



For a fair penalties' system in Europe PES Justice Ministers Declaration – 31/05/2017

I. Introduction

In a European Union which is currently facing significant challenges in standing up for the implementation of the Rule of Law, the Party of European Socialists (PES) and its member parties have pledged to take a firm stance for the respect of fundamental rights and for guaranteeing equal justice to all citizens. In this context, we deem it necessary to **relaunch the debate on the function of penalties in our judicial courts** and at the same time give a strong social-democratic perspective to the discussions. Having such a debate gives us the opportunity to counter the rhetoric of conservatives and propose more efficient solutions to problems. By approaching this dialogue with a progressive and social-orientated mind-set, our reflection will inevitably address the key questions of **why, what and how to sentence**.

For a well-functioning society to guarantee the safety and security of its citizens, we consider it fundamental to have judicial sentences which are fair and proportional to the offence committed. In our view, it is absolutely necessary that any citizen found guilty of breaching the law should pay their debt back to society. However, in order to have a safe, harmonious and inclusive society, decision makers in the EU have the responsibility to ensure that the penalty imposed **rehabilitates** these offenders. When we re-integrate and rehabilitate offenders back into society, everyone benefits from a safe environment which enables all citizens to live in peace and exercise their own rights in freedom. Together with stronger preventive measures, rehabilitation has proven to be an efficient tool in cutting down reoffending rates. However, much remains to be done and for it to be successful we need to find out what the best practices are when dealing with this issue, which are the main obstacles in its implementation and finally what can be done at the European level to facilitate the process. This paper aims to provide the general framework and principles for fair penalties systems. The specific measures needed to deal with issues such as radicalization, terrorism and fighters coming back from war zones will be treated in another PES document.

II. Current concerns

The steep decline of our welfare state, combined with the growing social disparities and the expansion of 'austerity only' policies against the implementation of more progressive policies have led us to identify three major concerns.

First of all, we have seen the increase use of penal sanctions as direct responses to problems which are also of social nature, such as drug addiction, immigration or prostitution. The penal system cannot be the only solution to these problems and must be complemented by social measures.

This method has shown its limitations. For example first-time drug abusers should benefit from help and assistance to make a new start for a drug-free life, instead of mandatory convictions. In times dominated by debates over topics such as violence, radicalization and terrorism, the **request of society for enhanced security** has led the decision-makers to come up with clear answers to the citizens' concerns. Unfortunately these concerns were often met by implementing plain securitarian measures instead of a more holistic social approach. Once again, the results did not lower the feeling of insecurity nor the numbers of crimes committed in our countries.



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Party of European Socialists

10-12 Rue Guimard

B-1040 Brussels

Belgium

Secondly, for the past decades, lawmakers have intensely **widened the scope of penal interventions** in their legal systems, covering areas that formerly were not part of the criminal code. This worrying trend is particularly true for measures which are aimed at depriving persons of their liberties, thus leading to the increase of the so called “social” detentions. More dramatically, the application of longer and less flexible sentences for a greater number of persons has directly contributed to **the explosion of the prison population figures** almost everywhere in Europe. Jail overcrowding not only affects the physical, mental health and well-being of prisoners but it also tends to generate tension and violence between prisoners, putting the objective of rehabilitation in danger. In some European member states, the high numbers of prisoners has prevented the prison guards from efficiently monitoring the activities inside the institution. While figures do not always confirm the hypothesis, jail overcrowding could be a strong factor in permitting radicalized inmates to use their rhetoric into attracting new members to their ideology.

Finally, our third concern has its roots at the ways prison systems are currently functioning. When examining the legal sentencings throughout the continent, the first observation one can conclude is that the key notion of **“rehabilitation”** is constantly being brushed aside by the competent authorities and is rarely put into practice. Furthermore, in the few cases where penitentiary establishments are setting up rehabilitation programs, the process often fails at enabling prisoners to have a fruitful social reintegration. Due to a **lack of funding and correlated with a deficiency of skills learning proposals**, adult inmates exiting prisons do not have the possibility to enjoy a normal life. Because of that, citizens with a criminal record risk falling back into criminal activities and encounter difficulties in their rehabilitation process.

III. Progressive proposals

In light of these three concerns, several measures aimed at improving the current practices could be implemented by European member states.

1) Regarding the practice of penal sanctions we propose to:

- Intensify the reflection over whether penal sentences, and the punishments which follow from them, are the most appropriate solutions. Tools of educational, administrative or conciliatory nature **can potentially be of better use when resolving pending cases**.
- Increase use of **mediation of conflicts** and the **application of a restorative justice** when possible. Such an approach, focusing on the needs of the victims, the offenders, and the involved community, should run parallel and even prevail over strictly punitive forms of ‘justice’.

2) When it comes to the scope of sentencing we propose to:

- Avoid the repeated detention of people who are guilty of minor wrongdoings (misdemeanors). Instead, a lighter sentence accompanied by **community service and diversion and rehabilitation programs** would have a more constructive impact on society but also on the culprit.
- Privilege shorter and more flexible sentences for minor offenses. By promoting **alternative sanctions** to custodial sentences, giving the offender a chance to remain an active member of society during their sentence.

3) When it comes to preventing crime we propose:

- Intensify necessary steps to **create social cohesion**. The best way to prevent crime is by social measures that create a fair and equal society where people, regardless of social or economic status, are given the opportunity to influence their own future. This calls for a more active redistributive policy.
- Enhance efforts in socially deprived areas (often suburbs). Increasing gaps to the majority society when it comes to unemployment, sickness, education levels, crime and dependency of social welfare are also geographically defined. Targeted measures to these areas are needed.

4) When it comes to men’s violence against women we propose:

- Ensure that the **right legislative measures** are taken to fight domestic and sexual violence.



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- Improve the treatment of victims of these crimes. Victims are often hesitant to report crimes and many fail to carry out a full legal action. A **valid and respectful treatment** is of importance to both the individual victim and to the confidence of the judicial system.

5) Concerning the fundamental process of rehabilitation within prisons we propose to:

- The prison has to become an institution that **provides** inmates with the **necessary rehabilitation processes and tools**, such as education, training, social care, etc.
- Create individual plans of reintegration for the majority of inmates. These programs can contain educational, social and work related efforts.
- Transform the nature of prison in order for prisoners to smoothen their reinsertion in society after they have served their sentence. Specific programs enabling them to **learn job skills** should be a priority for their rehabilitation process. By acquiring working skills and receiving **vocational training** and technical and IT development courses, inmates will be better prepared for their life after prison.
- Implicate a wider range of sectors of our society when dealing with prisoners so as to give them a wide range of **opportunities when completing their sentence**, such as jobs, education and social networks. Such cooperation will not only help prisoners' better re-integrate society but also decrease the risks of re-offending.
- Stronger investment in **educational courses** inside prisons. In order to fight illiteracy but also improve employment opportunities on release, libraries and improved educational programs should be available in all prisons. In order to facilitate the integration of prisoners, classes teaching a proficient use of the spoken national language must be organized. Inmates should also have the possibility to participate in distance education offered by educational institutions from outside the prison system.
- Encourage **cultural activities** for prisoners to foster personal development and promote rehabilitation. Together with the development of other physical and communicative forms of expression, these measures will positively impact the daily life of those serving a sentence and their prospects after they are released.
- Stimulate **inclusiveness** between people of all backgrounds inside custodial institutions and prisons. It is essential that cultural and religious differences do not become factors of antagonism and violence which can lead to isolation and conflict instead of successful rehabilitation.

IV. Conclusion

While it is clear that an important work must be done in our societies to prevent people from entering the criminal justice system, it is imperative that in parallel discuss the ways sentences are applied by judicial systems and how rehabilitation programmes are implemented. In order to improve the inclusiveness and the well-being of the societies we live in, a fair and comprehensive justice system providing all the required tools for a smooth reinsertion of prisoners into society must be the norm. To help overcome the current concerns, the proposed actions previously mentioned in this text has the benefit of giving a much needed social outlook to a problem which was until now mostly answered by punitive measures. By affirming our will to privilege constructive social-democratic measures as opposed to the use of purely repressive actions, we can play a key role in the discussion over penalties in Europe. Nevertheless, the proposals are just part of a framework and several questions remain to be debated regarding the feasibility of applying such measures at the level of the European Union.

Signatories

Andrea Orlando, Chair of the PES Justice Ministerial network, Minister of Justice, Italy

Heiko Maas, Federal Minister of Justice and Consumers Protection, Germany

Owen Bonnici, Minister for Justice, Culture and Local Government, Malta

Francisca Van Dunem, Minister of Justice, Portugal

Morgan Johansson, Minister of Justice, Sweden

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