

**PROBATION SERVICES IN EUROPE AND RUSSIAN EXPERIENCE  
OF SOCIAL REINTEGRATION  
AND REHABILITATION OF OFFENDERS**

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## **Executive Summary**

Issues of crime and punishment have taken an important place in the modern political, social and cultural life of the European societies. Famous criminologist David Garland highlights the shift experienced by England and Wales and the United States towards the “culture of control”, an indispensable characteristic of the so-called penal modernism. In this new penology, rehabilitative or welfarist ideals give way to public protection and widespread incarceration. Changing attitudes and circumstances lead to a reassessment of the role played by probation services. In this research I draw on recent theoretical knowledge regarding criminal justice and offender management, as well as the international law framework to help advance our understanding of the current trends in probation, and penal systems of England and Wales, the Netherlands and Scandinavian countries (Sweden, Norway and Finland) in general. After examining the historical background of probation services in the abovementioned countries and their modern role, status and objectives, I argue that there has apparently been a change in the penal policy following the vector of increased punitiveness and managerialism. Taking into account these developments, I explore the existing penitentiary system of the Russian Federation, which remains largely outdated, and the recently proposed reforms. Finally, I discuss some of the possible ways of modernizing the Russian system of criminal justice and some of the implications of the policy transfer.

# Contents

<b>INTRODUCTION .....</b>	<b>1</b>
<b>1. Legal Framework of Probation and Social Reintegration of Offenders in Europe .....</b>	<b>9</b>
<b>2. Historical Developments and Theoretical Underpinnings of Probation Work .....</b>	<b>23</b>
<b>3. Probation Services in Europe .....</b>	<b>36</b>
3.1 Probation Services in England and Wales. History of “Struggle and Survival” .....	37
3.2 Probation in the Netherlands: Between Self-identity and “Late Modernity” .....	44
3.3 Probation in Scandinavia: Exceptionalism in the Era of Control? .....	52
<b>4. Russian Experience of Social Rehabilitation and Reintegration of Offenders .....</b>	<b>62</b>
4.1 System of Russian Penal Institutions and Facilities .....	66
4.2 Realization of Rehabilitative Mechanisms in the Custodial Context .....	70
4.3 Realization of Rehabilitative Principles in Non-custodial Framework .....	78
<b>CONCLUSION .....</b>	<b>86</b>
<b>BIBLIOGRAPHY .....</b>	<b>90</b>

# INTRODUCTION

If only it were all so simple! If only there were evil people somewhere insidiously committing evil deeds, and it were necessary only to separate them from the rest of us and destroy them. But the line dividing good and evil cuts through the heart of every human being. And who is willing to destroy a part of his own heart?<sup>1</sup>

By A. Solzhenitsyn

The way we treat offenders characterizes not only the penal system of a given country, it represents an important characteristic of human culture, which signifies a level of development (civilization) at which people live in a particular time in history. Reflecting on the way criminals are handled in a criminal justice system, the way people's problems were addressed in the Soviet Gulags, or as portrayed in Kubrick's film *A Clockwork Orange* (1971), Maruna argues that the "belief in people who are permanently and fundamentally bad almost necessitates their segregation from mainstream society."<sup>2</sup> Such segregation, envisioned in custodial sentences, is both ineffective in countering recidivism,<sup>3</sup> is relatively expensive<sup>4</sup> and questionable from a theoretical point of view with relation to respect of the offender's humanity. Besides, criminal justice is not limited to punishment and must be supplemented by many other initiatives to rehabilitate or reintegrate offenders. As Doyal and Gough assert, "it is ... contradictory to regard someone ... as capable of doing better ... and then not help them

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<sup>1</sup> A. Solzhenitsyn. *The Gulag Archipelago 1918-1956: An Experiment in Literary Investigation, Parts I-II*, trans. Thomas P. Whitney (New York: Harper & Row, 1974), p. 168.

<sup>2</sup> S. Maruna. *Making good: how ex-convicts reform and rebuild their lives*. Washington: American Psychological Association, 2001, p. 5.

<sup>3</sup> See, e.g. P. Smith, C. Goggin, P. Gendreau. *The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences*, 2002, available at [http://www.ccoso.org/library%20articles/200201\\_Gendreau\\_e.pdf](http://www.ccoso.org/library%20articles/200201_Gendreau_e.pdf); F. Cullen, C. Johnson, D. Nagin. Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science. *The Prison Journal*, No. 91 (1), 2011, pp. 48-65.

<sup>4</sup> Knapp et al., concluded that, "even allowing for the high cost of breaches, community service orders cost less than half (46 percent) the equivalent costing of a comparable custodial sentence." *Cit.* from M. Israel, W. Chui. If "Something Works" is the Answer, What is the Question?: Supporting Pluralist Evaluation in Community Corrections in the United Kingdom. *European Journal of Criminology*, No. 3, 2006, p. 187.

attain at least the minimal wherewithal to do just that”.<sup>5</sup> In this particular context probation services, originally being an embodiment of these welfarist ideals, their functions and role played in today’s penal systems become a topical issue.

Within this debate, the book *The Culture of Control: Crime and Social Order in Contemporary Society*, written by a famous criminologist David Garland, had enormous implications for theorising issues of crime, punishment in their historical and philosophical dimensions.<sup>6</sup> Observing drastic changes in attitudes to crime and penal policy in general in the late 20th century-beginning of the 21st, Garland introduces the notion of “late modernity”, characterized by high imprisonment rates, widespread feelings of insecurity and fear of crime and politization of the notion of crime. Parallel to these processes reforms were carried out, expanding free markets and neo-conservative agenda. Despite the fact that in his research Garland focuses primarily on England and the USA, some of the trends highlighted seem to have been visible in many other countries.<sup>7</sup> It is not the aim of this research to question the validity of Garland’s thesis. Nevertheless, the culture of control tendencies bind the research together and will therefore be analyzed and referred to consistently as I progress in covering European penal cultures.

Profound comparative research covering different historical, legal and organizational accounts of multiple probation systems across Europe was covered in 2008 in *Probation in Europe*.<sup>8</sup> However, due to the fast changing character of the probation world, information presented in the book remains more of a snapshot of probation services in 32 jurisdictions at that particular time of their existence. Nevertheless, the movement towards supervision,

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<sup>5</sup> L. Doyal, I. Gough. *A Theory of Human Needs*. Basingstoke: Macmillan, 1991, p. 96.

<sup>6</sup> D. Garland. *Culture of Control. Crime and Social Order in Contemporary Society*. Oxford: Oxford University Press, 2001.

<sup>7</sup> E.g. “in Holland ... Italy, Portugal and some Australian states, imprisonment rates are higher than at any time in the preceding century. In France, the number of people sentenced to imprisonment and average sentence lengths have increased. Elsewhere, for example, in Germany, Canada, [Norway, Denmark and Sweden] imprisonment use and rates have increased [moderately] or fluctuated” – From M. Tonry. *Thinking about punishment: penal policy across space, time and distance*. Farnham: Ashgate Publishing Company, 2009, p. 128.

<sup>8</sup> A. Van Kalmthout, I. Durnescu. (Eds.) *Probation in Europe*. Nijmegen: Wolf Legal Publishers/CEP, 2008.

enforcement and control in probation work, underlined in *Probation in Europe*, has been emphasized by many other authors, such as Downes, Tonry, Whitehead, Lewis, Cavadino, etc.<sup>9</sup> The theoretical framework for this thesis also draws on research on “non-treatment paradigm” (Bottoms, McWilliams<sup>10</sup>), “revised paradigm” (Raynor, Vanstone<sup>11</sup>), desistance (McNeill, Maruna, Farrall, etc.<sup>12</sup>) and human rights-based (Canton, Robinson, van Zyl Smith, etc.<sup>13</sup>) approaches to offender management. In spite of all the differences between the mentioned theories behind probation, they are united in advocating for inclusive relationship, based on respect for persons and belief in change, thus departing from the pessimistic rhetoric of the “nothing works” doctrine.

The purpose of this thesis is not simply to outline the general framework of probation in some European states, compare the diverse probation systems or make a brief summary of key changes in probation work. Organizational or structural characteristics of a particular penal system, though quite telling, do not reveal in full the main principles and assumptions each system is based on. Moreover, as I will show in Chapter 3 and Chapter 4, penalties are not something set in stone. On the contrary, they are living instruments, rapidly changing in accordance with evolving views of policymakers, public, media, practitioners, etc. Actual forms of probation work are to a large extent dependent on the ideas behind punishment,

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<sup>9</sup> D. Downes. Visions of Penal Control in the Netherlands, 36 *Crime and Justice* 93, 2007; M. Tonry. *Thinking about punishment: penal policy across space, time and distance*. Farnham: Ashgate Publishing Company, 2009; P. Whitehead. *Exploring Modern Probation: Social Theory and Organizational Complexity*. Bristol: The Policy Press, 2010; S. Lewis. Rehabilitation: Headline or footnote in the new penal policy? *Probation Journal*, No. 52, 2005, pp. 119-135; M. Cavadino, J. Dignan. *Penal Systems: A Comparative Approach*. London: Sage Publications Ltd., 2006.

<sup>10</sup> A. Bottoms, W. McWilliams. A Non-Treatment Paradigm for Probation Practice. *British Journal of Social Work*, 9(2), 1979, pp. 160-201.

<sup>11</sup> P. Raynor, M. Vanstone. Probation Practice, Effectiveness and the Non-Treatment Paradigm. *British Journal of Social Work*, 24 (4), 1994, pp. 387-404.

<sup>12</sup> F. McNeill. What Works and What's Just? *European Journal of Probation*, Vol. 1, No. 1, 2009, pp. 21-40; S. Maruna. *Making good: how ex-convicts reform and rebuild their lives*. Washington: American Psychological Association; S. Farrall. *Rethinking What Works with Offenders: Probation, social context and desistance from crime*. Cullompton: Willan Publishing, 2002.

<sup>13</sup> A. Robinson. *Foundations for offender management: Theory, law and policy for contemporary practice*. Bristol: The Policy Press, 2011; R. Canton. Nonsense upon stilts? Human rights, the ethics of punishment and the values of probation. *British Journal of Community Justice*, Vol. 7, No. 1, 2009; D. van Zyl Smith, S. Snacken. *Principles of European Prison Law and Policy; Penology and Human Rights*. Oxford: Oxford University Press, 2009.

rehabilitation and the role of a state and society in handling offenders. It is precisely in this context that particular probation services will be analyzed. Moreover, in light of the proposed changes to the Russian penitentiary system, grounded in the ideas of social reintegration and rehabilitation of offenders, it is quite practical to understand how these ideals have been implemented in selected European jurisdictions and the complications they had to face. The look at the cross-national development of penal cultures in Europe will enrich the understanding of the Russian criminal justice system, which possesses a penal service of significant size but remains rather under explored.

The research consists of two major parts. In the first I analyze probation services in England and Wales, the Netherlands, Finland, Sweden and Norway in the context of an overall broad penal development in these countries. I argue that probation services in these jurisdictions have signified a move towards a more punitive and managerial system of offender management, as opposed to the welfarist one, which existed in the 1970s. The focus on these nations is determined by several considerations. First of all, the probation service of England and Wales is one of the oldest and very influential in Europe. Among the states where the National Probation Service for England and Wales has made direct contributions of this type are Turkey, Bulgaria, Czech Republic, Romania, Croatia, Bosnia, Estonia,<sup>14</sup> etc. Other countries – the Scandinavian nations and the Netherlands have also been influential probation “exporters”.<sup>15</sup> Secondly, the chosen countries, especially the Netherlands and Nordic states, have always been considered moderate or lenient in their penal policies, being quite successful in resisting growing penal populism. This is why the developments evident in these countries have a high chance of being displayed in other European jurisdictions.

The second part of the research is devoted to the analysis of the penal developments in the Russian Federation, both with respect to penitentiary system and custodial/non-custodial

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<sup>14</sup> R. Canton. Taking Probation Abroad. *European Journal of Probation*, Vol. 1, No. 1, 2009, p. 67.

<sup>15</sup> *Ibid.*



punishment. Russia, being a member of the Council of Europe and a signatory to the European Prison Rules and European Probation Rules, has undergone dramatic changes since the collapse of the Soviet Union. Nevertheless, the criminal justice system is still in the process of being shaped. The existing penal system in Russia remains outdated. In this context and taking into account recent governmental initiatives, it is now a crucial time for Russia to look at jurisdictions with established probation services for guidance and advice. The question remains whether penal policy transfer is the best possible option for Russia to take. As I demonstrate, such a policy might be dangerous since it is not always tailored to local conditions. Besides, modern penal trends in these “model” countries can hardly secure a smooth transition to a rehabilitative model of offender management.

As crime and criminal justice policy are closely connected to an overall economic, societal, cultural and even technological development, it is very important to use a comprehensive approach while analyzing complex processes of offender management in their development. In particular, it means paying careful attention to the specifics of each country, taking into account history, traditions and unique mind-set of every society. At the same time, some principles of criminal justice, such as humanity, respect for human rights and liberties remain universal. With the widening net of international laws and various recommendations, accompanying processes of globalization and integration, such universal ideas become more and more apparent, even though the documents might not necessarily impose any enforceable obligations.

Chapter 1 of this thesis is specifically devoted to issues of international regulation related to prisons and probation work. As a result of their analysis, I come to the conclusion that cross-European (mostly related to the Council of Europe and the European Union) and international legislation (the United Nations primarily) reveal a mainly unified approach to offender management. Interestingly though, the notions of public protection, punitiveness and

risk management, intrinsic to the abovementioned “culture of control” did not find strong support in international law. This is why, as I argue, human rights, which play an increasingly important role in Europe (especially with the influence of the European Court of Human Rights (ECtHR)), can become a driving force behind national reforms to revitalize (or at least increase the attention to) rehabilitative penal policy. Having reviewed the international legal framework for probation and rehabilitation in criminal matters I turn to a critical analysis of the history of ideas significant in probation work as they evolved and transformed over time.

Most famously, McWilliams described three main periods in the history of probation, from religious and missionary endeavor, intended to save human souls, to diagnosis and treatment for most of the 20th century.<sup>16</sup> This treatment paradigm has been followed by a period of criminological uncertainty, when the spreading disbelief in alternatives to custody led to divergent trends in penal policies and a general increase in incarceration rates among a number of European jurisdictions. The appearance of evidence-based theories of offender management in the 1990s happened to be an important turning point for probation services to claim their place in criminal justice systems, as new ideologies of the “war on crime” and “crime and order” were gaining their momentum. Despite the fact that in Chapter 2 I do not intend to offer a detailed account of different relatively new concepts, I argue that some of them, notably the desistance model, present a useful tool in analyzing the operation of penalties on the whole, since they contain unique sets of values and beliefs.<sup>17</sup> At the same time, the particular importance of these beliefs might be curtailed by their inapplicability (or ignorance) in practice. This is why taking a close look at the functioning of penal systems is needed.

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<sup>16</sup> See W. McWilliams. Probation, pragmatism and policy. *Howard Journal of Criminal Justice*, vol. 26, 1987, pp. 97-121.

<sup>17</sup> At least as they allow to combat managerialism and mechanization of probation work, see F. McNeill, P. Raynor, C. Trotter. *Offender Supervision: New directions in theory, research and practice*. Abingdon: Routledge, 2012.

Chapter 3 of my research explores the particularities of probation services' organizational, structural and ideological characteristics in selected European jurisdictions. Accepting considerable historic, social, economic and cultural differences of the countries in the region, I contend that apart from geographical proximity, the trends experienced by the reviewed penal cultures are quite similar. Usually when referring to a punitive turn, we tend to think primarily about the USA and England and Wales. However, as I show later on, such traditionally welfarist and moderate societies as the Dutch and Scandinavian (Swedish, Norwegian and Finnish) have recently leaned either towards risk management (managerial penal strategy) and/or to an increasingly punitive strategy.<sup>18</sup> These developments have been accompanied by rising public fears of crime and unwillingness of governments to properly deal with the problems of inequality, migration and drug-related crimes. The decline of individualized rehabilitation has been especially evident in England and Wales with the creation of NOMS and constant budgetary constraints for Probation Trusts. However, from the very outset I need to make the reservation that the results I come to in my research cannot be considered as a general proof (or disapproval) of some global or equally European penal trajectories. Due to the ever-changing political and economic climate, even penal policy in a given state can change quite rapidly, as for example happened in the 1990s in Finland. Notwithstanding the complicated nature of the European probation and criminal justice systems, they are viewed as a model for reforming the Russian penal institutions, as well as approaches to crime reduction and public protection.

With the end of the Soviet era, the Russian Federation faced serious challenges in many areas, including the economy, political and social spheres. Political uncertainty coupled with economic instability slowed down urgently needed reforms in penal matters. It is true that tangible progress was made in the late 1990s, when the state penitentiary system came

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<sup>18</sup> For more on typology of "penal strategies" see M. Cavadino, J. Dignan. *Penal Systems: A Comparative Approach*. London: Sage Publications Ltd., 2006.

under the jurisdiction of the Ministry of Justice and Russia joined the Council of Europe. Nonetheless, there are multiple problems, related to punishment and offender management, connected, *inter alia*, to high imprisonment rates, on the one hand, and weak supervision with practical absence of state support for parolees and those released on license, on the other. Thus, it is quite difficult and rather impractical to talk in terms of Garland's "culture of control", since the Soviet past entailed such a culture and it is precisely what the government announced the departure from in the newly adopted *Concept for the development of the Criminal Correctional System of the Russian Federation to 2020*.<sup>19</sup> The creation of a probation service is said to be an integral part of the modified penalty, based on the ideals of rehabilitation and social care. No practical steps have been made in this direction so far, which makes the analysis of the current penitentiary system together with European probation services even more topical.

In this context, I argue that the best way forward in Russia is not the development of a brand new organization, like Probation Trusts in England and Wales, but rather an in-depth (functional) reformation of the existing penal inspections within the Federal Penitentiary Service (FSIN). These changes, however, should be followed by improvements in social security, employment, healthcare and other social services to secure the best possible transition for those sentenced to custodial sentences, as well as support the sentenced to compulsory work and other types of non-custodial punishment. Looking back at the modern penal developments in Europe, I would be very cautious in advising adopting managerial (including risk assessment) techniques or target-based approaches to offender control. An individualized, human-centered approach should be embraced instead.

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<sup>19</sup> Concept for the development of the Criminal Correctional System of the Russian Federation to 2020, Government Decree from 14.10.2010 No. 1772-P. Collection of Legislative Acts of the Russian Federation, 25.10.2010, No. 43, pp. 5544.

# **1. Legal Framework of Probation and Social Reintegration of Offenders in Europe**

The unification of the approaches towards regulation of probation work on the European and international legal stages has become a distinguished trend in the last decades of the 20th – beginning of the 21<sup>st</sup> centuries. Such process goes in line with the broader movements of globalization and integration. The consolidation in the sphere of criminal justice and offender management is evident from the wide range of international documents produces and adhered to. At the same time since most of these documents have a status of recommendation and are frequently ignored, we should not overestimate their role at the local country-level, where penal policy is formed within specific socio-economic and cultural framework.

This chapter will give an outline and critical commentary on the development of unification and particular agreements reached. Analysis of the values and beliefs that inform international consensus in the area of rehabilitation and reintegration of offenders is crucial in understanding the goals probation is striving to achieve and means or tools which shall be used in this complex process. Moreover, I find it especially important to see if the current developments of crime control and risk management adhere to the ideals and hopes enshrined in international documents.

It is true that probation activity is per se value-oriented. Values appear at every step of probation framework, be it the organization of a service, communication with other agencies or practices of probation officers which show up in the operational decisions they take on the daily basis. Yet these values and beliefs are often taken for granted, with little thought given to the assumptions and presumptions about people and about the social world that they

imply.<sup>20</sup> Garland pointed out that nowadays “a liberal progressive ideal came to appear reactionary and dangerous to the very groups that had previously championed it”.<sup>21</sup> Analyzing the documents of the United Nations and the Council of Europe in their historical development, I will see if the shift from the social work values to enforcement, punishment and risk assessment has been somehow evident in these narrow settings of international law.

According to Article 29 of the Universal Declaration of Human Rights (1948), “in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are...of meeting the just requirements of morality, public order and the general welfare in a democratic society.”<sup>22</sup> In conformity with the Declaration, the UN International Covenant on Civil and Political Rights (1966) establishes that “the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”<sup>23</sup>

The recommendations on the management of penal institutions and treatment of prisoners are set forth in the Standard Minimal Rules for the Treatment of Prisoners (1955). In light of the research topic I shall pay special attention to the provisions related to the rehabilitation of offenders and post-conviction treatment.

The Standard Minimal Rules emphasize that in order to protect society against crime “the period of imprisonment should be used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.”<sup>24</sup> Thus, integration of an offender into society, individualization and desistance from

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<sup>20</sup> A. Robinson. *Foundations for offender management: Theory, law and policy for contemporary practice*. Bristol: The Policy Press, 2011, p. 3.

<sup>21</sup> D. Garland. *Culture of Control. Crime and Social Order in Contemporary Society*. Oxford: Oxford University Press, 2001, p. 45.

<sup>22</sup> The Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), *available at* [http://www.un.org/events/humanrights/2007/hrphotos/declaration%20\\_eng.pdf](http://www.un.org/events/humanrights/2007/hrphotos/declaration%20_eng.pdf) (last visited April 3, 2012).

<sup>23</sup> The UN International Covenant on Civil and Political Rights, Resolution 2200 (XXI) (16 December 1966), *available at* <http://www.hrweb.org/legal/cpr.html> (last visited April 4, 2012).

<sup>24</sup> Standard Minimal Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic

crime are the primary ideas behind the Minimal Rules, Universal Declaration and the ICCPR. The consideration of probation as a method for treatment rooted in the broader social and cultural trends and the “recognition of the social rehabilitation of the individual offender as a main object of penal policy”<sup>25</sup> characterize the therapeutic ideals of the 1950s.

These ideals distinguish the concept of social welfarism which gained its popularity in the second part of the 20th century. The view most relevant here would be Marshall’s notion of citizenship which is premised on equality, as all citizens possess equal right and duties, and on the inclusion of the weakest groups in society, and a focus on social welfare.<sup>26</sup> From the economic perspective welfarism entails guidance by the government and social benefits to its citizens, primarily in such spheres as education, housing, medical care, etc. All of those are resource-demanding and might be in contrast with the notion of criminal responsibility (individual by nature) which in this case has the propensity to be replaced by therapeutic interventions. As pointed by Martin Wiener “[c]riminals appeared now to require direct therapeutic intervention rather than deterrence or discipline. Consequently, the link between liability to criminal sanctions and moral blame was loosened, while these sanctions were made less punitive and more welfarist”.<sup>27</sup> I shall continue the discussions of the criminal justice theory in the chapters devoted to the development of probation/offender management in Europe and Russia.

The United Nations congresses on the prevention of crime and the treatment of offenders have emphasized the general issues of criminal policy, and dealt with particular features of crime prevention and criminal justice.<sup>28</sup> Among the documents adopted at the UN

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and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, *available at* <http://www2.ohchr.org/english/law/treatmentprisoners.htm> (last visited April 6, 2012).

<sup>25</sup> *Cit.* K. Hamai, R. Ville *et al.* *Probation round the world: a comparative study*. London: Routledge, 2005, p. 5.

<sup>26</sup> T. Marshall. *Citizenship and Social Rights*, Cambridge: Cambridge University Press, 1950 taken from S. Easton. *Prisoners’ rights: principles and practice*. London: Routledge, 2011, p. 18.

<sup>27</sup> *Cit.* C. Wells, O. Quick. *Reconstructing criminal law: text and materials*. Cambridge: Cambridge University Press, 2010, p. 349.

<sup>28</sup> Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice, *available at* <http://www.unodc.org/unodc/en/justice-and-prison-reform/compendium.html> (last visited September 15, 2012).

congresses I shall mention the Caracas Declaration of 1980, which proclaims that the “success of criminal justice systems and strategies for crime prevention...depends above all on the progress achieved through the world in improving social conditions and enhancing the quality of life.”<sup>29</sup> Social problems are perceived as the main risk factor giving rise to criminality. In this context a state retains the obligation to take every measure to improve social conditions and therefore avert the commission of crime. Because of that the promotion of alternatives to imprisonment is regarded to be valuable since it allows to respond to specific needs of disadvantaged and vulnerable groups.

The principles of social justice remained the cornerstone of the offender management as seen in other documents adopted by the UN General Assembly later on. Thus, the Milan plan of actions (1985) states that in the process of widespread rapid and far-reaching social and economic transformations, which are not criminogenic *per se*, the “success of criminal justice systems and strategies for crime prevention depend on the progress achieved in preserving peace, improving social conditions, making progress towards a new international economic order and enhancing the quality of life.”<sup>30</sup> Similar ideas are highlighted in the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order (1985).<sup>31</sup> The promotion of the principles of social involvement in crime prevention has also been fully captured in the United Nations Standard Minimum Rules for Non-custodial Measures of 1990 (The Tokyo Rules).<sup>32</sup>

Despite rapid and acute social changes in the world, facilitated by the economic crisis of the 1970s and changing governmental policies, the main principles of social justice in the area of offender treatment and penal policy on the whole remained untouched at the

<sup>29</sup> Caracas Declaration, endorsed by the General Assembly, in its resolution 35/171 of 15 December 1980, available at <http://www.cinu.org.mx/11congreso/pdf/antiores/res6cong.pdf> (last visited October 4, 2012).

<sup>30</sup> Milan Plan of Action. Adopted by the Seventh Crime Congress (1985), available at <http://www.unodc.org/unodc/en/justice-and-prison-reform/compendium.html> (last visited October 3, 2012).

<sup>31</sup> The Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, Seventh Congress of the United Nations, 1985.

<sup>32</sup> United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Adopted by General Assembly resolution 45/110 of 14 December 1990.



international stage. These genuine optimism and commitment to the long-standing ideals of criminal justice were largely in contrast with the widespread nihilism and the approval of the famous Martinson's "nothing works". Indicative enough this disappointment in correctional treatment was positively seen by liberals, but was even more positively viewed by conservatives who "demanded tougher handling of offenders".<sup>33</sup>

Separate set of documents produced by the United Nations are those related to the administration of juvenile justice. Convention on the Rights of the Child (1989),<sup>34</sup> the UN Standard Minimal Rules for the Administration of Juvenile Justice (the Beijing Rules) of 1985,<sup>35</sup> the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) of 1990<sup>36</sup> address shared concerns to combat juvenile offending across the globe. The revived interest and anxiety about the youth crime coincided with the transformation of the middle class and the remarkable shift in penal ideals and philosophy<sup>37</sup> on the one hand and the significant increase in juvenile violence that started in the mid-1980s and reached a high in the early 1990s<sup>38</sup> on the other. In Western Europe, for which there is data, arrests of juvenile delinquents and under-age offenders grew on average by almost 50 per cent between the mid-1980s and the late 1990s.<sup>39</sup>

In the ever-changing world with the constant transformation of ideals of family, religion, school, etc. the process of socialization of children becomes more and more

<sup>33</sup> J. Miller. *The Debate on Rehabilitating Criminals: Is It True that Nothing Works?* (March 1989), available at <http://www.prisonpolicy.org/scans/rehab.html> (last visited August 11, 2012).

<sup>34</sup> Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, available at <http://www2.ohchr.org/english/law/crc.htm> (last visited October 14, 2012).

<sup>35</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"). Adopted by General Assembly resolution 40/33 of 29 November 1985, available at <http://www2.ohchr.org/english/law/pdf/beijingrules.pdf> (last visited April 17, 2012).

<sup>36</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990, available at <http://www2.ohchr.org/english/law/juvenile.htm> (last visited October 16, 2012).

<sup>37</sup> D. Garland. *Culture of Control. Crime and Social Order in Contemporary Society*. Oxford: Oxford University Press. 2001, p. 53.

<sup>38</sup> J. McCord, C. Widom (eds.). *Juvenile Crime, Juvenile Justice*. Washington: National Academy Press, 2001, p. 13.

<sup>39</sup> World Youth Report, Chapter VII – Juvenile Delinquency (2003), available at <http://www.un.org/esa/socdev/unyin/documents/ch07.pdf> (last visited October 7, 2012).

complicated, less predictable and hard-regulated. The erosion of the social values and the sense of decline of the social capital and the norms, values, and mutual respect that underpin trust, cooperation, and shared concern<sup>40</sup> create the need for the special protection of such a vulnerable group as the youth. This is why the guiding principles in the juvenile offenders' management acquire utmost significance.

Article 40 of the Convention on the Rights of the Child (CRC) states that “every child alleged as, accused of, or recognized as having infringed the penal law [shall] be treated in a manner...which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.”<sup>41</sup> This correctional orientation continues the tradition of penal welfarism and progressive penology having its roots in the 19th century. It also goes in line with the abovementioned ICCPR, which requires in case of juvenile persons the criminal procedure to be “such as will take account of their age and the desirability of promoting their rehabilitation”.<sup>42</sup> I should agree with Loeber that “the repressive objectives of criminal justice must give way to rehabilitation and restorative justice objectives when dealing with juvenile offenders”.<sup>43</sup>

The importance of a special approach towards juvenile criminal justice is reinforced by creation of the special international documents: Riyadh Guidelines, Beijing and Havana Rules. No similar documents exist for the adult delinquency prevention and adult offenders' management.

The CRC has been considerably influenced by the Beijing Rules adopted three years earlier. These guidelines reflect the goals of juvenile justice and elaborate the leading

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<sup>40</sup> S. Farrall, J. Jackson, E. Gray. *Social order and the fear of crime in contemporary times*. Oxford: Oxford University Press, 2009, p. 6.

<sup>41</sup> Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, available at <http://www2.ohchr.org/english/law/crc.htm> (last visited October 14, 2012).

<sup>42</sup> The UN International Covenant on Civil and Political Rights, Resolution 2200 (XXI) (16 December 1966), available at <http://www.hrweb.org/legal/cpr.html> (last visited April 1, 2012).

<sup>43</sup> R. Loeber, N. Wim Slot, P. van der Laan. *Tomorrow's criminals: the development of child delinquency and effective interventions*. Farnham: Ashgate Publishing Company, 2008, p. 234.

principles for that purpose. As stated in the comment to Article 17 “[i]t is not the function of the Standard Minimal rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles”.<sup>44</sup> Exploring such an approach I should point out the common grounds or principles it is based on.

Achieving the long-range aim of juvenile well-being (Article 5) is regarded to be in contrast with the institutional treatment gaining its popularity in the 1980s (Article 19). Instead, a large variety of disposition measures are offered, including probation, community service orders, orders concerning foster care, living communities (Article 18), etc. The negative effects connected to the loss of liberty are particularly apparent in case of young offenders who are vulnerable to negative influences and easily become victims of the prison culture. Unfortunately, this ideal runs counter to the reality where “[i]ncreasingly restrictive policies have been implemented at the juvenile level – restrictions that are equal to, or sometimes more severe than, those at adult facilities.”<sup>45</sup>

The problem of the juvenile incarceration represents a part of a bigger societal problem, which is the lack of social connections and growing feelings of indifference and distrust. In this context rehabilitation, needed for the well-being of the juvenile, becomes an important consideration for the entire society. Accordingly, “efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance...in order to facilitate the rehabilitative process” (Article 24). However, these efforts do not stop after the sentence has been served. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) – the Havana Rules, state that “all juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after

<sup>44</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”). Adopted by General Assembly resolution 40/33 of 29 November 1985, available at <http://www2.ohchr.org/english/law/pdf/beijingrules.pdf> (last visited April 17, 2012).

<sup>45</sup> M. Bortner, M. Williams. *Youth in Prison*. New York: Routledge, 1997 taken from K. Barret, W. George. *Race, culture, psychology, and law*. London: Sage Publications, Inc., 2005, p. 370.

release. Procedures, including early release, and special courses should be devised to this end”<sup>46</sup> (Article 79).

The child-oriented approach in penal policy is evident in another document produced by the United Nations – the Riyadh Guidelines, issued in 1990. These guidelines emphasize that “policies should avoid criminalizing and penalizing a child for behavior that does not cause serious damage to the development of the child or harm to others”<sup>47</sup> (Article 5). If it does cause such damage or harm then it becomes a problem of the society as such and thus, it is the society that should bear the responsibility for his or her reintegration. This is why the efforts of the whole community are required to “ensure the harmonious development of adolescents with respect for, and promotion of, their personality from early childhood” (Article 2). It is very important to mention that the role a young offender shall play in the process of rehabilitation is far from being passive and requires active communication and work (Article 3).

The philosophical background behind the UN documents notwithstanding the range of their application, from adult to juvenile delinquency, from imprisonment to its alternatives, has remained the same for over more than half a century. Being offender-centered it puts in the forefront the ideals of social cohesion, rehabilitation and paternalism. The creation and maintenance of hope in offenders so they could manage their own lives and the acquisition of social capital are essential in the process of change and desistance.

Acceleration of the European integration and the growing number of international and transnational crimes committed in the 1990s created the incentives for active cooperation in criminal matters and developing the unified standards and approaches towards offender

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<sup>46</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, G.A. res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990), *available at* <http://www.un.org/documents/ga/res/45/a45r113.htm> (last visited September 11, 2012).

<sup>47</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990, *available at* <http://www2.ohchr.org/english/law/juvenile.htm> (last visited October 16, 2012).

management. Traditional criminal justice and law enforcement mechanisms proved their inadequacy in addressing the new challenges and combating all-standing forms of crime. In this context the Council of Europe (CoE) has become an important forum for discussions on crime prevention and rehabilitation techniques. The Council of Europe sets standards for human rights and monitors their application. Analysis of the recommendations and resolutions produced by the CoE is necessary for understanding the current vision of the primary aims of penal policies in Europe and the tools required to achieve them.

As early as in 1964 the Council of Europe opened for signature the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, which was prepared by the European Committee on Crime Problems (ECCP) in accordance with the program of action in the field of crime prevention and treatment of offenders. Highlighting the importance of the establishment of a system in order to facilitate international cooperation in implementation of conditional sentences, the Convention emphasizes that “[t]his assistance shall take the form of supervision designed to facilitate the good conduct and readaptation to social life of such offenders and to keep a watch on their behavior”.<sup>48</sup>

The principles of social justice in offender treatment were further developed in the Resolutions No. (65) 1 of 1965, No. (70) 1 of 1970, Recommendation No. R (92) 16<sup>49</sup> of the Council of Europe devoted to realization of alternatives to incarceration. Although non-binding by their character, these documents lay down the foundation for harmonized policies across Europe. According to the recommendations, conditional measures such as suspended sentence, probation order or other alternatives to imprisonment should have the priority over

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<sup>48</sup> European Convention on the Supervision of Conditionally Sentenced or Conditionally Released offenders, (ETS No. 051), Strasbourg, 30.XI.1964, entered into force 22 August 1975, *available at* <http://conventions.coe.int/Treaty/EN/Treaties/Html/051.htm> (last visited October 9, 2012).

<sup>49</sup> Resolution No. (65) 1 of 1965 Remand in custody; Resolution No. (70) 1 of 1970, Practical Organization of Measures for the supervision and after-care of conditionally sentenced or conditionally released offenders; Recommendation No. R (92) 16 on the European Rules on community sanctions and measures.

the sentence involving deprivation of liberty. This is why collection of information on the offender's needs, his character and social circumstances become an integral part of the consistent process of rehabilitation.<sup>50</sup> Other principles of community sanctions' implementation include clarity of legal provisions, determinate duration of measures, proportionality of the nature and duration of community sanction to the seriousness of the offence, no automatic conversion of failure to follow condition or obligation attached into imprisonment, etc.

The concern about the growing prison population and aspirations to enhance human rights of offenders have become a background for growing interest in community sanctions and probation. The collapse of the Soviet Union has also led to an increase in the adoption of probation practices in Eastern Europe.<sup>51</sup> As probation services in many countries are undergoing processes of formation and restructuring, creation of the necessary guidelines for these developments becomes vital. Drawing upon the expert advice and practical experience of the Member States, the CoE adopted the European Probation Rules (2010). According to the Rules, probation means the implementation of sanctions and measures in the community to promote successful social inclusion and reduce reoffending rates.<sup>52</sup> Among the basic principles underlying probation practices are: respect for human rights of offenders; personal autonomy; public character of probation responsibility; cooperation of probation agencies with other public and private organizations; accessible, impartial and effective procedures regarding complaints concerning probation practice, etc. These principles partly coincide with those established by the European Rules on community sanctions and measures, thus reflecting a general framework of the European penal policy.

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<sup>50</sup> See Article 1 (b), (c) of the Resolution No. (70) 1, Practical organization of measures for the supervision and after-care of conditionally sentenced or conditionally released offenders, adopted by the Ministers' Deputies on 26 January 1970.

<sup>51</sup> See A. Van Kalmthout, J. Roberts, S. Vinding. *Probation and Probation Services in the EU accession countries*. Nijmegen: Wolf Legal Publishers, 2003.

<sup>52</sup> Recommendation CM/Rec (2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, Adopted by the Committee of Ministers on 20 January 2010.

Despite the fact that probation services in Europe differ in their structures and types of probation measures applied, the Rules are important as they provide a common ground for developing unified standards of probation work, necessary in relation to, *inter alia*, mutual recognition of probation decisions following the Council Framework Decision 2008/947/JHA 947. This Framework Decision enables Member States of the EU to “enforce a foreign probation sanction or measure according to their national practice, provided that the enforcing state accepts the judgment [which] should be obligatory.”<sup>53</sup>

I should agree with Rob Canton that the Council and the European Court can be seen as transnational vector supporting the practical realization of the ethical aspirations of the Convention itself.<sup>54</sup> Many rights protected by the European Convention on Human Rights (ECHR) and broadly interpreted by the Court have given the impetus to the realization of principles captured in the Probation Rules and other CoE recommendations. The concept of positive obligations might become a basis for affirming the general right to rehabilitation.<sup>55</sup> As an ultimate value it forms a backbone of conventional rights. Because of the obligatory character of its judgments and relatively broad jurisdiction, the role played by the Convention in shaping effective and legitimate penal policy should not be underestimated. This role is especially evident in the sphere of prisoners’ rights.

The Council of Europe has issued several recommendations for management of prison sentences and administration of remand in custody. Extremely important for prison reform since the 1960s, the Council of Europe has been working to make improvements in “the treatment of those imprisoned or otherwise deprived of their liberty”.<sup>56</sup> Treatment of prisoners with respect to their human rights and with the aim of increasing the possibilities of a

<sup>53</sup> C. Morgenstern. European Initiatives for harmonization and Minimum Standards in the Field of Community Sanctions and Measures. *European Journal of Probation*, Vol. 1, No. 2, 2009, p. 138.

<sup>54</sup> R. Canton. Taking Probation Abroad. *European Journal of Probation*, Vol. 1, No. 1, 2009, p. 9.

<sup>55</sup> See R. Canton. Nonsense upon stilts? Human rights, the ethics of punishment and the values of probation. *British Journal of Community Justice*, 7 (1), 2009.

<sup>56</sup> European Prison Reform, Council of Europe, available at <http://www.coe.int/lportal/web/coe-portal/what-we-do/human-rights/european-prison-reform> (last visited October 30, 2012).

successful resettlement in society, have become the guiding principles behind all relevant documents.<sup>57</sup> In this regard the standards adopted by the Committee of Ministers have taken their inspiration from the Standard Minimal Rules for the Treatment of Prisoners discussed above.

Unlike the European Prison Rules of 1987, which require that prisoners be treated “with respect for their human dignity”, the new Rules adopted in 2006, put human rights of prisoners and their rehabilitation to the forefront. The relationship between dignity and human rights is far from being clear though. A deep analysis of this problem is beyond the scope of this work, this is why it is sufficient to emphasize that both documents played crucial role in establishing rehabilitation as a vital governing principle of the European law and policy. This principle in turn is accompanied by the other, more definite ideals, such as individualization, normalization, responsibility, non-segregation, etc.

Application of these principles can be found in the case law of the European Commission of Human Rights (EcomHR) and the European Court of Human Rights (ECtHR). As the EcomHR explained, for example, Article 8 of the ECHR, as applied to the right to respect to prisoners’ private lives, “requires the State to assist prisoners as far as possible to create and sustain ties with people outside prison in order to promote prisoners’ social rehabilitation”.<sup>58</sup> In *Hirst v. United Kingdom (2005)* the Grand Chamber of the ECtHR formulated its approach to the rights of prisoners, affirming that “prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty... Any restrictions on these other rights must be justified”.<sup>59</sup> Thus, prisoners should be treated as an equal part of the community, meaning with respect and

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<sup>57</sup> Recommendation Rec (2006)2 of the Committee of Ministers to member states on the European Prison Rules, Adopted by the Committee of Ministers on 11 January 2006; Recommendation Rec (2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners, Adopted by the Committee of Ministers on 9 October 2003.

<sup>58</sup> *Cit. Grace v. United Kingdom* [EcomHR], 15 December 1988, § 74 from D. van Zyl Smith, S. Snacken. *Principles of European Prison Law and Policy*. Oxford: Oxford University Press, 2009, p. 106.

<sup>59</sup> *Hirst v. United Kingdom (No. 2)*, no. 74025/01, 6 October 2005, § 69.



justice. As Uggen and Manza argue, restoration of voting rights is essential in regards of social rehabilitation and inclusion.<sup>60</sup> In this sense the ECtHR judgment in *Hirst* might be seen as a further step in this direction. Nevertheless, accepting the need to guarantee rights protected under the Convention (full legal citizenship of prisoners), the Court has fallen short of establishing a comprehensive vision of basic principles of penal policy in regards to prisoners.

A further step in this direction has been made in the Grand Chamber judgment in *Dickson v. United Kingdom* (2007), where the Court taking into account latest recommendation of the CoE, acknowledged that recently there has been a tendency to put more emphasis on rehabilitation.<sup>61</sup> The Court also emphasized that rehabilitation constitutes the idea of re-socialization through “fostering personal responsibility”,<sup>62</sup> rather than compulsory treatment of offenders. As regards the regime for sentenced prisoners, the ECtHR referred to the “progressive principle”, which entails preparation of prisoners for release into society. This principle implies that “all prisoners, including those sentenced to life imprisonment, should have a genuine prospect of release.”<sup>63</sup> The problem arises though with regards to life imprisonment without parole. In *Vinter and Others v. United Kingdom* (2012) the Court disregarded the development of the European penal policy and stated that life imprisonment without parole is not necessarily incompatible with the Convention.<sup>64</sup> Moreover, the ECtHR emphasized that none of the applicants has demonstrated that their continued incarceration serves no legitimate penological purpose.<sup>65</sup> This logic is flawed because it undermines the very purpose of punishment and justice. I agree with Fergus

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<sup>60</sup> C. Uggen, J. Manza. Democratic Contraction? The Political Consequences of felon disenfranchisement in the United States. *American Sociological Review*, 67 (6), 2002, p. 796.

<sup>61</sup> *Dickson v. United Kingdom*, no. 44362/04, 4 December 2007, § 28.

<sup>62</sup> *Ibid.*

<sup>63</sup> A. Crawford (eds.). *International and Comparative Criminal Justice and Urban Governance: Convergence and Divergence in Global, National and Local Settings*. Cambridge: Cambridge University Press, 2011, p. 182.

<sup>64</sup> *Vinter and Others v. United Kingdom*, no. 66069/09 and 130/10 and 3896/10, 17 January 2012, § 93.

<sup>65</sup> *Ibid.*, § 95.

McNeill that desistance can be encouraged by “believing in the offender”.<sup>66</sup> Life imprisonment without parole suffocates any hope of those in charge of prisons. Besides, since there is no hope of being released, the incentives for constructive change of offenders’ behavior are minimal and the very notion of reintegration is rendered meaningless. Thus, punishment and deterrence, dominant characteristics of the “punitive model” seem to prevail in this case.

The European and international initiatives signify a unified approach towards the principles which should guide penal policy. Rehabilitation and social inclusion, desistance and human rights have enriched the lexicon of criminal justice. The concepts of “public protection” and “risk management” viewing offenders as external threats to the community, though prevalent in the modern climate of populist punitiveness, have not found substantive support in the UN, CoE and EU instruments. It is true that the protection of victims of crimes and public do constitute an important part in pursuing social and criminal justice, they do not however justify irrational and one-sided punitive criminal policy. Legal framework of offender management outlined in this chapter shall become a driving force and a framework within which the modern practices of probation should go in line with. In this context human rights have a great potential in bringing the ideals and principles of rehabilitation into reality. The European Court of Human Rights seems to have embraced this approach in interpreting the Convention. Despite the fact that the Court has not established a general right to rehabilitation and some of its interpretations reflect a vision of the “punitive model”, it has a potential to become an important tool in shaping effective, harmonized and legitimate penal system.

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<sup>66</sup> F. McNeill. What Works and What’s Just? *European Journal of Probation*, Vol. 1, No. 1, p. 27.

## 2. Historical Developments and Theoretical Underpinnings of Probation Work

The organizational structures of probation services in Europe are diverse, so are their functions and priorities. Influenced by different historical and cultural developments, criminal justice policies of European countries have signified unique ways in reaching the goals of punishment and reduction of reoffending.

As Garland rightly pointed out “[w]hat appears on its surface to be merely a means of dealing with offenders so that the rest of us can lead our lives untroubled by them, is in fact a social institution which helps define the nature of our society, the kinds of relationships which comprise it, and the kinds of lives that it is possible and desirable to lead there”.<sup>67</sup> Since the societies are undergoing a constant process of change, so are the probation services. Social, political, economic and cultural shifts greatly affect public attitudes, criminal practice and official governmental policy. It is precisely with this holistic understanding of the penal system as a part of a large societal structure I am analyzing probation services in Europe.

In order to fully capture the crucial features of the modern stage of the probation practices’ development, I should briefly outline its historical background. As stated before, offender management was always dependent on political, cultural and social factors of a particular time in history. McWilliams has emphasized three main periods in the history of probation.<sup>68</sup> The first one, from 1876 to the 1930s, was rooted in religious idealism refrained in terms of salvation and moral reform. Following successful “special pleading”, offenders were placed under the supervision of individual missionaries in order for the offender’s salvation to be completed.<sup>69</sup> Alongside the altruistic accounts of such policy, it was argued

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<sup>67</sup> D. Garland. *Punishment and Modern Society*, Oxford, Oxford University Press, 1990, p. 287.

<sup>68</sup> W. McWilliams. Probation, pragmatism and policy. *Howard Journal of Criminal Justice*, vol. 26, 1987. – pp. 97-121.

<sup>69</sup> H. Kemshall. *Risk in probation practice*. Aldershot: Ashgate Publishing Limited, 1998, p. 89.

that “[c]harity was not simple altruism but confirmed the rightness of a middle class view of society, and maintained its dominance.”<sup>70</sup>

The second period lasted from the 1930s to the 1970s. It was a period of diagnosis and treatment. In this mode an offender was presented as the repository of psycho-social problems in need of expert casework treatment in order to alleviate them.<sup>71</sup> Thus, offender retained a passive role as a recipient of treatment prescribed to cure his/her illness. Influenced by the rise of psychology and eugenics, the expert assessment approach was meant to change offenders’ behavior in a positive way to bring down the reoffending rates. This move has been reinforced and backed by the growth of state power and its intrusiveness into social and economic lives of citizens in the period after the First World War. Nevertheless, the belief that penal sanctions in form of treatment were able to “cure” criminality lasted for a limited period until the 1970s, when a shift towards the crime control model occurred. Stanley Cohen summarized the main characteristics of new behaviorism as follows:

- it is uninterested in causes (the result is what matters – causal theories are either contradicted by the program or are irrelevant);
- it is not at all incompatible with management, control and surveillance (indeed this is what it is all about);
- it offers the modest prospect of changing behavior sequences rather than people;
- it works at the ‘realistic’ level of situations or physical environments rather than institutions which touch the social order.<sup>72</sup>

One of the most influential impetus to this change was Martinson’s report of 1974, which concluded that “[w]ith few and isolated exceptions the rehabilitative efforts that have

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<sup>70</sup> M. Vanstone. Mission Control: The Origins of a Humanitarian Service. *Probation Journal*, Vol. 51(1), 2004, p. 37.

<sup>71</sup> H. Kemshall. *Risk in probation practice*. Aldershot: Ashgate Publishing Limited, 1998, p. 90.

<sup>72</sup> S. Cohen. *Visions of social control*. Cambridge: Polity Press, 1985, p. 150.

been reported so far have had no appreciable effect on recidivism”.<sup>73</sup> Though, the report did not state that rehabilitation programs did not have any effect, it was interpreted as demonstrating that “nothing works”. Noting this shift from a treatment model to risk management and crime control, I should point out that there was an important element of continuity. It is the role of an offender which remained largely passive and undervalued in both of these paradigms.

The growing sense of insecurity and rising crime rates have been instrumental in establishing a new ideology of “war on crime” and “crime and order”, characterizing a late-modern crime complex (the one which has emerged since the 1970s mainly in the United States and the United Kingdom).<sup>74</sup> The failure (perceived or otherwise) of the rehabilitative ambitions “resulted in a profound loss of faith in the legitimacy of the traditional aims and purposes of probation”.<sup>75</sup> In this complex environment probation services had to modernize and compete with the growing popularity of custodial sentences. It all led to a rise of the punitive element in probation work. Probation has become a part of the ‘new penology’, “engaged in a transition from the traditional concerns of the rehabilitative and welfare arm of criminal justice...to an agency of control concerned with the accurate prediction and effective management of offender risk”.<sup>76</sup> Despite the fact that such development was particularly evident in the United Kingdom and the United States, its influence had been felt across Europe.<sup>77</sup>

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<sup>73</sup> R. Martinson. What works? – questions and answers about prison reform (1974), p. 25, available at [http://www.nationalaffairs.com/doclib/20080527\\_197403502whatworksquestionsandanswersaboutprisonreformrobertmartinson.pdf](http://www.nationalaffairs.com/doclib/20080527_197403502whatworksquestionsandanswersaboutprisonreformrobertmartinson.pdf) (last visited November 3, 2012).

<sup>74</sup> P. Whitehead. *Exploring modern probation: Social theory and organizational complexity*. Bristol: The Policy Press, 2010, p. 84.

<sup>75</sup> T. McCulloh, F. McNeill. Consumer society, commodification and offender management. *Criminology and Criminal Justice*, Vol. 7(3), p. 226.

<sup>76</sup> *Cit.* H. Kemshall, N. Parton, M. Walsh, J. Waterson. *Concepts of risk in relation to organizational structure and functioning within the personal social services in probation* (1997) in G. Robinson. Exploring risk management in probation practice. *Punishment & Society*, Vol. 4 (1), 2002, p. 8.

<sup>77</sup> *See, e.g.,* D. Downes. Visions of Penal Control in the Netherlands. *Crime and Justice*, 36- 93, 2007; E. Bell. Anglo-Saxon Sociologies of the Punitive Turn: A Reply. *Champ pénal/ Penal field*, Vol. VII, 2010, available at <http://champpenal.revues.org/7915> (last visited October 17, 2012).

It is necessary to emphasize that a move from penal welfarism and treatment models was rather rational and logical. The need to rethink the long-used methods and approaches of rehabilitative criminal policy was caused by the lack of evidence-based analysis and assessment in terms of cost-effectiveness and efficiency. Consistent and thorough measurement of penal system's performance is an important tool necessary for its improvement and development. After all, this is exactly what Martinson's report has been clear about. But in specific political, economic and social circumstances this discourse has been successfully used by those arguing for tough punishment, dissatisfied with costs of rehabilitation programs or embracing the rationale of 'just deserts' punishment.

It is precisely in this period of time that the new paradigms of probation have emerged. As a theoretical background for this research I should refer to the "non-treatment paradigm" of Bottoms and McWilliams, "desistance paradigm" of Maruna, McNeill, Farrall, etc. and the "revised paradigm" of Raynor and Vanstone. Before examining these theoretical constructs I should make a reservation that in words of Mair and Burke "it is impossible to know how far the discourses discussed were put into practice".<sup>78</sup> Keeping in mind the always existing gap between theory and practice, we should not underestimate the differences in probation services across Europe.

Bottoms and McWilliams propose their vision of probation against the alleged failure of the treatment doctrine. They argue that "treatment model is theoretically faulty, and capable of injustice".<sup>79</sup> Coercion of offenders and neglect of social causes of crime were inherent in it. Taking these shortcomings into account, Bottoms and McWilliams offer a new paradigm based on traditional values of probation, including provision of "appropriate help

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<sup>78</sup> G. Mair, L. Burke. *Redemption, rehabilitation and risk management: a history of probation*. London: Routledge, 2012, p. 4.

<sup>79</sup> A. Bottoms, W. McWilliams. A Non-Treatment Paradigm for Probation Practice. *British Journal of Social Work*, 9(2), 1979, p. 161.

for offenders, statutory supervision of offenders, and diversion from custodial sentences and reduction of crime.”<sup>80</sup>

Elaborating on the first of these values, authors emphasize the need to depart from the probation case-work-era ‘objective attitude’ towards more inclusive and help-based relationship.<sup>81</sup> In reaching this result probation services would have to be reorganized in a form of decentralization of agency structures to be able to respond more closely to client requests for help as well as greater use of voluntary associations. Regarding the second aspect of change, Bottoms and McWilliams embrace the distinctions between “coercion” and “constraint”. They connect these concepts with the value of “respect for persons” incompatible with coercion. Thus, “choice under constraint is acceptable, manipulative coercion is not”.<sup>82</sup> Maximization of choices for offender at the court stage and after is seen as another step towards offender-centered probation service. Diversion from custody takes an important place in the new paradigm. Community services, probation hostels, day training centers and so on are offered as a feasible alternative to custodial sentences (both short and long term). Interestingly, suspended sentence is advised to be treated according to the sentence itself. Thereby suspended sentence of imprisonment is given a similar status as sentence of imprisonment. Ultimately such logic taken in conjunction with the ideal of diversion, in my opinion, greatly reduces the applicability of suspended sentences in practice.

Crime reduction has always been a legitimate expectation of both a government and public from any penal policy. Nevertheless, as argued by Bottoms and McWilliams, prevention of criminality does not constitute a primary consideration for the new probation

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<sup>80</sup> A. Goodman. *Rehabilitating and Resettling Offenders in the Community*. Chichester: John Wiley & Sons, 2012, p. 69.

<sup>81</sup> The notion of help for Bottoms and McWilliams is rather broad and includes not only material, but also psychological and other forms of support.

<sup>82</sup> A. Bottoms, W. McWilliams. A Non-Treatment Paradigm for Probation Practice. *British Journal of Social Work*, 9(2), 1979, p. 177.

policy of help (legacy of “nothing works”). In this sense it represents a value in itself. Instead, society-oriented preventive measures are offered (*e.g.*, strong involvement of community).

More than ten years after Bottoms and McWilliams’ work had been published, their paradigm of non-treatment was revisited by Raynor and Vanstone. Influenced by the results of the Reasoning and Rehabilitation (R & R) and Straight Thinking on Probation (STOP) programs showing some form of effectiveness in crime reduction, they reconsidered previous findings, “built...out of a mixture of doubt and skepticism about the crime-reducing potential of rehabilitation”.<sup>83</sup> The main concern linked to the approach advocated by Bottoms and McWilliams is its blanket negation of any relevance of individual interventions in relation to crime reduction. “A simple and rigid assignment of activities to the two categories of ‘treatment’ and ‘help’ ignores other more realistic possibilities”.<sup>84</sup> Incorporation of informed practices, “focused on influencing and helping individuals to stop offending,”<sup>85</sup> is reincorporated into the revised paradigm of Raynor and Vanstone. At the same time valuable elements of the non-treatment doctrine such as principles of collaboration and “respect for persons”<sup>86</sup>, stress on client needs, significance of addressing social causes of crime, etc. remain untouched. In sum, corrections offered by Raynor and Vanstone include: introduction of the notion of harm which becomes a necessary sacrifice in protecting victims of crime and general public; relatively narrow interpretation of the principle of informed consent, which retains characteristics of social contract; incorporation of the category of effectiveness as part of the process of reaching a collaboratively defined task.

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<sup>83</sup> P. Raynor, M. Vanstone. Probation Practice, Effectiveness and the Non-Treatment Paradigm. *British Journal of Social Work*, 24 (4), 1994, p. 396.

<sup>84</sup> *Ibid.*, p. 399.

<sup>85</sup> *Cit.* from F. McNeill. A desistance paradigm for offender management. *Criminology and Criminal Justice*, Vol. 6 (1), 2006, p. 43.

<sup>86</sup> The notion of the “respect for persons” is extended to include actual and potential victims of crime.



This way of thinking has indicated “a revival of optimism regarding transformative potential of interventions,”<sup>87</sup> the beginning of the so called “new rehabilitationism” or “what works” paradigms to promote effective and evidence-based practices. It was a rather pragmatic and in a sense more hopeful vision of probation.

The 1990s has been a turning point for the European penal systems in many respects. On the one hand, the collapse of the Soviet Union has triggered the move toward reconsideration of the criminal justice policies in the new democracies. On the other, influenced by the rising crime rates and wide public dissatisfaction with crime policies, old European democracies had to face a real challenge in reconsidering their probation practices. This period has been unique both in terms of organizational transformations and theoretical turmoil driven by the need to protect public and reduce reoffending. In a sense it was a period of survival for probation as a concept which can be more cost-effective and efficient than custodial methods. In this respect Raynor and Vanstone’s “something works” has found itself in the theory of desistance.

Research on desistance is distinguished from many others as it focuses on discovering *why* and *how* offenders stop participating in criminal behavior. Unlike in the treatment paradigm with its correctional interventions, desistance implies support for the self-change processes of an offender, who is treated as an independent and mature actor in the process of change and is empowered to lead in it. This is why concepts of restorative justice, ‘state-obligated’ rehabilitation (rehabilitation as a human right) and social re-entry are natural allies of desistance.

Clearly desistance is not an event, so it cannot be brought up by a cure. It is rather a complicated process, personal and changeable. This is why this approach might remind the one of the non-treatment paradigm where any professional intervention is regarded as

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<sup>87</sup> G. Robinson. Exploring risk management in probation practice. *Punishment and Society*, Vol. 4 (1), 2002, p. 10.

unnecessary in the process of change. Nevertheless, having taken an offender-oriented stance, desistance does not negate the possibility of effective professional interventions at different levels (*e.g.* social or personal), which shall address not only risk, needs and responsivity (RNR), but most importantly, individual priorities. Desistance interventions accept natural character of reform and complement it in different ways. Because of a dynamic and manifold essence of desistance, various strands in its analysis and research have been adopted by criminologists. This is why it would be more appropriate to refer to theories of desistance rather than just one desistance theory.

In characterizing a desistance process Maruna highlighted two different dimensions: primary and secondary desistance.<sup>88</sup> Primary desistance relates to an offence-free period in a criminal career. Therefore it is a rather simplistic vision of offending activity and thereby does not really produce valuable information for formulating an efficient criminal justice policy. The focus of the secondary desistance in contrast refers to a more deep understanding of a personal change, reflected in the categories of a new role and alternative identity. The need to create appropriate framework for secondary desistance and the role of probation services in this process have prompted further studies within the new-rehabilitationist movement. Some researchers highlighted a significant value of the relational aspects of probation practice,<sup>89</sup> the others – importance of improving social and institutional structures,<sup>90</sup> and adopting integrative change-focused approaches to public protection and offender management.<sup>91</sup> Desistance from crime is a difficult path impeded by the criminal networks offenders are involved in, stigmatization attached to their status by a society and many other disadvantageous

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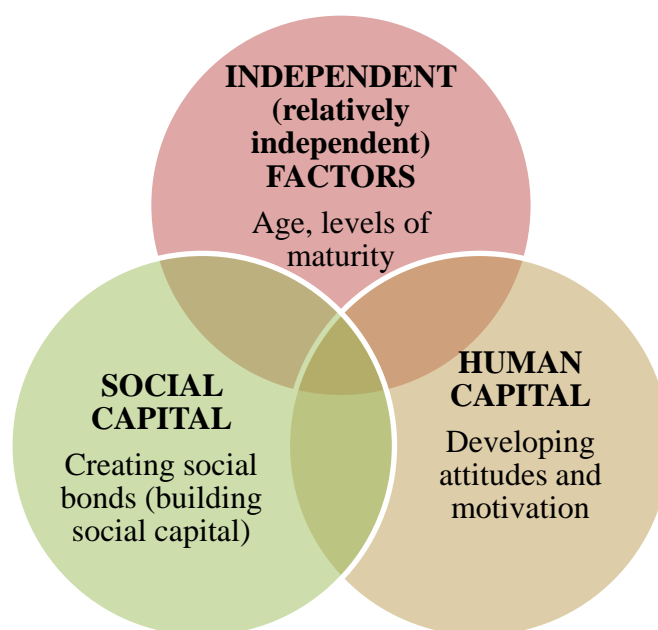
<sup>88</sup> S. Maruna, R. Immarigeon, T. LeBel. *Ex-offender reintegration: theory and practice in After Crime and Punishment: Pathways to offender reintegration*. Devon: Willan Publishing, 2004, p. 19.

<sup>89</sup> R. Burnett, F. McNeill. The place of the officer-offender relationship in assisting offenders to desist from crime. *The Journal of Community and Criminal Justice*, Vol. 52 (3), 2005, pp. 221-242.

<sup>90</sup> S. Farrall, A. Bottoms, J. Shapland. Social structures and desistance from crime. *European Journal of Criminology*, 7 (6), 2010, pp. 546-570.

<sup>91</sup> F. McNeill. What Works and What's Just? *European Journal of Probation*, Vol. 1, No. 1, 2009, pp. 21-40.

circumstances. The following diagram captures the main factors (strategies) of desistance process as discussed in the academic literature:



**Figure 1.** Desistance factors

The first set of factors are those independent (or relatively independent) from intervention's changing impact. It is well known that maturation plays an important role in criminal career. As *The Time Magazine* argued: "Violence is typically a young man's vice; it has been said that the most effective crime-fighting tool is a 30th birthday".<sup>92</sup> The empirical evidence shows "the early twenties to be the years in life when there is a particularly rapid deceleration of recorded involvement in criminal activity in the population as a whole."<sup>93</sup> Keeping in mind this significant age-maturation-factor, we should not run into overdeterminacy and rejecting or dismissing of impact of any rehabilitative interventions. At the same time, understanding of the natural processes of human development might be useful in formulating effective approaches in desistance.

<sup>92</sup> D. Drehle. What Behind America's Falling Crime Rate. *The Time Magazine*, February 22, 2010, available at <http://www.time.com/time/magazine/article/0,9171,1963761,00.html> (last visited October 5, 2012).

<sup>93</sup> A. Bottoms, J. Shapland, A. Costello, D. Homes, G. Muir. Towards Desistance: Theoretical Underpinnings for an Empirical Study. *The Howard Journal*, Vol. 43, No. 4, Sep. 2004, p. 369.

The other two types of factors represent a familiar from sociology “structure-agency dilemma” in human behavior, raising issues of personal autonomy and responsibility in criminal life and social determinism and predispositions. It is true that both of these paradigms are equally important in addressing problems of rehabilitation and crime prevention. As Antony Giddens emphasized “the constitution of agents and structures are not two independently given sets of phenomena, a dualism, but represent a duality”.<sup>94</sup> Both structure and agency in their mutual existence and constant interaction affect criminal career and should be a major consideration for those planning and executing interventions.

Repairing social bonds in such areas as employment, family and peer relations, housing, etc. is essential in building personal confidence and is instrumental for offender “de-labeling”.<sup>95</sup> It is true that social structures may become constraints or obstacles, blocking ex-offenders from becoming full members of a community. But they may equally be a source of empowerment, facilitating desistance process. In my opinion, such enabling is possible only through supporting social/personal relations, including “offender-probation officer” relations. This is why rehabilitative interventions should be accompanied by regular training programs for probation staff as well as effective cooperation with civil society (NGOs, employers, etc.). Preparation work within a community and among ex-offenders as one of the probation’s tasks needs to be further investigated and enhanced in order to provide for the most efficient construction of the bridging social capital as the first step in offenders’ re-entry.

Developing motivation and self-determination is another vital component of any successful change-focused rehabilitative initiative. It is well documented that the majority of persistent offenders have a very fatalistic view on their lives and possibility of behavior

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<sup>94</sup> A. Giddens. *The Constitution of Society*. Cambridge: Polity Press, 1984, p. 25.

<sup>95</sup> See, e.g. S. Maruna, T. LeBel. *The Desistance Paradigm in Correctional Practice: From Programs to Lives* in F. McNeill, P. Raynor, C. Trotter (Eds.). *Offender Supervision: New Directions in Theory, Research and Practice*. Cullompton: Willan, 2010.

change. They largely see “their life scripts as having been written for them a long time ago”.<sup>96</sup> Reinforced by the hostile environment, this outlook favors acquisition of negative attitudes to society (reinforced feeling of social injustice) and fosters self-selection of peer network most receptive to offender’s way of life. “There is evidence that desisters acquire a sense of agency (the ability to make choices and govern their own lives) in order to resist and overcome the criminogenic structural pressures that play upon them.”<sup>97</sup> This is why desistance can be described as a process of “maintaining one’s sense of self or one’s personal identity”.<sup>98</sup> The role played by interventions in this regard should be focused on stimulating confidence in oneself and a sense of personal responsibility in offenders (*e.g.* through involving them in generative activities like community service programs or applying restorative justice techniques like mediation), taking into account positive personal values, principles and strengths and often complicated socio-economic environment. It is especially at this level of change that the role of “significant others” retains particular importance. These people, be it close friends, family members or probation officers and judges, should recognize the possibility of change and support rehabilitative developments of an offender.

In a relatively wide-scale and comprehensive study of criminal careers of 199 probationers Farrall focused on the effects of the interventions by probation officers in desistance process. As he concluded “[g]ood motivation, gaining employment, mending damaged relationships, starting new relationships, moving home and so on were key influences on the success”.<sup>99</sup> This result shows how important a multifaceted thorough approach in probation practice, the one which taken into account interplay between individual choices and social structures is. In light of the current research, its objectives and comparative

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<sup>96</sup> S. Maruna. *Making good: How ex-convicts reform and rebuild their lives*, Washington: American Psychological Association, 2001, p. 75.

<sup>97</sup> F. McNeill. Towards Effective Practice in Offender Supervision, January 2009, available at [http://www.sccjr.ac.uk/documents/McNeil\\_Towards.pdf](http://www.sccjr.ac.uk/documents/McNeil_Towards.pdf) (last visited October 9, 2012).

<sup>98</sup> *Cit.*, D. Waldorf, C. Reinerman, S. Murphy. *Cocaine Changes*, 1991 in S. Maruna. *Making good: How ex-convicts reform and rebuild their lives*. Washington: American Psychological Association, 2001, p. 87.

<sup>99</sup> S. Farrall. *Rethinking What Works with Offenders: Probation, Social Context and Desistance from Crime*. Cullompton: Willan Publishing, 2002, p. 214.

methodology, I should point out that certain models of interventions addressing factors previously discussed might give positive results in one society and fail in another. Policy transfer has always been a highly problematic enterprise. In this regard focus on implementation and delivery (*when, why and how*) appears more appropriate and productive than blind copying of a successful experiment.

According to the European Probation Rules (2010), probation is characterized as implementation of community sanctions with the primary goals of promoting social inclusion and reducing reoffending.<sup>100</sup> This understanding of probation is not new. As I have shown above, originally probation was understood as a “social service preventing further crime by a readjustment of the culprit under encouraging supervision of a social worker guided by the courts of justice”.<sup>101</sup> Probation workers were social workers preoccupied with the pursuit of rehabilitation. Such rhetoric has been prevalent for most of the 20th century. The end of the Second World War and the general economic growth provided a necessary ground for the implementation of the so-called penal welfarism, evident in multiple spheres of state policy, including criminal policy. The demise of the penal welfarism in the 1970s and the promotion of the ideals of offender management through risk assessment and control have further led to a diversification of probation services in Europe, their roles and aims. Despite this changing understanding of the main goals and objectives of probation, adoption of a consolidated European definition and rules is a considerable step forward and the first step in my comparative research. Relying on the accepted definition of probation I will see if the criminal justice discourse in specific circumstances of particular countries reflects this ideal and how rehabilitative interventions are actually implemented to produce desistance.

Ioan Durnescu divided probation systems of the EU countries into four principal types: those based on promoting community measures and sanctions (*e.g.* Estonia, Turkey);

<sup>100</sup> Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, Adopted by the Committee of Ministers on 20 January 2010.

<sup>101</sup> L. Radzinowicz. *The Results of Probation*. London: Macmillan, 1958: p. 10.

those based on the model of assisting judiciary (*e.g.* Italy, Romania); those following the rehabilitation model (*e.g.* Norway, France, Czech Republic); and finally those following a punishment or enforcement model (*e.g.* England and Wales).<sup>102</sup>

This primarily functional division reflects diversified priorities and theoretical origins of probation services. Whereas rehabilitation model entails the aim of supporting offenders to lead crime free life (desistance paradigm), enforcement (community punishment) model seeks to bring about just desert and society's satisfaction. However, I believe that this distinction should not be regarded as solid and clear cut. Probation systems are constantly developing along with the changing political agendas. Besides, the majority of probation services pursue a wide range of official aims, such as protection of the public, punishment of offenders, ensuring security and rehabilitation, reparation to victims, etc.<sup>103</sup> Thus, with all respect to theoretical importance of the classification offered by Durnescu, it seems to be oversimplified and even misleading. With these reservations in mind and with understanding of the rich theoretical and historical backgrounds of probation in Europe, I begin a thorough analysis of the European probation systems.

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<sup>102</sup> I. Durnescu. An exploration of the purposes and outcomes of probation in European jurisdictions. *The Journal of Community and Criminal Justice*, Vol. 55 (3), 2008, p. 237.

<sup>103</sup> See, *e.g.* National Standards for the Management of Offenders: Standards and Implementation Guidance, the United Kingdom Ministry of Justice, 2007, p. 3.

### 3. Probation Services in Europe

Probation services in Europe differ in their organizational and functional characteristics. This diversity stems from a great variety of political, social and cultural backgrounds, which “determine the way national and regional societies manifest themselves and the way life is given its style.”<sup>104</sup> Taking into account the purpose of this thesis, I am not going to go into details and analyze organizational peculiarities of probation systems across Europe. On the contrary, the main underlying doctrinal and, to a certain extent, moral and psychological frameworks for operation of probation mechanisms in selected European countries will be analyzed. In doing so I will define the principal direction for the development of probation as, in the long, this is precisely what determines its role in criminal justice systems, its relation with prison on the one hand, and police on the other. As stated by Weedon, “The differences between competing views of justice within legal discourses are articulated in language and in the material organization of state institutions that control the meaning of justice, punishment and rehabilitation”.<sup>105</sup>

In the chapter devoted to theories related to offender rehabilitation and control, I have shown the main goals and functions probation was originally associated with and the transformation it underwent in the second half of the 19th century. Penal expansion and welfare contraction have been outlined as the main indicators signifying a decrease in the rehabilitative component of offender management. It is clear, however, that due to distinctive cultural and legal backgrounds probation systems in Europe cannot follow exactly the same path, even if some form of interconnection (policy transfer) exists.

In this chapter I will look at the probation services in several jurisdictions, in particular in England and Wales and the Netherlands. The Scandinavian model of offender rehabilitation

<sup>104</sup> A. Kalmthout, I. Durnescu (eds.), *Probation in Europe*. Nijmegen: Wolf Legal Publishers, 2008, p. 15.

<sup>105</sup> *Cit.* from F. Farrant. Knowledge production and the punishment ethic: The demise of the probation service. *Probation Journal*, No. 53 (4), 2006, p. 320.



will be analyzed as well. I have chosen these countries because they represent different trends in offender management and are rather influential in Europe, in particular with regard to the post-Soviet states, actively reforming their penal systems.

### 3.1 Probation Services in England and Wales. History of “Struggle and Survival”

The probation services in England and Wales have its roots in the 19th century. In 1907 the Probation of Offenders Act was adopted. According to this Act, “it shall be the duty of a probation officer... to advise, assist, and befriend [the person under supervision], and, when necessary, to endeavor to find him suitable employment”.<sup>106</sup> This idea of rehabilitation and assistance dominated probation doctrine in England for almost the whole 20th century. Probation officers were social workers working both inside and outside the prison context. Of course, the probation service evolved towards its professionalization and casework. With the growing use of probation, social case work was introduced into the administration of criminal justice.<sup>107</sup> Commenting on this development, David Garland has emphasized that the rapid development of probation after the Second World War can be understood as part of the social reconstruction process, increased state responsibility for citizens’ welfare, and confidence in the ability of experts and professionals to ameliorate social problems.<sup>108</sup>

However, this welfarist approach began to change in the 1970s. Correction pessimism was triggered by the reassessment of the efficiency of the applied rehabilitative techniques. Using meta-analysis Robert Martinson evaluated criminal rehabilitative programs from 1945 to 1967. As he famously concluded: “With few and isolated exceptions, the rehabilitative

<sup>106</sup> Probation of Offenders Act, 1907 [7 Edw.7. CH.17.].

<sup>107</sup> M. Maguire, R. Morgan, R. Reiner. *The Oxford Handbook of Criminology*. Oxford: Oxford University Press, 2012, p. 929.

<sup>108</sup> *Ibid.*

efforts that have been reported so far have had no appreciable effect on recidivism”.<sup>109</sup> This unfavorable characteristic of the prevailing criminal justice practices has also been confirmed by other studies.<sup>110</sup> Interestingly, in Britain (more than in some other countries) there was an official acceptance, particularly in the Home Office,<sup>111</sup> of the “nothing works” conclusions.

The loss of direction for probation in the criminal justice system was accompanied by the shift in understanding of the role Probation Services should play in England. Increased managerialism and budgetary restraints for public spending have led to a more cost-effectiveness, outputs-and-outcomes rhetoric. Probation services became widely seen as a tool to reduce the costly custodial sentencing. Thus, probation became a significantly less ambitious project: an “alternative to custody” rather than “treatment” aiming to change people.<sup>112</sup> Such understanding encouraged a diversion from custody, which had a positive co-effect in terms of restraining incarceration. The Criminal Justice Act of 1972 introduced community services positively assessed by the Home Office Research Unit in 1975.<sup>113</sup> Interestingly though, the introduction of new non-custodial forms of punishment was not so much connected with rehabilitation ideals, but rather with regulation, control and monitoring – typical features of imprisonment. So the 1980s can be seen as a paradox, when Conservative governments “actually pursued policies of liberal reform” against a background of rising crime and the use of “law and order” rhetoric which sought to deny any social and economic reasons for crime.<sup>114</sup>

This ideological trend was further promoted and crystallized in the 1990s. Politicization of crime, which was turned into a major social problem and a characteristic of

<sup>109</sup> R. Martinson. What Works? Questions and Answers about Prison Reform. *The Public Interest*, No. 35, 1974, p. 25.

<sup>110</sup> See, e.g., S. Brody. *The Effectiveness of Sentencing*. London: HMSO, 1976.

<sup>111</sup> P. Raynor. The Probation Service ‘Pathfinders’. *Criminal Justice*, No. 4, 2004, p. 310.

<sup>112</sup> G. Robinson, F. McNeill. Probation in the UK in M. Herzog-Evans, I. Dréan-Rivette, I. (eds.) *Transnational Criminology Manual*. Wolf Legal Publishers. 2010, p. 280.

<sup>113</sup> K. Pease, P. Durkin, et al. Community Service Orders. A Home Office Research Unit Report (1975), available at <http://library.npia.police.uk/docs/hors/hors29.pdf> (last visited April 3, 2012).

<sup>114</sup> J. Deering. *Probation Practice and the New Penology: Practitioner Reflections*. Farnham: Ashgate Publishing Limited, 2011, p. 29.

contemporary culture,<sup>115</sup> populist punitiveness exploited by the government to gain public support and “protection of public” discourse became an indispensable characteristic of the English political and penal culture of 1990s.

The White Paper “Crime, Justice and Public Protection” (Home Office, 1990) defined the core task of the probation service in England as “strategic management and administration of punishments in the community”.<sup>116</sup> Among other issues emphasized in the White Paper were the importance of proportionality in sentencing and the notion of “just deserts”. The same principles were enshrined in the Criminal Justice Act 1991. An important shift was made in the nature of probation order. Before the 1991 Act, the probation order was made instead of sentencing the offender. From this point onwards, the probation order became a sentence of the court.<sup>117</sup> Besides, as provided by Section 11 of the Act, “the court may make a combination order, that is to say, an order requiring him both to be under the supervision of a probation officer ... and to perform unpaid work”.<sup>118</sup> Sam Lewis has characterized these provisions as “officially marking the end of the rehabilitative era”.<sup>119</sup> The policy of the Conservative administration in the beginning of the 1990s, however, did not differ significantly from the one of the 1980s, when the “tough on crime” approach was adopted (at least in words).

Crime began to play a more prominent role on the policy agenda only in the middle of the 1990s, which was connected to the increased number of crimes, committed in England at this period of time, as well as to the popular sentiments, accompanied by the feelings of insecurity and fear. In his famous statement then Home Secretary Michael Howard

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<sup>115</sup> D. Garland. *Culture of Control. Crime and Social Order in Contemporary Society*. Oxford: Oxford University Press, 2001, p. 10.

<sup>116</sup> Cit. J. Deering. *Probation Practice and the New Penology: Practitioner Reflections*. Farnham: Ashgate Publishing Limited, 2011, p. 30

<sup>117</sup> T. Newburn. *Crime and Criminal Justice Policy*. Essex: Pearson Education, 2003, p. 147.

<sup>118</sup> Criminal Justice Act 1991, available at <http://www.legislation.gov.uk/ukpga/1991/53/contents> (last visited May 2, 2012).

<sup>119</sup> S. Lewis. Rehabilitation: Headline or footnote in the new penal policy? *Probation Journal*, No. 52, 2005, p. 120.

emphasized that “Prison works. It ensures that we are protected from murderers, muggers and rapists - and it makes many who are tempted to commit crime think twice”.<sup>120</sup> It is precisely since this time that “toughness on crime” began to take its shape. I will emphasize that this new penal policy was reinforced by the competition between the parties to outdo one another in terms of the toughness of their stance on crime.<sup>121</sup>

The criminal justice policy of the Labor administration was quite contradictory. On the one hand, the adopted evidence based approach led to the “What Works” initiative, which was an attempt to increase the effectiveness of probation services in England, backed by international research on the methods of offender rehabilitation. What Works project sought to identify and disseminate examples of effective practice.<sup>122</sup> On the other hand, the administration had to adopt the “tough on crime” policy as it was politically advantageous. The Criminal Justice Act 2003 is probably the most telling document, containing the major changes in numerous areas of the criminal justice system of England and Wales. The Act enlists the following purposes of sentencing: “the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders, protection of the public and making of reparation by offenders to persons affected by their offences.”<sup>123</sup> Despite the listing of rehabilitation among the purposes of sentencing, the Act was characterized as predominantly punitive and enforcement-centered.<sup>124</sup>

In 2002 Lord Carter was asked to analyze the criminal justice system in England and the “correctional services” in particular. The report was published in 2004 and, like Martinson’s report of 1974, had a massive effect on “modernization” of offender

<sup>120</sup> Cit. Michael Howard: a life in quotes. *The Guardian*, 26 August 2004, available at <http://www.guardian.co.uk/politics/2004/aug/26/conservatives.uk> (last visited May 3, 2012).

<sup>121</sup> S. Farrall, C. Hay. Not So Tough on Crime? Why Weren’t the Thatcher Governments More Radical in Reforming the Criminal Justice System? *The British Journal of Criminology*, No. 50, 2010, p. 566.

<sup>122</sup> G. Bernfeld, D. Farrington, A. Leschied. *Offender rehabilitation in practice: implementing and evaluating effective programs*. Chichester: John Wiley & Sons, LTD, 2001, p. 199.

<sup>123</sup> Criminal Justice Act 2003, available at <http://www.legislation.gov.uk/ukpga/2003/44/contents> (last visited May 5, 2012).

<sup>124</sup> D. Cornwell. *The Penal Crisis and the Clapham Omnibus: Questions and Answers in Restorative Justice*. Sheffield: Waterside Press, 2009, p. 203.

management. The Report advocated “prison and probation to be focused on the management of offenders throughout the whole of their sentence and improvement of the effectiveness and value for money through greater use of competition from private and voluntary providers.”<sup>125</sup> Following Carter’s suggestions, a new organization – National Offender Management Service (NOMS) was created in 2004. Both the Directorate of Probation and the Directorate of Prison Services were put under the same umbrella organization, which was intended to “provide the end-to-end management of offenders, regardless of whether they were given a custodial or community sentence.”<sup>126</sup> This organization has been criticized for sustaining a politics of punitive controlism, depersonalization, deprofessionalization and promoting a responsabilization strategy.<sup>127</sup> I should point out that there is nothing inherently wrong with the concepts of efficiency and end-to-end management. On the contrary, these are important considerations to be taken into account when structuring offender management policy. It is much more crucial how you intend to increase effectiveness, taking into account short- and long-term goals, since only rehabilitation can ensure successful strategy to combat re-offending.<sup>128</sup>

The move to NOMS has been seen as a “takeover of the probation service by the prison service”.<sup>129</sup> Probation areas were transformed into 35 Probation Trusts, accountable to regionally based Directors of Offender Management (DOMs) who have responsibility for commissioning services from the Probation Trusts in their region.<sup>130</sup> Senior management of

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<sup>125</sup> P. Carter. *Managing Offenders, Reducing Crime: A New Approach*, 11 December 2003, available at [http://www.thelearningjourney.co.uk/Patrick\\_Carter\\_Review.pdf](http://www.thelearningjourney.co.uk/Patrick_Carter_Review.pdf) (last visited May 5, 2012).

<sup>126</sup> *Ibid.*

<sup>127</sup> P. Whitehead. *Exploring Modern Probation: Social Theory and Organizational Complexity*. Bristol: The Policy Press, 2010, p. 7.

<sup>128</sup> According to NAPO 66-% of those jailed reoffend on release compared to 50-% on a supervision order. These figures fall to 58-% and 34-% respectively if the individual participates in a program. *See*, Effective probation programs face huge cuts, NAPO Press Release, 20 September 2010, available at [www.napo.org.uk/templates/asset-relay.cfm?frmAssetFileID=709](http://www.napo.org.uk/templates/asset-relay.cfm?frmAssetFileID=709) (last visited September 14, 2012).

<sup>129</sup> *Cit.* The Role of the Probation Service, Eighth Report of Session 2010-2012, Justice Committee House of Commons, Vol. I.

<sup>130</sup> G. Robinson, F. McNeill. *Probation in the UK* in M. Herzog-Evans, I. Dréan-Rivette, I. (eds.) *Transnational Criminology Manual*. Wolf Legal Publishers. 2010, p. 743.

DOMs is mainly composed of senior prison personnel. The post of Director of Probation was abolished. Apart from these changes, the position of probation services has been threatened by the constant budget cuts. Thus, in 2010 the cuts amounted to £-24 million, in 2011 they exceeded £-20 million,<sup>131</sup> the probation service is facing a 15-% reduction in its budgets up to 2015.<sup>132</sup> This leads to job cuts in Probation Service. Among the negative consequences of such a policy is that “up to three quarters of officers’ time might be spent on work which does not involve direct engagement with offenders.”<sup>133</sup>

Public protection and risk assessment have become priorities in offender management, which signified further changes in official aims for probation. According to a Five Year Strategy for Protecting the Public and Reducing Reoffending (Home Office, 2006), despite the decreasing levels of crime, protection of public (*inter alia*, through the new indeterminate sentence for public protection) and “toughness” of punishments, so that the way offenders are punished helps victims feel that justice has been done,<sup>134</sup> remained the primary goals for the probation services in England and Wales. These goals were to be achieved through the increasingly managerial tactics, risk assessment tools among them. New guidance to Probation on the court report framework that operates under the Criminal Justice Act 2003 makes clear that the Offender Assessment System (OASys) is the cornerstone of the probation’s work with offenders.<sup>135</sup> Currently OASys is used by all probation trusts in England and Wales in its electronic version, which is basically software, helping probation

<sup>131</sup> J. Ledger. Rehabilitation revolution: Will probation pay the price? *Probation Journal*, No. 57, 2010, p. 419.

<sup>132</sup> A. Walker. Cuts are threat to justice system. *The Northern Echo*, 27 August 2012, available at [http://www.thenorthernecho.co.uk/news/9894735.\\_Cuts\\_are\\_threat\\_to\\_justice\\_system\\_/](http://www.thenorthernecho.co.uk/news/9894735._Cuts_are_threat_to_justice_system_/) (last visited September 20, 2012).

<sup>133</sup> The role of probation service. Justice Select Committee report, 2011, available at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/519/51912.htm> (last visited September 20, 2012).

<sup>134</sup> A Five Year Strategy for Protecting the Public and Reducing Reoffending (Home Office, 2006), available at <http://www.official-documents.gov.uk/document/cm67/6717/6717.pdf> (last visited October 2, 2012).

<sup>135</sup> OASys: what is it designed to do? West Yorkshire Probation Trust, available at [www.westyorksprobation.org.uk/deliverfile.php?id=490](http://www.westyorksprobation.org.uk/deliverfile.php?id=490) (last visited September 20, 2012).

officers define the risk category of offenders (from low risk to very high risk).<sup>136</sup> It is clear that OASys is an important element of risk assessment and risk management. It is also an evident indicator of the widening use of a managerial approach. However, in my opinion, a unified and complex assessment tool by itself is a rather positive step to a more efficient offender management. Besides, as studies show, probation staff tended to regard risk of harm in OASys as an add-on to the assessment rather than being a central component.<sup>137</sup>

A public protection agenda for probation services in England and Wales has also been apparent from an advancement of the Multi-Agency Public Protection Arrangements (MAPPA) in England and Wales, which were intended to enhance inter-agency cooperation to prevent harm from certain categories of offenders. As provided in the MAPPA Guidance, MAPPA offenders are managed at one of three levels according to the extent of agency involvement needed and number of different agencies involved.<sup>138</sup> The particular ways of cooperation depend on the risk factors and can lead to information sharing, preparation of risk management plans, MAPP meetings, etc. Despite the obvious advantages of these cooperation schemes, since they impose greater control over the offender's behavior, reasonable concerns arise from the kind of imbalance in the system and blurring of functions attributed to "responsible authorities" (probation, prison services and police). These transformations raise the threat of bringing together agency practitioners who become too similar and lose their distinct contributions and cultural characteristics.<sup>139</sup>

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<sup>136</sup> Public Protection Manual, Chapter 9. Risk of Harm. NOMS, January 2009, *available at* <http://www.justice.gov.uk/downloads/offenders/public-protection-manual/1000489FChapter9RiskofHarmGuidance.pdf> (last visited September 4, 2012).

<sup>137</sup> J. Lishman. *Handbook for Practice Learning in Social Work and Social Care: Knowledge and Theory*. London: Jessica Kingsley Publishers, 2007, p. 144. I accept that there is an inherent contradiction between unification, pursued by the implementation of OASys and diversion in its application and use in practice by different probation trusts and officers.

<sup>138</sup> MAPPA Guidance 2012, Version 4, *available at* <http://www.justice.gov.uk/downloads/offenders/mappa/mappa-guidance-2012-part1.pdf> (last visited June 17, 2012).

<sup>139</sup> R. Mawby, A. Worrall. "They were very threatening about do-gooding bastards": Probation's changing relationships with the police and prison services in England and Wales. *European Journal of Probation*, Vol. 3, No. 3, 2011, p. 89.

Further threats to probation services come from the notion of contestability. The report *Probation Services: Effective Probation Services* (Ministry of Justice, 2012) urges reform of probation so it is more effective in reducing crime, “by extending competition and opening up the management of lower risk offenders to the innovation and energy of the widest possible range of providers.”<sup>140</sup> Though this has not happened so far, such prospects may lead to increased fragmentation of the service itself. I agree with the statement by the Howard League of Penal Reform that creating an internal market for probation merely serves as a distraction from the key role probation should have in forging the local and national partnerships required with other public services.<sup>141</sup>

The history of the probation service in England and Wales is rather complicated. From welfarist social caring it underwent a long way, struggling for its place in the criminal justice system. New political and social developments, the rise of evidence-based approaches and intensified feelings of insecurity and fear of crime led to significant changes in the organization and operation of probation services. Recent developments, in particular a shift towards indeterminacy, offenders’ control in the community, managerialism, the rise of the culture of risk are all indicators of increased toughness or punitivism in the treatment of offenders. In this context, probation services had to search for their own place in offender management and adjust to the changing circumstances.

### **3.2 Probation in the Netherlands: Between Self-identity and “Late Modernity”**

Cavadino and Dignan in their book analyzed the penal systems of different European and non-European states and came to an interesting conclusion that societies which share the

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<sup>140</sup> Punishment and Reform: Effective Probation Services, Ministry of Justice, March 2012.

<sup>141</sup> Effective probation services, The Howard League of Penal Reform, 22 June 2012, *available at* [http://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard\\_league/user/pdf/Consultations/Probation\\_consultation\\_final\\_22.6.12.pdf](http://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/Consultations/Probation_consultation_final_22.6.12.pdf) (last visited June 19, 2012).



same type of social and economic organization (and cultural and ideological predilections) will always tend to resemble one another to some extent in terms of their penalty.<sup>142</sup> David Downes once noted that the Netherlands have proved the most striking and durable example of a trend markedly different from that in Britain, France, Germany, and most other European societies.<sup>143</sup> Interestingly, despite the fact that Dutch society has been closely economically and culturally interrelated with other European states, England in particular, its approach towards criminal justice and penal policy has been largely in contrast with the penal systems around growing more and more punitive. Thus, considering the imprisonment rates in Europe, I should emphasize that the Dutch prison population steadily went down after World War II and remained at this rather low level (20 per 100,-000 general population in the early 1970s, 28 per 100,-000 in 1983)<sup>144</sup> for most of the time up until the 1990s.

Such “tolerance” or “leniency” of Dutch penalty has been justified by the idea that prison does not work and cannot facilitate offender rehabilitation. Instead, a minimal resort to incarceration and a maximum level of welfarism were the dominant narratives for the work of prisons, probation services and prosecutor’s office. Since the 1950s the scope of criminal justice in the Netherlands shifted from a focus on the act, to a focus on the actor.<sup>145</sup> With the work of different influential schools of thought, such as the Utrecht and Groningen Schools, the criminal justice system has absorbed sociological ideals. These ideals fashioned an inclusionary ethic – minimal use of custody, commitment to the principle of resocialization, preference to medical institutions, which was adopted and applied by the judiciary and enforcement agencies. The typical characteristic of such a mild penal regime was the “one

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<sup>142</sup> M. Cavadino, J. Dignan. *Penal Systems: A Comparative Approach*. London: Sage Publications Ltd., 2006, p. 16.

<sup>143</sup> D. Downes. *Contrasts in Tolerance: Post-War Penal Policy in the Netherlands and England and Wales*. Oxford: Clarendon Press, 1988, p. 8.

<sup>144</sup> M. Cavadino, J. Dignan. *Penal Systems*., p. 113.

<sup>145</sup> R. van Swaaningen. *Critical Criminology: Visions from Europe*. London: Sage, 1997, p. 109.

inmate-one cell” policy,<sup>146</sup> which ensured humane treatment of prisoners and prevented overcrowding and sanitary problems.

In this welfarist penal system probation organizations played a crucial role, ensuring successful social rehabilitation of offenders. Development of probation services in the Netherlands corresponded to the one in England and Wales. Thus, it was born in 1823 under the name “Society for the Moral Improvement of Prisoners” with the object of providing moral and religious instruction by schools, distributing religious books, and also by rendering assistance.<sup>147</sup> The official recognition of the role played by private probation organizations occurred in the beginning of the 20th century with the introduction of the suspended sentence with probation. Development of probation services during the century was connected to its professionalization, as more and more probation workers received professional education as social workers. The rehabilitative nature of the Dutch penal system coupled with the shortage of cells to ensure the “one inmate-one cell” was being sustained, led to the experiments with community sentences in 1980s. From the outset it was clear that the new non-custodial sentences were supposed to be administered by the probation organizations. However, within the probation service there was a great deal of resistance, because the probation officers, who were mostly trained as social workers, had difficulties in combining law enforcement tasks with their counseling work.<sup>148</sup> Despite this mostly negative attitude, implementation and supervision of unpaid work has become a new task for probation organizations, gradually losing their independence from the government.

It is true that during the 1990s probation agencies worldwide confronted the challenge of responding to media criticism.<sup>149</sup> The Dutch probation service was not an exception. In

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<sup>146</sup> W. Selke. *Prisons in Crisis*, Indiana U. Press, 1993, p. 105.

<sup>147</sup> The Sixth Report of the Committee of the Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders, 1824, p. 73.

<sup>148</sup> M. Boone. Only for Minor Offences: Community Service in the Netherlands. *European Journal of Probation*, Vol. 2, No. 1, 2010, p. 23.

<sup>149</sup> D. Evans. Spotlight on Probation in the Netherlands. *Corrections Today*, Vol. 64, 2002.

light of the growing movement for evidence-based policies, the government turned to restructuring its relations with probation organizations, which were basically independent from government influence or control from their creation in late 19th- beginning of 20th centuries. So in the 1990s the Dutch government decided to consolidate the 19 autonomous services – called the Dutch Federation of Probation Institutions – that provided various probation services.<sup>150</sup> The stated aims were the reduction of costs and improvement of services. In 1995 one national board, called the Dutch Probation Foundation, was created. The work of this body “covers all aspects of probation and negotiates with the Ministry of Justice for the Netherlands regarding budget and strategy.”<sup>151</sup> Apart from the Foundation, the Salvation Army Probation Department and GGZ Netherland’s probation department continue their operation, primarily with a focus on homeless probationers, juvenile and mentally disordered offenders. I should note that all probation organizations in the Netherlands are funded by the state, so their independence (economic and political) is relative.

Reorganization of probation services went hand in hand with changes in the penal policies. Section 2 of the Dutch Penitentiary Principles Act states that sanctions “should prepare the convict as much as possible for his return into society”.<sup>152</sup> The principle of resocialization, together with the principle of minimal restrictions, are considered to be the heart of Dutch penitentiary law since 1953.<sup>153</sup> Blumstein’s theory of the “stability of punishment”, that society tries to impose a fairly constant level of punishment,<sup>154</sup> has not been confirmed by the empirical data coming from England and Wales and the United States. The Netherlands seems to be on the same track. Comparing to 28 prisoners per 100,-000 in 1983 or 49 per 100,-000 in 1992, the prison population in 2004 stood at 18,-242 (112 per

<sup>150</sup> L. Mays, T. Winfree. *Essentials of Corrections*, Fourth Edition. Belmont: Wadsworth, Cengage Learning, 2009, p. 89.

<sup>151</sup> D. Evans. Spotlight on Probation in the Netherlands. *Corrections Today*, Vol. 64, 2002.

<sup>152</sup> M. Boone. Judicial Rehabilitation in the Netherlands: Balancing between safety and privacy. *European Journal of Probation*, Vol. 3, No. 1, p. 64.

<sup>153</sup> *Ibid.*

<sup>154</sup> A. Blumstein, J. Cohen. A Theory of the Stability of Punishment. *The Journal of Criminal Law and Criminology*, Vol. 64, No. 2, 1973, p. 207.

100,-000)<sup>155</sup> reaching 128 per 100,-000 in 2012.<sup>156</sup> Thus, Garland's "culture of control" thesis perfectly captures penal trends not only in England and Wales, but in the Netherlands as well. However, incarceration rates do not by themselves explain the underlying policy objectives and causes of such a dramatically punitive turn in the Dutch penal sphere.

Johnson and Heijder argue that in the Netherlands "largely detached from public monitoring ... a small professional elite, with a fringe of complementary groups, dominate practice in the field of criminal justice".<sup>157</sup> This neutral and public-opinion-free approach to crime and control over it has been shaken by the public punitiveness gaining momentum across Europe. As in many other countries, crime and safety have become important social and political themes in the Netherlands.<sup>158</sup> Tough on crime rhetoric is especially evident in the report of the Dutch Ministry of Justice called *Law in Motion*, which concluded that "what is at stake is nothing less than the credibility of constitutional government and its democratic and social values".<sup>159</sup> It is no wonder that such a political stance was backed up by wide public acceptance, as a survey conducted in 1989 showed that 85-% of Dutch nationals over 18 believed crime to be a "very serious problem".<sup>160</sup>

The increasingly punitive nature of the penal system in the Netherlands is clear from the introduction of several anti-crime measures designed to ensure the safety of society. Sentence length has increased for long and short sentences, the degree of penal austerity increased,<sup>161</sup> "one inmate-one cell" policy was left behind, the ideal of rehabilitation for all

<sup>155</sup> M. Roth. *Prisons and Prison Systems: A Global Encyclopedia*. Westport: Greenwood Press, 2006, p. 188.

<sup>156</sup> World Prison Populations, UK and Western Europe, BBC, available at <http://news.bbc.co.uk/2/shared/spl/hi/uk/06/prisons/html/nn1page1.stm> (last visited July 9, 2012).

<sup>157</sup> Cit. D. Green. *When Children Kill Children: Penal Populism and Political Culture*. Oxford: Oxford University Press, 2008.

<sup>158</sup> M. Punch. *Zero tolerance policing*. Bristol: The Policy Press, 2007, p. 30.

<sup>159</sup> Cit. A. Rutherford. *Transforming Criminal Policy*. Winchester: Waterside Press, 1996, p. 72.

<sup>160</sup> *Ibid.*

<sup>161</sup> S. Easton. *Prisoners' Rights: Principles and Practices*. Abingdon: Routledge, 2011, p. 90.

prisoners was abandoned; only a small part of motivated prisoners could qualify for additional interventions aimed at improving successful re-entry into society.<sup>162</sup>

“Governing through crime” has found its application with regard to the Dutch probation services, whose aim during the past few years has become to make demonstrable contributions to a safer society. The Probation Service now can only perform probation activities (*e.g.* behavioral interventions, labor penalties, diagnosis and advice, etc.) as commissioned by the judicial authorities: The Public Prosecutor Service, the judiciary and the prison system.<sup>163</sup> It is not necessarily a drawback that some form of control over the work of probation organizations exists, since it ensures professional and efficient execution of their tasks. On the other hand, however, is the issue of practical implementation of rehabilitative strategies by probation services, which is hampered by the same factors as in England and Wales. In both Britain and the Netherlands, the probation service has increasingly been detached from face-to-face work with clients.<sup>164</sup> Budget cuts led to a more selective use of probation (mid-risk and high-risk groups),<sup>165</sup> meaning that offenders considered as presenting low risk will usually stay outside the ambit of probation supervision. These are all signs of flexibility, market orientation and output measurement,<sup>166</sup> clear indicators of a managerialist approach to criminal justice and penal policy.

The question remains, what the driving forces were behind the transformation of the Dutch penalty towards punitiveness, managerialism and crime control. It is true, that the relatively steep rise in crime rates from the late 1970s to 1985 did make an impact on the rise

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<sup>162</sup> C. Kruttschnitt, A. Dirkzwager. Are there still Contrasts in Tolerance? Imprisonment in the Netherlands and England 20 years later. *Punishment and Society*, No 13 (3), 2011, p. 287.

<sup>163</sup> A. Kalmthout, I. Durnescu (eds.). *Probation in Europe*. Nijmegen: Wolf Legal Publishers, 2008.

<sup>164</sup> D. Downes. Visions of Penal Control in the Netherlands, 36 *Crime and Justice* 93, 2007.

<sup>165</sup> Presentation for the Conference on Strengthening Transnational Approaches to Reducing Re-offending (STARR), European Organization for Probation (CEP), 28-30 April 2010, available at [http://www.cepprobation.org/uploaded\\_files/Pres%20STARR%20Cam%2010%20Verkroost%20Word.pdf](http://www.cepprobation.org/uploaded_files/Pres%20STARR%20Cam%2010%20Verkroost%20Word.pdf) (last visited June 23, 2012).

<sup>166</sup> D. Downes, R. Van Swaaningen. The road to dystopia? Changes in the penal climate of the Netherlands in M. Tonry, C. Bijleveld (eds.). *Crime and Justice in the Netherlands. Crime and Justice: A Review of Research*, Vol. 35. Chicago: University of Chicago Press, 2007, p. 49.

of prison population.<sup>167</sup> Nevertheless, I should argue that there is no simple linear relationship between the level of recorded crime and imprisonment.<sup>168</sup> Thus, when a state enters the vicious incarceration circle, it is very hard to break, despite the possible downturn in crime rates. Insecurity at economic and societal level, together with technological revolution and the erosion of internal borders in an expanding Europe have led to all kinds of transformations, including new forms of criminal behavior and changing perceptions of crime.<sup>169</sup> Unsurprisingly, in public attitude it is perception that matters.

Societal transformations accompanied by rising migration and migration-related crimes, including drug trafficking and transnational crime, contributed to the growing feelings of fear and insecurity in the society long held to be a beacon of tolerance and broadmindedness. The culture of control started gaining weight in the Netherlands in the beginning of the 1990s, a process evident not only in the penal sphere. The Dutch government took numerous steps to exclude irregular migrants. At the same time, the period from 1997 to 2003 was “marked by an increase in the number of crime suspects and detainees without legal status.”<sup>170</sup> Another quite recent step in combating drug-related crime (“drug-tourism crime”) was the plan of the Dutch government to prevent the purchase of marijuana by non-residents, which came into effect on 1 May 2012.<sup>171</sup>

An interesting suggestion has also been made with relation to the language influence in the adoption (transfer) of the penal policy.<sup>172</sup> Fluency in the English language among the

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<sup>167</sup> D. Nelken. *Comparative Criminal Justice and Globalization. Advances in Criminology*. Farnham: Ashgate Publishing Limited, 2011, p. 38.

<sup>168</sup> V. Ruggiero, N. South, I. Taylor. *The New European Criminology: crime and social order in Europe*. London: Routledge, 1998, p. 88.

<sup>169</sup> J. Leun. *Immigration, Crime and Criminal Justice Systems*. Wolf Legal Publishers, 2010, p. 660.

<sup>170</sup> A. Leerkes, G. Engbersen, J. Leun. Crime among irregular immigrants and the influence of internal border control. *Crime, Law and Social Change*, No. 58, 2012, p. 17.

<sup>171</sup> D. Jolly. Dutch Plan to Restrict Marijuana Passes Hurdle. *The New York Times*, 27 April 2012, available at [http://www.nytimes.com/2012/04/28/world/europe/dutch-plan-to-restrict-marijuana-passes-hurdle.html?\\_r=0](http://www.nytimes.com/2012/04/28/world/europe/dutch-plan-to-restrict-marijuana-passes-hurdle.html?_r=0) (last visited June 13, 2012).

<sup>172</sup> See K. Blakemore, E. Griggs. *Social Policy: An Introduction*. Maidenhead: Open University Press, 2007, p. 66.

Dutch<sup>173</sup> is of course a factor promoting cultural and political convergence. It is, however, premature to make any clear conclusions with regard to the language's role in the proliferation of the penal expansion.

The Netherlands hailed by Downes for being an example of a well-thought pluralist and welfarist penal system in the 1980s, has undeniably changed since then. In 2007 Downes admitted that:

The Netherlands is seen as a “beacon of tolerance deemed”, largely for reasons to do with weakening of traditions of consensus-based policy making in the context of late modernity and globalization, with marked problems of multicultural integration and... an uncommon openness to neoliberal and individualistic influences from the United Kingdom and the United States, respectively.<sup>174</sup>

From the above it is clear that the history of the Dutch probation services, and penal system as a whole, has been quite dramatic. From the example of penal enlightenment for the criminal justice systems across Europe, with one of the lowest imprisonment rates in the world, it has adopted increasingly punitive approaches to offender management. Although I have no substantial basis for concluding that the punitive turn and the culture of control thesis represent the overall vector for European penalty nowadays, the examples of England and Wales, and the Netherlands are quite telling. In the beginning of this subsection I introduced the classification by Cavadino and Dignan, who described how the Netherlands has partially departed from the generous welfare, traditional tolerance and social liberalism to a more individualized and less communitarian society.<sup>175</sup> These important cultural and societal changes of recent decades have been crucial in framing the new penal vision for Dutch society.

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<sup>173</sup> A lot of people are even worried that about the ever increasing influence of English in the Netherlands. They fear that Dutch will disappear in the end, and that English will take over its position. See J. Nortier. “The more languages, the more English?” A Dutch perspective, in A. De Houwer, A. Wilton. *English in Europe today: sociocultural and educational perspectives*. Amsterdam: John Benjamins Publishing Company, 2011, p. 114.

<sup>174</sup> D. Downes. Visions of Penal Control in the Netherlands, 36 *Crime and Justice* 93, 2007.

<sup>175</sup> M. Cavadino, J. Dignan. *Penal Systems: A Comparative Approach*. London: Sage Publications Ltd., 2006, p. 116.

### 3.3 Probation in Scandinavia: Exceptionalism in the Era of Control?

Analyzing levels of imprisonment and prison conditions in Finland, Norway and Sweden, John Pratt came to the conclusion that unlike in the Anglo-American world, penal policies in the Scandinavian countries remained largely conservative, signifying low incarceration rates and policies of penal welfarism. As he points out: “Scandinavian social and cultural arrangements seem to have insulated these countries from the law and order politics”.<sup>176</sup> Social differences between the communitarianism of Scandinavian countries and individualistic neoliberal democracies have been highlighted by many other scholars.<sup>177</sup> Accepting the existing differences between Nordic countries, their separate history and identity, I believe that taking into account strong connections between these countries, as well as their shared strong social and structural similarities, it is possible to review the criminal justice policies of Finland, Norway and Sweden together.

David Nelken emphasizes that there does appear to be the beginnings of some fundamental shifts in Scandinavian penal values over the last decade.<sup>178</sup> In this subsection I will look at the recent developments in penal policies of these Scandinavian countries in the context of the increasing punitiveness and control in criminal justice systems across Europe. However mild penal policies in Nordic countries may be, there are apparent changes in political debates, social attitudes to crime and just deserts, pointing to the direction of harsher punishments and strong public protection.

It is true that Scandinavian countries have traditionally embraced a lenient penal policy with the prevailing rehabilitative ideal (with the exception of Finland). Figure 2 shows

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<sup>176</sup> J. Pratt. Scandinavian Exceptionalism in the Era of Penal Excess. Part I: The Nature and Roots of Scandinavian Exceptionalism. *British Journal of Criminology*, No. 48, 2008, p. 113.

<sup>177</sup> See, e.g. M. Cavadino, J. Dignan. *Penal Systems: A Comparative Approach*. London: Sage Publications Ltd., 2006, p. 150; N. Lacey. Punishment, (Neo)Liberalism and Social Democracy, Max Weber Lecture No. 2012/02, available at [http://cadmus.eui.eu/bitstream/handle/1814/21134/MWP\\_LS\\_Lacey\\_2012\\_02.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/21134/MWP_LS_Lacey_2012_02.pdf?sequence=1) (last visited June 6, 2012).

<sup>178</sup> D. Nelken. *Comparative Criminal Justice and Globalization. Advances in Criminology*. Farnham: Ashgate Publishing Limited, 2011, p. 93.



a relatively stable penalty among Nordic countries throughout 20th-beginning of 21st century.



**Figure 2.** Rates of imprisonment pre 100,-000 population in Finland, Sweden, Denmark, and Norway, 1950-2008.<sup>179</sup>

Imprisonment rates in Scandinavia varied between 60 and 75 per 100,-000 residents, comparing to around 100 per 100,-000 in other Western European Countries.<sup>180</sup> Nowadays the prison population of Nordic countries remains the lowest in Europe with 82 imprisoned per 100,-000 in Sweden, 75 per 100,-000 in Finland and 66 per 100,-000 in Norway.<sup>181</sup> Taken from this perspective alone, however, it is impossible to objectively judge the punitive stance in these countries. More important is to look at the internal processes in these countries, with particular regard to the public attitudes, implementation of alternative sanctions and proposed reforms. As Garland highlights, punitivism is about “how we fail to ‘recognize the other’,

<sup>179</sup> T. Tapio Lappi-Seppälä. Criminology, crime and criminal justice in Finland. *European Journal of Criminology*, No. 9, 2012, p. 215.

<sup>180</sup> M. Tonry. *The Oxford Handbook of Crime and Criminal Justice*. Oxford: Oxford University Press, 2011, p. 6.

<sup>181</sup> World Prison Populations, UK and Western Europe, BBC, available at <http://news.bbc.co.uk/2/shared/spl/hi/uk/06/prisons/html/n1page1.stm> (last visited September 24, 2012).

how we limit compassionate identification, how we establish distance and demonization”.<sup>182</sup> Thus, prison population is an important, but insufficient criterion of defining the level of punitiveness in a given society.

The administration of justice in Scandinavia is based on nationally organized institutions. Prison authorities and the prosecution service are administratively under the ministries of justice, while the police forces are under the ministries of interior.<sup>183</sup> Probation services, being subordinate to the respective ministries of justice, play an important role in the criminal process, though the particular tasks and responsibilities vary among Nordic countries.

The Norwegian probation service is part of the correctional services and is integrated into the prison service at both the central and regional level.<sup>184</sup> This organizational arrangement existed since the adoption of the Execution of Sanctions Act of 2001. Before that, as in many other European countries, probation services in Norway were relatively independent from the state, though financial dependence existed. With the increased professionalization of probation workers and development of evidence-based approaches in criminal matters, probation has become a part of a created in 1980 Prison and Probation Administration, a department within the Ministry of Justice. However, Prison and Probation remained separate entities up until 2001.<sup>185</sup> Thus, the evolution of probation in Norway had similar traits to that of England and Wales, where probation services became a part of a newly created NOMS. This by itself does not reveal much with regard to the nature and principles of probation work, which features a number of special characteristics. As summarized by Ploeg and Sandlie, employees of the Ministry of Justice and the Police themselves, probation in

<sup>182</sup> D. Garland. Beyond the Culture of Control. *Critical Review of International and Political Philosophy*, Vol. 7, No. 2, 2004, p. 185

<sup>183</sup> T. Tapio Lappi-Seppälä. Crime Prevention and Community Sanctions in Scandinavia. From Resource Material Series No. 74, 2008, p. 23, available at [http://www.unafei.or.jp/english/pdf/RS\\_No74/No74\\_06VE\\_Seppala2.pdf](http://www.unafei.or.jp/english/pdf/RS_No74/No74_06VE_Seppala2.pdf) (last visited September 24, 2012).

<sup>184</sup> G. Ploeg, J.-E. Sandlie. Mapping probation futures: Norway. *Probation Journal*, No. 58, 2011, p. 386.

<sup>185</sup> A. Kalmthout, I. Durnescu. *Probation in Europe*. Nijmegen: Wolf Legal Publishers, 2008.

Norway is peculiar for its wide discretionary powers to define the content of sanctions; the principle of normality, which sets limits on the degree of rights' limitations; and the so-called "import-model", when educational, health care and other services are bought from outside the prison context.<sup>186</sup> Taken together with the "one inmate-one cell" policy,<sup>187</sup> which unlike in the Netherlands, is still the case in Norway, it is clear that the penal policy is relatively welfarist and humanistic. Later in this section I will return to look for changes within Norway, to analyze the current dynamic of the penal culture.

Probation and parole supervision in Sweden was originally carried out by a non-governmental organization, the Protection society ("Skyddsvarnet" in Swedish), which was founded in Stockholm in 1910 for the purpose of reclaiming and reforming persons released under suspended sentence.<sup>188</sup> However, since 1943 Skyddsvarnet was no longer responsible for probation supervision, which then became an integral part of the state correctional system.<sup>189</sup> The Swedish Prison and Probation Service is now organized as a government agency with six regional offices, a head office and a transport service.<sup>190</sup> Criminal policy is designed to reduce crime and increase people's security.<sup>191</sup> Alike the main methodological and theoretical underpinning of probation work in Norway, Swedish probation is based on the belief that offenders must address their criminal conduct and learn to act responsibly in their lives and actions.<sup>192</sup> Thus, the probation supervision at its core retained what was originally provided for by the 1951 UN definition as involving guidance or treatment. In this context

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<sup>186</sup> G. Ploeg, J.-E. Sandlie. Mapping probation futures: Norway. *Probation Journal*, No. 58, 2011, pp. 386-394.

<sup>187</sup> For more on prison conditions in Norway see B. Johnsen, P. Granheim, J. Helgesen. Exceptional prison conditions and the quality of prison life: Prison size and prison culture in Norwegian closed prisons. *European Journal of Criminology*, No. 8 (6), 2011, pp. 515-529.

<sup>188</sup> Probation in Sweden. *Journal of the American Institute of Criminal Law and Criminology*, Vol. 4, No. 4, 1913, p. 599.

<sup>189</sup> B. Osterdahl. Prison and Probation: The Swedish Perspective. *Corrections Today*, Vol. 64, Issue 1, February 2002, p. 56.

<sup>190</sup> Prison and Probation Service, Government Offices in Sweden, available at [http://www.regeringen.se/sb/d/2708/a/15167?&lang=en\\_us&output=json&session-id=30451435bf05c3d991823d80e913bc15](http://www.regeringen.se/sb/d/2708/a/15167?&lang=en_us&output=json&session-id=30451435bf05c3d991823d80e913bc15) (last visited October 13, 2012).

<sup>191</sup> *Ibid.*

<sup>192</sup> A. Kalmthout, I. Durnescu. *Probation in Europe*. Nijmegen: Wolf Legal Publishers, 2008.

probation services in Sweden took full use of lay (volunteer) supervisors making supervision less a technological treatment and more an exercise in common sense.<sup>193</sup> The Swedish Prison and Probation Service, however, has not remained untouched by the “What Works” agenda. I will refer to these developments later on, when considering the overall direction for the Scandinavian penal cultures.

Among the Nordic countries Finland is unique in the sense that it has undergone dramatic changes in its attitude to crime and means to fight it. Finland’s incarceration rate, twice as high in 1965 (130 per 100,000 compared to 65 per 100,000 [in 2006]), fell by half.<sup>194</sup> A heated social debate on the over-oppressive penal regime has led to a long history of systemic and thorough reforms starting in the mid-1960s and continuing nowadays. Such pro-welfare development has been triggered by the intensifying economic and cultural contacts between Finland and other Scandinavian countries. Laws which allowed repeat criminals to be detained indefinitely were changed in 1971 so as to be applicable only to dangerous, violent offenders. The use of conditional sentences was substantially expanded and community sanctions were introduced.<sup>195</sup> The origin of probation services in Finland is connected to the Finnish Prison Association, which started with the aim of improving prison conditions and was later assigned additional functions, such as supervision of conditionally sentenced and parolees. In light of the reforms of the 1960s, the Prison Association was renamed to the Probation Service, which was a registered association. The Probation Association as a statutory body was established in 1975,<sup>196</sup> later reorganized in the Probation Service. In 2010 the Probation Service and Prison Service were united into the Criminal Sanctions Agency, affirming a broader trend to unification as evident in England and Wales,

<sup>193</sup> K. Hamai, R. Ville, R. Harris (eds). *Probation Round the World: A Comparative Study*. London: Routledge, 1995, p. 166.

<sup>194</sup> M. Tonry. *Thinking about Crime: Sense and Sensibility in American Penal Culture*. Oxford: Oxford University Press, 2004, p. 14.

<sup>195</sup> I. Ekunwe, R. Jones, K. Mullin. Public Attitudes toward Crime and Incarceration in Finland. *The Researcher*, Vol. 23, No. 1, 2010, p. 10.

<sup>196</sup> A. Kalmthout, I. Durnescu. *Probation in Europe*. Nijmegen: Wolf Legal Publishers, 2008.

Norway, Sweden and many other countries. Nowadays the Probation Service is responsible for the enforcement of community sanctions and other activities related to community sanctions and other non-custodial punishments.<sup>197</sup> Along with this organizational transformation, certain changes occurred in the system itself, signifying a slight, but still visible trend to punitiveness.

Despite the fact that Scandinavian countries, due to their cultural, political, social and economic features remain exceptional in their penal policies, they do not stay unaffected by larger developments in the European penology (the so called “late modernity”). In this context it is essential to look closely at the internal developments in Nordic countries to look for the shifts in their penal policies. I agree with Green, who points out that the “late modern changes in penalty... are indeed apparent in the Nordic countries too”.<sup>198</sup> It does not, however, negate an obvious difference in scale of punitiveness and other characteristics of the culture of control.

As contended by Mathiesen, Norway lately experienced, *inter alia*, a greater number of prisoners, stricter punishments, stricter prison regimes, a netwidening of those being punished, an extension of police search methods and an emphasis on preventive policing.<sup>199</sup> The Correctional Service’s main focus in recent years has been to manage an increasing number of people sentenced to prison.<sup>200</sup> A more punitive climate in the country is evident from the Ministry of Justice’s White Paper on Crime (2008), which stated that: “Safety for society is a superior aim for criminal justice policy ... The Ministry will propose to increase

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<sup>197</sup> Probation Service, Criminal Sanctions Agency, available at <http://www.rikosseuraamus.fi/16027.htm> (last visited October 15, 2012).

<sup>198</sup> D. Green. *When Children Kill Children: Penal Populism and Political Culture*. Oxford: Oxford University Press, 2008, p. 75.

<sup>199</sup> *Cit.* B. Monica, D. Leonardsen. Inequality and Punitivism in Late Modern Societies: Scandinavian Exceptionalism Revisited. *European Journal of Probation*, Vol. 4, No. 2, 2012, p. 53.

<sup>200</sup> B. Johnsen, P. Granheim, J. Helgesen. Exceptional prison conditions and the quality of prison life: Prison size and prison culture in Norwegian closed prisons. *European Journal of Criminology*, No. 8 (6), 2011, p. 516.

punishments regarding murder, rape, serious violence and child abuse.”<sup>201</sup> The official attitudes to crime control have been voiced in times of greater fear of crime and feelings of insecurity among Norway’s population. The tragedy of July 2011, when 77 people were killed in a horrific bombing and shooting attack<sup>202</sup> by Behring Breivik has had a great impact on Norwegian society. As shown in the report by Norway’s Institute for Social Research, more Norwegians are now willing to give their authorities more power to monitor society. More control is deemed necessary to further protect Norwegians from future attacks.<sup>203</sup> Growing socio-economic inequalities in Norway<sup>204</sup> have been followed by negative attitudes to immigrants and Muslim immigrants in particular. An increasingly polarized society coupled with rising crime rates and the shock-wave caused by the events of July 2011 did not leave the criminal justice system immune. Though it is hard to predict the future of penalty and the probation service in Norway, it is clear that the last decade has seen new attitudes, propositions and reforms. The particular role of the probation service depends on an overall vision of the penal system, and with the unification of prison and probation services, it is very possible that the traditional profile of probation may change to lean to the generally punitive function of prison.

Alike Norway, Sweden has been influenced by the trend seen both in England and Wales and the Netherlands. Within the Swedish Prison and Probation Services the new agenda oriented towards risk management has been gradually appearing. The “RNR-principle”, Risk-Need-Responsivity in particular has had a strong influence on the process of targeting individuals in order to match them with suitable interventions while serving a

<sup>201</sup> Cit. B. Monica, D. Leonardsen. Inequality and Punitivism in Late Modern Societies: Scandinavian Exceptionalism Revisited. *European Journal of Probation*, Vol. 4, No. 2, 2012, p. 54.

<sup>202</sup> M. Lewis. Norway Mass Killer Gets the Maximum: 21 Years. *The New York Times*, 24 August 2012, available at [http://www.nytimes.com/2012/08/25/world/europe/anders-behring-breivik-murder-trial.html?page\\_wanted=all&\\_r=0](http://www.nytimes.com/2012/08/25/world/europe/anders-behring-breivik-murder-trial.html?page_wanted=all&_r=0) (last visited October 26, 2012).

<sup>203</sup> July 22 attacks left many scars. *Views and News from Norway*, 25 September 2012, available at <http://www.newsinenglish.no/2012/09/25/july-22-attacks-left-many-scars/> (last visited October 26, 2012).

<sup>204</sup> C. Koggel. *Moral Issues in Global Perspective, second edition: Volume 2: Human Diversity and Equality*. Toronto: Broadview Press, 2006, p. 355.

sentence.<sup>205</sup> The risk assessment has been assigned a crucial role in various instructions having mostly recommendatory character. This ongoing shift of policy towards managerialism and unification of assessment techniques has been a clear sign of the changing attitudes among policymakers. In 2009 a government inquiry was launched with the mission to review the entire system of sanctions with the logic that the crime and not the criminal is supposed to be in focus when the question of a suitable sanction is decided.<sup>206</sup> Such approach to crime may at the end lead to a more punitive policy, since incarceration (or other control-based means) will always have a priority in a crime-oriented penalty. Parallel with these developments was the growing public discontent with the existing penal policy. Studies conducted in the 1990s and 2000s signified an obvious discontent with sentencing practices in Sweden, the majority of the population considered sentencing in Sweden to be too lenient.<sup>207</sup> Despite the fact that the introduction of What Works logic into the penal instructions and growing public sentiments to adopt harsher punishments, probation has kept so far its client-oriented or sociological approach. It is too early to conclude, however, whether this resistance will have a long-lasting effect on the handling of offenders in Sweden.

Some punitive trends marked the criminal justice system of Finland during the 1990s. A period of tougher penal policy started in the mid-1990s, with the passing of legislation that placed domestic violence under public prosecution.<sup>208</sup> Several other moves led to an increase in the level of punishment for rape, human trafficking, aggravated assault, etc. This time, as in many other Nordic countries, has coincided with spreading feelings of subjective insecurity alongside significant cuts in welfare spending and expanding social inequality. Punitive trends in Finland, however, lasted for a relatively short period of time and in the mid-2000s the

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<sup>205</sup> A. Persson, K. Svensson. Signs of resistance? Swedish probation officers' attitudes towards risk assessment. *European Journal of Probation*, Vol. 3, No. 3, 2011, p. 97.

<sup>206</sup> A. Persson, K. Svensson. Signs of resistance? Swedish probation officers' attitudes towards risk assessment. *European Journal of Probation*, Vol. 3, No. 3, 2011, p. 188.

<sup>207</sup> M. Demker, A. Towns, G. Duus-Otterstrom. Fear and Punishment in Sweden: Exploring penal attitudes. *Punishment and Society*, No. 10, 2008, p. 320.

<sup>208</sup> T. Tapio Lappi-Seppälä. Criminology, crime and criminal justice in Finland. *European Journal of Criminology*, No. 9, 2012, p. 212.

increase in prison rates and the resulting problems in enforcement seem to have created political pressures for actions towards de-carceration.<sup>209</sup> Proposals have been made for a more frequent use of non-custodial punishment with the wider involvement of probation services, having among its main principles social support and rehabilitation. At the moment it is hardly possible to assess the current trajectory for penal policy in Finland, as after the victory of the right-wing populists in April 2011 it might change again.

I agree with Bondeson and Tham that stronger survival of a social democratic welfare state in Scandinavian countries seems to have mitigated the rise both in crime and in punitive penal policy, but threats to both are becoming apparent.<sup>210</sup> The appearance of punitive and managerial attitudes in penal cultures of Scandinavian countries coincided with cuts in welfare spending, increase in social inequality<sup>211</sup> and changing views on the issues of migration, drug-related crime and Muslim communities. Nevertheless, it is still possible that punitive trends evident in Nordic countries are more of a temporary nature as a response to the altering political climate and economic fluctuations.

It is not the purpose of this chapter to question or disprove Garland's thesis about the spreading culture of control in Europe. Nevertheless, certain similar trends in the penal cultures of several European states (England and Wales, the Netherlands, Norway, Sweden, Finland) and probation services have been identified. Rising incarceration rates, growing public punitiveness, managerialism in offender management and cuts in social spending leading to greater inequality, all characterize the new developments in these countries. However, making predictions or conclusions regarding general directions for European penalty is a risky business. First of all, the range of countries analyzed in this chapter is rather

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<sup>209</sup> T. Tapio Lappi-Seppälä. Changes in Penal Policy in Finland. In H. Kury, E. Shea (eds.). *Punitivity International Developments, Vol. 1: Punitiveness – a global Phenomenon?* (Crime and Crime Policy Vol. 8-1), Universitätsverlag Dr. N. Brockmeyer, 2011, p. 227.

<sup>210</sup> In the footnote to M. Maguire, R. Morgan, R. Reiner. *The Oxford Handbook of Criminology*, Fourth Edition. Oxford: Oxford University Press, 2007, p. 365.

<sup>211</sup> See, e.g. T. Iversen. The Choices for Scandinavian Social Democracy in Comparative Perspective. *Oxford Review of Economic Policy*, Vol. 14, No. 1, 1998, p. 72.



limited and thus does not allow to judge the overall cross-European penal culture. Secondly, the trends within the countries reviewed are not always explicit and clear cut, leaving a space for political groups to form new policies or alter the existing ones, which might not have a long-lasting or trendsetting nature. After the collapse of the Soviet Union, the Russian Federation began a series of reforms, including in the criminal justice sphere. Recently pronounced liberalization and humanization of the penal policies, as well as plans for introduction of probation services make the experience of the European states with regard to penal policy especially relevant. It is not obvious though what kind of experience Russia will finally adopt, the welfarist one from the 1970s or the more punitive from the 1990s-2000s.

## 4. Russian Experience of Social Rehabilitation and Reintegration of Offenders

The need to improve the existing penitentiary system in Russia has been voiced by many representatives of academia, practitioners and government officials. Their calls have been recognized on the state level with the adoption of the Concept for the development of the Criminal Correctional System of the Russian Federation to 2020.<sup>212</sup> The primary goals of such development as highlighted in this document are: 1) reduction of reoffending rates among the offenders, who served their prison sentence, through the increase of efficiency of social and psychological work in places of detention and the development of a system of post-penitentiary help to such people, 2) humanization of conditions in places of detention for persons in custody and those serving their prison sentence, 3) increase in the effectiveness of work of bodies and institutions of criminal justice system to the level of European standards for the treatment of prisoners and in accordance with the needs of social development. These aims are to be achieved, *inter alia*, through creation of the probation service in Russia.

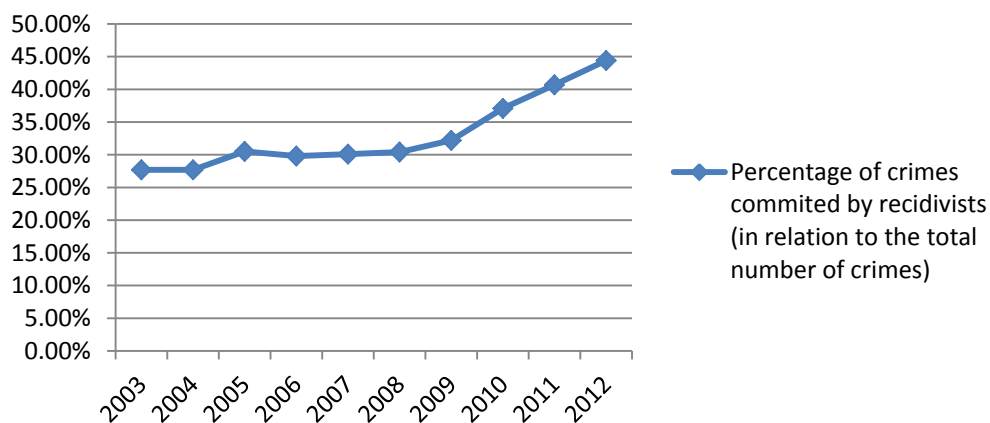
In this chapter I will analyze the existing framework of resocialization mechanisms in Russia. To do so, I will examine the organization of penal institutions, system of penalties, normative base for reintegration, as well as practical impediments for its successful realization. Summarizing Russian experience of social rehabilitation in the penal sphere I should emphasize that the current system of penal institution/penalties is unable to provide all necessary means to facilitate resocialization. Up to date no adequate changes to create a probation service or undertake in-depth reforms of the criminal justice system have been implemented. Moreover, it remains unclear what kind of institutions are to be formed to carry out rehabilitative practices within the Russian penal system. Taking into account different

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<sup>212</sup> Concept for the development of the Criminal Correctional System of the Russian Federation to 2020, Government Decree from 14.10.2010 No. 1772-P. Collection of Legislative Acts of the Russian Federation, 25.10.2010, No. 43, pp. 5544.

factors, I conclude that the most appropriate way for such reforms would be to enhance the efficiency of the currently working penal inspections belonging to the Federal Penitentiary Service of the Russian Federation. Organizational transformations should not be at the core of the reforms and should give way to functional improvements and better cooperation within the more or less unified rehabilitative framework.

Despite the fact that it is too early to make any conclusions about the efficiency of the announced reorientation of Russian penal policy towards its “humanization”, it is obvious that the current system of criminal justice remains largely outdated and inefficient. The following diagram reflects the levels of recidivism in Russia for the period from 2003 until June 2012.<sup>213</sup>



**Figure 3.** Levels of recidivism in Russia, 2003-June 2012<sup>214</sup>

This diagram clearly shows the gradual increase of the percentage of offences committed by those with the history of previous conviction. Such result is partially caused by the inefficiency of the Russian punishment system, as well as poor work by the state authorities. Despite the recent changes in the Russian criminal, procedure and penal

<sup>213</sup> It should be noted that the level of recidivism is by far not the only factor of efficiency of the criminal justice system, see M. Israel, W.H. Chui. If ‘Something Works’ is the Answer, What is the Question? *European Journal of Criminology*, Vol. 3 (2), 2006, p. 184. However, since recidivism has among its causes those of social and economic nature, high recidivism rates signify deficiency of the resocialization process.

<sup>214</sup> The data for the diagram is taken from the official reports prepared by the Russian Ministry of the Interior and available on the web site of the Russian Ministry of the Interior, available at [http://www.mvd.ru/presscenter/statistics/reports/page\\_1/](http://www.mvd.ru/presscenter/statistics/reports/page_1/) (last visited September 16, 2012).

enforcement legislation under the so-called “humanization” trend, the number of people currently detained in the penal facilities remains considerable reaching 717,400 by September 1, 2012<sup>215</sup>, which is about 615 people per 100,000. In comparison, in Germany this figure amounted to 94, in France – 85, in England/Wales – 148.<sup>216</sup> At the same time, 48,1-% of those sentenced to custodial punishment in Germany reoffended (as opposed to 38,1-% in case of non-custodial sentencing)<sup>217</sup>. In France the recidivism rate amounted to 52-%,<sup>218</sup> in England and Wales – to 59,4-% for those who received immediate custody (less than 12 months) and 51,1-% for offenders serving community sentences.<sup>219</sup> These relatively high recidivism rates in Europe and a rather low level of reoffending in Russia cannot, however, be taken as proving the “prison works” thesis for a number of reasons. First of all, there are considerable methodological differences across countries with regard to defining and calculating recidivism.<sup>220</sup> And secondly, statistical data from countries reviewed shows that reconviction rates are usually higher among offenders who served their custodial sentences as compared to those who received community service or probation orders.

There are many impediments to successful implementation of rehabilitation and resocialization practices in Russia. Among them I should mention the lack of unified federal legislation in the social sphere, multiple economic, political, organizational problems, etc. But, in my opinion, the main obstacle remains the absence of a general understanding of what resocialization is and how it should be managed.

<sup>215</sup> Short characteristics of the penitentiary system prepared by the Russian Federal Penitentiary Service, available at <http://fsin.su/structure/inspector/iao/statistika/Kratkaya%20har-ka%20UIS/> (last visited September 15, 2012).

<sup>216</sup> World Prison Populations, BBC, available at <http://news.bbc.co.uk/2/shared/spl/hi/uk/06/prisons/html/nn1page1.stm> (last visited September 15, 2012).

<sup>217</sup> Rückfallstatistik, Bundesministerium der Justiz, available at [https://www.bmj.de/DE/Service/Kontakt/kontakt\\_node.html](https://www.bmj.de/DE/Service/Kontakt/kontakt_node.html) (last visited November 15, 2012).

<sup>218</sup> Les prisons, en finir avec l’indignité: Faire de la prison l’ultime recours, améliorer des conditions de détention et favoriser la réinsertion, May 10, 2011.

<sup>219</sup> 2011 Compendium of re-offending statistics and analysis, Ministry of Justice Statistics bulletin, 10 May 2011, available at <http://www.justice.gov.uk/statistics/reoffending/compendium-of-reoffending-statistics-and-analysis> (last visited November 21, 2012).

<sup>220</sup> Different means to measure recidivism may include re-offence, re-imprisonment, re-arrest, technical violation, etc. See, e.g. L. Bissessar, S. Ramdhan. *Recidivism, Project Report*. Grin Publishing, 2010.

According to Article 2 of the Criminal Penitentiary Code of the Russian Federation, among the main goals of the Russian penitentiary system is correction of offenders. As stipulated by Article 9 of the above law, correction of offenders entails the formation of a respectful attitude to a person, society, work, norms, rules and traditions of a community and stimulation of good behavior. These goals are to be achieved through the penitentiary regime, educational work, community service, general education, professional training and social impact.<sup>221</sup> The use of the word “correction” unlike “resocialization” has a strong imperative character and represents a process in which an offender is affected from outside, rather than evolving in the process of desistance. Besides, taking into account the current transitional character of Russian society, disparity in views of politicians, practitioners, members of academia with respect to principles of the penitentiary system, effective practical realization of the stated goals seems quite remote.

The Criminal Penitentiary Code of the Russian Federation does not regulate relations in the field of social assistance (even “correction”) with respect to those under suspended sentence or on parole.<sup>222</sup> Thus, the very aim of resocialization of these categories of offenders can hardly be achieved by means of the existing legislation. This sphere in theory should be regulated by the social security legislation, which in Russia is rather piecemeal and most of the time insufficient. I will return to this issue further on. Since there is no probation service established in Russia, many different institutions deal directly or indirectly with social rehabilitation and reintegration of offenders at different stages of the criminal process. Before looking closely at the realization of these rehabilitative practices in the Russian context, I should briefly describe the main structure and features of the penitentiary system.

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<sup>221</sup> Criminal Penitentiary Code of the Russian Federation No. 1-FZ dated 8 January 1997.

<sup>222</sup> N. Olkhovik. Issues of Executing Criminal Punishment. *Penitentiary Problems of Crime Prevention*, Vol. 2 (16), 2011, p. 56.

## 4.1 System of Russian Penal Institutions and Facilities

During a long period of time a great variety of state bodies have been involved in the execution of punishment in Russia, acting primarily within the Ministry of the Interior. Russia's accession to the Council of Europe has triggered certain changes and with the adoption of the Federal Act No. 904 dated 28 June 1998 "On the transfer of state penitentiary system from the Ministry of the Interior of the Russian Federation to the Ministry of Justice",<sup>223</sup> the state penitentiary system came under the jurisdiction of the Ministry of Justice of the Russian Federation. Both the accession of Russia to the ECHR and the transfer of powers from the Ministry of Interior to the Ministry of Justice have signified new developments towards the culture of due process from the one of social control. But, as I will show later, these developments have been rather slow.

The second wave of reforms of the federal penitentiary bodies began with the enactment of the Presidential Decree No. 314 dated 9 March 2004, when the Federal Penitentiary Service (FSIN) was created. As provided by the Decree, the main responsibilities of the Service included the execution of criminal penalties, detention of persons suspected or accused of committing crimes, supervision over the persons on suspended sentences and those with delayed sentence, and organization of activities to help offenders in social adaptation, etc.<sup>224</sup> The territorial administrations of the Federal Penitentiary Service are responsible for penal facilities within their territorial jurisdiction. Apart from these facilities belonging to FSIN, there are temporary detention centers under the Russian Ministry of Interior. Criminal suspects are being detained in these centers until they are taken into custody.

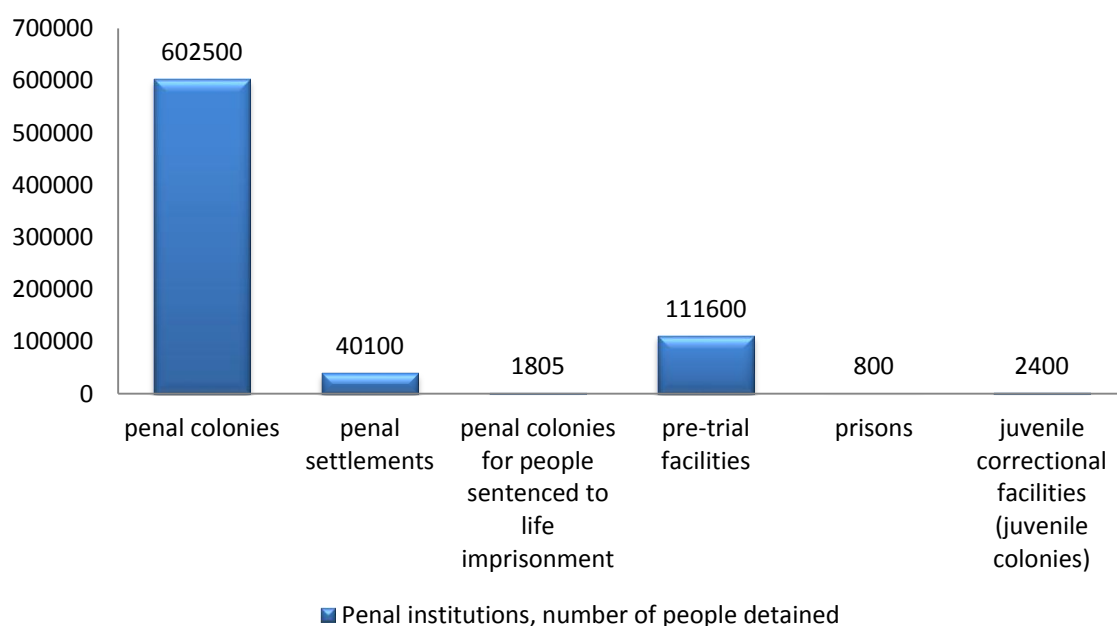
The penalties with the deprivation of liberty are performed by prisons and detention facilities in accordance with the Act No. 5473-1 of 21 July 1993 "On institutions and organs

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<sup>223</sup> Federal Law No. 904 from 28 June 1998 "On the transfer of state penitentiary system from the Ministry of the Interior of the Russian Federation to the Ministry of Justice of the Russian Federation".

<sup>224</sup> Presidential Decree "On the system and structure of the federal executive bodies", No. 314 from 9 March 2004.

executing criminal penalties in the form of deprivation of liberty”. Among the Russian penal facilities are penal settlements, juvenile correctional facilities, medical correctional institutions, penal colonies of general, strict and special regimes, prisons and pre-trial facilities. Figure 4 below helps better understand the scope and current state of penal facilities in Russia.



**Figure 4.** Penal facilities by number of people detained<sup>225</sup>

Thus, the Russian penitentiary system is mainly comprised of penal colonies, which, according to Article 74 of the Criminal Penitentiary Code of the Russian Federation, are the main type of penal facilities. Among the major differences of penal colonies from prisons is the regime of detention. Unlike in prisons, such “correctional practices” as labor, general education and vocational training, group activities, etc. should be widely incorporated in penal colonies. Besides, as opposed to prisons where inmates are held separate (Article 130 of the Criminal Penitentiary Code of the Russian Federation), life in penal colonies presupposes

<sup>225</sup> The chart is based on the information provided on the web site of FSIN, information is effective 1 September 2012, available at <http://fsin.su/structure/inspector/iao/statistika/Kratkaya%20har-ka%20UIS/> (last visited September 15, 2012).

accommodation in dormitories and the so-called “collective form of detention” (Article 121 of the Criminal Penitentiary Code of the Russian Federation).

There are four types of penal colonies: penal settlements, penal colonies of general, strict and special regimes. Depending on the detention regime, inmates have different scope of rights, *e.g.* number of dates to have, parcels to receive, money to spend. For example, an inmate of a colony of general regime is entitled to six short and four long dates during a year. In comparison, an inmate of a strict regime colony can have three short dates and three long dates a year. Offenders held in the colonies of general regime can also be released from custody, which allows them to live and work outside the penal colony, but under the supervision of the administration of the colony.

I should note that the first attempts to modify the system of penal facilities were made in 2006, when 73 billion rubles (1.8 billion Euros) was allocated for building of new facilities, including 27 pre-trial facilities. As a result, around 9,-000 additional places were created in penal colonies, and about 4,-200 in pre-trial facilities.<sup>226</sup> Thereby the reform had a more extensive than intensive character and so did not lead to radical changes.

A new reform project for the Russian penitentiary system was proposed in 2009. The core of it was a gradual decrease in the number of penal colonies, which by 2020 were supposed to be fully replaced by prisons and penal settlements.<sup>227</sup> Penal settlements would be reserved for those who committed crimes of small or medium gravity, or crimes committed through negligence, as well as for first-time offenders. All other offenders would be held in prisons operating in three regimes.<sup>228</sup> Juvenile correctional facilities are to be transformed into

<sup>226</sup> E. Drankina, A. Dolgoplov. Closed economic zone. “*Commersant-money*” magazine, No. 21 (778), 31 May 2010, available at <http://www.kommersant.ru/doc/1370364> (last visited September 15, 2012).

<sup>227</sup> “A” and “B” were sitting... The head of FSIN Alexander Reimer told Russian Gazette that inmates will be transferred from barracks. *Russian Gazette*, No. 5268 (189), 25 August 2010, available at <http://www.rg.ru/2010/08/25/rejmer.html> (last visited September 15, 2012).

<sup>228</sup> E. Kozhevnikova. Reform of FSIN will extend for 10 years, available at [http://infox.ru/authority/law/2010/02/25/Ryeforma\\_FSIN\\_budyet.phtml](http://infox.ru/authority/law/2010/02/25/Ryeforma_FSIN_budyet.phtml) (last visited September 20, 2012).



educational centers.<sup>229</sup> Pre-trial detention centers would still be in operation, but detention during preliminary investigation should become an exception. It is planned to create 721 facilities, among them 58 prisons with special regime, 180 prisons with reinforced security regime, 210 prisons of general regime for men and 55 for women, 218 colonies with enhanced and regular supervision.<sup>230</sup>

In November 2011, in line with the proposed reforms, the Ministry of Justice of the Russian Federation worked out a State program, called “Justice”, which is to be implemented by 2020 and will cost approximately 2.2 trillion rubles (54.9 billion Euros). Reforms of the existing penal system remain at the core of the program. According to this document, “taking into account health conditions and social characteristics of the convicted, the Russian penitentiary system will have to be transformed into a rehabilitative one, which will promote physical and spiritual recovery of offenders and also acquisition of the needed professional skills.”<sup>231</sup> Particular steps in this direction have not been taken so far.

The above is the basic legal framework for the Russian penal facilities and an overview of the relatively new initiatives. In reality, however, there is a huge array of problems, in particular with protection and provision of human rights in penal colonies, prisons and pre-trial facilities. It is not within the scope of this paper to analyze these problems in-depth. At the same time, detention conditions, including regime, significantly affect offender rehabilitation and re-integration into the community. This is why I analyze more deeply the correctional framework for those sentenced to imprisonment in the next subsection.

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<sup>229</sup> Penal colonies will disappear in Russia. *Russian Gazette*, 10 March 2011, available at <http://www.rg.ru/2011/03/10/turma-anons.html> (last visited September 19, 2012).

<sup>230</sup> V. Kulikov. Zone of registration. The bill proposed by the Ministry of Justice introduces registration in prisons. *Russian Gazette*, No. 5716 (43), 29 February 2012, available at <http://www.rg.ru/2012/02/29/zona.html> (last visited September 15, 2012).

<sup>231</sup> State program “Justice”, 2012, available at <http://www.minjust.ru/node/2498> (last visited September 25, 2012).

## 4.2 Realization of Rehabilitative Mechanisms in the Custodial Context

According to Article 56 of the Russian Criminal Code, deprivation of liberty entails “isolation of the convict from society by sending him to a penal settlement, placing him into a juvenile colony, medical treatment institution or into a penal colony of general, strict or special regime, or into prison. Deprivation of liberty shall be established for a term of six months to 20 years.”<sup>232</sup>

The abovementioned law also contains a definition of the purpose of punishment, which accordingly is restoration of social justice, reformation of a convicted person and prevention of commitment of further crimes. In light of the topic of the current research the “reformation” part acquires particular importance. Is custodial punishment able to rehabilitate? What institutional, economic and legal frameworks are created with such a purpose in Russia? These are the questions I will primarily deal with in this section of the thesis.

Paterson once said that:

In order to afford anything in the nature of permanent protection, either the prison must keep the offender within its walls for the term of his natural life, or it must bring such influence to bear upon him while in custody that he will, on the day of his discharge, be an honest, hard-working and self-controlled man [sic], fit for freedom, and no longer an enemy of society.<sup>233</sup>

Russia is currently in third place among the countries with the highest prison populations.<sup>234</sup>

And this number is unlikely to fall in the nearest future. This is why successful application of rehabilitative techniques to make inmates “fit for freedom” is especially topical. When I refer to social rehabilitation in the custodial context I primarily refer to two categories of activities:

1) rehabilitation within a penal facility and 2) rehabilitation following release from such a

<sup>232</sup> The Criminal Code of the Russian Federation, No. 63-FZ dated 13 June 1996.

<sup>233</sup> Cit. G. Robinson, I. Crow. *Offender Rehabilitation: Theory, Research and Practice*. London: Sage Publications Ltd., 2009, p. 35.

<sup>234</sup> World Prison Populations, BBC, available at <http://news.bbc.co.uk/2/shared/spl/hi/uk/06/prisons/html/nn2page1.stm> (last visited September 2, 2012).

facility. From the outset I should highlight that these categories are closely interconnected, and the success of the second stage to a large extent depends on the efficiency of the first.

Rehabilitative practices within a penal facility may include work, educational programs, social skills programs, and vocational training intended to prepare offenders for their life outside prison. But these practices constitute just one side of the rehabilitative measures; another side should include support for family and other social bonds. In this regard, practical realization of social reintegration of offenders in Russia is not effective.

Article 103 of the Criminal Penitentiary Code of the Russian Federation states that every person sentenced to imprisonment shall work in places, defined by the administration of the penal facilities. Nevertheless, according to FSIN, in 2009 only 186,-000 inmates (28-%) were involved in paid work, the others – 436,-300 (72-%) did not have a job because of its lack in penal facilities.<sup>235</sup> In 2011 a bit more – 30,5-% of inmates were involved in paid work.<sup>236</sup> At the same time there were about 290,-000 inmates with writs of execution in their hands.<sup>237</sup> This means that they would have to pay the debts sooner or later, which is hard to imagine taking into account that 52-% of inmates had no money on their accounts and 18-% had less than 200 rubles (5 Euros).<sup>238</sup>

According to the Report called “On the results and main activities of FSIN for the years 2008-2010”<sup>239</sup> there were 338 vocational schools operating in the penal facilities with a number of students reaching 79,-000, and 300 evening schools and 364 education consulting centers with more than 62,-000 students. It is important to bear in mind that more than 80-%

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<sup>235</sup> Data is taken from S. Berezikov. Problems of Improving the Incentive Framework Correctional Process Sentenced to Imprisonment. *Reporter of Saratov State Academy of Law*, No. 2 (84), 2012, p. 204.

<sup>236</sup> Performance indicators of FSIN for year 2011, available at [http://www.fsin.su/activity/performance\\_fsin\\_of\\_russia/](http://www.fsin.su/activity/performance_fsin_of_russia/) (last visited September 3, 2012).

<sup>237</sup> Division of Labour for Prisons of FSIN, General information, available at [http://fsin.su/structure/adaptation/index.php?sphrase\\_id=190571](http://fsin.su/structure/adaptation/index.php?sphrase_id=190571) (last visited September 5, 2012).

<sup>238</sup> Put in prison with all conveniences. *Moskovsky Komsomolets*, No. 25321, 7 April 2010, available at <http://www.mk.ru/social/article/2010/04/06/462867-sazhayu-v-tyurmu-so-vsemi-udobstvami.html> (last visited September 11, 2012).

<sup>239</sup> The Report “On the results and main activities of FSIN for the years 2008-2010”, available at <http://www.skandinavia.ru/en/> (last visited September 8, 2012).

(573,-920) of those coming to the penal facilities lacked professional and work skills, and around 50,-000 persons had no basic general education.<sup>240</sup> It is clear that incorporation of special educational facilities in colonies has a positive effect on rehabilitation, as it increases the chances of getting a job after release, as well as improving self-confidence. However, education programs should clearly be expanded in scope and considered an important, but not self-sufficient part of the overall holistic resocialization process.

Persons deprived of their liberty are denied regular, normal interpersonal contact with a meaningful social context. As their social identities atrophy, some report losing a sense of who, in fact, they are.<sup>241</sup> Researchers also point out that social isolation facilitates social withdrawal.<sup>242</sup> Turning to the Russian statistics, 23-% of the inmates did not receive any parcels, 53-% received parcels, but less frequently than is allowed by law, 48,1-% of inmates did not exercise their right to make phone calls, 68,8-% did not receive remittances from relatives during the year, 56,5-% did not have short dates, 66-% - long ones, 77-% of the inmates were unmarried.<sup>243</sup> These are clear factors signifying loss of social contacts, important for reintegration. Interestingly, the Russian legal framework, allowing for the simplified procedure to divorce with the convicted,<sup>244</sup> and a special easy way to remove offenders from the registry,<sup>245</sup> does not provide any sufficient remedies to restore or keep up social bonds. In turn, loss of the belief in change triggered by alienation from society, deprives offenders of any hope – an unalienable factor of the desistance process.

<sup>240</sup> A. Garmash. "We don't need them". How to help an ex-convict to find a place in life. *Ezh-Yurist*, No. 4, 2012.

<sup>241</sup> J. Petersilia, K. Reitz. *The Oxford Handbook of Sentencing and Corrections*. Oxford: Oxford University Press, 2011, p. 597.

<sup>242</sup> M. Maguire, R. Morgan, R. Reiner. *The Oxford Handbook of Criminology*. Oxford: Oxford University Press, 2007, p. 1129.

<sup>243</sup> Put in prison with all conveniences. *Moskovsky Komsomolets*, No. 25321, 7 April 2010, available at <http://www.mk.ru/social/article/2010/04/06/462867-sazhayu-v-tyurmu-so-vsemi-udobstvami.html> (last visited September 24, 2012).

<sup>244</sup> Family Code of the Russian Federation No. 223-FZ dated 29 December 1995, Article 19 (2).

<sup>245</sup> Rules on registration and de-registration of citizens of the Russian Federation at the place of stay or residence within the territory of the Russian Federation, adopted by the Government Decree No. 713 dated 17 July 1995.

This unfortunate situation can be partially linked to the absence of any clear rehabilitation strategy and enforceable laws in this sphere in Russia. Measures taken by the state are piecemeal and not sufficiently funded. Usually programs implemented in prisons and other facilities are initiated by these same facilities, by the federal subjects of Russia and municipalities. Thus, an indispensable linking stage before the release, when certain measures can be taken in order to assure successful return of an offender to society is practically neglected.

Referring to the second stage of rehabilitation, the one following release from a penal facility, I will point out that no integrated federal legislation has been adopted in this sphere so far. However, a relevant bill was proposed to the State Duma in 2006, called “On the basics of social integration and rehabilitation of persons released from prison”, which in my view has largely declarative statements due to the lack of the enforcement mechanism. Besides, if adopted it will primarily apply to the following categories of offenders: pregnant women and women with young children; minors; incapacitated by old age or state of health; and persons who lost their social bonds.<sup>246</sup> Thus, in fact the majority of the prison population will be disregarded.

Article 181 of the Criminal Penitentiary Code of the Russian Federation called “Rendering of assistance to persons released from service of sentence” stipulates that the convicts released from the place of confinement shall be provided with free transportation to their place of residence, with food and money for the period of transportation. Article 182 of the same law states that persons released from arrest or detention should be entitled to employment and normal conditions of life and other types of social assistance provided by law and regulations. Here the Code makes a reference to the Labor Code of the Russian

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<sup>246</sup> No definition of “persons who lost their social bonds” has been formulated. This is why its practical application is hard to assess.

Federation<sup>247</sup> and the Federal Act “On State Social Assistance.”<sup>248</sup> Therefore, social assistance to offenders is left outside the area of penal legislation.

Personally, I do not see any problem in transferring the social care issues to the social services regulated by the separate social security legislation, provided that these regulations are workable and narrowly construed to the needs of the category of offenders. However, this is not the case in Russia. The Housing code of the Russian Federation<sup>249</sup> does not contain any special provisions designed to address concerns of offenders. Several federal subject of Russia and municipalities initiated local legislative arrangements, creating overnight stay houses, social shelters and hostels, centers for social adaptation and other facilities for temporary lodgment of the released.<sup>250</sup> Labor Code of the Russian Federation does not provide any special benefits to ex-prisoners either. And thus, according to the data of the Ministry of Interior in the first quarter of 2011 from 633,-500 persons released from the penal facilities only 99,-400 (every 6th) succeeded in finding a job.<sup>251</sup>

Legislation on social assistance is equally vague and fragmented. Adoption of the Government Decree No. 800 dated 25 December 2006 “On the size of the lump-sum benefit to persons released from prison”<sup>252</sup> has signified a small step in the direction of creating a framework for social rehabilitation of offenders. According to the current version of the Decree, the amount of such benefit is only 850 rubles (21,3 Euros). At the same time, as

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<sup>247</sup> Labor Code of the Russian Federation, No. 197-FZ dated 30 December 2001.

<sup>248</sup> Federal Act “On State Social Assistance”, No. 178-FZ dated 17 July 1999.

<sup>249</sup> Housing Code of the Russian Federation, No. 188-FZ dated 29 December 2004.

<sup>250</sup> See, e.g. Departmental special-purpose program “Social rehabilitation and adaptation of citizens, who have served their sentence of imprisonment for years 2012-2013”, adopted by the Decree of the Ministry of Labour and Social Development of the Republic of Adygea No. 312 dated 28 November 2011.

<sup>251</sup> Data taken from A. Garmash. “We don’t need them”. How to help an ex-convict to find a place in life. *Ezh-Yurist*, No. 4, 2012.

<sup>252</sup> Government Decree No. 800 dated 25 December 2006 “On the size of the lump-sum benefit to persons released from prison”.

estimated for the first quarter of 2012, the minimum subsistence level in Russia constituted 6,-307 rubles (157,7 Euros) a month.<sup>253</sup>

Multiple shortcomings of the existing systems of social security, labor and housing legal frameworks, alongside the problems in practical realization of the envisaged social benefits, negative public opinion with regard to the former prisoners and unwillingness to accept them back into society<sup>254</sup> leads to dire consequences. These consequences are best exemplified by people released on parole. 23,6-% of them were brought back to the penal facilities within two months, 20,8-% – within a period from two to three months, 31,6-% – from three to six months. Thereby 76-% of those released on parole were taken back to the penal institution within six months from the release date. Another set of data shows that 18,3-% of ex-prisoners were returned within two months, 29,1-% – within three months, 40,2-% – within 6 months. So for 87,6-% of parolees parole orders were revoked within a year.<sup>255</sup>

Apart from the many concerns highlighted above, there are systemic or structural problems with the existing penal system as such. According to the European Prison Rules, “sentenced prisoners shall be assisted in good time prior to release by procedures and special programs enabling them to make the transition from life in prison to a law-abiding life in the community. In the case of those prisoners with longer sentences in particular, steps shall be taken to ensure a gradual return to life in free society.”<sup>256</sup> I believe that such steps acquire significant importance, because they create a platform for gradual, well-thought return of a prisoner to a society (“progressive execution of punishment”). The Russian penitentiary system significantly impedes any prospects for gradual “preparation” of the convicted for release.

<sup>253</sup> Government Decree No. 613 dated 19 June 2012 “On the establishment of the minimum surveillance level per capita and the main socio-demographic groups in the Russian Federation for the 1<sup>st</sup> quarter 2012”.

<sup>254</sup> Especially evident in the case of employment.

<sup>255</sup> N. Lopashenko. Conditional release from punishment: theoretical and law enforcement problems, 2010, p. 145.

<sup>256</sup> Recommendation Rec (2006)2 of the Committee of Ministers to member states on the European Prison Rules, Adopted by the Committee of Ministers on 11 January 2006.

To begin with, allocation of the convicted to the penal facilities is based on the gravity of the committed criminal offence and the criminal record. Despite the fact that Article 61 and Article 63 of the Criminal Code of the Russian Federation set forth circumstances mitigating punishment and circumstances aggravating punishment, they in practice limit the leeway for the court to operate within. Russian Criminal Procedure Code does not provide a mechanism for gathering information about the personality of the defendant. This is why there is basically no continuity in the criminal (rehabilitative) process between the investigating authorities, judiciary, pre-trial detention and detention in penal colonies.

Secondly, the Russian penitentiary legislation does not have provisions for the transitional regime of sentence, used before the release on parole or release after serving a full sentence. As an exception, as I mentioned before, in colonies of the general regime the inmates can be released from custody six months before the end of their sentence to work outside the prison environment (Article 121 of the Criminal Penitentiary Code of the Russian Federation). According to Article 133 of the Criminal Penitentiary Code, inmates of the juvenile colonies under the preferential treatment regime can also receive an approval to live in dormitories located outside the penal facility, but under the supervision of the administration of the colony.

In line with the adoption of the Concept for the development of the Criminal Correctional System of the Russian Federation to 2020 FSIN has worked out Guidelines on the use of “social mobility elevators” in FSIN penal facilities. According to these Guidelines, the system of “social mobility elevators” represents a mechanism to provide changes in the conditions of sentence, in the types of penal facilities, in replacement of the unserved part of the sentence with milder penalties, in granting a parole.<sup>257</sup> At first, this might seem to be a positive development, since the analysis of a person’s correction progress is being assessed on

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<sup>257</sup> Guidelines on the use of “social mobility elevators” in penal facilities of FSIN No. 15-5093-01 dated 25 March 2011.



a more or less structured level. I can also clearly see here some influence of the Offender Assessment System (OASys), used in England and Wales. This could give rise to the real dangers of misperception and cultural imperialism.<sup>258</sup>

There are two factors, which in my opinion greatly reduce the validity of such assessment tools in the Russian context.

First of all, the particular criteria established by the Guidelines do not necessarily reflect rehabilitation of an inmate. For example, the mere observance of the sentence regime considered by the Guidelines as the main indicator of change, can hardly be regarded as a primary factor for desistance because of its highly formal character.<sup>259</sup> Other indicators such as wearing a provided uniform, abstention from tattooing or assigning of nicknames, keeping animals and birds and growing indoor plants only with the permission of an administration, *etc.* can hardly be called reliable either. Working out the criteria for desistance (rehabilitation) process should be based on fundamental research, as well as national and cross-national empirical knowledge. Besides, in my opinion, the list of indicators should be open-ended and leave some leeway for probation staff to ascertain the degree of importance of a particular indicator.

Another side of the problem with “social mobility elevators” is the issue of incentives. In order to accelerate a process of social transformation a workably system of incentives has to be established. I find that different regimes of penal facilities (and internal punishment/reward systems) do not create such incentives. As noticed above, these regimes differ primarily by the number of dates allowed, number of parcels inmates can receive, amount of money they can have on their account. It has also been emphasized that not many inmates use these opportunities for different reasons, loss of social contacts among them.

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<sup>258</sup> J. Harding, K. Davies. Step by steppe – progressing probation in Russia. *Probation Journal*, Vol. 58 (4), 2011, p. 356.

<sup>259</sup> A. Propostin. Progressive system of the execution of imprisonment in light of the concept of the Criminal Correctional System. *Journal “Vestnik of Tomsk State University”*, No. 2 (4), 2012, p. 47.

Moreover, since the support of the social bonds is considered a crucial segment of the on-going reforms, limitation of dates, calls, packages, *etc.* as punishment for non-compliance with prison rules (*e.g.* growing indoor plants without permission of prison authorities) in theory and practice contradicts social rehabilitation ideals. It should also be noted that the rule according to which a person deprived of liberty “may be released conditionally and ahead of time if the court finds out that for his rehabilitation he does not need to serve the full punishment imposed by the court” (Article 79 of the Criminal Code of the Russian Federation), gives in reality an unconditional green light for early release on parole.<sup>260</sup> From the beginning of 2012 more than 35,8-% of inmates (42,-000) were released on parole, 4,-200 of them had negative assessment from the penal facilities they were detained in.<sup>261</sup> Considering that for 87,6-% of released prisoners parole orders are revoked within six months, the efficiency of the system of “social elevators” remains very low.

According to the Recommendation of the Council of Europe “On conditional release (parole)”, “the conditional release should aim at assisting prisoners to make a transition from life in prison to a law-abiding life in the community through post release conditions and supervision.”<sup>262</sup> In the Russian context existing supervisory mechanisms are not framed to render assistance to ex-prisoners. Instead they are usually limited to periodic meetings with staff of the law enforcement agencies and various restrictions, *e.g.* prohibition of visiting certain places or mass events, prohibition to leave defined territory, *etc.*<sup>263</sup>

### 4.3 Realization of Rehabilitative Principles in Non-custodial Framework

<sup>260</sup> V. Uzhanin. On the Russian “progressive system” of the execution of punishment of imprisonment. *Modern penal law: problems of theory and practice. Materials of the International Scientific Conference*, 2007, p. 35.

<sup>261</sup> More than 35-% of prisoners in Russia released on parole in 2012. *Ria News*, 28 September 2012, available at <http://ria.ru/society/20120928/761294053.html> (last visited September 24, 2012).

<sup>262</sup> Recommendation Rec (2003) 22 of the Committee of Ministers to member states on conditional release (parole), Adopted by the Committee of Ministers on 24 September 2003.

<sup>263</sup> Federal Act “On the administrative supervision over persons, released from the places of detention”, No. 64-FZ dated 6 April 2011.

It is widely accepted that prisons rarely rehabilitate, “but they tend to further criminalize individuals, leading to re-offending and a cycle of release and imprisonment, which does nothing to reduce overcrowding in prisons or to build safer communities.”<sup>264</sup> Despite this, for a long period of Russian history, incarceration was considered the most effective tool to prevent recidivism and assure public security. Incarceration dominated the Russian toolkit of punishment during the 1990s, and only in 2001 in the Report of the Commissioner on human rights in the Russian Federation a separate chapter devoted to alternatives to imprisonment was included.<sup>265</sup> However practical implementation of norms related to alternative punishment has been rather slow and complicated due to a variety of factors.

Improvement of the system of criminal penalties and, in particular creation of a modern and efficient system of punishment, not connected to isolation from society is mentioned among the main goals for the Russian government by end of 2012.<sup>266</sup> Development of alternatives to imprisonment is also considered as a crucial step in rationalization and humanization of state policy in the field of criminal justice. The Concept for the development of the Criminal Correctional System of the Russian Federation to 2020 entails an increase in the number of persons sentenced to non-custodial penalties by 200,000. This goal is supposed to be achieved through the use of restriction on freedom and other alternative forms of punishment, as well as by extension of crimes for which non-custodial penalties can be

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<sup>264</sup> Custodial and Non-Custodial Measures. Alternatives to Incarceration. United Nations, New York, 2006, available at [http://www.unodc.org/documents/justice-and-prison-reform/cjat\\_eng/3\\_Alternatives\\_Incarceration.pdf](http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/3_Alternatives_Incarceration.pdf) (last visited September 10, 2012).

<sup>265</sup> Report on the activities of the Commissioner on human rights in the Russian Federation in 2001, available at <http://old.ombudsmanrf.org/doc/documents.shtml> (last visited September 15, 2012).

<sup>266</sup> The main areas of activity for the Government of the Russian Federation for the period until 2012, adopted by the Government Order No. 1663-r dated 17 November 2008, available at <http://www.ifap.ru/pr/2008/n081126a.pdf> (last visited September 8, 2012).

imposed.<sup>267</sup> In this regard it is very important to analyze the existing non-custodial measures in the context of offender rehabilitation.

It is not the purpose of this chapter to present a deep analysis of the alternative sanctions in the Russian context. This is why only separate issues related to the rehabilitative components and effectiveness will be considered in more detail. Alternative criminal sanctions can be divided in three groups depending on the constitutional rights limited by each of them. The first group restricts the right to a free disposal of earnings, special benefits and privileges as granted to certain categories of citizens. Among the relevant penalties here I should mention a fine, deprivation of special, military or honorary title, class rank or state awards or restriction on military service. The second group of restrictions concerns the right to free use of labor capacities, to choose profession and occupation. These rights are limited by prohibition to hold certain positions or engage in certain activities, compulsory works, corrective labor and obligatory labor. The third group of limitations constitute those restricting a right to free movement and to choose a place of residence. These rights are limited by restriction of freedom and service in a disciplinary military unit.<sup>268</sup>

Apart from the abovementioned alternative penalties I should mention the wide use of suspended sentences in Russia, which will also be analyzed from the point of efficiency in light of a rehabilitation doctrine.

Despite the fact that the Russian Criminal Code introduces a plethora of alternative sanctions (Article 44), their practical application has been rather restrained. Figure 5 below shows the structure of non-custodial sentencing in Russia for the year 2011.

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<sup>267</sup> Concept for the development of the Criminal Correctional System of the Russian Federation to 2020, Government Decree from 14.10.2010 No. 1772-P. Collection of Legislative Acts of the Russian Federation, 25.10.2010, No. 43, pp. 5544.

<sup>268</sup> T. Korzhikova. Peculiarities of legal position of prisoners sentenced to the alternative punishments. *Man: crime and punishment*, No. 1, 2009, p. 48.



**Figure 5.** Non-custodial penalties and suspended sentence.<sup>269</sup>

It is clear that the vast majority of alternative measures provided for in the Russian legislation is simply not used by the courts in their sentencing practice. In my opinion, the main impediments to a more frequent use of alternative sanctions are of organizational and economic nature. Among the possible explanations for the limited use of compulsory works,<sup>270</sup> for example, is the refusal or reluctance of the local self-government bodies to cooperate with penal inspections, usually explained by the lack of places (subordinate enterprises) under municipal control, where the convicts can serve their sentence.<sup>271</sup> Nevertheless, compulsory works in Russia have been quite effective as shown by the reoffending rates, which are three times lower than in the case of corrective labor.<sup>272</sup> Corrective labor is a sanction imposed for a period from two months to two years, which results in the deductions being made from a person's salary in favor of the state. Despite its

<sup>269</sup> Data for the diagram is taken from M. Gromov, E. Artebyakin. On the main work results of penal inspections. *Law and Legislation*, No. 5, 2012, p. 108.

<sup>270</sup> According to Article 49 of the Russian Criminal Code compulsory work consists in the performance of free socially useful works by the convicted person during his spare time.

<sup>271</sup> A. Borodina. Employment of persons sentenced to compulsory works. *Russian investigator officer*, No. 1, 2010.

<sup>272</sup> I. Agzamov. Non-custodial sentences as an alternative to suspended sentence. *Law and Legislation*, No. 7, 2010, p. 73.

positive nature, due to the lack of jobs, poor cooperation of municipalities and penal inspections, absence of clear enforcement rules and liability for institutions, corrective labor remains largely inefficient. By the end of 2011 among 30,-007 of those sentenced to corrective labour 5,-880 were unable to find a job, 1,-184 were convicted of further offences, and 18,-158 received a stricter form of punishment.<sup>273</sup>

Restriction of freedom is a relatively new invention in the Russian system of punishment. It was introduced with the adoption of Federal Act No. 377-FZ dated 27 December 2009 and began to apply from the beginning of 2010. Restriction of freedom can take different forms: prohibition to leave a house in certain times of the day, leave the territory of the city, visit and participate in public events, change the place of residence without notification of a special oversight body, etc. It is clear that many of these limitations can equally be applied during the regime of suspended sentence.<sup>274</sup> In this context it is reasonable to analyse these two regimes together, taking into account the existing differences between them.

The primary function of both the restriction of liberty and suspended sentence is the control over the life of an offender for a certain period of time. In this regard there are apparent similarities with the work of the probation services in the European context. The monitoring regime can be achieved through, *inter alia*, periodic checks in relevant databases of the information on new crimes, inspections at the offenders' place of residence, work or study, electronic monitoring, regular meetings and conversations with offenders, etc. Detailed regulation of these measures is contained in the Instructions on the organization of execution of punishment and other criminal law measures without isolation from society, approved by

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<sup>273</sup> S. Vasilyev, S. Simakina. Characteristics of prisoners sentenced to the penalty of correctional work. *Man: crime and punishment*, No. 1 (76), 2012, p. 15.

<sup>274</sup> N. Borisova. Ration of restriction of freedom and suspended sentence. *Research papers. Russian Academy of Legal Sciences*, Issue 11, Vol. 2, 2011, p. 609.

the Order of the Ministry of Justice of the Russian Federation No. 142 dated 20 May 2009.<sup>275</sup> According to the Instructions, inspections (visits) at the offenders' place of residence shall be conducted only with regard to persons sentenced to corrective work, those with suspended and delayed sentence and at least quarterly. Penal inspectors are also obliged to do additional checks in case measures imposed by the court sentence are being violated. Frequency of work place checks are not however regulated by the Instructions, if they are conducted by penal inspectors on their own (without police officers).<sup>276</sup> "Planned preventive conversations", being a significant tool in offender control are also poorly regulated. In fact, they are not regulated at all, thus leaving a legislative loophole in the monitoring regime. On the other hand, the widening use of electronic monitoring in Russia since 2011 cannot, in my view, replace personal meetings and conversations in terms of its rehabilitative and preventive components.

According to the Judicial Department at the Supreme Court of the Russian Federation, 281,-822 people received suspended sentence in 2011 (36-% of all convicted).<sup>277</sup> Among these 45-% committed a new crime within the first three months of their probation period (52-% of them – within one month from the time of registration with a penal inspection).<sup>278</sup> It is evident from these numbers that application of suspended sentence has been largely unsuccessful in terms of curtailing reoffending rates. Partially, it can be explained by the shortages of the criminal judicial process itself, one side of which is the absence of professional personality assessment tools (probationary report the court may rely on at sentencing). On the other hand, the very nature of the post sentencing monitoring will, in my

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<sup>275</sup> Order of the Ministry of Justice of the Russian Federation No. 142 dated 20 May 2009 "On the approval of Instructions on the organization of execution of punishment and other criminal law measures without isolation from society".

<sup>276</sup> N. Olchovik. Control of the penal inspections over the convicted persons' compliance with the regime requirements. *Journal "Vestnik of Tomsk State University"*, No. 354, 2012, p. 133.

<sup>277</sup> *Cit.* Sober head. Electronic bracelets for the convicts are planned to be equipped with alcohol testers. *Russian Gazette*, No. 5784 (111), 17 May 2012, available at <http://www.rg.ru/2012/05/17/alkotester.html> (last visited September 8, 2012).

<sup>278</sup> I. Agzamov. Probation period in the mechanism of the conditional non-application of punishment. *Law and Legislation*, No. 6, 2012, p. 66.

view, be altered as to include cooperation with other agencies (NGOs, local self-governing bodies, commercial entities, etc.), redefinition of the main goals in order to promote the rehabilitative component of the supervision and facilitate the creation of the so-called circles of support to assist with practical aspects of offender reintegration.<sup>279</sup> Such changes would clearly require an increase in staff of penal inspections, as well as changes in the relevant legislation (*e.g.* Penal instructions, acts on organization and work of local authorities, Criminal and Criminal Penitentiary Codes, etc.).

Suspended sentence itself is not a panacea and does not bring rehabilitation or enhanced crime control. This is why a comprehensive approach will be taken. In particular, it has to be considered alongside other measures such as compulsory or corrective work. These other measures have to be further promoted through *e.g.* creation of tax and other incentives for employers of ex-offenders, promotion of cooperation with the private sector, etc. On the other hand, the controlling function of penal inspections should be streamlined, so it will not stay reduced to registration of the convicts with penal inspections, as is often the case.<sup>280</sup> In this regard the Russian system of criminal justice does not really fit any of the models described by Garland. It is definitely not a rehabilitative model, in spite of all the principles and guidelines pronounced by the state officials. It is not a crime control/risk assessment model either. Due to limited resources, poor organizational, procedural and legislative arrangements, taking into account widespread use of suspended sentence and traditionally high rates of incarceration, I would call it a “crime control without control” model. It is genuinely a mix of policies, which do not necessarily go hand in hand with each other. Increased application of alternative sanctions in recent years, belief that “social reform

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<sup>279</sup> S. Farrall, M. Hough, S. Maruna, R. Sparks. *Escape routes: contemporary perspectives on life after punishment*. London: Routledge, 2011, p. 171.

<sup>280</sup> D. Artamonov, M. Kovaleva. Organizational and legal problems of control over the conditionally convicted. *Law and Legislation*, No. 10, 2011, p. 97.



together with affluence would eventually reduce the frequency of crime,”<sup>281</sup> introduction of new penalties, such as restriction of freedom and obligatory labor signify a change from the old-Soviet vision of criminal justice policy. On the other hand, the piecemeal character of reforms together with practical (enforcement) challenges greatly impede the transition to a new culture of rehabilitation.

To enhance the effectiveness of non-custodial punishments it is necessary to ensure adequate control over the offenders, secure minimum social standards (primarily employment) and promote comprehensive assessment tools. Increased cooperation of penal inspections with law enforcement bodies (police), the Federal Migration Service, employment services, local authorities and NGOs would be greatly needed and require structured changes in the Russian legislation. Considering the introduction of the probation service in Russia as anticipated in the Concept for the development of the Criminal Correctional System of the Russian Federation to 2020, I should argue that the existing system of penal inspections should be modified in order to meet new requirements, improve effectiveness and follow the adopted guidelines. Creation of a novel structure within the Ministry of Justice (or any other ministry) would, in my opinion, lead to additional complications in the interaction between the abovementioned bodies, require significant investment and be mostly of an organizational rather than functional nature.

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<sup>281</sup> D. Garland. *The Culture of Control: Crime and Social Order in Contemporary Society*. Oxford: Oxford University Press, 2001, p. 38.

## CONCLUSION

Criminal justice systems do not exist in a vacuum. On the contrary, they are affected by a variety of external and internal factors. Probation services, despite the differences in their organization and functioning, remain an important part of European penal cultures. The purpose of this thesis was to explore and throw further light on the processes currently occurring in probation services of selected European states. As I have shown, such jurisdictions as England and Wales, the Netherlands, Norway, Finland and Sweden, regardless of their significant economic, social and cultural differences, have witnessed similar penal trends starting in the 1980s-1990s. With a variety of manifestations, certain typical characteristics of Garland's late modernity have become particularly clear. Taking into account the shortcomings of the penal welfare state (which was historically portrayed in Martinson's report (1974), the public, policymakers, and academics reorganized their philosophies to focus on means of preventing crime, protecting the public, punishing offenders, and maintaining order in society.<sup>282</sup> In my opinion, these trends have recently been reinforced by the growing fear of international terrorism, thus becoming a part of the growing surveillance state<sup>283</sup> facilitating the perpetual sense of crisis in economy, international relations and social and penal spheres.

In England and Wales, the rise in prison population coincided with increasingly harsh penal policies, the creation of the National Offender Management Service and planned budget cuts for probation services. With less and less time spent on meetings with offenders and overreliance on assessment tools like the Offender Assessment System (OASys), probation work has undergone significant transformation from what was originally considered the

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<sup>282</sup> W. Stadler. The Review of the Culture of Control: Crime and Social Order in Contemporary Society. *Journal of Criminal Justice and Popular Culture*, No. 14 (2), 2007, p. 224.

<sup>283</sup> For more on surveillance state, see D. Barnard-Wills. *Surveillance and Identity: discourse, subjectivity and the state*. Farnham: Ashgate Publishing Company, 2012.

purpose and role of probation in handling offenders. Along the lines of economic reforms leading to cuts in welfare spending and strong backing of austerity measures, the Netherlands, once a beacon of tolerance and penal enlightenment, has embraced an increasingly punitive penal system. Similar to England, the Dutch probation service has substantially been detached from face-to-face work with offenders. Growing feelings of fear and insecurity experienced by people in England and the Netherlands gave the green light to the respective governments to pursue new policies of crime control and public protection.

The analysis of recent developments in the criminal justice policy in selected Scandinavian countries (Norway, Sweden and Finland) has shown that penal exceptionalism, attributed to traditionally lenient penal policies and strong resistance to outside influence, may well stay in the past. Nevertheless, the punitiveness so visible in England and the Netherlands, is somehow muted in Scandinavia, due to primarily strong economies and extensive social security coverage. However, this situation might change in the future, as no country can stay absolutely immune to overall European trends, though particular vectors for penal developments may vary. At the same time, it is very important to understand the limitations of the research results that I came to. First of all, they do not demonstrate the existence of some uniform European penal trajectory. Secondly, it is hardly possible to predict how the situation will evolve in the countries under review, so one should be cautious in saying that there is a defined future for probation in England and Wales, the Netherlands and Scandinavia. I agree with Canton that “culture is neither static nor discreet and one dimensional: rather it evolves and may well reflect contradictions, not least in the contested realm of penalty”.<sup>284</sup>

Interestingly, the abovementioned punitive penal changes have been accompanied by a growing number of international regulations related to offender management. Apart from the ECHR and the case law of the ECtHR, relating to protection of prisoners’ rights, numerous

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<sup>284</sup> R. Canton. Taking Probation Abroad. *European Journal of Probation*, Vol. 1, No. 1, 2009, p. 69.

guidelines, recommendations and directives have been worked out at the European and international levels. Among them I should mention the European Probation Rules, which highlight the importance of respect for human rights of offenders, personal autonomy and social inclusion. However, as I have shown, these guiding principles have not always been followed by adequate practical steps in the European countries, especially in recent times in light of the complex political, social and cultural changes.

The principles of social inclusion have been at the center of the non-treatment and revised paradigms, as well as desistance and human-rights based approaches, which have acquired an important place in theoretical understanding of crime, justice, responsibility on the one hand, and the role of probation, police and prison services in a penal system, on the other. As opposed to the protection strategy that aims to protect through the control of risk, the rehabilitative core of the abovementioned paradigms seeks to reduce risk and thus protect the public. Unfortunately, the offender programs oriented towards building social and human capital and the incentives to change have found almost no application in both the countries where probation has been a part of the criminal justice system for a long time and Russia with its newly developing forms of non-custodial punishment and social work.

The Russian Federation presents a good example of a country, which after the fall of communism, has been trying to find its own way to modernization in many areas, including criminal justice. It is interesting that in Russia both the traditions and mentality of the Soviet time, for so long imposed and integrated in the society, and new political and legal conditions (especially with Russia's accession to the Council of Europe) had to coexist with each other. Unlike many European counterparts, Russia does not have a separate probation service, and there are no pre-sentence reports or developed risk assessment tools, like OASys in England and Wales. I would argue that despite all the progress made in the 1990s, Russian penalty lags behind, as the prison population remains the highest in Europe and the supervision of

those released on parole and who received conditional sentence is almost non-existent. This is why I argue that the Russian penal system does not really fit into the “culture of control” tendencies, as it has what I call a “crime control without control” model. However, the initiatives announced in the *Concept for the development of the Criminal Correctional System of the Russian Federation to 2020*,<sup>285</sup> include the creation of a probation service, development of a system of post-penitentiary help, humanization of conditions in places of detention, etc.

In this context the European probation services become a model, both in its organizational and functional dimensions. I agree with Robert Harris who said that probation “is not a ‘thing’ to be taken or left but a set of ideas and possibilities to be used creatively and strategically to solve local problems of criminal justice”.<sup>286</sup> Taking into account specific social, economic and cultural characteristics of the Russian society, I argue that creation of a totally new service in Russia assigned with duties of offender supervision, would in the first place be quite costly, and secondly, inefficient. Probation functions can instead be assigned to penal inspections within the Federal Penitentiary Service. But the successful implementation of rehabilitative techniques would require more than just some technical transformations. It would need complex reforms in the social sphere to secure support of the desistance process by providing help with housing, employment and other matters. The transnational vector set up by the ECHR is, in my opinion, a better way for policy transfer, than mere copying or emulation of penal systems, especially now as they are getting more and more punitive. Respect for human rights and value of every person coupled with the belief that everyone has the ability to change should lie at the bottom of the changing penal system, as well as revitalize modern European penalties.

<sup>285</sup> Concept for the development of the Criminal Correctional System of the Russian Federation to 2020, Government Decree from 14.10.2010 No. 1772-P. Collection of Legislative Acts of the Russian Federation, 25 October 2010, No. 43, pp. 5544.

<sup>286</sup> R. Harris. “Reflections on comparative probation” in K. Hamai, R. Ville, R. Harris, M. Hough, U. Zvekis (eds.). *Probation Round the World*. London: Routledge, 1995, p. 202.

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