Working Group 4: European Norms, Policy and Practice -
The "European Element"in Offender Supervision

Liverpool Hope University
26-27 April 2013

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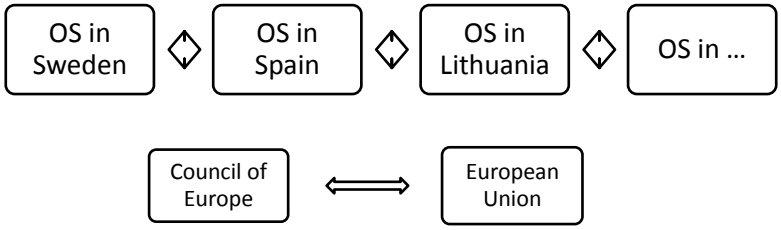
The comparative approach to Offender Supervision in Europe

- Horizontal comparisons



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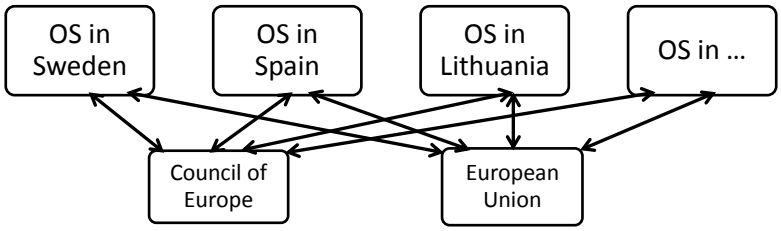

- Vertical comparisons

➢ Multi-level comparative work needed

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What Europe?

Council of Europe

47 Member States

- European Convention on Human Rights
- European Court of Human Rights
- Recommendation on Community Sanctions and Measures, 1992 (updated 2000)
- European Probation Rules, 2010

➢ Both to be found here: http://www.coe.int/t/dghl/standardsetting/cdpc/2Recommendations.asp

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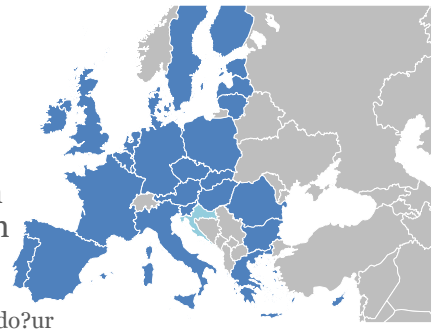
What Europe?

European Union

27+ Member States

- Mutual Recognition Instruments, such as:
  - Framework Decision 947 on the Supervision of Probation Measures
    - http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008F0947:EN:NOT
  - Framework Decision 829 on the Supervision of Pre-trial Measures



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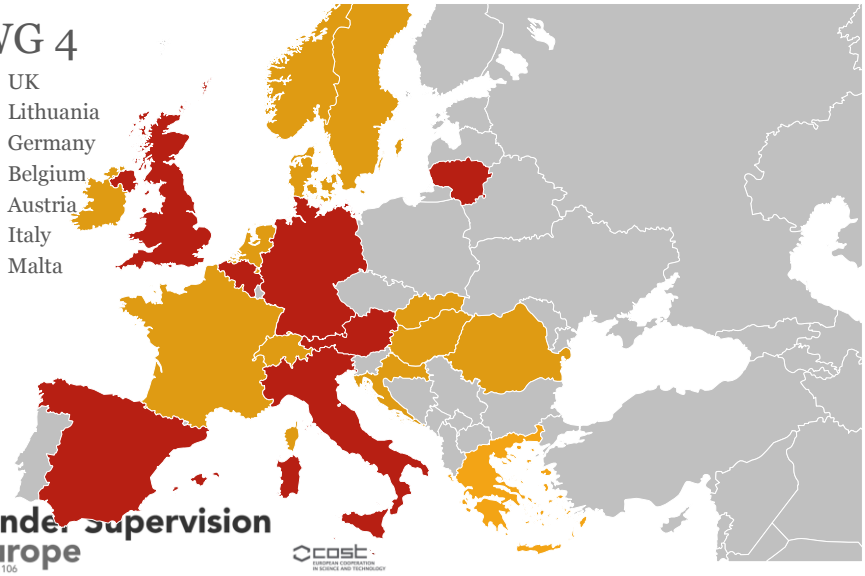
What Europe?

WG 4

- UK
- Lithuania
- Germany
- Belgium
- Austria
- Italy
- Malta



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Cross-border Scenario 1

- A. , living in Strasbourg, France, is arrested - 7 km far from home - in the German town of Kehl for shoplifting for the second time.
- The last time she did not show up for trial – pre-trial detention?
- When sentenced in Germany, what sentence?
  - a fine?
  - Suspended sentence with conditions/obligations attached? Involvement of the German Probation Service is not possible, neither can the German judge order other supervision measures to be enforced in France
  - Consequence: Prison or an unsupervised suspended sentence…

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Cross-border Scenario 2

a fictitious scenario, for illustrative reasons…!

- B. , who originally comes from X, is convicted in State Y because of anti-social behaviour, she has been loitering in the streets and accosting passers-by while drunk. She is a mother of seven and never has worked.
- Her sentence is a suspended prison sentence, with the obligations to perform 600 hours of community work. State Y also wants to transfer her back to X, for better reintegration chances. B was not asked to consent to any of this.
- The authorities in X do not want to supervise such as sentence because
  - this behaviour is not a crime in State X
  - For petty crimes usually 40 hours of work are seen as adequate
  - In any case the law foresees a maximum of 400 hours
  - Consent is necessary for community service

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European initiatives: the impact

The case of the Council of Europe:

Are the ER CSM and the Probation Rules used? By whom, for what?

- Translation/Dissemination
- Policy Use
- Scholarly analysis
- Teaching/Training
- Jurisprudence

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European initiatives: the impact

The case of the Council of the European Union:

FD 947 on Probation Supervision

- Transposition into national legislation (due end of 2011, so far only by 8 states)
- No practical implementation yet
- Enhancing mutual knowledge and mutual trust – our task: keeping track with European projects (eg ISTEP, work of the CEP)
- Need and potential practical impact of the FD?

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OS as a European challenge – some examples

What kind of offender supervision is - europewide – acceptable?

- Double criminality: the problem of petty crimes/misdemeanours
- Proportionality: "grossly disproportionate" sentences
- The question of a European 'ordre public' – EU and Council of Europe norms interacting
  - Art. 6 (3) Treaty of the European Union: Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

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OS as a European challenge – some examples

What kind of offender supervision is - europewide – acceptable?

- Double criminality: the problem of petty crimes/misdemeanours
- Proportionality: "grossly disproportionate" sentences
- The question of a European 'ordre public' – EU and Council of Europe norms interacting
  - ER CSM 6: "The nature and the duration of community sanctions and measures shall both be in proportion to the seriousness of the offence for which an offender has been sentenced or of which a person is accused and take into account his personal circumstances."

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OS as a European challenge – some examples

- The European dimension of 'Social Rehabilitation': terminology, translation problems and the power of defining

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OS as a European challenge – some examples

Offender Involvement: Consent and co-operation

- ER CSM, Rule 34: "Since the implementation of a community sanction or measure shall be designed to secure the co-operation of the offender and to enable him to see the sanction as a just and reasonable reaction to the offence committed, the offender should participate, as far as possible, in decision-making on matters of implementation."
- Probation Rules, Rule 6: "As far as possible, the probation agencies shall seek the offenders' informed consent and cooperation regarding interventions that affect them."

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OS as a European challenge – some examples

Offender Involvement: Consent and co-operation

- FD 947: Consent to transfer?
- A right to be transferred?

OS as a European challenge – some examples

Breach and subsequent decisions

- ER CSM (13 out of 90 rules):
  - clear information for the offender what is expected from him
  - Proportionate reaction to breach of conditions
  - Objective examination, right to be heard,
  - revocation of the sanction only by a judge/court; modification or revocation of certain measures only by specified and accountable "deciding authorities"
  - prison as last resort
- FD 947:
  - Competence for all 'subsequent decisions' is being transferred to the executing state (but can be transferred back)

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Concluding Remarks

- The Council of Europe's recommendations in the field of Offender Supervision merit further dissemination, implementation and scholarly interest. *Added* value can be seen in the fact that they are *common* European standards and can thus provide a yardstick when problems are discussed across the border.
- We can perceive Europe as a multiple crisis area; we can, in the context of offender supervision, criticize the EU as an area dominated by law enforcement. But the "European idea" is more than that, it is based on a set of common values, the European Convention of Human Rights being the most visible. According to a poll (Eurobarometer 69 and 74), both to the question which values represent best the European Union and to the question which values are the most important for them personally, the most frequent answer was "human rights".
- Probably not many of those have thought of the situation and rights of offenders, but we will.

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