide audience within Europe and beyond.

The project reached out to a great variety of parties involved in managing offenders all over Europe and also encouraged parties from other countries to join the conference. The conference, which took place on the 3 – 5 September 2014 in Warnemünde (Germany), was visited by over 400 participants

⁸⁷ cf Sherman et al. 1998; MacKenzie 2006; Visher/Travis 2012, 696ff.

from 34 countries. The conference offered, next to the presentations in the plenary session, four forums for the presentation and discussion of the project results. The presentations were greatly welcomed and the results endorsed by the audience.

The scope of the conference in regards to number and heterogeneousness of the participants can be said to present a great success in terms of dissemination. The forums offered the possibility to explore the results in depth and the organisational framework of the conference left enough room for the participants to discuss the input among themselves.

Summary and conclusions

The Justice Cooperation Network has analysed and compared four different states with their respective jurisdictions and prison regimes, trying to find common denominators in the transition management of high-risk offenders. While it became apparent that the approach towards high-risk offenders differs throughout the countries involved, resulting in a variety of practices in regard to the transition management of those offenders, there was a unanimous agreement on many core principals in this field among all parties. It is those principles that are reflected in the best practices that have been developed and discussed in this project. It is the hope of the project partners that these principles, through the implementation of the best practices, may find its way in many more transition systems in Europe.

The project, however, benefited not only from its transnational composition, but also the experience of the practitioners involved in this project. The Justice Cooperation Network created a unique room for the exchange of staff from prison and probation services across borders and allowed them to openly challenge each other's assumptions and conceptions on this matter. It is without doubt that each project partner has gained much valuable knowledge during the course of the project.

Yet, the end of the project marks only the beginning of the implementation of its recommendations. As a result of this project, legal provisions for the management of high-risk offenders within prison and in the community should be enacted, cooperation between responsible services in the transition process should be enhanced and the supportive side of aftercare should be strengthened, as reflected in the best practice of the „community guarantee“.

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