

# Offender supervision and decision-making in Europe

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**Offender Supervision  
in Europe**  
COST Action IS1106

 **cost**  
EUROPEAN COOPERATION  
IN SCIENCE AND TECHNOLOGY

# Participants

## Participants

- 12 countries (15 members)
  - Belgium (Beyens)
  - France (Herzog-Evans, Danet)
  - Germany (Dünkel, Pruin)
  - Hungary (Kereszi)
  - Ireland (Kennefick)
  - Lithuania (Laurinavicius)
  - Scotland (McIvor)
  - Spain (Blay and Cid)
  - Sweden (Persson)
  - Switzerland (Weber)
  - The Netherlands (Boone)
  - England & Wales (Hucklesby)

## Countries lacking

- Denmark
- Italy
- Romania
- Slovak Republic

# Aim of the WG

The aim of the Working Group is to explore the processes involved in the imposition and administration of Offender Supervision at different stages of the criminal justice process.

*Which parties are involved and in what ways? What kinds of offence, offender, risk-based, due-process, human-rights, victim-focused and other criteria are developed and deployed to frame their decisions? The different forms and purposes of Offender Supervision also affect the roles, powers and responsibilities of the different agencies involved. Who decides upon and oversees the content of Offender Supervision, the meanings and parameters of compliance with them and the processes and consequences of enforcement action?*

# Original outline for papers

- Which supervision measures can be distinguished?
- Which phases of the criminal justice system? (front end and back end).
- Who decides, what parties and persons are involved in the decision making process?
  - status of the decision makers : judge, board, court...?
  - role of judiciary, executive and third sector?
- On the basis of which rules, what is the status of this rules?
- Which influences on the decision making process are recognised in the literature?
  - Penal principles?
  - bureaucratic pressures?
  - risk discourse?
  - due process?
  - role of the victims?
  - Procedural fairness?

# AIM of the Action (first phase)

- review existing knowledge in its field of interest so as to (1) assess the extent of
- research evidence and scholarship about OS (2) identify methodological limitations in the existing research
- and (3) identify substantive gaps in knowledge.

# General structure per phase (pre-trial, sentencing, release)

Modalities

Parties involved (*who decides*)

- *Granting*
- *Breaching*



Judicial  
part

Criteria/requirements

Research conducted

Factors that influence the dm-  
process

Outcomes

Gaps



Empirical  
part

# Pre-trial *modalities*

## Pre-trial (two main systems)

- Conditional suspension of preventive custody (civil law systems)
- Release from pre-trial detention with or without conditions (common law systems)

Huge differences among jurisdictions concerning the availability and use of electronic monitoring in this stage

## Pre-prosecution (the Netherlands, Scotland)

- Diversion from prosecution (Scotland)
- Out of court settlement (*transaction, NL*)
- Conditional dismissal (NL)
- Sentencing Order (NL)

# In between

Hungary: postponement of accusation

- Maximum of two years with or without supervision
- Prosecutor decides (pre-trial?)

Scotland/France: deferred sentences

- Court decides (sentencing?)



# Pre-trial

## Who decides, legal criteria

### *Who?*

- Investigating judge (most civil law countries)
- (Lower) Courts (common law countries)
- Important (advisory) role of the prosecutor in some countries (Spain, the Netherlands, Scotland)
- role of the defense lawyer (more important in adversarial countries than in inquisitorial countries in this stage)

*Legal criteria* (too complex to present)

# Pre-trial detention

## (some empirical key studies)

Author(s)	Title (translated)	Research Question	Country
Raes and Snacken (2004)	The future of remand custody and its alternatives in Belgium	How are decisions with regard to remand custody and its alternatives taken?	Belgium
Gurerra, C (2010)	The judicial decision to impose pre-trial custody: a legal and criminological study.	In what cases and following which criteria do judges impose pre-trial custody?	Spain
Jacobs et all (2006)	Application of special conditions in the phase of (...) and suspension of pre-trial detention	gain insight in the practice of applying and implementing special conditions of a conditional sentence or a suspension of pre-trial detention	Netherlands
Beijerse, Uit and D Kunst (2000)	(...) Suspension of pre-trial detention with conditions in practice	How do investigation judges apply suspension of pre-trial detention with conditions in practice?	Netherlands
Hucklesby (1994)	Bail decisions in magistrates' courts	The decision-making process	England and Wales
Hucklesby and Marshall (2000)	Offending on bail	The decision-making process in cases in which defendants had allegedly offending on bail	England and Wales
Hucklesby et al (2007)	Restriction on Bail	The use of a new condition requiring drug using defendants to attend assessment and treatment	England and Wales
Hucklesby (2011)	Bail Support Schemes for Adults	The use of bail support schemes for adults	England and Wales
Paterson and Whittaker (1994)	<i>Operating Bail: Decision-Making Under the Bail Etc. (Scotland) Act 1980</i>	To provide an analysis of the bail/custody decision in relation to female accused	Scotland
Mclvor and Warner (1996)	<i>Bail Services in Scotland</i>	To explore the impact of bail information on the willingness of courts to grant bail to accused who would otherwise be remanded in custody	Scotland
Brown et al. (2004)	<i>A Preliminary Analysis of the Bail/Custody Decision in Relation to Female Accused</i>	To provide an analysis of the bail/custody decision in relation to female accused	Scotland
Grunald and Dunet (2004)	<i>La composition pénale. Une première évaluation</i>	To study a new bifurcation procedure, CP, whereby the prosecutor's delegate decides, outside of Court, what the sentence should be	France

# Pre-trial Factors

- Nationality, residence status, community ties, seriousness of the offence, previous convictions are important factors in the dm-process
- The completion of previous bail conditions.
- Availability of a probation report/or other information that gives the interrogation judge or court confidence that he/she doesn't mistake (time pressure).
- Organizational or technical obstacles (cf. EM) play a role, but much more in Belgium and the Netherlands e.g. than in E&W
- Behaviour of the defendant during the interrogation/hearing
- Much differences between courts (influence of court culture?)

# Pre-trial detention

(Outcomes, only scarcely available)

- Part of the prison population in pre-trial detention
- Part of the offenders prosecuted in pre-trial detention
- Percentage of defendants that are released/or remands in custody that are suspended (under conditions)
- Characteristics of offenders that are released/suspended compared to offenders (who remain) in detention

# Pre-trial Gaps and Questions

Two fundamental topics in most countries:

- Should you impose conditions in a phase that people are still supposed to be innocent?
- Lack of time to prepare release/suspension in pre-trial stage

## Questions/Gaps

- Relation between the number of alternatives available for pre-trial detention and the use of it?
- Relation between the amount of information the courts/investigating judge/prosecutor has and the imposition of supervision measures?
- Good practices of fast reports in pre-trial stage?
- Success-stories of hopeless cases (every stage)
- What is the influence of the use of formal risk assessments on the imposition of pre-trial detention?

# Sentencing *modalities*

- Autonomous sentences (most countries)
- Replacement of a *considered* prison sentence (Ireland, Belgium)
- Condition of a suspended sentence (E&W, NL, Germany, France, Spain, Lithuania, Belgium)
- Suspension of proceedings to make mediation possible (Hungary)

# Sentencing

## *Orders/Conditions*

- Unpaid work
  - Prohibitions and bans (location, contact, alcohol, internet, publication...)
  - Residence obligation
  - Work/vocational training/education
  - Mental health treatment, Drugs/Alcohol treatment and/or internship\*
  - Behavioural intervention
  - Compensation
  - Electronic monitoring (autonomous or as an added obligation)
  - Excuses to the victim (**Lithuania**)/reparation (**France** but rare) or assistance to the victim (**Lithuania**)
  - Mediation (Hungary, Belgium)
- > *Some or all can also be imposed in other stages*
- > *Three types (phases in some countries): **Rehabilitative-oriented**, **punitive oriented**, **Victim-oriented***

# Sentencing

## Who decides, legal criteria

- *Courts decide in formal sentencing phase*
  - *Exception: Prosecutor can impose a sentence in the NL, with the exception of imprisonment*
- In what countries a pre-sentence report is available/mandatory?
  - Differences amongst countries
- Obligated attendance of the probation officers in court?
  - Differences amongst countries
- Drugs-courts

*Legal criteria: too complex to present*



# Sentencing

## (some key publications)

Author(s)	Title	Research Question	Country
Tombs (2004)	<i>A Unique Punishment: Sentencing and the Prison Population in Scotland</i>	The study sought to explore reasons for the increase in imprisonment in Scotland and where ways could be found to arrest or reverse the trend	Scotland
Mclvor and Burman (2011)	<i>Understanding the Drivers of Female Imprisonment in Scotland</i>	To what extent and in what way is the increase in female imprisonment a result of decisions made at different stages in the criminal justice process	Scotland
Brown and Levy (1998)	<i>Social Work and Criminal Justice Volume 4: Sentencer Decision-Making</i>	To examine the impact of National Objectives and Standards and central government funding of social work services to the criminal justice system on sentencer decision-making	Scotland
Tata et al. (2008)	<i>Assisting and advising the sentencing decision process: The pursuit of 'quality' in pre-sentence reports</i>	To examine how reports are constructed by report writers; what the writers aim to convey to the sentencing judge; and how those same reports are then interpreted and used in deciding sentence	Scotland
Cid and Larrauri (2002)	Jueces Penales y penas en Espana	To what extent judges grant alternative sentences and factors associated them being granted	Spain
Beyens (2000)	<i>Sentencing as a social practice</i>	<i>When and how do judges decide to impose a prison sentence or an alternative?</i>	Belgium
Boone (2000)	<i>Rights for community sentenced</i>	<i>How are criteria for granting and breaching community sentences applied in practice</i>	The Netherlands
Boone et al (2009)	<i>Meting out punishment with a view to influencing behaviour</i>	<i>to what extent judges use the power they have to give tailor-made orders with a view to influencing behaviour when meting out punishment or ruling on the execution of a sanction.</i>	The Netherlands
Floodpage and Mackie (1998)	Sentencing Practice: an examination of decisions in magistrates' courts and the Crown Court in the mid 1990s		England & Wales
Hedderman and Gelsthorpe (1997)	Understanding the Sentencing of Women		England & Wales
Hood (1992)	Race and Sentencing		England & Wales

# Sentencing Factors

- Offender-related
  - Nationality, residence status, community ties, seriousness of the offence, gender and previous convictions are important factors in the dm-process
  - Germany: unfavourable social and economic conditions are reason for the courts to impose a supervision order (Ineke\*: instead of a prison sentence or in case of a suspended sentence?, formal legal criteria or in practice?)
- Decision-maker / court-related
  - Sentencing orientation of the courts (rehabilitative, punitive, victim-oriented)
  - Ideas of the judge/courts about what is happening in the implementation phase
- Organisation/culture
  - Availability of a pre-sentence report
  - Preceding pre-trial detention yes or no
  - Quality of the defence-lawyer

# Sentencing

(Outcomes)

- Failure rates (available in most countries, but not always comparable)
  - What do we understand by failure?
  - But: no huge differences in failure rates per country (15-25%) and similar factors that influence them (e.g. number of hours, number of earlier convictions)
- Re-offending and survival rates (available, but often unreliable)
- Decarceration rates
- Composition of the population
  - Same categories of offenders are excluded in all countries (foreigners, addicts, non-native speakers, irregular migrants)

# Sentencing

## Gaps and Questions

- How do the decisions made in the pre-trial phase influence the decisions made in the sentencing phase?
- What is the influence of a pre-sentence report? In what cases is it available and in what cases not (differences and reasons behind them)?
- How does the information of different actors influence the decision-making of the judge, what information is decisive or authoritative?
- The position of the defence-lawyer, his/her knowledge
- Information exchange of judges and (behavioural) experts: how does it work, what are the different responsibilities?
- What is the effect of using structured risk-assessments on the dm-process?
- Success-stories of hopeless cases

# Release *Modalities*

- Early release
  - Automatic release without conditions (Scotland, up to four years, E&W)
    - Semi-automatic (contra-indications)
  - Automatic release with conditions (Belgium up to 3 years, Sweden)
    - Semi-automatic with conditions (the Netherlands)
  - Discretionary release with at least the condition not to reoffend (Belgium (+ 3 years), Hungary, Sweden, Germany, Spain, France, E&W for over 4 years)
- Open regimes (the Netherlands, Spain, Scotland)
- Home Detention/Curfew (E&W, Spain, Scotland, France Belgium & the Netherlands forthcoming)

# Release

## Who decides, legal criteria

- Sentence implementation court/execution judge (Hungary, France, Belgium, Spain, Germany)
- Prison administration (Belgium (short sentences,) Spain (open regime))
- Parole Board (United Kingdom, Ireland, Scotland)
- Prison and Probation (Sweden)

*-> Broad differences among countries concerning the legal criteria and requirements for early release. These differences alone are already very decisive for the outcomes*

# Release

## Some empirical key studies

Author(s)	Title	Research Question	Country
Hood and Shute (2000)	The parole system at work: a study of risk based decision-making		England & Wales
Maguire, Peroud and Raynor (1996)	Automatic Conditional Early Release: the first two years		England & Wales
Maguire and Raynor (1997)	The Revival of Throughcare: Rhetoric and Reality of Automatic Conditional Release		England & Wales
Padfield and Liebling (2000)	An exploration of decision-making at discretionary Lifer panels		England & Wales
Tébar (2006)	<i>El modelo español de libertad condicional.</i>	To know which factors explain the granting of parole	Spain
Cid and Tébar (2012)	Revoking early conditional release measures in Spain	Is recall used as a last resort?	Spain
Scheirs (2013),	The implementation courts at work	Analysis of dm-processen and practices of the SIC	Belgium
Herzog-Evans (forthcoming)	French re-entry courts and desistance	Do French re-entry courts have a desistance culture ;are they desistance knowledgeable and do they act accordingly?	France
Weaver at all (2012)	The failure of recall to prison	To identify the sharp increase in prison recall rates	Scotland
Flight and Oberon (2011)	Conditional Freedom. Evaluation of the Conditional Discharge Bill	how the Conditional Discharge Bill is executed in practice and which problems and effects occur.	The Netherlands

# Release Factors

- Risk-assessments are very influential in the back door stage
- Family-contacts, housing, income
- Having a release plan
- Earlier behaviour during leaves or early release (recall from e.g. open regime)
- Pre-trial detention
- Ethnic background, residence status
- Type of offence (Violence, sexual offences are contra-



# Release

## *Outcomes*

- Percentage of prisoners that is early released (necessary higher in a (semi-)automatic system than in a discretionary system)
- Percentage of early releases *with* conditions
- Completion rates
- Recidivism rates
- Different characteristics of prisoners who are conditionally released and who are not.

# Gaps/Questions

- Procedures and legal criteria differ most of all in this phase
  - Do they also lead to different outcomes in the sense of
    - Number of people that are released?
    - Failure rates?
    - Rates of recidivism?
- What other factors are decisive in this phase:
  - Characteristics of the offender?
  - Supervision measures available and known to the decision-makers?

# Conclusion

## Characteristics of the research:

- Quantitative data only available on outcomes, not on dm-processes
- Quantitative data/statistics are often lacking or unreliable with some exceptions
- In some countries no research on decision-making process available at all (Lithuania, Hungary, Sweden, Switzerland)
- Quite some interesting (relatively) small-scale qualitative studies in the sentencing stage, but often not directly focussed on decision-making, let alone concerning supervision-measures
- Pre-trial and release are under-researched in all countries
- Huge differences between countries on the judicial level (modalities available, legal requirements, decision-makers)
- Some interesting commonalities on the empirical level

# Research Agenda/Discussion

- Huge research-agenda for the coming years
- On a comparative level: How do different procedures/legal requirements influence decision-making (and outcomes)
- But also many normative questions to discuss, e.g:
- The exclusion of groups of offenders in all stages of the dm-process
  - The influence of the pre-trial decision on the remaining process
  - Prisoners that leave prison without any release scheme
- Instrumentalisation of release measures to relieve pressure from prison overcrowding moving away from rehabilitation
- The influence of victims on the dm-process/public opinion in general
- Attitudes of courts, probation officers and prison officers on offender supervision, legal culture, education of professionals