

19th Council of Europe Conference of Directors of Prison and Probation Services

Helsinki, 17-18 June 2014

SHARED GOALS, SHARED VALUES IN PRISON AND PROBATION

Conclusions of the General Rapporteur

Mauro Palma

Chair of the Council for Penological Co-operation (PC-CP)

Distinguished participants, Cher Philippe, Director General of the Council of Europe Human Rights and Rule of Law Directorate, and dear Esa, Director General of the Finnish Criminal Sanctions Agency, which efficiently and fairly hosted our annual meeting: these two interesting and useful days come to their end. Allow me to express the Council for Penological Co-operation's gratitude to everybody, but in particular, to those who presented their experience, research or study so enriching the exchange of views that is at the heart of these annual Conferences.

As you are aware – and it was underlined during these two days – this time the name of the annual meeting changed : to Conference of Directors of Prison and Probation Services (CDPPS). This change has the symbolic value of delivering a message of equivalence of the two modalities to serve a sentence or in some countries two different types of sentence. Although since 2004 Directors of Probation Services have been invited to the Conference of Directors of Prison Administrations, it was the first time that both prison and probation directors were together on equal footing.

Very often, on occasion of Conferences, symposiums and other meetings it is repeatedly underlined that the deprivation of liberty, the prison, should be a measure of last resort; that imprisonment should be limited to those who really deserve it due to the seriousness of the crime they committed or are suspected to have committed. Nevertheless most of the European prisons are full of individuals who committed minor crimes, very often a repetitive sequence of the same offence and we register the corresponding sequence of admissions to the prison and subsequent release. The shared characteristic of these frequent clients of prisons is their social weakness: their impossibility to make reference to any network of social support.

So, very often our overcrowded prisons are full of persons who have no house, who have mental disorders, who have committed many petty transgressions, in some countries often related to the irregularity of their presence in the state territory. And the time they spend in prison is rarely useful for avoiding the reiteration of the same misbehaviour once released.

The European panorama is uniform enough as far as the prisons are concerned: high percentages of addicts, strong presence of sick prisoners, high percentages of foreigners in Western European countries, overcrowding. Mr. Tapio Lappi-Seppala in his presentation examined the alarming trend of the prison systems in Europe over the past 20 years as the result of the penal policy adopted in a number of member states and unconnected with crime rates. And Mr. Chiaromonte reminded us about what overcrowding entails in a prison and its impact on the overall aim of imprisonment, involving prisoners' health and rights, staff working conditions, management, finances.

Fifteen years ago the Council of Europe adopted a Recommendation on how to reduce overcrowding in prison; ten years later, at the CDAP in Edinburgh, the state of implementation of the principles and guidelines of this recommendations was examined and the urgency of its full implementation was agreed by all the participants. It is time to significantly make steps forward in such a direction.

The principles affirmed in that Recommendation go to the direction of limiting the remand in custody, by developing and using a wide range of alternatives; increasing the imposition and implementation of community sanctions and measures; reducing the length of sentences and accompanying a prisoner in his/her reintegration process by resorting to conditional release as one of the most effective and constructive means of preventing re-offending and promoting resettlement.

Therefore emphasising the importance of the probation service means to remind all of us about the necessity to find the best sanction for each person who committed a crime, for his/her possible rehabilitation, so helping the social reintegration and diminishing the risk for the community at large. The best sanction is never the deprivation of liberty in itself without any support, without purposeful activities and education to a fit and healthy style of life. This principle should be taken into account both at the time of the judgment, when the type of the sanction (imprisonment or community sanction) and its duration are set and during its execution, by the so called "management of the sanction" which includes the possibility of release on parole and the perspective of being accompanied during the process of reinsertion into society.

For such a reason it is important to continue opening our Annual Conference to the contributions of prosecutors and judges who have the actual responsibility of adopting restrictive measures during the investigation as well as of deciding the sanction to be imposed. We invited Mr. Antonio Mura, Chair of the Consultative Council of European Prosecutors (CCPE) and Mr. Bart Van Lierop, Chair of the Consultative Council of European Judges (CCJE). We thank Ms Raija Toivianen for representing the CCPE at this meeting. Unfortunately the representative of the CCJE couldn't attend due to other commitments; the Chair expressed his personal interest and that of the CCJE to develop a discussion on the matter.

At the level of the Council of Europe the proposal to create a working group composed of actors of the criminal justice system – legislators, judges, prosecutors, prison and probation services – is on the table. And this is an important result of this meeting: the PC-CP is ready to play fully its part in that group.

However, as usual problems are less easy than they appear. As Mr. Lappi-Sappala observed, the positive development of a probation system and the increasing number of its clients doesn't imply *per sé* corresponding decreasing numbers of prisoners and Mr. Durnescu raised the problem of overcrowding even in the probation service.

Mr. Mc Neill referred to myths, realities and challenges of probation. As we already said, the first myth is that it reduces the number of prisoners. But the second concerns the support by society, which often is very keen to hold up restrictive measures: the myth is that if probation uses tougher methods it will get more support from society. A third myth is that probation is an easier sanction for an offender than prison. These three warnings should be taken into account when discussing prison and probation, their values and their goals. We need to be careful to effectively use probation as an alternative and not as a cumulative sanction. Probation should be a genuine alternative to prison and not a form of net-widening, which recalls the risk of extension of control systems that Michel Foucault studied a few decades ago.

The issue broadens the vision about the role, the content and the aim of penal sanctions that are behind a given penal policy. We should remember that the European concept of penal sanctions is not based on a principle of 'retribution' of the harm inflicted to the victim and to society by the offender. This 'retributive approach' to penal sanctions – present in other traditions – based on the symmetry between the crime and the sanction is not the paradigm of punishment as developed in the modern European context. On the contrary the sanction should be aimed at a positive result, to a possible utility: converting the harm caused by crime into something useful for the future: first of all the possibility of avoiding, or at least reducing, future offending (the so called deterrent function of the sanction) and second the possibility of future reintegration into the society of the person who caused harm to it. This is the 'utilitarian approach' to penal sanctions.

In Europe, we don't sanction a crime to give pain and suffering, although restriction or deprivation of liberty are themselves a matter of suffering; we sanction a crime and implement the sanction in order to heal the harm that the crime produced, to the victim as well as to the society, by finding ways to rework subjectively and collectively what happened.

I wanted to recall the foundation of the European approach to the questions "why to punish?" and "how to punish?", because the answers given to these questions emerged from the various presentations as the shared values to be affirmed both in the prison and in the probation services.

A specific issue was examined by some presentations: how to evaluate prison and probation services. Mr. Vesterbacka recalled that the common goal of these two services is trying to reduce recidivism and reinforce safety in society. Their ethical basis – despite differences between countries, legal systems and traditions – is the assumption of the ability of the individual to change. *Fair treatment* is the working method based on this professional ethics. Starting from these points the discussion on different systems of evaluation moves on.

The fact that several presenters discussed an evaluation project spreading in European prison systems (Ireland, Sweden, Norway, United Kingdom, Finland) on the quality of execution of prison sentences based on prisoners' and staff's surveys is very important as it shows the growing concern and need to evaluate how a prisoner feels inside the institution, his perceptions, distress and wishes and also what are the perceptions of staff compared to this. This is important because both offenders and society need to perceive the sanction as just, fair and humane. This applies equally to prison and probation. This is a real ideological change in the way of approaching punishment and its aim, and it would be very useful to adopt this approach in several countries and put on the agenda of a future meeting further discussion about the results of this internal evaluation.

This Conference presented a good mixture of speakers and contributions to the discussion – practitioners, researchers, representatives of prison and probation services and of all parts of Europe. The Conference tried to keep a good balance between theory and practice, between strategy, implementation and reliable evaluation.

As I already underlined Inviting judges and prosecutors is a way of seeing execution of penal sanctions and measures from another perspective and making it clear that the execution of sanctions and measures is part of criminal policy, that prison and probation are part of the criminal justice system. But it is also a way of sending messages back to the judiciary that as prison and probation is an important part of the criminal justice system; their voices need to be taken into consideration in deciding the penal policies of a given country. In particular it is a way of underlining that the main alarming problem affecting our systems – overcrowding – has to be dealt with through joint actions of all the actors of the criminal justice system.

At the Council of Europe level the dialogue between judges, prosecutors, prison and probation services started during one of the previous Conferences, held in Rome in 2012. In accordance with the proposal made by Mr Boillat at the present Conference, it should find its realisation in the working group I mentioned before to be convened at the Council of Europe level, based on sound comparative research and professional knowledge and data in this area. But it is important that such dialogues start in parallel at national level and also at local level to fuel the development of ideas in good practices. First instance courts and prosecutors know better the situation locally and can more easily and directly work with the prison and probation services which in turn need to establish good working relations also

with the local authorities and civil society (including volunteers) to successfully introduce more positive activities and a variety of interventions for better reintegrating offenders.

The PC-CP will continue offering its contribution as a think tank: networking, advising, spreading positive experiences and practices and assisting prison and probation services. The factsheets published on the PC-CP website will help knowledge and cooperation among the 47 Administrations. The aim is, as always, to find the right balance between control and care – not only as a guiding principle at the top managerial level but at every level of prison and probation work.

Not an easy task.