

What is the future for International Developmental work in the Criminal Justice field?

Discussion paper

Background

Introducing probation was one of the most significant novelties in the criminal justice systems in the Central and Eastern Europe. Countries like the Czech Republic, Romania, Bulgaria, Hungary and, more recently, Slovakia and Slovenia have developed new probation services, since 2000, mostly to decrease the number of prisoners but also to enroll in what can be called a Europeanization process (van Kalmthout and Durnescu, 2008). Meanwhile, probation services in the Western part of Europe went through very deep and sometimes painful reform processes. The National Probation Service in England and Wales in particular embarked on one of the most intriguing organizational experiments, called 'Transforming Rehabilitation' (June 2014), where two-thirds of the service market share was transferred to the private sector (Burke and Collett, 2016). In April 1999, probation services in France were amalgamated with the prison system, forming the current *Service Pénitentiaire d'Insertion et de Probation* (SPIP) (Pelissier and Perrier, 2008). Since 2014, the Probation Service in Italy was reformed by following the experience with the juvenile services in a new organizational structure called *Dipartimento per la giustizia minorile e di comunità*¹.

At the working ideology level, several transformations could be noticed in the last 20 years. While some of them are more localized in different areas of Europe – such as working with violent extremists (in Belgium, France, England & Wales), or working with mental health issues (The Netherlands) – others can be seen as more common among the probation services in Europe.

One of the most visible common trends among the European Union (EU) jurisdictions is the concern for the risk-needs-responsivity model of practice. With different speed and sometimes with different accents, all countries in the EU started to use a language that is specific to this paradigm: e.g. risk assessment, cognitive-behavioural interventions, programmes etc. Moreover, more and more methodologies and micro-practices started to travel from one jurisdiction to another: e.g. rehabilitation programmes (such as drink driving, anger management), risk assessment tools and so on.

Some other less obvious trends can be also observed in the EU as far as probation practice is concerned: e.g. the tick-boxing culture, more and more managerialism, more and more electronic monitoring and so on.

¹ https://www.giustizia.it/giustizia/it/mg_12_4.wp

Probation developments in the Eastern Europe were determined by the transition from the communist regime to democracy and also by the EU accession process. This process implied also a different approach to human rights and also to the use of prison sentences. The Council of Europe and the European Commission were extremely influential in setting up and developing probation services in the Central and Eastern Europe. While the Council of Europe played a more political and technical role in this sense, the European Union played a more pragmatic and financial one. In other words, by promoting different Recommendations [such as Rec.(2010)1 on the European Probation Rules], the Council of Europe set up effective European standards in establishing, running and also practicing probation across European jurisdictions. Moreover, the European Court of Human Rights and the Committee for Preventing Torture placed an indirect pressure on European countries to reform their punishment systems by favouring more and more community sanctions and measures against the imposition of prison sentences.

On the other hand, the European Commission, through its individual country reports, encouraged and monitored the progress in setting up embryonic probation systems in different parts of Europe. Furthermore, it created strong mechanisms – such as the Phare Programme or other pre-accession tools – that assisted the new democracies to learn from the old ones how to develop, organize and manage the new justice devices.

In this respect, European Commission has created one of the largest penal policy transfer platforms known in the history of the EU. Through its pre-accession and transition tools, many Central and Eastern European countries have developed probation services, put in place training systems, implemented rehabilitation practices and so on. In this respect, probation services from England and Wales and Netherlands played a significant role as ‘lending states’ in EU, first riding their national funding programs such DFID (UK) and Matra (NL) and later being very successful in accessing EU funded programmes.

Norway and Sweden also used their own national programmes (NORLAU and SIDA) to contribute to the probation development. However, their influence seems to be more at the periphery of the EU, in countries like Moldova and Ukraine.

Developments in the Western Europe seemed to be more isolated from the rest of Europe. Most of the reforms in these jurisdictions seem to be internally generated, either by political drivers (as in England and Wales or Italy) or by a specific crisis (in Belgium).

Most of these international developments were influenced by different factors, in different locations and at different levels. There was no single point of influence in Europe as far as probation development was concerned. However, England and Wales seemed to play a significant role.

Strengths and weaknesses

One of the most obvious strengths of the existing mechanisms is the incredible rhythm of probation development in the EU. Some countries developed their probation services in just 10-15 years, while in countries with long probation

tradition it took more than 100 years. Benefiting from foreign expertise helped the young probation services avoid important mistakes that countries with longer experience made in the past.

At the same time, the simple adoption of existing arrangements led also to some mistakes. For example, some policies or practices were transferred from one jurisdiction to another using the 'copying' strategy rather than emulation or hybridization and synthesis (Dolowitz and Marsh, 1996). This is how the probation order landed in the Bulgarian legislation and the UK's OASys assessment tool started to be used extensively with very little validation or adaptation in Eastern European countries. In most cases, these errors could be attributed to so called experts, who were only familiar with their own system of probation and were not always flexible enough to adapt or innovate in response to the 'receiving state's unique needs, features and traditions.

Another important mistake is that most of these probation international developments are time-limited and project based. When the sustainability strategies were not solid enough, the new developments faded away once the projects ended. This is how, for example, commendable management approaches, restorative practices or COSA (Circles of Support and Accountability) have ceased to exist after the project's lifetime.

Conclusions

Looking at the recent developments in the probation field, we could conclude that we live in a complex world with multiple poles of influence.

It can be safely anticipated that the European Commission and the Council of Europe will continue to play their critical roles at the macro level by setting up standards and pushing towards more penal harmonization. The last framework decisions (FD 2008/947 and 2009/829) are signalling in this direction. For example, according to these two framework decisions, all EU Member States have to be ready to implement certain probation decisions, alternative sanctions or supervision measures. In case they do not have them regulated in their own jurisdictions, they need to adopt them in order to create the premises for mutual recognition.

At the same time, both organisations are likely to continue to support research and development projects that will contribute to modernizing probation organizations and practices. As we speak, the European Commission is debating over a new recovery and investing program – Next Generation EU – with a financial firepower of 1.85 trillion Euro. As mentioned by the European Commission President, this plan will support 'European Green Deal and digitalization'².

Due to Brexit and the current internal turmoil in the National Probation Service, it is possible that the place of UK as an important source of probation and community justice know-how will be taken over by other European countries

² https://ec.europa.eu/commission/presscorner/detail/en/ip_20_940

with strong probation systems and solid strategic orientation – e.g. Netherlands, Sweden or Norway.

All these countries could mobilize both European resources and national programs to disseminate their expertise – Matra, SIDA and Norlau. They have already important previous experiences in countries such as: Croatia, Moldova, Ukraine, Montenegro, Serbia and so on.

Some of them are taking serious steps towards innovation and this will make them more and more attractive for other jurisdictions. Sweden is quite active in developing RNR (risk/needs/responsivity interventions) in partnership with the Canadian Correctional Service. Netherlands is making significant steps towards the use of technology in probation practice and training (e.g. use of apps or animations).

England and Wales could continue to play an important role in international development work if it continues to invest in innovation. UK universities are very strong in research and innovation. If they continue to be supported financially, they will be able to produce knowledge that can be ‘exported’ to other European countries. As EU funds will not be accessible to UK – at least for a while – it could be helpful for the UK Government to identify other streams of funding for this type of work. CEP membership could be also strategic for England and Wales in order to maintain and expand its participation at the European level.

As it was observed during Covid-19 crisis, technology has an important potential that can be used also in the probation field. Technology, innovation combined with the human ‘touch’ could create new possibilities for international development work in the future.

References

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