

COST ACTION: IS1106: “Offender Supervision in Europe”.

Scientific Report for Short-Term Scientific Mission

Title: *Criminal Background Checks in the labour market as a supervision measure 'by' the community. Developing a comparative analytical framework from a European perspective*

Reference : ECOST-STSM-IS1106-250614-050436

STSM dates: from 21-07-2014 to 29-08-2014

Applicant: Martí Rovira

Institution of origin: Universitat Pompeu Fabra, Barcelona (Spain)

Host Institution: Willem Pompe Institute of Criminal Law and Criminology, Utrecht University, Utrecht (The Netherlands)

1. Purpose of the STSM:

The purpose of the STSM has been to define a comprehensive analytical framework in order to compare the research of two PhD theses that deal with the impact of criminal records in the labour market. In The Netherlands, Elina Kurtovic is carrying out the thesis "*Criminal records and reintegration. The effects of conviction-based employment restrictions on policy efforts to push back recidivism and juvenile ex-offenders' chances and motivation to reintegrate in society*" supervised by Dr. Miranda Boone and Dr. Dina Siegel. In Spain, Martí Rovira, the STSM grant holder, is carrying out the thesis "*criminal records and exclusion from the labour market*" supervised by Dr. Elena Larrauri and Dr. Jorge Rodríguez.

The purpose of the STSM has changed slightly in relation to the first proposal. Particularly, on the recommendation of Prof. Dina Siegel and Prof. Miranda Boone, the project has expanded its ambition in the theoretical part. The project has developed from focusing on the regulation of criminal records in each context to study, also, the social context on which criminal background checks are carried out. On the other side, it was decided to focus the methodological comparison of both researches on later stages.

2. Description of the work during the STSM.

3 different stages must be distinguished during the STSM:

- Initial comparison on the regulatory systems on the use of criminal records in the employment market in Spain and The Netherlands and previous literature on this issue in both countries.
- Review of previous literature on comparing the effect of criminal records in the employment market.
- Creation of a conceptual framework in order to analyze the effects of criminal records in the employment market.

3. Description of the main results obtained.

Initially it was observed that The Netherlands has more restrictive legislation for the use of the criminal records in the labour market than Spain. However, Criminal Background Checks were much more prevalent in The Netherlands than in Spain. Therefore, we cannot understand the different use of criminal background checks in society only by studying the regulation on the disclosure of criminal records. We concluded that the use of criminal background information is embedded in the much broader social context of society as a whole.

Most part of the previous comparative literature on criminal records in Europe had focused on the comparison of regulations between countries (Loucks et al 1998; Stefanou & Xhantaki 2005, 2008). The special issue 3(1) of the European Journal of Probation gives a new insight. Scholars of Australia (Naylor 2011), France (Herzog-Evans 2011b), Germany (Morgenstern 2011), England (Padfield 2011), The Netherlands (Boone 2011) and Spain (Larrauri 2011) explain the historical development and characteristics of criminal background checks in each country. However, they do not provide a full analytical framework to compare this issue between countries.

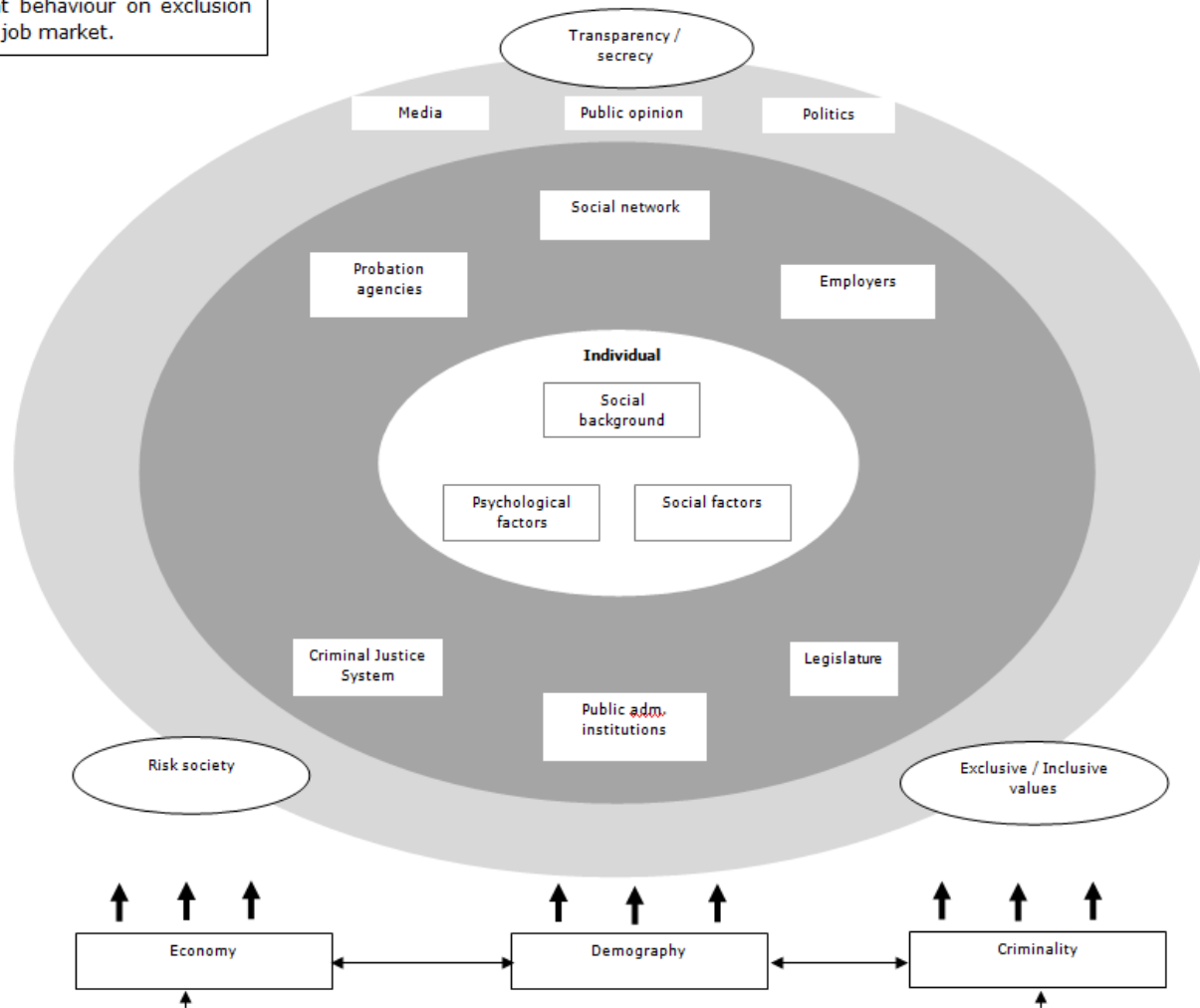
In order to create this analytical framework it was necessary to develop dimensions and categories, given account of all factors that previous literature mentioned regarding the impact of criminal records in the labour market and additional factors found in our research on the impact of criminal records in Spain and The Netherlands. Based on the previous tradition comparing 'punitivity' between criminal records system (Leppi-Seppala 2008; Snacken 2010; Pratt & Eriksson 2013) we developed and defined those dimensions and categories and created an analytical framework.

The basis of the analytical model is the definition of three 'levels':

- The '*micro*' level focuses in the processes involved in searching and finding jobs. Particularly, it is interested how a person's own view on the stigma of a criminal record modifies these processes.
- The '*meso*' level focuses on the processes for the definition of opportunities that individuals with criminal records find in the employment market. In the formation of these opportunities six main institutions are considered: The Probation agencies, social network, employers, Criminal Justice Systems, Public Administrative Institutions and the Legislature.
- The '*macro*' level focusses on the construction of the norms (either formal as laws or informal as traditions or customs). These norms constitute the basis for social interactions, and consequentially, define the opportunities that the individual have. These norms are defined in base of 'constructions of knowledge' and the interplay of different actors as the Media, the politicians and the public opinion.

An initial version of the model can be seen in the next page.

Figure 1: Mechanisms explaining the influence of deviant behaviour on exclusion of the job market.



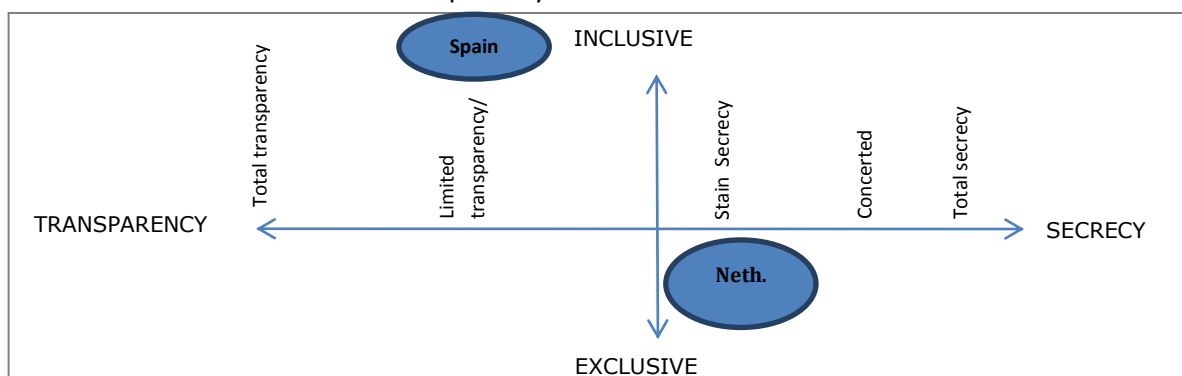
During the STSM there was a particular attention to the definition of two particular relevant dimensions:

- **Inclusive / Exclusive values:** Previous comparative research on punishment has highlighted the importance of the values of society regarding deviant others to understand differences in prison systems (Snacken 2010; Pratt & Eriksson 2014). They stress that more inclusivist values in Nordic countries had led to maintain lower prison rates and soft regimes in comparison to Anglo-Saxon countries. Following this reasoning, Criminal Background Checks in the employment market could be considered as a proxy for an 'exclusive society'. Through this mechanism, employers, either public or private, got the possibility to prevent, exclude, ex-offenders in developing a particular profession. On the contrary more 'inclusive' values would promote stricter regimes regarding the provision of criminal background information to employers.
- **Privacy/Transparency:** Jacobs and Larrauri (2012) point out the importance of confidentiality in understanding the impact of having criminal records. Following the work of Cohen (2001) the relation between transparency and secrecy can be derived in the following categories:



In previous literature the dimension of inclusive/exclusive and transparency/privacy had been integrated. For instance, McAlinden (2012:169), referring to sexual offenders, argues that societies based on 'inclusive' ideals are likely to favour more secrecy when it comes to vetting schemes for sexual offenders. On the contrary, societies based on 'exclusionary' values, they will tend to support less strict regimes in terms of privacy.

However, in the comparison between The Netherlands and Spain these dimensions operate differently. As it has mentioned previously, in The Netherlands a stricter regime of privacy operates regarding the disclosure of criminal records than in Spain. In The Netherlands employers cannot have information on the content of criminal records of the individual. They just have access to a certificate of conduct stating that the individual is either suitable for the job or not. On the contrary, in Spain employers can have access to all the non-spent criminal records of the individual. However, several signs point out that in The Netherlands there is much more use of the exclusionary measure of the petition of criminal records in the labour market than in Spain, where it seems to be very rare. Therefore, the previous assumed direct relation between transparency/secrecy and inclusive/exclusive does not seem to hold. These dimensions need to be considered separately.



References

- Boone, M. (2011). Judicial rehabilitation in the Netherlands: Balancing between safety and privacy. *European Journal of Probation*, 3(1), 63-78.
- Cohen, Stanley (2001) *States of Denial: Knowing about Atrocities and Suffering of Others*. Malden, MA: Blackwell.
- Herzog-Evans, M. (2011). Judicial rehabilitation in France: Helping with the desisting process and acknowledging achieved desistance. *European Journal of Probation*, 3(1), 4-19.
- Jacobs, J. B., and Larrauri, E. (2012) "Are criminal convictions a public matter? The USA and Spain." *Punishment & Society* 14.1: 3-28.
- Lappi-Seppälä, T. (2008). Trust, welfare, and political culture: Explaining differences in national penal policies. *Crime and Justice*, 37(1), 313-387.
- Larrauri, E. (2011) "Conviction Records in Spain: Obstacles to Reintegration of Offenders?." *European Journal of Probation* 3.1: 50-62.
- Loucks, N., Lyner, O., & Sullivan, T. (1998). The employment of people with criminal records in the European Union. *European Journal on Criminal Policy and Research*, 6(2), 195-210.
- McAlinden, A. M. (2012). The governance of sexual offending across Europe: Penal policies, political economies and the institutionalization of risk. *Punishment & Society*, 14(2), 166-192.
- Morgenstern, C. (2011). Judicial Rehabilitation in Germany—The Use of Criminal Records and the Removal of Recorded Convictions. *European Journal of Probation*, 3(1), 20-35.
- Naylor, Bronwyn. (2011) "Criminal records and rehabilitation in Australia." *European Journal of Probation* 3.1 (2011): 79-96.
- Pratt, J., & Eriksson, A. (2014). *Contrasts in punishment: An explanation of Anglophone excess and Nordic exceptionalism*. Routledge.
- Snacken, S. (2010). Resisting punitiveness in Europe?. *Theoretical Criminology*, 14(3), 273-292.
- Stefanou, C., & Xanthaki, H. (Eds.). (2005). *Financial Crime in the EU. Criminal Records as effective tools or missed opportunities*. Kluwer Law International.
- Stefanou, C., & Xanthaki, H. (Eds.). (2008). *Towards a European criminal record*. Cambridge University Press.

4. Future collaboration with the host institution

The STSM has provided the basis for the development of a common research in this issue for Elina Kurtovic and Martí Rovira. They will continue to work together in this project.

In front of the recommendations of their supervisors, Miranda Boone and Dina Siegel in Utrecht University and Elena Larrauri in Universitat Pompeu Fabra, it was decided

- a) To transform the analytical framework to a theoretical framework, establishing theories on how each factor can influence on the effects of criminal records.
- b) To create a table with the material of their empirical research comparing the differences in the responses that they obtain in the specific elements delimited in the theoretical framework, in order to observe if substantial differences exist.

Martí Rovira and Elina Kurtovic have started to meet through internet calls every two weeks. They plan to have their research finished in June 2015. Then, they will present the results of the research in a Conference on Criminal Records in Europe that will take place in Barcelona in 2015. On the conference, they plan to invite other researchers in this topic from other countries to join them in a comparative perspective.

5. Foreseen publications/articles resulting or to result from the STSM (if applicable)

- As it has been mentioned, the results of the research will be presented on a conference on criminal records in Europe that will be carried out in Barcelona in June 2015.
- Probably they also will be presented at the Conference of the European Society of Criminology 2015 in Porto.
- An article will be prepared to be published in a peer reviewed European journal.

6. Confirmation by the host institution of the successful execution of the STSM.

See document attached.