

" On Crime and Punishment - 250 years after Beccaria"

Convention organised by the "Tuscany Regional Council" on the occasion of the "Festa della Toscana" (the abolition of the death penalty in 1786) on November 21/22nd 2014 in Florence - Original text in Italian

La Contrainte Pénale - Penal Constraint

There is news from France.

The "Peine de Probation" law project (a kind of "probation sentence") was discussed for two years and finally passed under a more severe title, more in conformity with the judiciary vocabulary "la Contrainte Pénale - the Penal Constraint". As this law represents, at least for France, an important step forward which is in line also with the aims of NO PRISON, I would like to inform you of its principles from my perspective of a Prison Volunteer.

- As in many Western countries the prison population has grown. In the case of France by 44 % between 2001 and 2014 (from 47.000 to 68.000) and, therefore, totally disproportionate to the crime rate which has been more or less stagnant, and the increase of the population which was only 8 %. In the same time frame the prison occupancy rate increased from 98 % to 119 % today.
- In the last 10 years the cumulated inflation rate was 23 %. The budget of the Prison Administration, on the other hand, increased by 68 % (from 1,49 to 2,51 billion Euros in 2013), the national debt by 60 %, but not the real income of many categories of the population.
- In spite of the introduction of "peines plancher - minimal punishments" in 2005 for re-offenders and certain crimes, the rate of any type of re-offending has remained stable over the last 10 years (about 28 %) whereas "legal recidivism" (which means the repetition of the same offence), even increased from 5 to 12 %.
- In 2012 117 detainees committed suicide which represents a rate of 15,6 acts per 10.000 prisoners compared with an average rate of 7,7 for the 47 member countries of the Council of Europe. 49 people committed suicide the same year in Italy.

At the same time (2004 - 2014)

- The Netherlands reduced their prison population by 37 % with an occupation rate of only 72 % today. Therefore the Tilburg prison with 650 places was let to the Flemish Administration and a similar rental agreement is in preparation with Norway. Four prisons have been shut in Sweden because the prison population has been reduced by 16 % since 2004. Empty prisons too in Germany where the number of detainees sank from 64.300 in 2007 to 57.600 in 2013.

- Thanks to their reintegrative penal policy, the Scandinavian countries kept obtaining recidivism rates down to between 20 to 30 % compared with 62 % in France and 68 % in Italy and occupancy rates below 80 % compared with 119 % in France.

After the arrival of the Left to power in 2012 and faced with the evident inefficiency of prison policy, the new Minister of Justice, Mme. Taubira, charged a commission with the analysis of the situation and a reform proposal with the main objective to reduce re-offending. In February 2013 12 policy guidelines were defined for the future law during a public hearing in the presence of magistrates, the prison administration, criminologists, lawyers and prison volunteer organisations. In March 2013 the Ministry of Justice published a 123 page summary with the options available and a proposal for the future law. After a most lively debate, the approval by Parliament, the Senate and the Constitutional Court, the law was passed in October 2014.

What are the characteristics of this "Contrainte Pénale"? I should first clarify that with "Probation" we understand in France mainly the supervision of people condemned to a "suspended sentence", the so-called "sursis avec mise à l'épreuve". The SPIP (Service pénitentiaire d'insertion et de probation - the Social Services") follow some 175.000 of these people with 120.000 new cases every year. In other countries and according to the definition of the Council of Europe "Probation or Strafaussetzung mit Bewährung" means also post-prison reintegrative measures from which in Germany benefit every year some 40.000 detainees, but only fewer than 8000 in France.

The SPIP (Social Services) was created in 1998 not only to supervise the proper follow-up of the "conditional release" defined by the Judge, but to help the released prisoners to find their way back into society. But in the last years every Probation Officer had to follow 80 to 150 people on probation which meant that their assistance could be little more than "administrative". In addition and contrary to other countries, French "Probation civil servants" are not assisted by trained volunteers, as is the case for example in Austria, where 860 voluntary workers co-operate with 610 professional Probation Officers.

As already said, the main intention of the new law was to reduce recidivism, because it is the re-offenders who fill the prisons and cost a lot of money to the nation. According to a 2011 study, the probability of re-offending is highest in the first 4 months after release, 55 % within the first and 76 % within the second year after being freed.

1. What the "Penal Constraint" will change is that the Judge will have (or better, should have) the rehabilitation of the defendant into society as the main objective. Every time he feels that the measures foreseen by the "Contrainte Pénale" are better adapted for the person not to fall back into delinquency, he can apply them.

In future, the Probation Officers working within the new legislation will deal with a maximum of 40 people and be helped by specialised services and experts in order to counterbalance the reasons why the person became delinquent in the first place, as, for example, an addiction (38 % of all detainees acknowledge it), a predisposition to violence (53 % have it), mental disorder, debts, poverty and lack of basic schooling and professional skills which is the case for 80 % of all inmates.

The "Penal Constraint" will try to avoid the incarceration of petty delinquents and first-time offenders, because, as has become common knowledge in the meantime, that prison is rather more "criminogenic" than curative.

Instead of punishing a delinquent with prison according to the "Retribution theory" and hoping for a deterrent effect, the novelty is that the legislator gives preference to reintegrative measures outside prison and in freedom. But the condemned person must respect the Programme convened with the Judge and the Probation Service (SPIP) - which means that he will be subjected to a "Penal Constraint". The contact with the Social Worker will be frequent and the progress recorded rigorously. In other words, a whole range of measures will be offered to the condemned to correct the deficiencies which led him into delinquency.

Nevertheless, without active co-operation, the person could find himself quickly in front of a judge, lose the favourable conditions and even be incarcerated. The "Penal Constriction" is not a naïve system invented by a simplistic lady-minister, but requires a sustained effort which leads a person out of delinquency towards a new life which respects the laws and fellow-citizens.

2. According to the same principle a "liberation under constraints" will be available immediately also for all detainees condemned to between 6 months and 5 years of prison. After having spent two thirds of the sentence, it will be mandatory to have the case reviewed by a "Juge d'application des peines", because the detainee has the formal right of benefitting from the new law for the rest of the time. This is an important change in a country which granted in 2012 alternative measures to only 15 % of its prisoners (of whom 76 % wore the electronic bracelet and one could ask whether the bracelet is in fact a reintegrative measure). "Conditional Release" was granted to only 6,3 % and the electronic bracelet to 3,6 % of all prison leavers, who, according to existing legislation, would have had the right to an alternative measure. The consequence is that 81 % of all detainees were freed without any mitigation and even 98 % of all inmates condemned to less than 6 months of detention. One should add that the effective time in prison can be reduced in France by 3 months per year for "good behaviour" and an additional 2 months for 'exceptional efforts', such as working, following educational courses or a therapy.
3. In 2005 Sarkozy introduced so-called "peines plancher = minimum sentences" for re-offenders and certain categories of crimes. This measure increased the effective average time of detention from 8 to 11 months in 5 years and added 2300 prisoners every year. The sentences for re-offenders increased from 9 to 15 months and 80 % of them went to prison. The average overcrowding rate reached 119 % and for the "maisons d'arrêt = short-term prisons" of the big cities even beyond 200 %. Thousands of new prison guards were hired. 13 new prisons are either already operational or in construction, financed and run by private companies for 27 years (Partenariat Public Privé). The aim was to increase the prison places from 51.000 in 2005 to 63.000 in 2017. But the "prison only" concept did not produce the intended deterrent effect, because the condemnations of the re-offenders kept increasing also. With the present reform the "minimum sentences" were cancelled for reasons of inefficiency. The

Magistrates are now able to apply again the laws at their own discretion which is known as the "individualisation of sentences".

4. The present reform introduces also a number of dispositions in favour of the victims who will have in future easier access to the files of the perpetrators, the aims of the sentences, the development, rehabilitation and release of the offender. The "Reparative Justice", this very delicate form of conciliation, which is still very little developed in France, will be vigorously promoted in future.

The "Contrainte Pénale" does not apply to the legislation of the minors, the detainees condemned to 15 years and more, severe crimes such as aggravated rape or armed robbery (which concern about 2500 criminals per year) or sentences of less than 6 months detention which represent 56 % of all sentences and 18 % of all detainees).

A - What could the impact of this reform be?

- According to the report by the Justice Ministry, of the 120.000 people condemned annually with a "suspended sentence" up to 20.000 could theoretically benefit from the "Contrainte Pénale" and up to 60.000 after the 3 years introduction of the new system.
- Of the 68.000 prisoners at present, 28.000 (equal to 40 %) would have the right to benefit from the "liberation under constraints" after having served two thirds of their time. Therefore, it seems somewhat strange that only 2600 to 6600 detainees would be eligible for the new dispositions (see page 106). How come? If thousands of petty delinquents and 40 % of the entire prison population have the right to benefit from the "Penal Constraints", how could this concern only less than 6 % or 4000 detainees? Honni soit qui mal y pense (as for example "Le Monde") which fears that with 63.000 available prison places in 2017 the Administration will want to effectively fill them. With "slight" overcrowding, as at present, a more right-wing government might be tempted to jail up to 80.000 people, this all the more as the Private Prisons must be filled for reasons of financial profitability.

B - And how much will this reform cost?

- Here again the report of the Ministry indicate figures with margins too large to allow even an approximate evaluation. The media too have qualified the indicated elements as "inexploitable - pretty much useless". Strangely enough the report shows a cost reduction per economised detainee of 11,83 Euro per day, although the real cost is at least 100 Euros. What is passed over in silence is that, according to the calculation method, at least 80 % of the operative cost of a prison is spent on the administration and only about 7 % on the detainees themselves for food, hygiene, assistance, schooling etc. The Ministry's calculation is apparently aiming at a stable prison population of 63.000 and the Prison Administration at the present level with the expense for the "Contrainte Pénale" calculated IN ADDITION. I hope that the report wants to evaluate only the 3-year transitional period. If, apart from the planned reinforced social assistance, a

substantial reduction of the prison population was not a major objective, the whole reform would be hardly credible and frankly useless. Under the pressure of public opinion and the political right, the Government has vigorously refuted the suspicion that "it wanted to empty the prisons".

- Based on the Dutch Prison Reform with 37 % fewer inmates in 10 years, I have tried to imagine a similar reduction in France with 20.000 fewer detainees. A rather detailed calculation pattern is available on the NO PRISON website. The calculation is simple: 20.000 fewer prisoners result in a yearly economy of 730 Million Euro.

For the improved assistance to the people within the "Penal Constraint"-Program approx. 600 more Social Workers are required, 40 additional "Juges d'application des peines" and some 100 more Civil Servants, office space and some other additional cost amounting to a total of about 50 Million Euros per annum. For a second year with 40.000 people to follow, the amount would be approx. 100 Million Euros. Even if additional money was needed for some more police within the Program, the improvement of the Ministerial Computer hardware and court-assisted lawyers, there would be 500 Million Euros left to be invested in the planned educational and corrective programs, as well as the creation of an efficient and dynamic "Restorative Justice"-System. As this colossal sum would never be used entirely in rehabilitation measures - the rest could be used by the State to borrow less money or to repay some of the existing public debt.

Instead of putting re-offenders into jail time and again, the result would probably be less re-offending in the long run. And the whole reform could be financed entirely on its own - provided the number of detainees were reduced substantially and the basic principles of the "Contrainte Pénale" were applied without restrictions.

C - The reactions to the new law are, of course, different according to the political sensitivities, the material self-interests and the very personal appreciation of punishment as a means of deterrent:

- Thus, the Gaullists, the Police Unions and the conservative Judges are generally opposed to the law, as well as probably 80 % of the population for whom an offense must be punished, preferably with prison, and this whatever the facts might be or the criminologists say. The moderate right-wing LE FIGARO has qualified the reform as a "usine à gaz" = an overcomplicated concoction and the Front National as "another proof of the Government's loss of authority".
- Among the supporters are the Magistrates and lawyers of the left, the Church, the organisations of prison volunteers, the majority of the media, the Green and Socialist parties - and numerous personalities of the traditional right.

D - The "Peine de Probation" was initially conceived as a "social and integrative" measure without the notion of "punishment". After two years of consultations and concessions to the interested lobbies, the "Contrainte Pénale" is considered today not more than a supplementary sentence the judges MAY

apply. Nevertheless, Judge Ponticelli, who is counted among the "left of the middle" magistrates, is optimistic, because he feels that the new tendencies towards "less prison" and "more re-educational measures" will influence all future legislation. He thinks that future sentences of up to one year will be gradually replaced by the "Contrainte Pénale" which will replace eventually the conditional release in its present form. Robert Badinter, charismatic lawyer and ex-minister of justice, sums up the situation by saying " After the excellent preparatory work, the passed law remains well below the expectations of a true Prison Reform". Much will depend now on the Judges. We will see.

- E - The SPIP has been appointed to put in place the "Contrainte Pénale" within 3 years. The ministerial report did not mention once explicitly the co-operation of Civil Society and the prison volunteers, just as if the convicted people and the detainees were the exclusive possession of the judicial and penal administration, just as if it was merely a judicial matter. What a disappointment!
- F - The choice of the "Penal Constraint" as my contribution, is not by chance. As said before, this new law is an important step towards the concept of NO PRISON. But I chose it also , because Italy finds herself in rather a similar situation to France.
- Even after the spectacular reduction of the Italian prison population since last year from 65.000 (and an occupancy rate of 145 %) to 56.540 inmates today, the rate is still 114 % and, therefore similar to the situation in France. Even the rate of detainees per 100.000 inhabitants is close with 93 for Italy and 102 for France.
 - The 2013 budget for the Italian Prison Administration was 2,8 Billion Euros which is close to the French attribution of 2,51 billion (which has been increased by 28% in 2014 !). And all this in a situation of mounting debt levels beyond 2000 billion Euro for both countries or equivalent to 134 % of the Italian and 95 % of the French GDP.
 - After the last Amnesty (Indulto) of 2006 39.000 inmates remained in the Italian prisons. In only 4 years the number had then risen to 68.000, and this, according to the relevant statistics, in spite of only 34 % re-offenders. We all know that the Italian Government is preparing another "indulto" with probably accompanying measures. An amnesty is certainly a useful move, but, to exclude the refill of the prisons as after 2006, only a thorough prison reform, possibly following some of the "Penal Constraint"- principles, could guarantee a lasting result.
 - Do work towards such a reform! It is not only a "win-win" situation, as you call it in neo-Italian, it is a "win-win-win" solution for the rehabilitation of people who have become delinquent, the prison guards who will be less stressed and therefore more open to their social role, decaying and costly prisons, better financed and therefore more efficient rehabilitation measures, a more lasting solution to overcrowded prisons, less public debts, etc.

Can we do it? Yes we can!

Thank you for listening.