

Report

CEP Workshop
London, 3rd – 4th July 1998

Implementation of European Rules on Community Sanctions and Measures

In October 1992 the Committee of Ministers of the Council of Europe adopted Recommendation No. (92) 16 of the European Rules on Community Sanctions and Measures which sets out international norms for the creation, imposition and implementation of these sanctions and measures.

In view of the developments which have occurred in member States in the use of community sanctions and measures, the Committee of Experts on the Implementation of the European Rules on Community Sanctions and Measures (PC-ER) have instituted a review of the operation of Recommendation No. R (92) 16 (PC-ER 16).

The CEP, represented by Breidge Gadd (Chief Probation Officer, Northern Ireland), has observer status on the Committee of Experts. A workshop was held in London from 3rd – 4th July 1998 to enable the CEP to make a well informed contribution to the review of PC-ER 16 based on a practitioner perspective. The workshop was attended by representatives from member in The Netherlands, Ireland, Portugal, Germany and the United Kingdom. It is envisaged that a further event will be held for representatives from member States in southern Europe.

Workshop Report:

Introduction

John Walters (Member of CEP board) identified common trends across Europe:

- Crime rates are falling;
- Prison rates are rising;
- Probation officers are becoming more expert.

Update Of The Council Of Europe Committee

Breidge Gadd reported on the progress of the review of PC-ER. The Committee of Experts has sent a detailed questionnaire to all member States. The Committee aims:

- To see how far countries are following the European Rules on Community Sanctions and Measures (CSMs)
- To establish a basic set of knowledge about the work of probation services in Europe
- To produce a good practice guide based on evidence of good practice throughout Europe

Key Themes for the Workshop:

- The relative importance of public protection as opposed to reform of the individual;
- The importance of reparation as a CSM. Victim satisfaction as an effectiveness measure;
- The extent to which surveillance alone (without a programme of supervision) can be seen as a legitimate CSM;
- Effective practice; optimising assessment to maximise effectiveness;
- Consent and voluntary participation;
- Complaints;
- The relationship between probation, the judiciary, the police, the administration.

Crime Figures, Rates of Imprisonment and Use of Community Sanctions Throughout Europe

Graham Smith (Chief Inspector of Probation, UK) raised the following points:

- Is it possible to have a consistent set of principles across a whole range of systems?
- Prison overcrowding is a major reason some countries are interested in CSMs, rather than humanitarian reasons. There are only two countries where prison overcrowding is not a problem (Finland and Slovenia).
- Different countries see things differently. Within Europe it is possible to distinguish between countries with highly developed CSMs, those who were developing CSMs, those who were at a beginning stage and those who had no CSMs at all.
- The Nordic countries, Southern European countries and those from Eastern Europe have very different traditions.
- In some countries the prison system is much more closely linked to probation than in other countries. This is however not related to the degree of development of CSMs – no universal principle can be drawn from this.
- There is a common enthusiasm across Europe for CSMs. Community sentencing survives as long as it gives the community something it values.

Discussion:

Wolfgang Rau (Council of Europe): The Council of Europe is unlikely to propose one model. There are however some basic principles – it is crucial to have an infrastructure to support CSMs. It is important that the law is not so prescriptive that there is no room for experimentation.

Peter van de Laan (The Netherlands) said research should look at 3 different aspects of CSMs:

- The programme of work undertaken (contract/ length/consent)
- The process of implementing the CSM (integrity).
- The outcome in relation to re-offending and in relation to victims.

There are methodological difficulties in research. It is difficult to measure the impact on re-offending. Also more new laws create more new offenders.

Trends in Crime Rates in Europe

The Council of Europe aims to collect comparative data about the use of CSMs and imprisonment.

Netherlands: Crime rates have been stable since 1993/4 except in the area of violent crime which have risen. However rates of imprisonment have increased and the overall length of sentences have increased over 10 years from 4.5 months to 7 months. CSMs doubled to 1996 but have been stable since.

United Kingdom: Crime rates have similarly stabilised except for violent crime. There has been a significant growth in CSMs. Detection rates have gone down.

Within prisons there is greater evidence of social exclusion - more foreign nationals imprisoned for drug-related offences.

Finland: There is more consistency about the presentation of crime.

Germany: Resources are decreasing and probation staff caseloads are growing (average caseload is 75 cases). Prison overcrowding in Baden-Wuerttemberg in S. Germany has recently been tackled by halving the amount of time spent in prison for non-payment of fines.

N. Ireland: Organised crime is the hardest area for probation to deal with, partly because such offenders are not motivated to change. Stronger legislation to protect the rights of defendants reduces the numbers being processed by the police, which increases community tolerance of paramilitary beatings of persistent offenders.

Issues:

- Negative impact on public opinion about CSMs caused by high profile events (e.g. the Bulger case in Britain; use of CSMs for celebrities in Netherlands).
- Public hysteria.
- Staff believe offenders are becoming more dangerous – is this the case? We are better at predicting dangerousness.
- Implications of health policy and the closing of psychiatric institutions. Problems caused by cases being identified as "untreatable" and resultant difficulty in finding secure placements. Health services are not engaging with dangerous disturbed individuals.
- Impact of changing the rules about disclosing information to the public about dangerous offenders (e.g. in the United States);
- Increasing numbers of refugees in detention. Stress suffered by refugees.
- Race dimension – social exclusion.

Reparation and Victims

Graham Smith outlined points highlighted from the questionnaire responses:

- Reparation is an important feature of Central and Eastern European systems – even those where CSMs generally are under-developed (e.g. in Lithuania compensation, victim-offender mediation and restitution have a high profile).
- Some more developed systems have lost reparation, although it has attracted increasing focus.
- Public opinion is assumed to be favourable to reparation whereas the attitude to CSMs is assumed to be indifferent.
- What place do victims have in the system? What information should they receive? Should probation be involved with victims?
- Victims include victims of domestic violence. Many offenders have been victims already and will be again, because of their lifestyle and where they live.
- Victim issues are central to public perception and approval of CSMs, hence the political value of moving towards victims.
- There can be resistance from victim support, but many victims want probation involved.
- Victim-offender mediation is stronger in Central and Eastern Europe with a greater focus on the victim.

Discussion

- In the Netherlands the focus is on offenders. Other organisations deal with victims. Legislation for CSMs is based upon assumptions (possibly mistaken) about victims.
- In Austria work with victims takes place prior to the court case and prosecution is suspended.
- In Switzerland offenders have to give one third of their prison pay to the victim. If there is no clear victim, the money goes to a central fund for social causes.
- Victim-offender mediation has often developed from an offender focus, especially in juvenile justice. Research has shown that at times the victim has not been able to assert their consent or non-consent to the process.
- **Principle: Primacy of the victim. It is essential that the interests of the victim are secured.**
- Should offender participation also be voluntary? In Germany the offender's consent is not required.
- In Ireland there has been a national review which has shown that above all, victims want information. There is public sympathy for the victim – it is important that the probation service is involved. Victim-offender mediation has not yet been implemented in Ireland.

- In USA where the probation service has been required to participate, they have been repositioned within the criminal justice system, e.g. in Colorado probation reports must include the victims' views. The defence no longer sees probation as "on the side of" the offender.
- In Norway there are mediation boards based on municipalities. Mediation is volunteer run but probation has links into it.
- In some states in USA, e.g. Texas, it is compulsory to consult the victim. Research has shown only 55% are willing to participate. Their level of satisfaction with the system is worse than that of those who do not participate. If giving information makes victims feel they only have a marginal role, dissatisfaction can be increased.
- Many offenders are also victims. In New Jersey being a convicted felon disbars an individual from reparation.
- The term "victim" is not always helpful. Comparison between domestic violence and shoplifting shows two very different sorts of victim.
- There can be lack of balance in access to resources: e.g. sex offenders may get help quickly, whilst their victims may have to go on a waiting list for counselling.

Reparation and Community Service

- Community service (CS) is a unifying sentence across Europe operating in surprisingly similar ways, although there are differences in the maximum hours which can be required (e.g. Lithuania can give up to 1000 hours).
- Differences in the maximum hours between states are often related to cultural or historical factors, e.g. some Eastern European states have high maximums because of strong traditions of forced labour by offenders.
- Privatisation is an issue. CS is potentially suitable for contracting out (e.g. in some probation services in England and Wales).
- To what extent is CS about reparation to the community, punishment or increasing the employability of the offender? CS can help to develop skills and boost offenders' competence.

Discussion

- In the UK effectiveness in CS is focusing increasingly on the role of CS in increasing offenders' employability and the benefit this brings to the community (community reintegration).
- Does the aim of social reintegration militate against privatisation? Profits can be used to make CS self-financing or they can be channelled into socially useful projects or restitution to victims.
- A distinction should be made between "for profit" and "not for profit" organisations if CS is contracted out or privatised.
- Should probation seek to retain control? Once CS is privatised, the only control is through inspection.
- There is value for the community in seeing offenders working in their midst. Credit for this should go to probation.
- If probation were contracted out, there are issues about bureaucratisation. Multi-national organisations could potentially become involved.
- Many countries in Europe are not prepared to look at privatisation for ideological reasons. Only British, Dutch and Scandinavian countries take a more pragmatic approach.
- In England and Wales Home Office statistics show that CS has the best achievement in actual reconviction rates as against predicted reconviction rates. However this may reflect the type of offenders who are given CS.
- In the Netherlands the original purpose of CS was reintegration into society but the volume of orders has made it more mechanistic. There is now a greater attempt to identify those offenders who have particular needs to ensure they receive help and are appropriately matched to project.
- **Principle: Community service should aim to maximise the reintegration of the individual into the community.**

- In USA there is a trend of public shaming in some states (e.g. offenders in uniform).

Public Attitudes to Offenders and the Purpose of CSMs

- There is not much information in the questionnaires about this.
- Electronic monitoring has shifted the continuum in many countries. It is relatively easy to introduce in Central and Eastern European countries where it is more culturally acceptable – it fits with earlier traditions.
- Where people have historically viewed custody as the only real sanction, they tend to be ready to adapt to a close alternative, e.g. electronic monitoring.
- In the Czech Republic there is low public trust in community sanctions. There is also a lack of understanding about community sanctions within the criminal justice system and lack of an infrastructure.
- The development of a wider range of CSMs is needed. Legal frameworks are needed to allow pilots.
- **Principle: the purpose of CSMs should be linked with social benefit (i.e. solely not for punishment).**
- If criteria for CSMs are too rigid or too complex, they can lead to exclusion – the focus should be on developing appropriate inclusive programmes, not on developing programmes which exclude.
- In Denmark, difficulties facing community service include the closing down of some mental hospitals, which has increased the number of mentally disoriented offenders coming before the courts, and increasing drug problems. The right people are harder to find. There is also a growing sophistication, so that it is harder to qualify for CS, and there is an increasingly hostile press.
- "What Works" will fail if CSMs exclude too many offenders.
- **Principle: CSMs should work towards social inclusivity.**
- In Finland there is no prison overcrowding. There is greater public consensus about sentencing.

Redefining Community Sanctions and Measures

Wolfgang Rau introduced this session.

Consent

- There is a fundamental contradiction in the recommendations in ER-16. The commentary to rule 27 (see page 41) refers to the "afflictive nature" of CSMs (the word "punishment" is not used in the document); whereas chapter 4 focuses on the co-operation and consent of the offender but with some reservations:
- Rule 34 says the offender should participate "as far as possible", so recognises the possibility of valid unilateral or coercive decisions.
- Rule 36 says "where the offender's consent is required", thereby implying that consent might not always be required.
- In rule 35 it states that consent "should" be obtained, implying it may sometimes not be obtained. This should be replaced with "must be obtained".
- **Principle: the consent of the accused person must be obtained before the imposition of any CSM pre-trial – they are not convicted at that point and consent is required if the individual is to comply with more demanding conditions.**
- What is the definition of treatment? The definition contained in the prison rules is extensive.
- Can treatment be required? The commentary to rule 87 implies compulsion could be an option. However formal consent is required for medical treatment.
- There is a general move away from consent for CSMs in parts of N. Europe. In S. Europe consent is seen as fundamental on 2 levels: human rights level; motivational level.
- Consent is a complex notion. It would be unwise to say consent is required. A system is required which can tolerate a gradation of consent – motivation can change.

- The requirement for an offender to consent to a probation order in Britain has been removed – but the consent previously was a false consent according to Michael Howard. If a CSM is a punishment, is consent required?

Discussion:

- In the Netherlands, people who do not turn up at court are not able to give consent and cannot have a CSM made.
- A CSM is a contract between the offender and the court. The probation service administers this. An offender needs to understand what events are consequent on actions (e.g. breach). Perception at the point of sentence is critical. The contract with the offender can be renewed post-sentence.
- In Ireland CSMs aim to effect change. Is consent the right term? Agreement or willingness to participate is required. The initial assessment is of suitability. Real willingness to participate may start some way into the order.
- The Treaty of Geneva outlaws forced labour. This has implications for prison work and CS. The difference between the two is that at the prison stage the offender has already been sentenced whereas with CS consent arises at the point of sentence.
- In the Netherlands 70% CS orders are made without the probation service being involved (e.g. social security fraud – the number of hours imposed is related to the size of the fraud). The offender has to sign up to 20 standard rules (e.g. must have health insurance) before the order starts – if they refuse, the order goes back to court.
- Research shows CSMs are more effective if they start immediately and breach pursued quickly if there is a failure.
- Does the collection of too much information at the pre-sentence report stage militate against the imposition of CSMs by uncovering too many problems?

Can surveillance or punishment alone be a CSM?

- There is a continuum of CSMs. Electronic monitoring might be a borderline case.
- Rule 22 says that the implementation of a CSM should be in line with internationally guaranteed human rights. Rule 55 says a CSM should be meaningful to the offender – methods of supervision and control serve these aims.
- CSMs aim to develop a sense of responsibility. It could be argued that electronic monitoring could meet this aim.

Discussion

- Behaviour can be changed by surveillance alone (e.g. speed cameras on roads).
- In the Netherlands electronic monitoring is only used in combination with a probation programme.
- The technology is currently about home confinement. But technology will develop – e.g. it could be attached to a car so that the car is immobilised; there could be a tag on a school which would alarm if a specific offender went nearby. In the US smart tags are being developed which give the offender assurance (e.g. domestic violence).
- **Principle: if the sole aim is punishment, the sanction should not be seen as a community sanction. CSMs should give added value linked to behaviour change or social reintegration.**
- CSMs do not necessarily have to be linked to the probation service. In Belgium victim-offender mediation is undertaken by a social worker under the oversight of a public prosecutor. In Eastern Europe the police have elements of a social work role. The concept of a CSM is important and should be separated out from the organisational arrangements for delivery.
- Punishment is a divisive term – the terms sanction or penalty are more useful.

Complaints

- In the UK public organisations are required to have a complaints procedure (Citizens Charter). Complaints about the probation service are internally managed.

- In the Netherlands complaints can be made to a public prosecutor. Issues of practice are dealt with by an independent committee presided over by a judge.
- Increased complaints might be seen as evidence of effectiveness.
- The increased use of litigation should also be noted (e.g. victims could sue the probation service for their failure to change the offender).
- A minimum level of resources is needed to achieve standards. Services need to have an honest discussion about what can realistically be delivered.

Effective Practice

Colin Roberts (University of Oxford) introduced issues concerning effective practice.

- Effectiveness means changing the behaviour of offenders subject to CSMs. There are different ways of looking at effectiveness:
 - Which CSMs are the most credible alternatives to the public? To judges? To policy makers?
 - Which CSMs have the best compliance rates and have done what the courts wanted them to achieve?
 - Which CSMs are the most acceptable to victims and in what circumstances?
- Hence there are 4 aspects:
 1. Reduction of re-offending. This is difficult to evidence. Self-report studies can be used. Reconviction studies have not had long enough follow up yet. Specific programmes need to a specific follow up (e.g. drink driving programmes).
 2. The extent to which rehabilitative change and change in attitudes is achieved.
 3. The extent to which sanctions are complied with. Offenders who do not complete are more likely to re-offend.
 4. The extent to which conditions or requirements of court orders are complied with.
- Questions must therefore be asked at two levels:
 - Are the programmes achieving their targets?
 - Are the targets linked to reduced offending?
 - In the UK there is relatively little evidence (despite the amount of work going on).
 - Programmes have moved "up-tariff" targeting more persistent offenders (who might be more likely to fail). It is important to target those offenders who account for a disproportionate amount of serious crime.
 - Programmes must be able to demonstrate value added. Initial assessments must be valid. A multiplicity of evaluation measures should be used.
 - An evidentially based approach should be taken to the design of programmes. We need to be able to say who and what was effective.
 - It is important not to be over-positive.
 - A key theme is integration into the community – what are the community's measures of success. In N. Ireland a survey has been undertaken of whether the community has noticed the difference.
 - What is effective in helping offenders stop offending? More is known about onset factors rather than what makes offenders desist.
 - Targets:
 - Pro-criminal attitudes/beliefs
 - Personality characteristics
 - Inter-personal relationships
 - Lifestyle
 - Employment/finance
 - Criminal history
 - Community ties/accommodation
 - Substance misuse
 - Mental health problems/personal distress
 - Principles of effective intervention:
 - Risk – target high risk. Systematic assessments of risk are required.
 - Need – target offending behaviour and behaviours associated with it
 - Responsivity – communicate and engage with offenders in a way which makes sense to them.

Discussion

- We need to accredit effective programmes, to identify pathfinder projects to use as models for the design of others. They should be subjected to rigorous scrutiny.