



Canadian International
Development Agency

Agence canadienne de
développement international

Canada



Conference: “Making our community safer: exploring new possibilities in criminal justice and prison system”

Sarajevo, 21-23 September 2005

CONFERENCE REVIEW AND EMERGING THEMES By Mr Roger Houchin, prison management expert

We started with introductory speeches from our sponsors, the Special Representative of the Council of Europe and The Canadian Ambassador. They each emphasised the seriousness with which they view the situation in our prisons and urged government, at all levels, to take steps to tackle the deteriorating situation as a matter of urgency. They explained the importance of the work of the conference for them in helping them shape their discussions with government.

The two conference chairmen, Mr Raguž and Mr Österdahl, emphasised both the inevitability of change and the possibility of shaping that change for the general good. They looked forward to the conference injecting momentum into the country's programme of prison reform and the development of criminal measures.

Contributions from Mr Šain and Mr Simović then described, respectively, the current concrete and legal situations and gave summaries of the challenges we now have to face. One part of Mr Simović's presentation I found particularly important. He stressed that legal harmonisation, even if it were achieved, is no assurance of equality of treatment before the law that is constitutionally guaranteed by Bosnia and Herzegovina (BiH) to all her citizen's. Law sets a framework but between law and practice there is a large gap, determined by policy, legal interpretation and tradition. Even within a framework of harmonised laws, BiH would not be able to guarantee its constitutional duty to its citizens.

The issue of the gap between current legal provision and concrete practice is the first of the main themes emerging from the conference that I would wish to highlight.

Those introductory contributions set the scene for our first working group sessions. These were in groups broadly representative of occupational and professional roles. For me, there were two striking outcomes from the session. Firstly the seriousness, energy and discipline that each group brought to their work. This set the conference off in a most positive way. Secondly, it was striking how similar were the conclusions from a very diverse range of participants.

I think there was an overwhelming consensus in the groups about the main driver of the need for development and the issue most in need of reform.

My second theme is this issue of the disabling effect of the fragmentation of law, institutions and organisations consequent on the persistence of the constitutional settlement reached at Dayton. I shall return to this in my concluding summary.

There was also another underlying theme from these first working groups, however.

Behind the discussions of each of the groups was expressed a deep concern that the present situation leads to injustice and an inability to respect individual rights. This deep concern for justice, this professional frustration felt throughout the room of people who take pride in their responsibilities and the values embedded in the our culture but are unable in the present circumstances to work to their own standards. That pervasive ethical concern was widely commented on by international participants and permeated the conference.

On Wednesday afternoon we heard Bertel Österdahl and Professor Škulić. Our Chairman fully demonstrated why his contribution is now so widely sought wherever in Europe people are serious about

reform and justice. Reform will not happen here, was his key note, without vision, leadership and courage. The system of government in Sweden is such that, if the right person is at the head of, in his example, a prison system that person can, with the right style of strategic leadership, bring about massive change.

Bertel's contribution, in my mind raised a fourth theme: the need for the creation of a structure that separates the political function of policy formulation from the managerial task of implementation. In Sweden, the Minister of Justice can say to the head of the prison system "bring about massive change" and "save money". When he has said that he can stand back and, ensuring that the head of the prison service has the necessary authority and resources, can leave him to take whatever steps he considers necessary to achieve the policy. Our Assistant Ministers here – and especially Mr Bisić, with his responsibilities for setting the standards and the framework towards which the systems in BiH must converge - are in positions that resemble that of Mr Österdahl; but how different their circumstances are.

Without a clear political agenda to work within and disabled by lack of resources or support, they will need to show greater bravery and leadership skill than even Mr Österdahl was able to describe.

Professor Skulić gave us a very frank description of the situation in Serbia. They have made progress with a number of reforms but are still falling below the standards to which they are committed.

That introduced for me the next theme: the need for absolute honesty (and openness to the analysis and criticisms of others) in our examination of our own performance. That is not something that is easily done in public. But in private that process of critical self-examination needs to be taken forward. Everyone in this conference has their own responsibilities. For each there is an opportunity for leadership. Effective leadership, to be positive, demands a willingness to be totally honest in recognising where change, for the general good, is necessary.

The situation in the penal field is rapidly becoming more challenging. That immediately places two obligations on each of us: firstly to improve our communications with all those with whom we have to work – our bosses, our employees, our public, those working in related occupations and professions; and secondly to be as frank with ourselves in our examination of the performance of that part of the process for which we area accountable as Professor Škulić was in his description of Serbia. Take those two actions and we will have a reasonable prospect of meeting the challenges we face. Fail to take them and the circumstances will certainly flood over us and overwhelm us.

The discussion that followed shifted from the grand themes of the morning to the identification of particular issues and consideration of how they might be tackled. Groups identified a number of specific issues where reform is necessary:

Classification of prisoners and prisons;

Decent and effective treatment of groups of prisoners with special needs or presenting special problems: women, juveniles, the mentally disordered, those serving long sentences, those who present difficult control problems;

Making the parole system work as the law intends;

Implementing a full range of community sanctions;

Reliable and well-conceived staff training;

Independent inspection;

The development of research and statistical reporting; policy and strategy development.

Each group recognised that it had a contribution to make to this.

But each group strongly asserted the next theme that I would wish to identify: the need for government, in the form of the Ministry of Justice, to take heed of the need for reform and to take a clear lead in steering and empowering those charged with implementing the required changes.

Day 2 started with presentations by Professor Tubex, Vildana Vranj and Saša Rajić. Hilde Tubex gave us a very clear framework within which to consider the implementation of non-custodial sentences. Vildana and Saša then described the situations in BiH and in Croatia. From the latter two presentations we saw in bold relief the gap that exists between legal and concrete provision – but from Saša we learned how in a colleague jurisdiction significant progress has been possible. Importantly, we learned that there already exists a substantial framework of community measures. The task now is to bring about progressive concrete progress towards what the law foresees, particularly as regards Community Service and Suspended Sentences with Supervision.

Hilde Tubex put down a different challenge. Community measures should not be seen, she argued, simply as a humane option for lower end offences, a soft alternative to a sentence of imprisonment. Community measures should be at the forefront of the minds of legislators, policy makers, prosecutors, judges and parole commissioners; for their relevance, their effectiveness, their economy and their justice. Too often they are seen simply as a means to ameliorate the offenders punishment: rather they should be seen as constructive and positive disposals in their own right.

Before considering the responses of the working groups I shall comment briefly on yesterday afternoon's presentations. Hilde Tubex this time was talking about parole. Her message, subsequently eloquently re-asserted by Mr Marić, was similar to the morning: parole should not primarily be seen as a reward, looking backwards to the prisoner's past, but as an opportunity to work positively with the prisoner to achieve successful, contributing and benefiting re-entry to the community. Like community measures, parole, is an opportunity to promote public safety. She also asserted the need for parole to be conducted within the requirements of the law; on time and against stated criteria.

Larry Motiuk gave us a vision of the future. Canada leads the world in its commitment to the development of an evidence-based criminal justice system. No-one can have failed to be impressed both by the scope of their evidence gathering and the evidence he was able to give of its effectiveness. This was a "Star Wars" performance, not something we might hope to be able to implement in BiH in the immediate future but a glimpse into the range of work and experience that is available elsewhere.

What is most encouraging is that we hope to continue working with Larry for some months in BiH. There have been repeated references during the conference to the need for effective assessment methods. CoE hopes that we will contract with Larry to work with a group of interested members of staff here to develop, introduce and train an assessment system tailored to the circumstances of BiH.

The first thing I should report from the conclusions of the working groups was their strong assertion of the need to fully implement a programme of community measures (and I think I can include parole within that assertion).

There was another part of the discussion, however, that also particularly interested me; and the intervention of Mr Adamović.

Hilde Tubex had mentioned mediation in her presentation. In Western Europe we see that as a modern innovation. The reference, however, clearly aligned with the thinking of many participants. 3 of the working groups referred to it in their feedback as an approach that aligns with Bosnian culture. Mediation – and other non-judicial processes - point to two further themes that I think emerge from the conference.

Firstly, there are responses to unwanted behaviours that can exist outside the criminal justice system. How much more constructive it is, if there is violence between members of the public or if a member of the public has been stealing, that a means is found to repair the damage and to confront the participants with the consequences of their actions than that we go through the sterile and damaging process of prosecution, trial and custody. And how much more affordable.

Which brings me to the intervention of Mr Adamović. Mediation may be a modern innovation in the western world but it is a well established process of social control and reconciliation in many societies, with greatly more effectiveness in resolving social discord.

The two themes that I would identify from this phase of the discussions are, firstly, that there is scope to develop institutionalised responses to unwanted behaviours that are outside the criminal justice system and that these may well be more socially valuable and are certainly more affordable

than criminal prosecutions and, secondly, that in considering developments in BiH the government should not look only to the western world but should consider developments from elsewhere that might well align better with the country's cultural and economic circumstances.

Finally, this morning, we heard from Arthur de Frisching. I was struck by how elegantly his presentation brought us back to issues that had been raised on the first morning by Bertel Österdahl and explored a theme that had recurred throughout the conference: leadership, strategy, staff competence and development. He returned also to an issue first raised by Hilde Tubex and subsequently explored in a number of discussion groups. This is the issue of the need for public accountability, the duty on the prison system to educate the public and the opportunities that exist in running a prison system to do so in a way that involves members of the public and non-governmental organisations more fully.

I shall use a word employed by Mr de Frisching in drawing attention to this theme. He argued that prisons need to be 'permeable' to the communities in which they are situated. This general observation covers 3 distinct issues that were debated. The first is a conceptual issue: that prison should be seen as just one disposal amongst many, the others of which are executed in the community. The normal way of responding to crime should be in the community with imprisonment reserved for only the most offensive and threatening of crimes, and then only for that portion of the sentence necessary to mark society's offence or to give public protection. The second is the duty on the authorities responsible for the execution of sentences to educate the public about their work. The third is the opportunities that exist for prisons to invite other departments, voluntary organisations and the public to contribute to their work.

The thrust of Mr de Frisching's presentation, however, concerned the absolute necessity, if the institutions that execute criminal sanctions are to develop, to have clear leadership at the top and a skilled and flexible workforce charged and empowered to deliver the vision of that leadership. That theme was pursued in the working groups where there was a strong recognition of the need for comprehensive and continuing training. The workshops also reported some experience of working with other organisations and communities. They recognised opportunities to expand them.

Attention was drawn earlier to the theme of the need for the government to take a clear lead. This was developed by this part of the conference by discussion of the need for the senior staff of the prison system to demonstrate leadership and for all staff to be selected and developed to be able to demonstrate the skills they need to move the service forward.

In concluding the substantive part of the conference Mr Fejzagić accepted the invitation to add his comments. He referred to the situation in The Federation of Bosnia and Herzegovina (FbiH), explained the problems of leadership inherent in the very small central authority that he – by himself – represents and advocated moving towards a single prison system. He illustrated the need for this by reference to the unacceptable circumstances in which juveniles, women and the mentally disordered are presently imprisoned. He paid tribute to the quality of work, in difficult circumstances, of the prison directors.

.....

The **main themes** that for me have emerged from the conference, then can be summarised as follows:

- The wider political and executive situation that exists in Bosnia and Herzegovina is at the root of a chronic and deepening problem in the area of criminal justice:
 - There is fragmentation of legislation resulting in inconsistency
 - There is fragmentation of organisation leading to inadequate capacity
 - There is a wide gap between the requirements of the law and what happens in practice
 - There is inadequate political interest in the just execution of criminal sanctions and measures

- These problems can only be solved by government
 - Ministries of Justice, and particularly the BiH Ministry of Justice, must take a lead if the situation is to be improved
- The outcome of the political situation is a denial of justice in the treatment of crime. This denial of justice is profoundly unsatisfactory for those employed in the agencies of criminal justice.
- If improvements can be made to the political and administrative situation, improvements will also be necessary in the agencies that execute criminal sanctions and measures:
 - Honest and evidence-based assessments of current and developing performance will have to be undertaken
 - Senior staff will have to be selected and continuously developed both in their professional skills and in the skills of leadership
 - The work requirements of all staff will have to be clearly communicated and systems for continuous training and development of staff introduced.
- The existing reliance on criminal justice and custody as responses to unwanted behaviours is both ineffective and expensive. It will not be possible to develop an effective, affordable system that meets ethical and humane standards without substantial re-assessment of how the country responds to unwanted behaviours. The opportunities that exist to develop more affordable, relevant and effective responses need to be pursued.
 - Responses can be developed outside the criminal justice system:
 - Non-judicial mediation might be developed as an option available to prosecutors. For a range of offences, criminal prosecution might only be available where mediation has failed.
 - Where behaviours that otherwise would be criminal are committed by the mentally disordered, the response could be outside criminal prosecution. Where detention is necessary for public protection this may be by a civil order and contingent on the health of the person concerned.
 - There exists a critical need for the development of community educational and disciplinary measures, as foreseen by the law, as a response to offending behaviour by children.
 - There is scope for developing the contribution made by agencies, organisations and individuals outside the criminal justice system in the execution of criminal sanctions
 - Within the criminal justice system measures in the community should be seen as a normal response to crimes. Imprisonment should be reserved for when the extreme seriousness of the offence requires it or as public protection against someone objectively assessed to present a continuing threat.
 - The range of community measures foreseen in existing laws should be implemented. Of particular importance are Community Service and Suspended Sentences with Supervision. This requires:
 - Implementing regulations need to be introduced
 - Social Welfare Centres need to be adequately resourced to execute the supervision required.

- The parole system should be made to work as the law intends. It would be working as intended if a significant number of prisoners were being released for periods of time up to $\frac{2}{3}$ or $\frac{1}{2}$ of their sentence and were subject to effective supervision when released. This requires:
 - Bringing entity law into compliance with BiH law – and further development of BiH law.
 - Introduction of practice – both in prisons and by the Parole Commissions that is in compliance with the new law
 - Adequate resourcing of Social Welfare Centres
- There is a range of specific matters in the execution of criminal sanctions and measures that causes particular concern:
 - The unacceptable conditions of custody of women, juveniles and children
 - The unacceptable conditions of custody of mentally disordered offenders
 - Inadequate provision for the assessment of prisoners
 - The absence of independent inspection of prisons or independent grievance resolution
 - Inadequate investigation of allegations and incidents
 - The absence of accommodation of a standard of security adequate to house long term or disruptive prisoners
 - The unavailability of community supervision of offenders
 - The very limited use of release on parole and the absence of provision for community support of those released
 - The absence of a systematic staff training system
 - The absence of effective systems for recording statistical or other data on the operation of the criminal justice system
 - The absence of research into the execution of penal sanctions
 - The absence of coherent development of penal policy