

## Preface

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*Frieder Dünkel and Hanns von Hofer*

At the end of the year 2000 the Council of Europe edited a book entitled *Crime and criminal justice in Europe*. This comparative reader had been proposed by members of the Criminological Scientific Council of the Council of Europe (PC-CSC) with the then President, Alenka Selih from Slovenia. The contributions – written by members of the PC-CSC and other scholars in criminal policy and criminological research – covered a wide range of topics: from crime trends and crime prevention to different forms of sentencing and prisons in Europe. The positive reception of this reader encouraged preparation of this present publication on criminal policy in the member states of the Council of Europe. This time it was felt that the focus should be on examples of promising practice in specific countries, which could be encouraging to other countries whilst being aware that the transfer of such practices has always to take into consideration the cultural and legal background of national systems.

Recent research in criminology has greatly emphasised “what works” in the field of crime policy and it is fully acknowledged that the approach used in this volume does not meet the strict criteria of famous meta-analyses like the University of Maryland report conducted by Lawrence Sherman and his research institute<sup>1</sup> or of other studies like the one presented by the British Home Office<sup>2</sup> or the mostly unpublished meta-analyses of Lipton et al.<sup>3</sup> The present exercise falls under the category of “promising examples” that need further evaluative research. However, the examples presented in this volume deserve attention in so far as they demonstrate that under certain circumstances crime

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1. See Sherman, L. et al., *Preventing crime. What works, what doesn't, what's promising*, University of Maryland, 1997. See also Office of Justice Programs, US Department of Justice, and National Institute of Justice, *Research in brief*, July 1998; the extended version is available at [www.preventingcrime.org](http://www.preventingcrime.org)

2. See Goldblatt and Lewis (eds.), *Reducing offending: an assessment of research evidence on ways of dealing with offending behaviour*, UK Home Office, 1998; in particular Vennard and Hedderman, “Effective interventions with offenders”, pp. 101-119.

3. See Lipton, “The effectiveness of correctional treatment revisited thirty years later: preliminary meta-analytic findings from the CDATE study”, paper presented at the 12th World Congress of Criminology, Seoul, 24 to 29 August 1998 (available through [douglipton@earthlink.net](mailto:douglipton@earthlink.net)); Pearson and Lipton, “The effectiveness of educational and vocational programs: CDATE meta-analyses”, paper presented at the annual meeting of the American Society of Criminology, Toronto, 17 to 20 November 1999.

policy can have a positive impact and projects can be successfully implemented with respect to criminal law reform. Again, the term “successfully” needs further clarification as Pierre Tournier points out in his chapter.

The examples of “good practice” have been grouped together in the present volume under the headings of crime prevention (see chapters 1-3), mediation and other community sanctions (chapters 4-10), the prison system (chapters 11-12) and criminal procedure (chapter 13). Most of the authors are members of the PC-CSC. Others have been asked by the PC-CSC to contribute as they are important researchers in their countries.

As already indicated, in the first chapter Pierre Tournier reminds us that we should be aware of possible pitfalls when declaring that something “works”. The statement that something works has to be related to something else: for example, is a new penal sanction more promising than another and how can we measure it? We have to consider problems of net-widening and the possibility that the new sanction replaces other minor sanctions and not – as intended – imprisonment. However, he also provides some interesting examples, such as the experiences in France with early (conditional) release, which is described in more detail by Annie Kensey in chapter 12. The difficulties in judging a practice as successful lead to two conclusions: that there has to be a clear definition of what “success” means (taking also into consideration the barely measurable further consequences of such practices; for example, for third persons and their quality of life) and, secondly, the need to employ high methodological research standards.

In chapter 2, Denis Ribeaud, Martin Killias and Marcelo Aebi describe the long-term effects of a heroin prescription programme for serious addict offenders in Switzerland. After a four-year follow-up period the treated persons showed significant lower prevalence and incidence rates concerning drug abuse, and also violent and other crimes, particularly property crimes. The effects seem to be independent of natural “maturing out”, although those who dropped out of the programme also showed some (less impressive) decline in their prevalence rates. The consequences of the Swiss drug policy are evident: a health care or “harm reduction” approach looks much more promising than the traditional repressive penal law approach. This is true not only for the drug-addicted offenders, but also for their (possible) future victims when taking into consideration, for example, violent or property offences committed in order to get drugs or money, etc., for buying drugs.

Austrian legislation for protection against domestic violence came into force in 1997. Austria was one of the “forerunners” in this field; for example, Germany followed with a similar law only at the end of 2001. The Protection against Domestic Violence Act created new interventions against perpetrators of domestic violence, combining instruments of civil law, police law and penal law. The aim of the new law was to assert the victim’s right to protection, security and support. Therefore much emphasis is given to the so-called “intervention

centres" providing free counselling and support. The so-called "go-order" forbids the (mostly male) offender to stay in the same household as the victim. This eviction or barring order issued by the police lasts for ten days and can be prolonged by the district court. Such orders have been used increasingly since 1997. About half of the cases resulted in a dispute settlement, and another 43% in longer eviction/barring orders. In chapter 3, Birgitt Haller, Christa Pelikan and Petra Smutny report that, according to research, victims and the police seem to be satisfied. Maybe this shift in perspective is important as domestic violence is no longer seen as a private conflict, but as a ground for receiving protection from state agencies.

The second part of the volume focuses on mediation and other community sanctions.

In chapter 4, Christa Pelikan reports on a comparative research initiative to evaluate the impact of the Council of Europe's Committee of Ministers Recommendation No. R (99) 19 on mediation in penal matters. The results are very encouraging, demonstrating that victim-offender mediation has spread rapidly throughout Europe. In some countries the influence has not been so strong as mediation "was on its way" already with a widespread network of mediation schemes, such as those in Germany, whereas in many other countries new legislation has been passed in order to extend existing model projects nationwide or to transfer juvenile justice experiences into the field of general penal law. On other occasions, the impact is mainly restricted to NGOs and academics and therefore the recommendation may have only an indirect influence on national penal policy. The report is not an evaluation of mediation schemes, but of the influence of the Council of Europe's work in member states. It is furthermore a good example of how important an evaluation of a recommendation is, and of why this exercise should become "routine" in the Council of Europe's work.

Mediation is increasingly used in Europe and in some countries not only on an experimental basis, but nationwide. Belgium is one of the "forerunner" countries in developing mediation. The idea of restorative justice has spread from the well-known Leuven Department of Criminology (Lode Walgrave, Tony Peters et al.) and gained importance in the criminal justice system. However, it is often stated that cases dealt with by mediation schemes only concern minor crimes and petty, first-time offenders. Often the focus is on juvenile offenders and diversion procedures. The crucial question for a more widespread implementation is whether mediation also works with more serious offences and offenders. The Belgian results (with references to similar experiences in England and the Netherlands), presented by Ivo Aertsen in chapter 5, are encouraging and demonstrate that even in prisons some cases, when selected carefully, can result in a positive solution for the victim as well as the offender. However, this is a demanding task and needs much time, energy and professional skill as it sometimes comes close to a therapeutic intervention. The majority of serious

cases (inside and outside prisons) apparently work through indirect mediation, that is, the victim does not necessarily have to meet the offender face to face. As a consequence of the experiments in prisons, the programme on “restorative justice in prisons” has been implemented in every Belgian prison since the end of 2000.

In chapter 6, Vincent Delbos describes experiences with a specific mode of community service order in France that has existed since the end of 1999 (the traditional form of community service order was introduced in 1984 in France). The experiment now includes (in addition to working hours) eighteen hours of social training where the juvenile offenders in a group are confronted with members of victim assistance or probation services and other representatives of the civil society. The aim is to establish a civic dialogue and to increase the young person’s responsibility and integration into society. These training sessions have also been offered recently to prison inmates. The French experiment of civic dialogue has not yet been evaluated in the strict sense, but the approach of integrating “normal” civil society in offender treatment programmes deserves much attention and opens perspectives not only for a justice system oriented to the idea of restorative justice but also to restorative neighbourhoods and a restorative civil society in general.

The Czech Republic is one of the central European countries with a penal tradition much influenced by the former Soviet Union. At the end of the 1980s, a strong reform movement started which resulted, on the one hand, in reforms of penal law in 1995 and 1997 (introducing or amending community sanctions, such as community service, or suspended sentences with or without the supervision of the probation service) and, on the other, of the Criminal Procedure Act in 1993 and 1995 (expanding the possibilities of diversion and mediation). A new Probation and Mediation Service was established at the beginning of 2001, covering social work in the pre-trial, trial and post-trial stages, but mainly occupied with the execution of community service and probation orders. In chapter 7, Helena Válková describes the changes in sentencing practice during the 1990s, which show an important increase in community sanctions and a decrease in unconditional prison sentences from 28% of all convictions in 1998 to 15% in 2002. Whilst the absolute numbers of convicted offenders has increased since 1998, the number of persons sentenced to unconditional imprisonment has declined. The follow-up period is too short to draw final conclusions, but the idea of reducing imprisonment seems to work.

A major problem in many countries is not only long-term prison sentences, but also short-term sentences, which cause a lot of bureaucratic work and cannot really be seen as rehabilitative because of their short-term nature. One really disturbing case is the issue of fine defaulters. In most countries those who are not able or willing to pay their fine finally get detained (see the example of Germany described in chapter 9). There is, however, the interesting exception of Sweden. Hanns von Hofer’s report in chapter 8 demonstrates that

alternative provisions – for example, instalment schemes – need not necessarily have a negative influence on honest payment of fines imposed on offenders. It seems to be of importance that responsibility for collecting fines has been transferred to the tax administration and therefore the payment of fines has acquired a clear fiscal and civil overtone, pushing the idea of penal retribution into the background. Sweden has practically abolished detention for fine defaulters, although fines are the most prominent sentences and used very extensively. Only in the case where an offender takes active steps to evade collection systematically is detention possible, but this rule has only been used in a very few cases. Hanns von Hofer establishes a link to the historical reform movement in Sweden, which enabled such a reform before retribution made its return to other penal law areas. Fortunately, there has been no demand to reverse this alternative approach to fine defaulters' detention in Sweden up to now.

The legal background in Germany is different. In chapter 9, Frieder Dünkel describes the German system relying very much on the ultimate resort of detention for fine defaulters. Due to the general economic problems in the country and a sentencing practice which in more than 80% of cases imposes fines, the number of fine defaulters in the 1990s has dramatically increased. The problems have been even more serious in the "new" federal states (*neue Bundesländer*) of the former GDR. In the north-east German federal state of Mecklenburg-Western Pomerania in 1996 no less than 22% of the daily prison capacity was occupied by fine defaulters. This was the starting point for a project that increased the possibilities of replacing this kind of short-term detention by community service. As fine defaulters often show very serious behavioural, alcohol and other problems, special pedagogical assistance had to be provided. More than 1 600 institutions where offenders can perform community service have been established, 62 of them with special pedagogical assistance.

The evaluation of the project demonstrates a reduction of the number of fine defaulters in prison by half. More than 80% of those transferred to community service before entering the prison, and even 55% of the very problematic inmate population, completed community service successfully. The most promising element in ensuring that offenders took part in community service was a proactive case management system where social workers systematically visited the offenders at home and tried to motivate them through personal contacts. The project was a success not only in terms of diverting offenders from prison, but also in terms of cost-benefit analysis: the costs for the staff and social pedagogical assistance were far less than the costs of imprisonment. The Ministry of Justice of Mecklenburg-Western Pomerania has therefore implemented the project on a permanent basis. At the end of 2003 the Federal Ministry of Justice proposed the extension of community service through a draft bill at the federal level, referring to the positive example of Mecklenburg-Western Pomerania.

An outstanding "natural experiment" has been the post-war reduction of the prison population in Finland. The prisoners' rate went down from about 190 per 100 000 inhabitants in 1950 to less than 60 per 100 000 at the end of the 1990s. This has been a result of long-lasting law reforms and changes in sentencing policies. The movement towards a more lenient system of sanctions and a more lenient sentencing practice (particularly for property offences and drunken driving) cumulatively contributed to this "reductionist" approach. Community service and conditional prison sentences replaced unconditional prison sentences to a considerable degree. In chapter 10, Tapio Lappi-Seppälä points out the background factors which made such a change possible. The political will and consensus among Finnish experts and in society, the reasonable attitudes of the media towards issues of criminal policy, the readiness of the judiciary and a rather peaceful and safe crime situation in Finland favourably contributed to the changes described above. The rise of the prison population between 1999 and 2002, up to about 70 per 100 000 inhabitants, may be explained by an increase in foreign prisoners (mainly drug dealers, etc.) as well as by an expansion of the fine-defaulter and remand-prisoner population. It cannot yet be decided if the somewhat reverse development in the last three years is the beginning of a "politicisation" of crime policy with a trend towards more severe punishment. Finland is probably just being faced with global problems such as drug trafficking and the mobility of offenders, which counteract the "reductionist" approach. However, it seems that official criminal policy will react and try to fight against unfounded repression.

In the third part of this volume two chapters are dedicated to the prison system, although both of them also deal with "alternatives". One deals with partly replacing the prison sentence by conditional release (France) and the other deals with the relaxation of the closed prison regime by prison furloughs, day leave and opening the prison system in general (Germany).

In chapter 11, Frieder Dünkel refers to prison reform in West Germany in the 1970s, which was taken up in 1990 in the East German federal states after the re-unification of Germany. The Prison Act of 1977 in Germany provides several forms of leave of absence (day leave, prison furlough, work release) that are used for preparing the offender for release and to maintain social bonds with the outside world. The number of home leaves has been tripled in the last twenty years. In the same period the failure to return from leave has decreased to a mere 1%. Furthermore, tension in prison and aggressive behaviour towards prison staff have also decreased. In the early 1990s the number of violent assaults against members of the prison staff in East Germany was twice as many as in West Germany. With the extension of rehabilitative measures and the opening up of prisons, the ratio has now dropped to the low West German level.

Several studies demonstrate that different forms and periods of prison leave contribute to rehabilitation, especially when they are followed by conditional

release (parole). Prison leave in Germany is seen as a fundamental right of prisoners and the Constitutional Court in this context has repeatedly emphasised the constitutional principle of rehabilitation. Although relaxation of the prison regime, which leads to reduced violence, can be judged as a humane and “good” practice, recent trends in prison policy in some conservative federal states are oriented to more severe and less rehabilitative regimes. Thus a comparison of the prison regimes in the different federal states will probably show disparity, which – under the same federal law – is problematic.

In chapter 12, Annie Kensey reports on a research project on the recidivism of French prisoners granted early release in comparison to those who fully served their sentence. Independent of crime categories, age and prior convictions, the early release group showed significant lower recidivism rates than the “control group”. Although some methodological reservations may be made, this result is very much in line with international research. The implications for criminal policy are evident and there are strong arguments for regular early release, at best combined with intensive social after-care by the probation service.

The last part of this volume deals with the important issue of victim protection in criminal procedure.

In chapter 13, Francesco De Leo, Mariavaleria del Tufo, Gualtiero Michelini and Francesco Patrone describe the experiences of the Italian reform concerning persons co-operating with the justice system and witnesses in anti-Mafia proceedings. Persons co-operating with the justice system have a key position in the fight against organised crime. They risk their lives if the state does not provide effective protection for such witnesses. The Italian criminal justice system provides a variety of protective measures, as well as a sentencing scheme allowing considerable mitigation of a sentence for persons who been involved in crime themselves. The favourable treatment granted to collaborators is not restricted to more lenient sentencing; it also concerns the prison regime (*inter alia*, privileges in prison life). A very important point is the protection of persons co-operating with the justice agencies at the first level through different forms of surveillance up to their transfer to another municipality, social reintegration or special custody measures. The second level comprises measures leading to an alternative life programme with a new identity.

Furthermore, special programmes exist for witnesses including long-distance proceedings through video-conferences (which enable, for example, interviews with dangerous prisoners without them having to leave a secure prison unit to go to the court). The chapter does not offer an empirical evaluation of the new regulations, but does provide extensive material on the legislation and on certain problems concerning its implementation. There may be other countries that have introduced similar regulations for witness protection, etc., but it is, unfortunately, undoubtedly true that Italy has the most experience in dealing with criminal proceedings against members of organised crime groups.

Although the heterogeneous examples of this volume certainly give no clear picture of what works in criminal policy, at least some examples could be useful for further consideration. The main emphasis is on what works in community sanctions and how to reduce the prison population. The example of Finland shows a possible alternative to "getting tough" and mass incarceration ideologies that prevail in the United States and certain other countries. Europe might also discover a more humane and effective way of sanctioning offenders and crime reduction. Maybe one should look not only for good practices and what works, but also for the pitfalls of criminal policy, because one can learn more about what works if one considers what has been a failure and what did not work. This might form the basis for another criminological exercise of the Council of Europe.

**PART I**  
**CRIME PREVENTION**