SENTENCING AND THE EXECUTION OF SENTENCES: AN INTERNATIONAL COMPARISON. TRENDS AND PERSPECTIVES IN LITHUANIA

A Collection of Peer-Reviewed Papers of the International Conference on 'Social Integration of Prisoners: Research and Practice',
Vilnius, 12-13 October 2015

Edited by Gintautas SAKALAUSKAS, Law Institute of Lithuania

SUMMARY

The present volume represents a collection of papers delivered at the international conference under the title 'Social integration of prisoners: Research and practice', organized by the Law Institute of Lithuania on 12-13 October 2015. The conference was sponsored by the Research Council of Lithuania, the Ministry of Justice of the Republic of Lithuania, the Prison Department under the Ministry of Justice, and the Law Institute of Lithuania; authors of the papers published in this collection as well as other presenters from Lithuania and abroad took part and delivered reports at the conference. The conference aroused active interest on the part of researchers, politicians, practitioners and students. The high scientific level of the presentations and the discussions once again have demonstrated the lack of knowledge about national penal practices of sentencing and prisoner resettlement in the global context in Lithuania. Therefore, it was very welcome to the organizers, that the majority of the authors have agreed to further elaborate their presentations in order to give a comprehensive view on the problems addressed during the conference, based on results of empirical studies and analyses of legal regulations and their implementation into practice. The present publication is a collection of these papers.

All the authors included in the collection are engaged in research in various countries, focussing on the forms of the state response to criminal behaviour, the effectiveness and consequences of the response, and the processes ensuing from it. The imposition of penal sanctions for criminal behaviour is based on certain theoretical foundations and fundamental principles which, on the one hand, are an expression and a reflection of the concept of a modern legal, democratic and social state and a

consequence of certain thinking and ideas; on the other hand, they are (or must be) based also on the results of criminological research evaluating the effectiveness of different sanctions and their implementation. Thus, sentencing of offenders should be 'evidence based'. Ideally, insights relying on both theoretical considerations and empirical research results should match and complement and substantiate each other. This key thought links all the articles of the present publication together.

The authors agree that prevailing of both a well-founded theory and reliable results of empirical research into the area of criminal sanctions is difficult in a climate of emotions, populism, stereotypes, hunting for sensations, fears and insecurity which is being created, either naturally or artificially, around criminal behaviour. This has always been the case, and will probably remain, as criminal behaviour and responses to it are always close to the individual: everyone has some direct or indirect experience related to it, everyone has an opinion and expresses it more or less loudly in the current debate on safety and on sentencing of offenders. Such populist opinions, which are rarely subjected to a differentiated analysis, are often relied upon in the political decision-making, used in the rhetoric of public discussions, and sometimes used as a basis for the taking of practical decisions; they influence both attitudes and actions of practitioners. Numerous investigations have shown that opinions of poorly-informed members of the public on criminal sanctions and sentencing tend to change substantially when circumstances of the criminal behaviour, which are usually forgotten or ignored while expressing an opinion spontaneously, are presented in a more differentiated manner. A spontaneous opinion is based on fear and stereotypes that very rarely match reality, as real life is much more complicated and complex. Therefore, relying on a 'public opinion' based on 'unquestioned knowledge', alleging that the public wants a certain thing (e. g., stricter penalties) is both irresponsible and unsustainable – it would mean that the very solution of the problem is based on ignorance, which a responsible system of sentencing cannot afford. Therefore, it is important for any society to raise the knowledge about criminal sanctions to be imposed and actually imposed, as well as the knowledge about the impact of such sanctions, to a scientific level, which enables both a more objective evaluation of the current situation and a differentiated and comprehensive overview of various aspects of the state response to criminal behaviour. This is the principal objective of this publication.

Scientific publications providing an opportunity for learning more about an evidence-based approach toward the imposition and enforcement of criminal sanctions are badly lacking in Lithuania. A comparison of various countries' situation in

this area is important and useful in many respects. Firstly, such comparison enables one to take a look at oneself, to see a wider context and to verify that the right direction has been chosen. Secondly, a comparison allows to see, in the other countries' context, distinctive trends and specific factors that have influenced them as well as certain exclusivity that might have prospects for the future. Thirdly, on its basis a certain commonality could be sought if desired, for example, in the context of European culture or in a narrower sense such as the European Union's legal or social area. Fourthly and finally, the comparison enables a search for best practices, can offer solutions for universal problems already found in other countries and motivates to test innovation and to abandon outdated and meaningless routine and unnecessary prohibitions or restrictions, in other words, it may prompt changes or even radical reforms in the national sentencing practice and enforcement systems.

The first in this publication is an article on the sentencing practice and the effectiveness of different sanctions in Germany by *Wolfgang Heinz,* Professor of Criminology at Konstanz University (Germany). The chapter deals with some specific issues that have already been mentioned in this summary. The author starts from the fundamental principles of sentencing and the enforcement of criminal sanctions under relying also to principles of the German Constitution. This starting point of the presentation is appropriate for both the article and the publication as a whole. In Germany, as in no other country, these principles have actually become the basis for the penal system and the real reference points that are remembered, emphasized and serve as an actual framework for decision-making much more frequently than, for example, in Lithuania. Germany is an exceptional country in Europe first of all not due to its 'order', beer, football or cars, which is 'known' by a larger part of Lithuania's public relying on unquestioned knowledge, but due to the two unique legal and social turning points that occurred after the Second World War and the reunification of East and West Germany and which surprisingly quickly allowed the emergence of a qualitatively new attitude towards an individual including an 'offender'. The experience of National Socialism has shown the importance of the principles of law very clearly. It is not by chance that the German Constitution, which was adopted in 1949 starts with the words 'Human dignity is inviolable'. This principle often becomes the main lever in resolving issues related to the imposition and enforcement of criminal sanctions, on various levels and in different contexts, in Germany. It appears that a closer taking on of the constitutional principles of a democratic and social state and the rule of law, with a stronger emphasis on their importance, could crucially

change the reality of imposition and enforcement of criminal sanctions in Lithuania. Of course, no country should be idealised or denigrated. In their articles, the German colleagues provide many examples of issues arising in Germany; even more such examples could be provided.

On the other hand, many positive aspects can be identified in Lithuania as well, in particular in the terms of change in the long term. However, *jeder jammert auf seinem eigenen Niveau* ("everyone moans on one's personal level") and, despite all the indisputable deficiencies in Germany or achievements in Lithuania, considering Germany's experience in greater detail is very useful. The other turning point relevant to Lithuania is the reunification of the Federal Republic of Germany and the German Democratic Republic, which meant many economic, social and legal changes for the latter in particular. Again, from Lithuania's perspective, it is very interesting to look at what and how has changed in the penal practice; for this purpose, numerous statistical data and figures provided by the author are useful. Among the very illustrative criminological data, one may highlight the four most important figures – the landmarks showing the line of development of the German penal practice: (a) approx. 60% of criminal cases in Germany are discontinued (diversion) by imposing orders to the alleged offender (with his or her consent) and to end the proceedings without such orders, due to the pettiness of the offence; (b) actual custodial sentences in Germany account for just approx. 6% of all formally sentenced offenders (i. e. by a conviction of the criminal court); (c) in approx. 65% of cases, features of criminal liability applicable to minors are applied to young adults (18–20 years old); (d) at the beginning of 2017, the rate of imprisonment in Germany was 76 per 100,000 population (in Lithuania: 239). Finally, another very interesting aspect of this article is the statistical analysis of recidivism – an area of criminological investigations, which in Lithuania is still in its 'cradle'.

The author of the article gives a critical assessment of the demands for expanding criminal law and making it stricter, which are heard from time to time in the discussions on penal policies. In such cases, penal policy is treated narrowly as a policy of criminal law, which results in a systematic overestimation of the opportunities for protecting legal goods by means of criminal law. There cannot be a full 'security through criminal law'. The effectiveness of criminal law in terms of general prevention is limited; this applies even when the severest penalties are threatened to be imposed. No criminal law will succeed in preventing first-time offenders from committing a criminal act. Also, recidivism cannot be reduced by imposing more severe punishment.

By summing up the results of research conducted for several decades, *Wolfgang Heinz* expresses his conviction that criminal law sanctions and measures cannot have an impact upon the majority of potential causes of delinquency, or that such an impact will be very limited. Criminal behaviour is caused by a large number of various economic, social, individual and situational factors that most often are beyond the limits of operation of the criminal law system. Research on repeated and intensive criminal behaviour of young people (including violent behaviour, of so-called persistent offenders) has shown social deficiencies and shortages in these offender groups, starting from the experienced, observed and tolerated violence in families, material poverty, integration issues (in particular among young immigrants – having or not having the German citizenship), and ending with difficulties at school and during vocational training and the resulting absence of chances and prospects.

Life situations and fates can be influenced, however, the criminal law plays only a very limited role in the process of desistance. Criminal law cannot serve as a replacement or provider/implementer of assistance to children and youth or social and integration policies. Criminal law has very limited opportunities for dealing with consequences of violence experienced, observed or tolerated in the family or another social environment. Neither can it compensate for the lack of chances and prospects arising from difficulties at school nor during further studies; criminal law often increases the problems of social exclusion and makes this lack more acute. Therefore, social and situational prevention institutions and measures, aimed at families, schools and municipalities, should be supported first.

The use of custodial sanctions (imprisonment) in a European comparative perspective are analysed jointly by *Frieder Dünkel*, Professor of Criminology at Greifswald University, and *Gintautas Sakalauskas,* a former doctoral student at Greifswald university and at present research fellow at the Law Institute of Lithuania. In terms of imprisonment levels (number of prisoners per 100,000 inhabitants), the practices differ considerably from one country to the other, in the extreme case by a factor of 1:5. The direct reason for a large number of imprisoned persons is the frequent imposition of long-term prison sentences, which, on its turn, is determined by the penal tradition and culture and the legal sentencing provisions as well as on the practice of an early (conditional) release (parole). Statistics show that the range of sanctions imposed even for crimes that are traditionally classified as serious crimes, such as robbery or severe damage to health is very wide, and deprivation of liberty normally does not account for the larger part of all the sanctions imposed. A search for an optimum balance

and a scientific analysis of various penal strategies will undoubtedly remain both an interesting field of comparative criminology and a significant challenge, as finding the real meaning of the data available from different countries is not always easy.

The authors argue that prison sentences are applied very differently in comparison of the European countries; prison population rates are determined – in terms of both frequency of imposition of prison sentences and the length of imprisonment – by many factors, which are difficult to be influenced unidirectionally, even while using the best practices of neighbouring countries not far away. These practices show that the much less frequent use of custodial sanctions, with offenders being sentenced for shorter periods of deprivation of liberty, as well as a more frequent use of release on parole does not create any 'climate of impunity', contrary to arguments still often found in judgments rendered by Lithuanian courts; it is the consequence of the implementation of the *ultima ratio* principle based on the results of empirical research and international standards.

Without any doubt, the downsized rate of offenders sentenced to imprisonment is a great achievement for any country, showing respect for human freedom and proving the ability not to succumb to the revenge instinct and a response that is based on causing pain. This also contributes to an increased public safety. The State and its citizens determine the choice of other proportionate and effective measures to respond to criminal behaviour and to show to the individual that such behaviour is inappropriate. At the same time, such measures are aimed at restoring justice, compensating natural or legal persons and the State for the damage as well as eliminating the discomfort of fear and insecurity for the victims of the criminal behaviour. Empirical criminological research has shown that imprisonment is the worst answer for this purpose, even though part of the public holds a different view, not knowing about the real impact of imprisonment.

While seeking alternatives to custodial sentences it is important to understand, first of all, that it is imprisonment that must be an alternative, when all other sanctions options have been exhausted and/or no longer can be justified. A less frequent and shorter period of deprivation of liberty would result from a reform of legal regulations, namely, the sentencing rules, for example, by abandoning (in Lithuania) the calculation of penalties on the basis of the average penalty, expanding the scope of early release on parole, and further developing the use of open prisons and other options for 'opening' the prison regime (e. g. through prison leaves, work or study release etc.) that would promote the individual's integration into the society and lower the probability of re-offending. Electronic surveillance of convicted persons is judged

as a doubtful measure – many studies have proved that this is a waste of money without any tangible benefits for the offender, the probation services and the public. In this article, *Frieder Dünkel* and *Gintautas Sakalauskas* draw one more conclusion that is significant for scientific research: different penal practices, more or less frequent imposition of custodial sanctions with shorter or longer terms of imprisonment, and other factors determining different prison population rates in various countries remain an important subject of criminological studies, which must remain in the focus of attention for future research with joint efforts of criminologists from various countries.

In another article, *Frieder Dünkel* examines the principle of resocialisation from the perspective of international human rights' standards. Firstly, the author points out to the importance of soft law, which may not belittled even though it consists 'just' of recommendations of the Council of Europe or the United Nations. Also, it must be noted that international standards emerge where the regional necessity exists to unify the sentencing and the enforcement practice, in order to secure respect for human rights, seeking to summarise and provide examples of best practices, to identify general problems and ways to resolve them, and to further improve and develop the penal and penitentiary systems. While international standards often are of a recommendatory nature (except for the fundamental human rights established in conventions such as the European Convention on Human Rights), their implementation is the matter of the State's good will and intention to improve, along with the wish not to stand out in the overall legal and cultural environment of the region. All international standards are joined together by the common concept of convicted persons' resocialisation, which is also in line with the constitutional principle of a social state. Therefore, they are a good reference point for any country's system for the execution of criminal sanctions.

The resocialisation concept is becoming increasingly important globally, after the previous phase that focussed on deterrence, incapacitation or a humane containment of the individual in a closed institution. Data from the latest empirical studies conducted in the USA show that the nothing-works doctrine that emerged in the 1970ies was not accurate. Results of social therapy studies in Germany are in line with these global trends. Resocialisation is a constitutional principle in Germany, Spain and France. Components of the content of the resocialisation-oriented imprisonment correspond, in part, to such notions as 'reducing damage', 'normalisation' or 'humane containment', however, the emphasis should always be on a successful integration of the individual into society.

The principle of normalisation, or creating conditions in penal institutions that are similar to living conditions in liberty to the maximum extent, enable prisoners to assume social responsibility, thus reducing the detrimental impact of deprivation of liberty. In this respect, the involvement of the public is important, together with the efforts by prison staff members and volunteers, which facilitate the transition to life after the release from prison. The earliest possible involvement of state institutions providing assistance to prisoners (probation services) in some countries (e. g. Denmark) is exemplary; recently, the situation in Germany has also improved upon launching of numerous individual projects, making sure that the imprisonment is followed by a consistent transition to life in liberty, implementing a universal reform of all institutions and organisations that care of recently released prisoners, and creating a single network of management of the said transition on a municipal level.

Thus the European consensus about the principle of resocialisation laid down in the international human rights standards, and the UN-based global consensus in this area can be summarised as follows: (a) non-custodial penal sanctions (community-based measures and sanctions) have an absolute priority over custodial penal sanctions (the principle of custodial sanctions as *ultima ratio*); (b) measures not related to the deprivation of liberty should also be limited by the principle of proportionality; they can be effective provided that the individuals to whom they are applied accept them as fair and proportional; (c) there is a lot of room for community sanctions/alternatives to imprisonment in all areas – they can be implemented in different forms depending on the phase of development of criminal law and the role that fines, community service orders, suspended prison sentences (probation), and the release on parole (early/conditional release) play in various countries; (d) the only purpose of the execution of custodial sanctions (imprisonment) is resocialisation, which is a constitutional principle in some countries; (e) a consistent application of this principle means the drawing up and regular reviewing of individual sentencing plans containing well-structured proposals for general education and vocational training, therapeutic, social and pedagogical measures, starting early preparation of the individual for release, involving external organisations and institutions (probation services, job and accommodation services, half-way houses, temporary homes etc.), the regular early release on parole, and after-care upon release. In conclusion *Frieder Dünkel* refers to many links between the resocialisation principle, the international human rights standards and the German criminal and penitentiary laws (and their practical application), even though, at a closer look, certain deficiencies and

opportunities for improvement can be seen. Without any doubt, the international penitentiary law standards, focussed on resocialisation of convicted persons (e. g. the European Prison Rules), provide a good perspective for Lithuania as well.

In her article, *Ineke Pruin* who has recently started working as a Professor at Bern University (Switzerland) and who previously worked in the universities of Mannheim, Heidelberg and Greifswald, analyses issues of release on parole from penal institutions from the aspect of management of a consistent transition to free life (Übergangsmanagement). Many Western European countries have realised long ago that successful resocialisation after having served a prison sentence is a realistic perspective provided that the process of a continuous care is started as early as possible in the penal institution. The broadest possible range of measures is involved: individual sentencing planning, coordination of measures in the penal institution and in free life (e. g. through short-term prison leaves; working and studying outside prison), involvement of both external and internal staff (e. g. probation institutions and non-governmental organisations), resolution of issues that will be important upon release from prison (e. g. work, place of residence, repayment of debts, medical treatment etc.). In other words, modern management of enforcement of a custodial sentence must take on a much larger share of tasks related to life after prison than before. The author discusses both German and other countries' experience in this area.

Certain developments are seen in Germany and other European countries in terms of release from penal institutions. Results of investigations so far have not given a final answer to the question of whether these reforms will improve the transition of prisoners into freedom. One may assume, on the basis of research conducted in foreign countries and of international legal provisions relying on such research results, that the reform that was completed in Germany and materialised in the laws will have prospects if the practical implementation successfully has been completed.

The European concepts of release from penal institutions and of care upon release in theory and/or practice do not apply to some groups of prisoners such as prisoners in pre-trial detention, foreigners and those imprisoned for only a short period. On the one hand, according to the Risk-Needs-Responsivity principle and for the purposes of proportionality, the focus of the new concepts on a consistent release of persons serving long custodial sentences is a positive thing. On the other hand, relying on research on desistance one might ask, if it is just these cases that need assistance, which should be offered, at least on a voluntary basis, in all cases when a person is released from prison. The Netherlands have developed a good practice in this area:

a nation-wide system of care for people released from prison is in place on the level of the municipalities. It should be investigated, whether non-governmental structures of assistance for convicted persons also could do such work effectively. Whereas the new legal provisions adopted in England and Wales seem to be disproportionate and create a risk of a never-ending penal spiral, when the individual faces a recall to the penal institution for a failure to comply with specific orders. Based on an overview of the European situation, *Ineke Pruin* presents the assumption that relevant discussions about the adaptation of curator programmes and electronic surveillance of persons released from prison will take place in Germany, as well.

While the article discussed above, though aimed at an analysis of release on parole, focusses on starting resocialisation while the person is still serving a custodial sentence, the chapter by *Gintautas Sakalauskas* raises a question, from Lithuania's perspective, whether deprivation of liberty can be resocialising, and if yes, then what criteria must be met. The reality of imprisonment, at least in those countries where it receives little constructive and political attention, is very different from statutory declarations and the stereotypical formal attitude. Opportunities for (better) '(re)socialisation' in penal institutions often remains an illusion and materialises very rarely and rather in accidental circumstances; such opportunities are significantly limited by the very essence of imprisonment – deprivation of liberty, where learning something positive is very difficult due also to the poor infrastructure of penal institutions, the closeness, lack of ideas, supply and competences, the big influence of subculture, the poor staff training, insufficient funding, hierarchical management etc. It is important to understand and to emphasise that imprisonment is *a priori* damaging by its substance and usually does not have any 'correctional', 'integrational' or any other positive impact, in particular if its content consists of simply 'being in prison' without any clear, systemic, targeted and qualitatively good application of integrative measures. The longer the imprisonment, the more damage it causes. Research revealed that the motivation for changing increases or at least remains during the first and second year of serving the sentence, however, later, when the person realises that he/she was just punished and there is nothing else, the motivation decreases in the fourth and fifth year, and that frustration and resignation start growing again. These processes of desocialisation often give rise to additional side effects and may initiate a vicious circle of aggravating problems: the person starts getting into conflicts with other convicts and the staff (outward aggression) and taking any available intoxicating substances (inward aggression), relations with relatives and friends break or are

severed, accusations of others start and numerous complaints are written, and the person's self-esteem is undermined and respect for others diminishes (and he/she is treated with lesser respect by others). The lack of respect and recognition may lead to cruel violence against both oneself and others.

In order to achieve that imprisonment is less damaging and, in the best case scenario, produces at least a minimal (re)socialising impact, it must be organised according to certain quality assurance principles, because an imprisonment consisting of just 'being in prison', passive waiting and adaptation leads to even greater exclusion from society, increasing apathy, establishment of anti-social attitudes, various addictions and destruction of positive social relationships thus not just violating the constitutional principle of a social state but also increases the threat of repeated criminal behaviour.

Rūta Vaičiūnienė in her article examines the subculture of prisoners as one of the relevant imprisonment issues in Lithuania. The author has been tackling the subject for many years, and her work stands out among publications of many other authors on this subject due to a wider and deeper analysis of the subculture in penal institutions. It is obvious from the results of her investigation that the prison subculture is a consequence of the imprisonment system rather than a feature of prisoners' communication. Therefore, it would be too superficial or short-sighted to assume that the subculture is created or chosen by prisoners themselves. Subculture is a subproduct of the system as a whole and it operates counter-productively in the context of prisoners' social integration in two ways: (1) It makes an external positive influence much more difficult as it is focussed on its own inner logic and hierarchy; (2) it weakens or even fully undermines trust in the system that just declares justice and equality but does not actually ensure them. While searching for reasonable subculture reducing strategies, the author challenges the prevailing 'version' that the subculture issue can allegedly be resolved (only) by putting all prisoners into cells (instead of using the traditional large dormitories).

While resocialisation is the main aim and target of modern imprisonment structures, in Lithuania the attainment of objectives of resocialisation and successful return to society is stagnating and remains complicated due to the inherited Soviet imprisonment system and traditions. One may argue that the form of collective imprisonment, together with the prison subculture and self-regulation and order-maintaining mechanisms forms grounds for recidivist behaviour. In the rules of subculture, priority is given to minimum relations between the convicts and the staff, therefore, those who are involved in the subculture automatically reject any assistance offered by the

prison administration; in this way, convicted persons' involvement in any personality development or skills training programmes is limited considerably.

One-third of convicted persons who took part in a survey conducted by *Rūta Vaičiūnienė* have stated that imprisonment does not contribute to a change in personality or behaviour and that the convicted person loses skills and motivation, while his/her disappointment, anger and frustration increase. Convicted persons have noted that the custodial sanction is enforced by isolation from society, therefore, upon release from prison offenders experience an enormous technological and information gap and a loss of social relationships. According to the research participants, the main obstacles to resocialisation include structural factors such as the long term of imprisonment, lack of a clear and transparent motivation system, and limited communication with relatives.

Staff of penal institutions play an important role in the resocialisation process as they can motivate or interest convicted persons. The research has shown that the latter can become more open and less hostile toward the staff. The respondents have stressed that pleasant, respective, not condemning and not stigmatising communication on the part of the staff is usually responded to in the same way; therefore, it is very important for the prison staff to soften the tone, look for compromises, and try to understand circumstances and situations in resolving various issues. In order to maintain friendly relations with convicted persons, staff of penal institutions, however, find themselves in the trap of double standards: on the one side, recommendations for dynamic security or other guidance from the Council of Europe maintaining the vision of an officer as a social worker, and on the other side – internal rules focussed on the function of an officer performing surveillance and control of impermissible relations between the staff and offenders.

Present reforms in Lithuania's penal institutions are aimed at the implementation of international standards through a transition from collective imprisonment to a cell system, i. e. from a communal form of imprisonment to the one ensuring a higher degree of isolation and control. It is obvious that reforms are indispensable and the life in which the person shares same space with a few tens of others must be changed by improving the conditions in which convicted persons are kept. One should not forget, however, that the collective form of imprisonment provides more mutual communication and freedom of movement and can be deemed to be a compensation measure that guarantees the preservation of skills of communication and living in a group. Therefore, while replacing collective imprisonment with cell-type

imprisonment, it is important to plan measures to preserve social skills and to attain rehabilitative objectives rather than isolating prisoners. It is also important to ensure that capacities available for working with convicted persons allow a practical application of measures of good quality and not just formal work.

Andželika Vosyliūtė presents a differentiated approach to issues of release on parole in Lithuania, first of all, an extremely varied case law in the area of release on parole. The description of the case law analysis gives an impression that a large part of court decisions relies on a very vague argumentation, a part of which contradicts not just the meaning of release on parole and the aim of social integration, but also the principle of systemic interpretation of law – if, e. g. the seriousness of the crime is evaluated twice or even three or four times (for example, the individual is not released on parole on the basis of the argumentation to the effect that the crime is a serious one, a large part of the custodial sentence has not been served yet and there exists a high risk (the assessment of which includes the evaluation of seriousness of the crime), even though the legislator had already classified the formal conditions of release on parole according to seriousness of crimes). The author argues, that the number of such misunderstandings, and many other misunderstandings, would be reduced if courts remained focussed on the final goal of enforcement of penalties, i. e. ensuring that the convicted person seeks his/her personal aims by legitimate methods and means; release on parole in most cases contributes to the achievement of this goal, and it only happens very rarely that the granting of such release has a counterproductive impact. Regrettably, release on parole is an exception in the current Lithuanian practice (just approx. 30% of all grounds for release). The conclusion of this article is very important in the context of the publication as a whole, and one hopes that the practice of release on parole will change: that it will be applied much more often and that a refusal to grant early release will be based on a well-founded argumentation.

Article 157(2) of the Code for the Execution of Criminal Penalties of the Republic of Lithuania establishes formal grounds for release on parole (a specific part of a custodial sentence that must have been served), however, these provisions are ignored by courts as they determine the minimum required part of the sentence themselves. On the other hand, this is being done based on various criteria or different interpretations of the same criteria, therefore, decisions rendered in cases on release on parole are contradictory and their explanation is difficult. While statutory provisions for release on parole have become softer (the part of the sentence that must be served on a compulsory basis has been reduced for most convicts), the application of

release on parole has become stricter according to the case law. Previous legal regulation of release on parole did not provide grounds for the courts to objectively evaluate the material basis for the release on parole, as reliable means and methods of making an appropriate evaluation of the convicted person's personality were not available to correctional institutions. At present such means and methods have been established by law but are not trusted by the courts.

The courts evaluate not the final conclusions of a social inquiry report or a psychological expertise themselves, but select certain circumstances from them (criminal record, criminogenic factors etc.), prioritise them over the final conclusions, and rely on this in their argumentation for their decisions. A case-law analysis has shown that the majority of problems arose from the establishment of the material grounds for release on parole, in particular from the evaluation of 'other significant circumstances'. Different courts evaluate the same circumstances (partial payment of damages, part of the sentence remaining to be served, seriousness of the crime, invalid penalties, criminogenic factors etc.) in different ways, therefore, decisions in analogous situations and cases differ from court to court. Furthermore, the said circumstances are already evaluated either by the legislator by establishing formal grounds (seriousness of the crime, the part of the sentence that must have been served as an indispensable condition for release) or in the conclusions of a social inquiry report presented to the court (personality, payment of damages etc.), therefore, the re-evaluation for the purposes of deciding on release on parole is seen as an excessive exercise – as these are the same circumstances that have already been evaluated.

On 1 September 2015, amendments to Article 157 of the Code for the Execution of Criminal Penalties of the Republic of Lithuania took effect whereby the legislator explicitly stated the material grounds for release on parole (implementation of measures provided in an individual social rehabilitation plan, low risk of criminal behaviour and/or progress in reducing such risk), however, the courts ignore these provisions and continue to base their decisions on the application/non-application of release on parole on other circumstances that are significant in their view (seriousness of the crime, large part of the sentence remaining to be served, personality, criminogenic factors etc.).

Finally, *Andželika Vosyliūtė* notes that different laws have taken guidance from in the case law while deciding on release on parole: the Code for the Execution of Criminal Penalties or the Criminal Code. As release on parole is governed by the Code for the Execution of Criminal Penalties, the principles of enforcement of crimi-

nal penalties and aims of release on parole must be given priority over provisions of the Criminal Code.

The article by *Ilona Michailovič* deals with the opportunities to apply mediation and restorative justice measures in the criminal sanctions system including even the execution of prison sentences. The concept of mediation is paving its way through Lithuania's criminal justice system with difficulty – the frequency of application of this procedure in the EU Member States is inversely proportional to the number of prisoners; this is also one of the indicators of the specific penal cultures. The article on mediation presents a wider perspective in the context of restorative justice. It is not necessarily the only means, usually applied during the pre-trial investigation and providing grounds for the termination of the latter in case of successful application. Mediation can also serve as an additional tool in seeking restorative justice upon rendering the conviction; examples of this can be found in many countries, and not only in Europe. The author well-foundedly asserts that in order to intensify the development of mediation, changes in the perception of the State's response to criminal behaviour (a criminal conflict), which is not only indispensable but must also be effective and efficient, are required. Mediation can provide a huge positive side effect, which most often cannot be achieved by a formal penalty. Restorative justice and mediation offer cultured procedures of an efficient resolution of criminal conflicts and, in this respect, can become a source of resistance to the strictly penal policy. One must bear in mind that even though criminal law is conducive, to some extent, to the administration of restorative justice, it rarely makes it impossible as both independent resolution of a conflict between the parties and satisfaction of claims are possible even upon imprisonment of the guilty party. Upon rendering a conviction during mediation, emotions related to the crime and criminal proceedings usually subside, and specific needs of the parties become more apparent.

Ilona Michailovič hopes that the Lithuanian legislator will take account of the opinions of specialists investigating mediation and restorative justice upon conviction (safe mediation) and that mediation will become an actual instrument of softening the criminal policy, which can be applied in any phase of criminal proceedings. One must not forget, however, that the realisation of the restorative justice provisions depends, to a large extent, also on society's cultural specificity and features of its legal heritage. During communication between the parties, they share information relevant to both of them, present motives of their behaviour, express fears and claims, and emotional stress is reduced and certain mutual understanding and agreement is

achieved – even reconciliation in some cases. Thus mediation is, in a way, receiving something for something, and not just in material terms – also in moral, psychological and even philosophical terms.

The article by *Harald Wagner*, a Professor of Sociology at the University of Applied Sciences for Social Work, Education and Nursing (Dresden) of many years, is the last in the publication, even though it could be the first as well. He writes about the fundamental human rights of which social integration and inclusion form an integral part. It has been an intention to bring those readers, who will read the publication from its beginning to end, back to the dimension, which rises above specific issues. The establishment of appropriate grounds and principles enables the building of the system on these foundations, at the same time looking at what has been developed. The sociological approach is handy in this respect as it broadens the legal and/or criminological logic and opens other perspectives.

Etymologically, integration is something both very specific and interesting: in Latin, the verb *integrare* means 'to restore, renew, join together to form a whole', whereas in German *integrieren* means, generally, *'to join together to form something new'*. The etymological approach is interesting in that it reveals the mutual dimension; here we may recall the normative basics of the human rights in international documents: an inclusive society, i. e. a society that enables the maximum development of its members' potential and, due to desired inclusion, provides opportunities for individuals for a successful life – and such society depends on mutuality. This means that society, on its part, must provide opportunities for inclusion, and individuals must fulfil their duties related thereto (Article 29 of the Universal Declaration of Human Rights) in order to contribute to the formation of the community. One may draw an interim conclusion that integration is a process that promotes an inclusive society in which everyone – including offenders, migrants and disabled persons can use inclusion, in the course of their lives, at moments when it is important for them and when they wish this.

The authors of the publication hope that it will be interesting and useful to researchers of law, practitioners working in the area of the execution of sentences, politicians, students and everyone who is interested in the penal and penitentiary field. Each article is followed by numerous references to the literature that the authors relied on and which may be useful for those wishing to deepen their understanding of the issues concerned.