



Co-funded by the
Erasmus+ Programme
of the European Union

Exploring the disconnect between prison education as a human right and the rules governing its provision linked to programmatic failures

Introduction – laying the groundwork

The Council of Europe's 17 recommendations on prison education¹, originally published in 1989 and currently being reviewed by an independent group of experts led by James King (Head of Education at the Scottish Prison Service) on behalf of EuroPris, unambiguously state that access to education in prison is a fundamental right. Underpinning this statement, the recommendations refer to the evidence that prison education aids the 'humanisation' of prisons and also represents an 'important' way of returning offenders to the community at the end of sentence. The key point is 'right to education'. That notwithstanding, it is only a set of recommendations.

The Council of Europe's 2006 Prison Rules, which is in reality also a set of recommendations, recommend that all European prisons are required to provide offenders with access to education programmes in accordance with individual need. Additionally, and just as importantly, education shall have no less of a status than work. In a recent report by the Secretary General of the Council of Europe to a Ministerial Session in May 2019², we are reminded that the European Social Charter guarantees education as a right for Europeans (there is no distinction between 'Europeans' and 'European prisoners', and note that not all member states have accepted the full contents of the Charter (as of the time of writing). Together with the European Convention on Human Rights, these constitute the major legal instruments of the Council.

Addressing the 'Education Problem'

So where are we in the 21st Century? Re-offending rates are spiralling across many member states, as is prison over-crowding. In a recent judgement by a Dutch judge (May 2019)³, a prisoner subject to a European Arrest Warrant was barred from transfer to a prison in England on the basis that the

¹ Council of Europe Committee of Ministers Recommendation No R (89) 12 of the Committee of Ministers to Member States on Education in Prison (1989).

² Jagland, T. (2019). Ready for future challenges – reinforcing the Council of Europe. Report by the Secretary General for the Ministerial Session in Helsinki, May 2019. Council of Europe.

³ <https://www.prison-insider.com/en/ressources/enquetes-reportages/en-europe-plus-de-pression-sur-les-droits-des-prisonniers> Accessed 26.09.19

conditions of detention could pose a real risk of inhumane and degrading treatment. This highlights the persistent disparities between member states' conditions of detention in prison institutions.

Prison education cannot be approached as the 'perfect remedy'⁴ to resolve all of these problems. The evidence, though, is clear that *effective* prison education can contribute meaningfully to improvements in offender behaviour and mental health whilst in detention, reductions in recidivism, and in facilitating a more positive, sustainable re-integration of offenders back into society on release⁵. Education, from these directions, is consequently seen as transformative. According to its architect Jack Mezirow, transformative education is focused on the cognitive processes of meaning-making and is specific to adult learning. Adults learn through making sense of experience, and through this sense-making, individuals or groups may effect change in their beliefs and /or attitudes. The earlier emphasis on 'effective' is intentional, and prescient.

If education has the potential to play such an important and positive role, why are we still seeing an increase in rates of re-offending, and reports of mounting prison violence in some institutions? There are multiple often inter-connected reasons behind these trends including prison over-crowding and accounts of appalling conditions. But even here, in these kinds of conditions, evidence suggests that education can be a significant factor in helping offenders to cope with incarceration⁶, and as creating a 'safe space'⁷.

The argument made here is that the problem is two-fold. First, there is the disconnect between embedding prison education as a human right and prison education as an 'administration', and as such is the subject of prison rules. Second, that the education provision that is currently available in prisons is not necessarily addressing the specific needs of learners – it is not *effective*. For instance, the provision of what is in reality a school curriculum intended for children is wholly inappropriate for adult learners. There is also an apparent obsession with low level basic skills education (e.g., literacy and numeracy) as standalone instructor-led topics, with the resulting absence or reduction of Arts, for instance, from the available programme. To quote Taylor's arguments in his paper for the Prisoners' Education Trust: "There is no evidence to suggest that teaching of basic skills adequately meets the learning needs of prisoners or by itself leads to employment," (2014: p4). In short, current provision is both an administration and, far from being transformative, it is in fact didactic.

Why the obsession with basic skills? Clearly, one influencing reason is the reported low rate of basic skills amongst prison populations, with one 2013 report written for the European Commission concluding that basic skills education is critical to offender re-integration, but which also advocates an alternative education provision to that of traditional mainstream.⁸ More recently, Coyle and Fair

⁴ Interestingly, the phrase 'perfect remedy' is a popular lyric in contemporary music, often linked to love and drug use, but seldom connected to education!

⁵ For instance, Coates, S. (2016). *Unlocking Potential: a review of education in prison*. London: Ministry of Justice; Knight, V. (2017). *Digitizing the Prison: the light and dark future*, *Prison Service Journal*, 231: 22 – 30; Auty, K., Taylor, C., Bemmally, M. and Champion, N. (2016). *Involve, Improve, Inspire: Evaluation of a Learner Voice programme piloted in eight prisons to develop rehabilitative cultures*. Prisoners' Education Trust; Szifris, K., Fox, C. And Bradbury, A. (2018). *A Realist Model of Prison Education, Growth, and Desistance: A New Theory*. *Journal of Prison Education and Reentry*, Vol. 5 No. 1, June 2018; Baranger, J., Rousseau, D., Mastroilli, M and Matesanz, J. (2018). *Doing Time Wisely: the social and personal benefits of higher education in prisons*. *The Prison Journal*, 1: 24.

⁶ Taylor, C. (2014). *Brain Cells: Listening to Prisoner Learner 3rd Edn*. Prisoners' Education Trust

⁷ Szifris, K., Fox, C. And Bradbury, A. (2018). *A Realist Model of Prison Education, Growth, and Desistance: A New Theory*. *Journal of Prison Education and Reentry*, Vol. 5 No. 1, June 2018

⁸ Hawley, J., Murphy, I. and Souto-Otero, M. (2013). *Prison Education and Training in Europe: current state-of-play and challenges*. GHK: European Commission

(2018) report how many prisoners have low levels of social and education skills, with many coming from ‘society’s marginalised groups’.⁹

The SkillHUBS project is specifically designed to address the issue of provisioning for adult learning whilst at the same time mediating a more imaginative and effective approach to basic and transversal skills teaching and learning. The distinctive methodological model of teaching and learning that has been developed through the SkillHUBS project is currently being piloted in prison institutions in Europe. Called ‘the Engine’ this is a transformative, co-creative model grounded in theory of change. But, what of the legislative disconnect mentioned earlier?

The current legal landscape on prison education in Europe, and consequences for education

As part of the SkillHUBS project, the Learning and Work Institute¹⁰ researched the shape of the legislative landscape as it affects prison education in Europe. Superficially, this is a well specified and focused simple research task, involving the discovery and accumulation relevant texts for all 28 member states. Several months later, having exhausted most if not all avenues including online platforms operated by the EC itself and many others, having engaged with some of the leading legal experts in Europe, other researchers in the field, senior officers in relevant parts of the public sector, and issued calls for information through various channels, it has become clear that this ‘simple’ task is anything but. If one had limitless resources, including people with multiple languages, and direct lines to the national judiciaries for every nation, then it might be achievable. But even then, one would also need to deal with the complexities of some nations devolving authority and policy setting to regional level. It is worth noting one useful source of information regarding prison conditions in countries around the world, some of which do make reference to conditions and rules on prison education (although care should be taken regarding the currency its content) is Prison Insider.¹¹

What we have been able to uncover, which in itself is a substantial amount of information, testimony and evidence, indicates a considerable level of diversity and variation in the approach to and treatment of education in prisons across Europe. In general, education in the prison context is seldom treated as a fundamental human right. In King’s recent review of the original Prison Education Recommendations, and which draws on an extensive survey and analysis of prison education practice across Europe, there is a general and widespread lack of compliance with those Recommendations, with education more often than not characterised as a privilege.¹² Alongside these findings, and perhaps as a viable reason for them, King finds multiple definitions of what constitutes education, and its purpose.

So, rather than seen as a human right, education is more likely to be the subject of prison administrative rules determined by strategy or policy, and which are often open to interpretation depending on the prevailing local conditions. There are few examples where prison education is the subject of national law or regulation, although this is potentially unrepresentative of reality given the

⁹ Coyle, A. and Fair, H. (2018). A human rights approach to prison management: handbook for prison staff, 3rd edn. London: Institute for Criminal Policy Research

¹⁰ The author, Lesley Crane PhD is an Associate with the Learning and Work Institute and leads on the Institute’s contribution to the SkillHUBS project.

¹¹ “Countries”, Prison-Insider [Online]. <https://www.prison-insider.com/en/pays>. Accessed 29.09.19

¹² King, J. *et al.* (2019). Final Draft Report on the Review of European Prison Education Policy and update of the Council of Europe Recommendations on Prison Education (1989). EuroPris. [In Press].

research limitations. Irrespective of what the governing articles are called, ultimately their objective is to establish a framework of rules to be followed.

This raises a question. If the rules governing education in prisons do not explicitly refer to education as a ‘fundamental right’ – that is, if their purpose is not to ensure that prison offenders are afforded education as a right – then what is their purpose? Based on the information and evidence gathered, the primary purpose of education in prisons is to reduce the burden (financial as well as human and societal) of re-offending by equipping offenders with the relevant skills necessary to be able to gain purposeful and positive employment on release.

The conclusion that can be drawn is that, while it is certainly not in any way misguided to connect education to employability and consequently to reduced re-offending rates, the rules applicable to prison education serve as a deterrent to its *effectiveness*. As Dame Sally Coates categorically argues in her insightful, definitive and unequivocal report on public sector prisons in England (2016), education in prison must be holistic and, by implication, must address the distinctive learning needs and preferences of adults (within the adult prison education). Given that three-fifths of offenders in England leave prison without any ‘identified employment, or education or training outcome’ – a picture that is likely to be reflected in many other EU states – it is abundantly clear that the present approach to education as the subject of administration rules, and misguided by far too much emphasis on instructing on basic skills, is failing staff, society, offenders’ families and offenders themselves.

There are moves to change. In a recently implemented framework for prison education in England, education is given a reformed purpose: “Education in prisons aims to give individuals the skills they need to unlock their potential, gain employment and become assets to their communities. It should also build social capital and improve the wellbeing of prisoners during their sentences and once released.”¹³ In Romania, the law of 2013 categorically states that education is a right for offenders.¹⁴ In both cases, however, these intentions are made the subject of availability and ‘possibilities’. By contrast, the Scottish Prison Services’ Learning and Skills Strategy 2016-2021 embraces a ‘person-centred’, holistic approach with the intention of delivering “high quality, creative and flexible learning opportunities to meet the changing needs of the population.” Significantly, there is no mention of an emphasis on employment skills. Again, in contrast, a recent review of offender education in Wales by the Rt. Hon. David Hanson MP¹⁵ makes 22 recommendations with a ‘pathway to employment’ at its centre, along with basic skills education.

The SkillHUBS project referred to earlier will complete its pilot projects for reforming prison education at the end of 2019. The Engine model prioritises a whole-person approach to education, emphasising individuality and a co-creative, transformative approach in which adult learners share in their own development and learning. In this model, basic and transversal skills are embedded to broader topics and themes and made implicit to vocational training and contexts. Should the pilot results prove positive, there is every expectation that all EU member states will embrace this model, and recognise the contribution that SkillHUBS and its team of experts in prison education have made.

September, 2019

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¹³ Prison Education & Library Services for adult prisons in England Policy Framework, 2019, Ministry of Justice.

¹⁴ Law No 254 of 19 July 2013, Chapter 5.

¹⁵ Hanson, D. (2019). Reforming Outcomes – a review of Offender Education in Wales. Welsh Government.