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PRISON OVERCROWDING AND ALTERNATIVES TO DETENTION

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The overall goal of the project is to promote the development and the implementation of alternatives to detention at a EU level, in order to reduce the disproportionate resort to incarceration by legislators and judicial authorities.

The abuse of custodial measures first of all determines prison overcrowding across Europe, that violates fundamental rights of individuals and compromises the mutual trust necessary to underpin judicial cooperation in Europe. What is more, incarceration proves to be dysfunctional both to the rehabilitation of the offenders and to the prevention of recidivism.

Therefore, the project activities are directed to criminal justice operators and policy-makers with the objective of improving their ability to appropriately implement the alternative strategies to detention.

To this end, the project aims to provide criminal justice operators and policy-makers with a strong comparative knowledge of alternatives to detention existing in other Member States.

A series of training meetings addressed to legal practitioners and other professionals is organised by both the coordinator organisation and the partners. In order to organise the meetings, a preliminary study of legal provisions in force in the selected Member States will be carried out. Drawing on this legal analysis, the researchers will then assess the efficiency of a selected number of alternative measures, identifying the best practices and the problems to solve.

Additionally, the project will propose a set of guidelines on the alternatives to detention. The purpose of these guidelines is twofold. On the one hand, they aim to promote the adoption and the implementation of alternatives to incarceration in accordance with Council of Europe standards and rules.

On the other hand, they intend to encourage the circulation of best practices on a European level with the aim of fostering mutual recognition and mutual trust in cross-border judicial cooperation.

The focus will not only be limited to analysing the alternatives to detention in the sentencing phase, but will also envisage strategies to avoid incarceration before the trial, as required by the EU Council Roadmap on procedural rights of suspected or accused persons.

The research action will be focused upon Belgium, France, Italy, Romania and Spain, and it is intended to obtain scientific results which may also be useful and effective in other Member States. For this reason, a combined methodology is employed in order to maximise the validity of the results.

The activities include:

- a comparative study of legal provisions on alternative to detentions in the selected Member States;
- the elaboration of a questionnaire to collect practical data on the implementation of alternatives to detention according to scientific standards;
- three meetings among researchers and law practitioners in order to verify existing good practices and to raise awareness on the advantages of alternatives to detention;
- an integral analysis of legal and empirical findings;
- the practical guidelines and legislative proposal on the alternatives to detention in the EU;
- a two days international congress, to discuss and disseminate the results of the project;

This is the second of a series of booklet that will be published during the two years of research, in order to frequently update the operators about the development and activities of the project.

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SUMMARY OF THE ACTIVITIES CARRIED OUT

DURING THE FIRST YEAR OF THE PROJECT

During the first year the research has achieved some major goals. In the first semester (May-November) an in-depth analysis of the factors contributing to prison overcrowding and prison population inflation was carried out. Data concerning prison rates and prison capacity have been gathered, showing significant discrepancies between the selected Member States.

At the first sight, the outcomes of such examination might even appear paradoxical: according to the national data and CoE-Space I 2013 survey, for instance, prison population in Italy in 2012 exceeded by the 48% prison capacity, being the worst among the penitentiary systems scrutinized.

In striking contrast to its prison density, however, Italy revealed the lowest incarceration rate per capita among the selected Member States. Poland on the other hand had the highest incarceration rate among the selected systems but was the only one in which prison overcrowding was not detected. During the second semester of the research (December-May) national units have indeed focused on information and statistics concerning alternative sanctions and measures. Encompassing the instruments applicable, respectively, to the pre-sentencing, sentencing and post-sentencing phase, the analysis drew attention to the existence of a wide array of sanctions and measures available to prosecutors and judges in the selected Member States.

Statistical data again showed that an increase in the use of alternatives to detention does not correspond to a decrease of the prison population rate. Surveys indeed demonstrated that in some Member States an augmentation of prison population can be noticed despite the increasing recourse to sanctions and measures executed in the community, raising questions on the risk that a process of "net-widening" may take place. This shows how the mere correlation of data may not be sufficient to assess the real

impact of non custodial sanctions and measures on prison conditions. This is why, in the last working group held in Cluj-Napoca, consensus has emerged around the idea that the time has come to depart from a simple analysis of data and address a principle-based evaluation of alternative sanctions and measures as they operate in practice. It is essential to take into account the limits which might reduce or hinder the recourse to or the impact of non custodial sanctions, by analysing in depth both their legal basis and enforcement in practice.

This methodology will enable the researchers to point out, among other things, the shortcomings hampering the effective implementation of alternative measures, the counter-productive effects of their malfunctioning and the risks triggered by a lack of assistance, supervision and control in the execution of the latter.

A valuable benchmark to carry out such evaluation are the standards set out in the Recommendations enacted by the Parliamentary Assembly of the Council of Europe, drafted by the European Committee on Crime Problems (CDPC), the Council for the Penological Cooperation (CP-PC) and other ad hoc working groups of experts. Such a methodology will also help disseminating appropriate information to the public on the functioning of alternative sanctions and measures and lay down the basis for the elaboration of a set of guidelines at a EU level. European Committee on Crime Problems. An in-depth evaluation of European soft law in the field of alternative sanctions is essential to build common standards that will ease the functioning of instruments of judicial cooperation in this field, such as the Framework Decision on probation and alternative sanctions whose effectiveness may be threatened by the differences between the various national systems of probation and by a lack of mutual trust among practitioners.

What follows is a first partial summary of the Conference held in Cluj-Napoca, where some of the above mentioned issues were deeply discusses. Please note that other important contributions on the topics discussed during the Conference will be uploaded on our website. The research project is now entered

SUMMARY OF THE CONFERENCE HELD IN FERRARA, ON 14 AND 15 APRIL 2016

The final conference of the project (*“The fight against prison overcrowding in Europe. New types of punishment and custodial models in a comparative perspective”*) was held in Ferrara on 14 and 15 April 2016. The occasion enabled the research units to disseminate the results of the project and, more generally, to raise consciousness among other scholars and practitioners on the topicality of the overall debate concerning prison overcrowding and alternatives to detention.

The conference was opened on 14 April 2016 with a session dedicated to *“Alternatives to imprisonment in Europe: models and techniques”* chaired by Emilio Dolcini (Full Professor in Criminal law at the University of Milan and member of the research unit of the same University). The presentations given during this session were the following: *“Alternatives to custodial sentences between comparative law and supranational impulses”* by Alessandro Bernardi (Full Professor in Criminal law at the University of Ferrara and coordinator of the project); *“The Council of Europe’s policy in the field of alternatives to detention”* by Pierrette Poncela (Full Professor in Criminal law at the University of Paris Ouest Nanterre); *“Restorative justice and mediation as alternatives to criminal trial and punishment”* by Claudia Mazzucato (Full Professor in Criminal law at the Catholic University of Milan); *“The variable impact of the different types of punishment on recidivism rates”* by Grazia Mannozi (Full Professor in Criminal law at the University of Insubria).

its third phase. Ideally the guidelines resulting from this part of the research will consist in a series of research-based recommendations aimed at enhancing a wider and safer recourse to non custodial sanctions and measures in the EU.

The second session, chaired by Emilio Santoro (Full Professor of Philosophy of law at the University of Florence) and entitled *“Fundamental rights in prison: Italian context and European principles”*, was focused on the following topics: *“The prison overcrowding’s parable and its constitutional teachings”* (Andrea Pugiotto, Full Professor in Constitutional law at the University of Ferrara); *“Prisoners’ rights in the case law of the Italian surveillance Courts”* (Nicola Mazzamuto, judge at the Surveillance Court of Messina); *“The recent European Court of Human Rights’ case law on the rights of prisoners”* (Emanuele Nicosia, judge at the Surveillance Court of Caltanissetta); *“The role of lawyers in the protection of prisoners’ rights”* (Riccardo Polidoro, lawyer and president of the Prison Observatory of the Union of the Italian Penal Chambers).

The afternoon session was dedicated to the presentation of the national reports by each research unit, namely the University Saint Louis of Brussels (Christine Guillain and Thibaut Slingeneuer: *“Presentation of the Belgian report”*), the Association de Recherche Pénale Européenne (Raphaële Parizot: *“Presentation of the French report”*), the University Babes-Bolyai of Cluj-Napoca (Daniel Nitu: *“Presentation of the Romanian report”*), the University of Castilla La Mancha (Adán Nieto Martín and Marta Muñoz de Morales Romero: *“Presentation of the Spanish report”*), the Universities of Ferrara and Milan (Stefania Carnevale, Adriano Martufi and Maria Lombardi Stocchetti: *“Presentation of the Italian report”*).

During the last session, held on 15 April 2016 and entitled “*Recent trends in the evolution of treatment inside and outside prison*”, the debate concentrated around several topics among which: “*Prison facilities and penitentiary treatment*” (speakers: Lucia Castellano, Member of the Regional Council of Lombardia, former head of Milano Bollate prison, Vice-President of the special Commission for prison overpopulation in Lombardia and member of the Government’s Commission for prison reform; Alberto Lunghini, Engineer and President of the Reddy’s Group; Desi Bruno, lawyer and President of the Ombudsman for Prisoners’ Rights of Emilia Romagna Region); “*House detention: reductionist policy and rehabilitation*” (speakers: Marco Pelissero, Full Professor in Criminal law at the

University of Genoa; Kristel Beyens, Full Professor in Criminal law at the Vrije University of Brussels; David Brunelli, Full Professor in Criminal law at the University of Perugia); “*The evolution of community service: reparative or neo-retributive perspectives?*” (speakers: Gian Luigi Gatta, Associate Professor in Criminal law at the University of Milan and coordinator of the research unit of the same University; Francesco Cozzi, Added Public Prosecutor of Genoa); “*Probation orders: between suspended sentences and ‘new’ models of autonomous punishment*” (speakers: Angela Della Bella, Researcher in Criminal law and member of the research unit of the University of Milan; Yves Cartuyvels, Full Professor in Criminal law at the University Saint Louis of Brussels; Roberto Bartoli, Full Professor in Criminal law at the University of Florence).

NEWS FROM THE PROJECT

FORTHCOMING PUBLICATION OF THE HANDBOOK

We are glad to inform that the core project team has recently signed an agreement with one of the most renowned academic publisher in humanities and social sciences: Routledge (which is an imprint of the Taylor and Francis Group). The agreement concerns the publication of a book provisionally titled “Routledge Handbook on Prison Overcrowding and Alternatives to Detention”. The book in question will incorporate the materials produced by all the members of the various research units during the project. The agreement establishes that the book will be published no later than eighteen months after full delivery of accepted work from the Editor. According to the above mentioned agreement, the Editor of the handbook will be Professor Alessandro Bernardi, a renowned expert in European Criminal Law having published a considerable number of studies, articles and books on Comparative Criminal Law and harmonisation of legislations and sanctions in Europe in several languages.

According to the agreement, the handbook will be published also in electronic format, and if the Publishers consider that a new edition of the book is needed, the latter will be reprinted.

We strongly believe that publication we propose stands out for:

- its subject (consisting in a detailed analysis of non-custodial sanctions in six Countries) and its method (horizontal comparison and vertical evaluation of compliance with supranational standards);
- the choice of the selected Countries which is complementary to other research projects on the same topic;
- its interdisciplinary approach, merging legal comparative analysis with a review of the most recent empirical surveys on non-custodial sanctions and measures (see concluding commentaries by the editors)