



Treatment, transition management and re-integration of high-risk offenders in Europe – results of a comparative project

Prof. em. Dr. Frieder Dünkel

Professor and chair of Criminology, University of Greifswald

1. Introductory remarks

Treatment, transition management and re-integration into society are the task of prison and probation administrations. In certain cases, the police are also involved in the supervision of released offenders, in particular if they are subject to electronic monitoring. The paper deals with the results of an EU-funded comparative European project on identifying good practices of transition management and re-integration of high-risk offenders in Germany, Estonia, Finland and Ireland.

The re-integration of high-risk offenders is one of the major challenges for the criminal justice system. All criminal justice systems in Europe provide mechanisms for the re-integration of so-called dangerous or high-risk offenders as an important if not priority objective of punishment. The present paper is based on an internationally comparative project on the treatment and transition management of high-risk offenders in Europe. The project was funded by the Criminal Justice Programme of the European Commission (JUST/2011/JPEN/AG2943) during the period 2012-2015 (see *Dünkel et al.* 2016; 2016a).

Since the early-1990s discussions about increasing rates of sexual and violent crimes took place. The *Dutroux*-case in Belgium was a landmark for the “punitive turn” in crime policy and sentencing practices in the following years. Germany expanded the so-called preventive detention (*Sicherungsverwaltung*), an indeterminate imprisonment for dangerous offenders after they have served their determinate prison sentence. But the European Court of Human Rights (ECtHR) and the German Federal Constitutional Court (FCC) outlawed some of the law reforms with the result that so-called dangerous offenders had to be released. The motivation for coordinating the project by the Ministry of Justice of the Federal State of Mecklenburg-Western Pomerania was to find models for the treatment and transition management including after-care supervision of high-risk offenders.

The definition of high-risk offenders is not always clear in national legislation. For the present project the partners came to the following conclusion: “A high-risk offender is someone who presents a high probability to commit crimes which may cause very serious personal, physical or psychological harm”. Therefore, the project focused on (recidivist) violent and sex offenders.

2. General results

The results of the project were presented under 4 aspects. The first issue was the question of legislation covering all aspects of treatment in prisons or institutions, the transitional phase of preparation for release, the decision making for early release and the aftercare support and supervision. So, special emphasis was given to best practices concerning the treatment inside prisons (sentence plan and treatment programs), the transition management (preparation for release, early release schemes, through care) and on aftercare services and supervision of high-risk offenders (probation service in a multi-agency approach, community guarantee, see 2.1).

The project partners further discussed “good practice” experiences in the area of high-risk offenders, which are summarised under “case studies” below (2.2).

2.1 Legislation and practice concerning the treatment and transition management of high-risk offenders

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

As to *treatment inside prisons* it was agreed that *socio-therapy* for high-risk offenders is a promising model of preventing re-offending. There is empirical evidence that socio-therapy “works” (see in particular the chapters of *Pruin* and *Feelgood* in *Dünkel et al.* 2016; 2016a).

Socio-therapy is an integral part of a prison system based on the goal of rehabilitation (“resocialisation”). Sentence planning, risk assessment, socio-therapy, preparation of release, early (conditional) release, continuity of care are core elements of such an approach, which should be laid down by substantive prison law. Socio-therapy is executed in special units and comprises a range of rehabilitative measures. Other principles of punishment such as incapacitation and deterrence also for high-risk offenders are no acceptable solution as sentences such as “life without parole” would constitute a violation of human rights principles (according to the German FCC and also the ECtHR in the case of *Vinter et al. vs UK*, judgement of 9 July 2013).

High-risk offenders should be subject to a specific prison regime with a therapeutic approach. In this, their specific risk of re-offending, criminogenic needs and responsivity to certain treatment modalities (see the RNR-model) should be considered and an increased effort towards rehabilitation (“resocialisation”) through (preferably) cognitive-behavioural therapy in a milieu-therapeutic environment should take place. This includes provisions for a gradual return of the prisoner to life in the free society by prison leaves, work release, open

facilities and other temporary release schemes and the orientation at early/conditional release with an intensive aftercare.

As to the *preparation for release* (prison leaves, relaxations of the prison regime) it was agreed that an intensive preparation for release for high-risk offenders is a promising model of preventing re-offending and improving social reintegration. There is empirical evidence that a gradual transition scheme of preparation for release combined with early release (see below) and aftercare “works”.

The following principles should be laid down by law: The planning for (early) release must be organised in due time and give also for high-risk offenders a concrete perspective for the time of release and for the period of aftercare supervision. Prison leaves and other forms of temporary release are an essential part of a gradual return of the prisoner to life in free society. The criteria for granting such releases should be less restrictive the longer the stay in prison lasts. Particularly in the last phase of the sentence the prisoner should have the right to be granted temporary releases, except if he/she presents a serious danger of committing very serious crimes against other persons. These principles should apply also to high-risk offenders. The criteria and legal conditions should be regulated by substantive prison law. The competence of decision-making should be given to prison governors or prison authorities in general (with the requirement to consider the expertise of psychologists or psychiatrists). There must also be a right to immediate judicial review if such necessary forms of preparation for release are denied.

It was further agreed that *early release* for high-risk offenders is a promising model of preventing re-offending. There is empirical evidence that a systematic preparation for release combined with early release schemes, support, and control by aftercare services “works”. This is in particular the case if there is social re-integrative support provided by probation and aftercare services (in many countries this support is linked to conditional early release, while fully serving the prison sentence would result in a lack of such support; electronic monitoring then is also no solution, as it is restricted to pure control ideas and not social re-integration). Legislation should also define the criteria for “good prognoses”, preferably in a way that gives priority to an early release in the situation of uncertain prognoses (“*in dubio pro libertate*”). A “good practice” model of legislation is a regular early release scheme as provided in Austria as it allows the supervision and control after release through directives including – if necessary – electronic monitoring etc. The Finnish legislation and practice can also be seen as a model of “good practice”. Offenders can be “tested” in a six-month period before the early release date by granting them a temporary long-term stay outside prison (living in half-way houses or other accommodation facilities with intensive care and supervision).

It is agreed that *post release supervision* for high-risk offenders is necessary and that there are promising models of preventing re-offending and improving the social integration.

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

Furthermore, legal provisions should regulate the dissemination and exchange of information regarding the supervision as well as clearly define obligations of the person under supervision to submit information to the competent authority for this purpose. When acting upon this information, authorities should be legally obliged to consider the effects on the rehabilitation of the supervised person and the protection of potential or former victims. All obligations and directives imposed on the offender under supervision must have the primary aim of rehabilitation and pure control measures should be excluded. Electronic monitoring is only advisable as an exceptional measure and only if it is combined with intensive support and care by the probation and aftercare services.

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

As to the organisation of *post-release services* it was agreed that the delivering of these services concerning accommodation, employment, social welfare aid, etc. for high-risk offenders is necessary and promising for preventing re-offending and improving social integration. Such aftercare services can “work”, particularly if they are structured by a network of intensive co-operation (multi-agency approach). All competent authorities on the local level (state and municipal institutions) should be obliged by law to provide the necessary services to released prisoners according to their needs, which was discussed under the headline of “*community guarantee*”. Legislation shall also define the necessary measures, the competent authorities and the right of the released person to demand these services right in advance, i. e. already during the custodial phase. Legislation should set out such guarantees in the laws regulating communal/local competences and duties and also in laws regulating the obligations of after-care services (e. g. probation services) as well as of local agencies involved in the reintegration of released prisoners (job centres, accommodation services, health care services etc.). Good practice models can be found in Denmark, Norway and the Netherlands.

2.2 Case studies on Estonia, Finland, Germany and Ireland

It was difficult to identify really “good practices” in *Estonia* that has been criticised by the so-called Torture Committee (CPT) for its excessive use of isolation cells for disciplinary reasons. In particular, high-risk offenders are suffering from the conditions of a very strict prison regime. However, one positive aspect was that the preparation for release is provided by special case managers. Risk assessments take place also in the aftercare situation (for those conditionally released). Conditional release can be granted earlier if the offender agrees with electronic monitoring. Major problems were the poor prison conditions and that there is a lack of systematic through care. The probation service is in a developing stage, police supervision after release is still of importance.

In contrast *Finland* provides a system of gradual transition and increased liberties in the course of the execution of sentences, which are seen as a normal part of the sentence enforcement also for high-risk offenders. Sentence and release plans in cooperation with the aftercare services have been implemented (multi-agency approach). 40-44% of prisoners are transferred to and released from open prisons. Electronic monitoring is used to control prisoners when being on prison leaves (“supervised probationary freedom” or “temporary release”). Early release is granted almost automatically (99%), a phase of temporary release (up to 6 months, before early release after one half or two thirds of the prison sentence) serves for the preparation of release and re-integration into daily life outside prison; it can be electronically monitored.

In *Germany* socio-therapeutic treatment units in prisons have been established, which – according to several evaluation studies – have contributed to a reduction of re-offending rates and to a better re-integration into society. They can be judged as a “good practice” as well as models of transition management (e. g. InStar Mecklenburg-Western Pomerania), where the probation services are included into the preparation of release work latest 12 months before release. The sentence plan at the beginning of the execution of a prison sentence is further developed to a re-integration plan 12 months before release. Prison leaves are an integrated part of the preparation for release (with very good results with prisoners’ compliance). Conditional early release with probationary support and through care are further corner stones of this model.

Those inmates fully serving the sentence will get a supervision of conduct order, i. e. social work support and control, in rare cases electronic monitoring. Only about 60 cases out of 35,000 supervision of conduct cases are under electronic surveillance. In these cases, police are also involved in the control mechanisms of EM.

Ireland had a problematic practice of isolating high-risk offenders (up to 23 h per day in their cells), which was criticised by the CPT. The numbers of such isolated prisoners have

been reduced by 80% and also the number of prisoners with reduced times of joint activities with others.

A good practice is the “integrated case management” in co-operation with the probation service (12 months before release). 9 months before release a “Community Integration Plan” has to be developed. The Probation Service works in cooperation with local services (multi-agency approach). The Police are only involved in sex offenders’ release and aftercare management (SORAM), but no electronic monitoring is provided.

3. Conclusion

According to a European basic philosophy and constitutional requirements (in Germany the principle of resocialisation, rehabilitation as a human right) high-risk offenders must be prepared for a life after release from prison. All principles of effective offender treatment (RNR) apply also to high-risk offenders. Further promising approaches are the “Good-lives”-model and efforts to strengthen the capabilities of offenders (focus on the formulation of positive goals, see *Feelgood* in *Dünkel et al.* 2016; 2016a).

As to the institutional setting inside prisons or other institutions (psychiatric institutions, preventive detention etc.), high-risk offenders should as far as possible be integrated in “normal” prison regimes with as much of contacts and meaningful activities as possible (also with the outside community). Isolation and segregation are acceptable only temporarily and for the shortest time period as possible.

Guidelines should be the standards as formulated by the Council of Europe for long-term and “dangerous” offenders (Rec (2003)23 and Rec (2014)3). The principles of normalisation, of dynamic security and of intensive support and supervision in the transitional and post-custodial phase are essential elements for a successful re-integration of high-risk offenders. The role of the police and of technical forms of social control should be of minor importance. Electronic monitoring should never be a stand-alone sanction or form of supervision.

References

- Dünkel, F., Jesse, J., Pruin, I., von der Wense, M. (2016) (Eds.): *European Treatment, Transition Management, and Re-Integration of High-Risk Offenders. Results of the Final Conference at Rostock-Warnemünde, 3-5 September 2014, and Final Evaluation Report of the Justice-Cooperation-Network (JCN)-Project “European treatment and transition management of high-risk offenders.”* Mönchengladbach: Forum Verlag Godesberg.
- Dünkel, F., Jesse, J., Pruin, I., von der Wense, M. (2016a) (Eds.): *Die Wiedereingliederung von Hochrisikotätern in Europa – Behandlungskonzepte, Entlassungsvorbereitung und Übergangmanagement.* Mönchengladbach: Forum Verlag Godesberg.