

Conclusions from the 28th Council of Europe Conference of Directors of Prison and Probation Services

Ladies and gentlemen,

We came to end of the 28th Council of Europe Conference of Directors of Prison and Probation Services, which took place in the beautiful city of Berlin and brought together more than 130 professionals from the prison, probation and criminal justice field.

During the last two days we all had the possibility to share experience, challenges and new opportunities, to create cooperation and friendships, to learn and to discuss our work and mission in the context of the new reality in which we live. The correctional sector has been affected more than ever by global threats, the COVID pandemic, the war in Ukraine, the polarization of the societies, the rise of radical movements, populism, conspiracy theories and the emergent dangers to human rights, democracy and rule of law – the core values of the Council of Europe.

In the same context, the State Secretary, Federal Ministry of Justice, Germany, Dr. Angelika SCHLUNCK, during her opening address highlighted the hallmarks of European democracy and the Council of Europe's most important task to promote human rights and the rule of law. We were reminded of the great achievements of the Council of Europe since its establishment in 1949, through its institutions, conventions and recommendations, particularly: the European Convention on Human Rights that still shapes our understanding of criminal justice today; and the European Court of Human Rights in its crucial role of guardian of fundamental rights and freedoms. Of particular importance to criminal justice is the European Convention for the Prevention of Torture, which established the world's first mechanism for visiting and inspecting places where persons are deprived of their liberty. Special emphasis was laid on the contribution of the Council for Penological Co-operation (PC-CP) through its recommendations and guidelines that set the framework and standards for modern criminal justice systems rooted in human rights. It was also highlighted that criminal law and criminal justice is being challenged within our own societies, populist and authoritarian attitudes are gaining ground and we are seeing the promotion of hate. This development has major implications for the criminal justice system in particular. Another challenge stressed by the State Secretary was the digital transformation and developments in artificial intelligence, which offers significant opportunities, but also raises some ethical and other fundamental questions.

In his opening address, the Deputy Secretary General of the Council of Europe, Mr. BERGE has drawn our attention to the Council of Europe work on new standards concerned with mental health, juvenile offenders, substance addiction but also some other recent challenges that our services are facing, especially at a time when European budgets are under pressure. He mentioned in his speech that changes to policy must be based on evidence and with the buy-in of experts, including judges, prosecutors, police, prison and probation services. The use of community sanctions and measures might not only ease prison-overcrowding, improve conditions and ease budget pressure but it might also lead to better outcomes in the reintegration context and reduced rates of reoffending. Restorative justice is one such alternative. This enables those harmed by crime and those responsible for it to participate actively in a resolution process through the help of a trained and impartial third

party. Such process should be voluntary, deliberative and respectful, focused on reparation and reintegration. On this, the Council of Europe agreed a Recommendation to member states developed by PC-CP, followed by a Ministers of Justice conference which further promoted this important recommendation and adopted the “Venice Declaration on the role of restorative justice in criminal matters,” making clear how and where this approach can work best.

The keynote speech presented an overview on the *Management of Prisons and Probation: New Challenges and Innovative Responses*. Nowadays we face many challenges like the consequences from the COVID pandemic, which caused enormous difficulties for the prison and probation systems around the globe and yet has provoked our ability to adapt. We still face economic and social disparities, climate changes, mental health issues, as well as changing geopolitical trends. These are not new but we have new insight, new ways in which we see them. More than ever, we recognise the urgent need to respond in innovative and creative ways. Technologies could be regarded as a solution, but they can also create new problems, like biases and possible discrimination based on gender and diversities.

More time needs to be dedicated to the importance to reconnect with the issue of ethics and values, because it seems that in prison and probation we spend so much time on technical issues. New solutions should be evaluated through their *effectiveness* – answering the questions what works and with whom?, *efficiency* – doing more with the same or even less resources; *economy* which is connected with the wider issue of *efficiency*, or simply said how much we spend for changes, compared to how much not changing may cost. After paving this turbulent route we return to ethics to remind ourselves that ethics are the pursuit of values such as justice, tolerance, decency, humanity and civility and should be part of any penal institution's self-consciousness and that those who lost liberty must keep their human rights during incarceration and after release, and even more valid they should keep the right for equal opportunities. Another point mentioned is that we should think carefully about legitimacy and the need to learn much more from people who are and have been subject to punishment. Legitimacy is achieved by being clear, accountable and open about what you are trying to accomplish and then by working well to achieve that. It is not achieved by making exaggerated and unrealistic claims. Legitimacy must be constantly cultivated through ongoing dialogue and negotiation – it is not something that should simply be ‘ticked in a box’ as established forever.

Penal institutions and practices declare to the whole society and to other countries about what is considered unacceptable but also about how we should respond to wrong doing, including our responsibility towards victims and to people who have committed crimes.

We had an extremely interesting presentation by Jochen GOERDELER who presented the ‘multiple personality’ of the German system, divided into Federal and Landers. Hosting more than 56,500 prisoners, Germany has a unique system according to which everything that happens in prisons is regulated by Landers. However, even with this kind of organisation, the shared aim of the German system is - to reintegrate the inmates back to the society as good citizens, to ensure sufficient and competent staff, to guarantee contact with the outside world and to strengthen cooperation and joined-up initiatives like national conferences and different administrative solutions. The overall goal despite the specific legislative and organisational infrastructure is to reduce and avoid prison sentences where possible, because the best prison sentence is the non-executed one.

WORKSHOP 1 was on MEDICAL CARE IN PRISON AND PROBATION SERVICES and incorporated: Remote Medical Care in the Penitentiary System of Bavaria and Baden-Württemberg Dr. med. Gregor GROß (Physician, Prison of Straubing) Martin FINCKH (Director General, Ministry of Justice and Migration Baden-Württemberg) and Dr. Guido ERNST (District Judge, Ministry of Justice and Migration Baden-Württemberg).

During the workshop, the developments in telemedicine in Bavaria were promoted, the project TEMPiS (Telemedical Project for Integrated Stroke Care; 2003) and the pilot projects for telemedical on-call service (A+ Videoclinic, 2019) were presented. But from 2020 telemedicine is part of the standard medical care. The benefits from telemedicine observed are based on the arguments that this service provides at any time access to physicians experienced in prison medicine, including vacation and weekend replacement of the prison physician, good reception services in facilities without a physician or limited physician availability, rapid availability of medical specialists and availability of services in foreign languages. The typical cases in which telemedicine is applied include those involving back pain, toothache, headache, urinary tract infections, addiction medicine, supervision of substitution medication, exclusion of myocardial infarction, guidance for first aid measures, psychiatric diagnostics, psychotherapy and recently drug-substitution.

There are also some limitations, for example: vaccinations, forced treatment, monitoring of patients restrained in bed, and integration of the telemedical physicians into the staff. It should be also taken into account that each institution has unique or special needs. Other challenges are related to data protection and the implications of missing interpersonal contact.

It was not disputed that the “golden standard” is to have a doctor on the spot, but when this is not possible, the telemedicine is a way to provide direct and timely medical care.

In the intervention dedicated to Forensic Aftercare: Mentally ill offenders after conditional release and supervision as a security measure, Dr. Alexander VOLLBACH (Deputy Director Department of Prison and Probation Service in Bremen, Ministry of justice and Constitution & Julia-Anna BRAND (Research Associate and Project Manager for the CHANCE Network at the Ministry of Justice of the Federal State of Bremen) stressed that those identified as a Mentally Disordered Individual (MDI) is a health problem affecting 30% of individuals in prison. Prevalence of psychiatric disorders among prisoners is higher, compared to the general population (with a range from 15% to 82% MDI, depending on the definition of mental disorder used, with higher rates of antisocial behaviour). Suicide is one of the leading causes of death in prison. According to Section 63 of the German Criminal Code and Section 64 of the German Criminal Code, offenders with underlying mental or substance use conditions related to crimes are placed for treatment in high-security forensic hospital sections and addiction treatment facilities. Offender who do not present mental condition in the sense outlined here are usually sentenced to prison. The number of released forensic patients dropping out of forensic treatment is increasing, particularly the numbers of offenders released according to the German Criminal Code. In such cases, they are released from the forensic hospital, as treatment is unlikely to lead to a reduction in dangerousness, which usually means that offenders will go back to prison. Also, a significant number of

offenders with a substance use disorder do not finish forensic treatment on a regular basis, as it cannot be assumed that the risk of relapse can be reduced by forensic addiction therapy – these patients are also referred back to prison. After release from prison, those released with mental health issues related to a risk of reoffending receive a court order for forensic aftercare. Individuals with mental health issues face additional challenges when released from correctional facilities compared to those without mental health issues. There is an increased risk of mortality, morbidity, homelessness and re-imprisonment. One big issue is the lack of forensic after care from prison and Probation Services. On the one hand there is an increasing number of court orders for forensic aftercare for offenders with mental disorder or a substance use order. These clients tend to differ from those who can be released on probation after finishing a regular treatment in prison or in the forensic hospital (conditional release). On the other hand in the Probation Service there is a lack of forensic after-care following the detention period and there is a lack of psychiatric follow-up in the judiciary. Attempts have been made to make improvements for all such deficits: e.g. the prison system started connecting with the After-Care-Project . New models of care have been developed to minimise this risk of deintegration and re-offending. Release planning has been introduced and is coordinated by mental health social workers with their knowledge of local service and support organisations. Multi-agency meetings chaired by psychiatrists and attended by health care prison staff are held, where medical care is organised. The CHANCE Project is a network of various stakeholders of the justice system and non-governmental civic society organisations providing systematic assistance to offenders in the process of rehabilitation and social reintegration.

The CHANCE network is a great way to address this problem. This also applies also to HEADS (for surveillance of sexual offenders with a high risk of reoffending) and KODEX network for disengagement of VEOs.

Another initiative mentioned in the presentation is the Circles of Support and Accountability – COSA. COSA is an innovative community justice initiative for post-release monitoring medium- and high-risk sex offenders in and by the community, founded on the principles of restorative justice in Canada 1994. Cosa-models can differ depending from the location and needs of the jurisdiction. COSA is volunteer driven and depend on establishing a relationship with the *core member* (the individual who has offended) that helps core members more effectively adjust to social and professional norms when returning to the community.

Main points addressed by Petr HNÁTÍK (Administrative Officer/Lawyer, Secretariat of the CPT, Council of Europe) were the medical screening upon admission and injury recording, equivalence of care, medical confidentiality, psychiatric care, prevention of suicide and self-harm.

An important focus of CPT assessment is the provision of health care services in prisons. One key aspect from the CPT perspective is recording of injuries. Injury recording – medical evidence for investigations into ill-treatment (by law enforcement officers, prison staff, other prisoners). This is explored using any statement made by the prisoner, objective medical findings, observations to the consistency of the statement and other findings.

He reminded us some of the key principles related with access to healthcare in prison, namely: Equivalence of care – conditions comparable to those in the community; Consent to treatment – general requirement to provide information and seek consent; Medical

confidentiality – confidential access, confidentiality of medical files, confidentiality of medical examinations; Presence of a person competent to provide first aid at all times (preferably a qualified nurse).

During the workshop on “the *ultima ratio* principle, or how to decrease reoffending” we heard three very interesting and complementary presentations.

The presentation made by Jo TEIN about Schleswig Holstein showed that starting from a positive cultural approach of the *ultima ratio* principle at the different levels of the criminal justice system can make a difference. It is due to the engagement of all partners, including governmental organisations, and NGO with good service delivery etc, as well as good legislation, which reduces the potential politicisation of criminal justice issues.

The presentation made by Fergus Mc Neill about the Scottish system showed how in a welfare state the penal population can raise due to a huge use of sanctions, including so-called alternatives to custody. The ‘pains’ of probation can be really underestimated. The question is to use sanctions with parsimony, proportionality and productiveness. If we want to reach long term results, it’s more appropriate to see the intervention of the criminal justice system as a dialogue instead of a monologue. It means that the person has to be at the centre.

In the Netherlands, Johan BAC told that their long history of probation allow them to rethink the penal system. The place of the victims, and of technology has had to grow up. Rethinking with the public is key. Therefore, a huge effort is done to contact the public, to explain the content of probation as for example by messages from 50 to 70 ‘ambassadors’ giving insight about their work. Another approach is to make the work visible also via life experiences shared with politicians or journalists.

Ms Frauke *Petzold* In her presentation on Restorative Justice and Victim Orientation in Prisons - how to develop collaborative pathways for victim-offender encounters, shared with the audience the work and activities carried out by Waage Hannover, an NGO established in early 1992. She underlined the importance of victim-offender mediation especially in cases of domestic violence. She underlined that to handle cases of serious crimes there are some key characteristics that need to be presented in order to create efficient and effective approaches, which includes the need of follow-up time, an adequate number of individual meetings and a good cooperation network.

As part of the intervention dedicated to “Restorative justice - whose responsibility is it?,” the presenters Ms Andrea Matoušková and Kateřina Šlesingerová presented the work in probation and prison in a slightly different way - from the perspective of the community of one city where they work, as well as from the point of view of the clients they work with - victims and offenders. They tried to answer the question of how we work restoratively more generally and whose and what is the responsibility in this context. Using the example of the creation of the first probation house in the Czech Republic, they shown how they present their work to the citizens of a small town, how they have broken down barriers, overcome prejudices and how they tried to teach their clients to be good neighbours and help build a calmer and safer community.

The third speech was from Arja Kontilla from RISE the Finnish prison and probation service. Arja talked about restorative justice as an innovative response to crime . She told that in 90% of the cases they handle the initiative comes from the offender and in 10 % from the

victims. When you start implementing restorative justice information and communication both inside and outside the organization is key. The Finnish experience is very positive, their experience is that where they implemented a restorative approach they have more engaged staff and better results in general. Arja finished with “you need to work step by step but every approach is better than nothing.”

Those who have committed offences of interpersonal violence, particularly sexual, domestic and gender-based violence, or who pose a risk of committing such offences, present particular challenges in relation to their assessment and management, in the community and in custody. This workshop heard presentations by Alessandra Pauncz (European Network for Work with Perpetrators [WWP]), Johanna L  th, (clinical forensic psychologist with the Swedish Prison and Probation Service) and also from two probation officers – Oliver Hackbarth (PO in Munich) and Philipp Stark (PO in Augsburg), regarding two community based intensive programmes for young people in Germany.

All of the presentations were related to perpetrators of violence and dealt with the complexities in relation to the provision of such programmes, including the needs of the victims and survivors of such crimes. Some of the issues discussed included mapping what is already being provided to perpetrators of interpersonal violence within national boundaries and when comparing different jurisdictions, as well as what has been found regarding the quality of such programmes, with reference to international standards and evidence-based approaches and service delivery. What works and particular models of service provision, including interagency cooperation, as well as developments in risk assessment, were discussed, as were the challenges identified. There was a particular focus throughout the presentations on the need to link programme delivery to evidence-informed best practice. Also the appropriateness of having an appropriate framework of service delivery such as that based on the risk, need and responsivity theoretical and practice model, was acknowledged. In addition, it was highlighted that there is a need to be positively-focused, promoting positive behaviour and attitudes, while being conscious of and developing interventions that address specifically identified risks and needs. Finally, the imperative to link all programme delivery and interventions with ongoing evaluation was highlighted in the workshop.

The first presentation on the topic “Drug use by prisoners and probationers” made by Prof. Dr. Mark STEMMLER (University of Erlangen-N  rnberg) & Dr. Johann ENDRES presented a study from Bavaria about comparing opioid-substituted and non-substituted prisoners following them for twelve months after release. The results shown more advantages for substituted inmates, but on another hand substitution is not a panacea because of little to no effects on use of other drugs (different to opioids), there are those, who receive substitution treatment, and use opioids nevertheless, there are problems with integration of daily substitution into everyday life.

Then we had a presentation on Joint survey of all German Federal States: Substance misuse by prisoners from Dr. Sharon JAKOBOWITZ. It is a joint survey in all German Federal States about Substance abuse by prisoners, commissioned by a working group led by the Ministry of Justice Berlin. The survey concept is based on abuse assessment using the International Statistical Classification of Diseases and Related Health Problems and the different responsibilities in the federal states: doctor, social worker, psychologist addiction counsellor. The limitations of the survey show lowest common denominator solution among federal states, different professions assess drug abuse or dependence differently, variations

in data collection and documentation of outcomes, limited reliability of substitution rates. What follows is the treatment acceptance to be measured and trained psychologists to carry out a diagnostic interview with a random sample of inmates in all Berlin prisons.

There was a very interesting presentation by Mr Denis Huber about the Pompidou group - the Council of Europe's drug policy co-operation platform with 41 member states, whose mission is to balance the interests of the community at large with protection of the individual's fundamental rights, in responding to drug use, risk of addictions and illicit trafficking in drugs. The Programme is based on the conviction that prison is not the best place for treatment. We are aware of the difficult situation prisons are in since there are a range of measures that could be achieved before sending a person in need of treatment into prison, such as referral to treatment, fines, restorative justice. But the reality is that in many countries people with drug use and addictions do end up in prison. As such, the Programme supports prison administrations and staff working in prison in implementing a comprehensive drug treatment approach. By comprehensive treatment systems they provide a menu of options for people with drug use disorders that includes clinical treatment, harm reduction measures and different psychosocial support to address their complex health needs. On the other hand, they to reinforce regional cooperation and capacities of professionals for implementing international health and human rights standards, for example in Georgia, Ukraine, Moldova, South-East Europe with work also started in Montenegro.

Mr Torben Adams from UNODC presented a more global picture on how the United Nations is thinking about resocialisation and reintegration and stressed the focus areas of UNODC namely reducing the scope of imprisonment and preventing crime, strengthening prison management and improving prison conditions, supporting the social reintegration of offenders and preventing recidivism. Member States around the globe face fundamental challenges to ensure the safe, secure, and humane custody of prisoners and to apply a rehabilitative approach to offender management. Twelve million people are incarcerated around the globe, many countries face the issue of extreme overcrowding, with more than 120 % over the capacity, which does not allow proper rehabilitation interventions to be applied because only safe, secure, and humane prison environment provides foundation for such interventions. The importance of staff has been highlighted as a crucial element of the relevant national architectures. Another key area which requires more investment is the rehabilitation and reintegration, we should never forget that every prisoner today is our future neighbour.

Ms. Vesna FERENČIĆ from Croatia presented the perspective of the probation service in the context of social inclusion, challenges and examples of good practices. Probation service in Croatia has been established since the probation law introduced in 2009 but the real start was in 2011 when the probation services started working. As usual, the probation law has been amended during the years and currently there are in total fourteen probation offices in Croatia. More innovative initiatives are being sought, which address the issue with particular vulnerabilities and marginalisation. One such project is the Roma Mentors, oriented to help and support members of the Roma community to cooperate with providers of other professional services, to help members of the Roma community in communication with the authorities, institutions (and *vice versa*) also to motivate members of the Roma community to fulfil their obligations (execution of alternative sanctions, regular schooling, etc.). The project is a very good example of interagency cooperation between prisons, police, state

inspectorate, social services and other stakeholders and could be easily transferred in other probation practices in Europe.

A very interesting example of the largest open institution in Europe was presented by Kerstin HÖLKTEMEYER-SCHWIC. It was really interesting to learn about the special features of the open imprisonment system, which include: an employment rate of 95%; possibility of regular employment / continued employment; approximately 80% of prisoners work daily in companies located in the vicinity of the branches and prison buildings; collaboration with around 730 companies in the OWL area; and that every prisoner should be released through the open imprisonment system which offers the best way for prisoners to gradually and realistically reintegrate into society.

CONCLUSIONS

1. Medical care is an urgent and challenging matter in all the European prison services. On the one hand, this is because the prisoners become more and more burdened with physical and especially mental health disorders and on the other hand, there is generally not sufficient medical staff in the prison services. Medical care problems are likewise to be found in the probation system. Urgent measures are required which should be properly integrated in the correctional environment.
2. The rates of psychological and psychiatric disorders in prison and probation is increasing, which calls for new mechanisms and understanding among the criminal justice system and different stakeholders about the treatment of those persons, especially valid after release from custody.
3. New after care interventions upon and after release should be designed in order to reduce or prevent future risks and strengthen opportunities for normal life in society.
4. Drugs in prison and probation populations represent an important issue, as a large part of those populations use (or have used) drugs and many suffer from health problems related to their former or current drug use. Appropriate interventions to prevent and reduce health and psycho-social problems related to drug use, especially among people in prison are needed.
5. "Without justice there is no Peace": we should develop and maintain clear criminal justice systems to guarantee that the criminal law will not lose its legitimacy.
6. The digital transformation and staggering developments in artificial intelligence are affecting the prison and probation services, just as they are affecting all other areas of society. This offers significant opportunities, but also raises some fundamental questions. With increased surveillance and predictive technology, how, for example, can we ensure that prisoners' data are protected – their right to private life respected – and their human rights upheld more generally? In this respect, the Council of Europe is at work on a Convention that will set out a general framework for the design, development and application of AI in line with our standards and specific recommendation on the ethical and organisational aspects of AI use by prison and probation services.
7. The staff remain the most important foundation for the effectiveness of our correctional services. Unfortunately, the prison profession for example is not perceived in many jurisdictions as prestigious and attractive. In many cases, the value and importance of that work is underestimated by society and policy makers. More

investments and support should be provided for staff, especially those in uniforms. The profession should be promoted and understood as important for the safety and security of the State and the whole society.

8. Transforming corrections requires transformational leadership, able to reflect the new challenges and to create change in the organisation and creating an inspiring environment for prisons and probation staff .
9. Human rights, Democracy and the Rule of law - values that need to be actively protected in a Europe where these values are now challenged in many countries.