

# Evaluation and the future of probation services in Baden-Württemberg, Germany

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## ABSTRACT

The arguments for using evaluation to inform policy decisions are well made, but the decision making process is complex and can involve factors outside of the policy makers' control. This paper describes the recent experience of the Ministry of Justice in Baden-Württemberg, Germany which commissioned an extensive evaluation to inform the decision about the future of probation services in the State. Ultimately the evaluation did not play a part in the policy outcome which was the result of a High Court decision, out of the control of the Ministry of Justice.

## I. BACKGROUND

The German probation system is decentralized. There are sixteen different probation services, one in each federal state. With around 3,000 probation officers supervising over 150,000 offenders, probation services (also called 'social services in the criminal justice system') represent a bigger institution than the correctional service. While federal law regulates the legal tasks and functions of probation staff in all of Germany, "rules dealing with organization, local and regional authority, operating standards and the selection and recruitment of staff fall within the responsibilities of the individual federal states" (Kalmthout and Durnescu, 2008).

In 2002, under a Liberal Conservative Government (CDU/FDP), the former Baden-Württemberg Ministry of Justice (BW MoJ) began a reform project to modernise probation services. One of the project's working groups was dedicated to the question of whether or not probation services could be delegated to a private company. Before any conclusion of the working group could be reached, the Ministry decided, in 2003, to pilot the privatisation of the service in some local court districts and in the following year extended this to all courts districts. The restructuring process had some legal difficulties<sup>1</sup>, but after two and a half years privatisation officially started on the 1st January 2007 with the contract awarded to Neustart gGmbH.

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<sup>1</sup> There were legal breaches concerning the privatisation process, see Regional constitutional court (*Staatsgerichtshof*) Decision, 11 October 2007 (GR 1/07) and Administrative court (*Verwaltungsgericht*) Sigmaringen (6 K 512/07).

In 2013 the BW MoJ initiated an evaluation of the privatisation of the probation services to inform the continuation of this contract which was scheduled to end in December 2016. Several research methods were chosen according to the evaluation's objectives. The following questions needed to be addressed before making a decision on either writing a new bid, ordering contract modifications from Neustart, or giving the management and the execution of probation services and measures back to public authorities:

- Have the legal requirements been fulfilled?
- Have the professional standards been complied with?
- Is the organisation structured as requested?
- Is the system economically efficient?

The evaluation consisted of quantitative analyses of Neustart internal figures and public statistics undertaken by the BW MoJ and Neustart, qualitative aspects undertaken by a University Research Team and a survey of Neustart staff undertaken by a private consultancy company. A report of the evaluation was completed in 2014.

## **I. THE EVALUATION**

The qualitative evaluation required checking the quality of the work of Neustart. Specific quality standards were developed for this work from relevant literature, quality standards used in other German Länder, and international documents. The quality standards used in the evaluation included the prevention of reoffending through support and control, and the assessment of three phases of work: the start phase comprised of structured activities, first contact, work alliance and work plan; an ongoing phase of support and control which included work with civil society, compliance with regulations and behaviour; and a final phase of concluding interview, 'risk, needs, responsivity' approach and reporting. The evaluation team compared these quality standards with the practical activities of Neustart to assess whether they were implemented. The main research methods applied for this part of the evaluation were file analysis, focus groups, an online questionnaire, and a survey conducted between April 2012 and July 2013.

The effectiveness of probation services was assessed by the analysis of figures produced from a number of sources. These included data from the Federal Office for Statistics<sup>2</sup> on the number of measures and sentences supervised by probation services; statistics on probation, court orders' supervision, and mediation measures provided by Neustart; and an electronic manual for quality standards and probation officers' client files also from Neustart.

A review was undertaken of 50 closed cases chosen at random from the 8,545 probation cases closed in 2011, 40 of the 3,306 closed court orders' supervision, 20 of the 1,250 closed mediation cases in 2011 and 20 from the 1,602 closed in 2012. Cases were evaluated with the help of a data entry form developed by a student in social work and a lawyer, each category of the data entry form was discussed and chosen by both evaluators. Some results

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<sup>2</sup> *Statistisches Bundesamt, Statistik Rechtspflege Bewährungshilfe (Fachserie 10 Reihe 5)*

were worrying. For example home visits were conducted in only 18% of all cases, although they were a standard activity to be implemented during the supervision period. File analysis has also shown that closing meetings took place in only 48% of all cases.

Focus groups comprised of staff from the different professional groups working at or for Neustart were asked which elements and criteria they considered important enough to be part of the evaluation. Participants were also asked to report on their work experience, on the daily issues they face at work, and on strengths and weaknesses of the probation services under Neustart management. Six professional groups participated in these activities: probation officers with executive function, probation officers without executive function, voluntary probation agents, judges and prosecutors, prison social workers, and representatives of the third sector involved in offender supervision. The selection of participants aimed to achieve an effective and balanced participation of sub-groups and local groups. All discussions were semi-structured.

The following groups took part in the online questionnaire survey: probation officers and voluntary probation agents, Neustart employees at the headquarters in Stuttgart, Neustart administrative staff, judges and prosecutors, prison social workers, and representatives of the third sector involved in offender supervision. The content of the questionnaire was developed from the focus group discussions and was tailored to the several professional groups. Among probation officers, the return rate was 77% (N= 274/357), but it was only 12% among voluntary probation agents. The return rate of headquarters employees was 60% and 58% for administrative staff, but was very low for judges and prosecutors (respectively 12% and 13%). The response rate from prison social workers was 51% and 44% from representatives of the third sector involved in offender supervision. Results from the survey revealed a strong negative opinion from prison social workers about their collaboration with Neustart (47% of respondents), especially concerning future cooperation on release planning (64%) and the degradation of the probation work's quality (64%).

Finally, clients under supervision for more than twelve months were surveyed about their perception and opinion on probation services offered by Neustart. During routine contact with the probation officer within the supervision process, probationers were asked whether they were interested in participating in the evaluation. If yes, each probationer received the questionnaire and an envelope that was already postpaid and addressed. Probationers could fill in the questionnaire either on the spot or later at home. The collection of clients' feedback was conducted over 14 weeks at the beginning of 2013 and gathered 768 completed questionnaires: 90% of respondents said that they were satisfied with their probation officer, which contrasts with negative results from other evaluation segments, although we do not know the response rate of this survey.

## **II. SOME REFLECTIONS ON RESULTS**

- The evaluation identified that the financial goals (absorbing added costs and achieving saving) were not met.<sup>3</sup>
- The stated quota of one manager position for twenty social workers (1:20) was not met. The evaluation found a relation of 1:13, although Neustart had presented a 1:18 quote in

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<sup>3</sup> As the Audit court (*Rechnungshof*) already did on the 15.07.2010, *Drucksache 14/6610*.

its report, which means high administrative costs. This is reflected in the budget which had €675,000 budgeted for staff structures and marketing compared to €378,000 dedicated to social work.

- The quality of work was found to be unequal, for example home visits were exceptional although there were required as a regular measure.
- The number of recalls has not changed since Neustart took over the delivery of probation services. This is a reflection of the practice of regional courts´ which is less harsh than in other German Länder.<sup>4</sup>
- A short paper released in May 2015 (BW MoJ 2015) presented a summary of all the position papers that had been released by individual probation officers, judges and prosecutors and workers unions. This résumé showed that while a majority of individuals and groups who had actively participated in the evaluation favoured keeping Neustart in charge of running the probation services, the probation and judges unions argued against this.
- Public opinion and mass media have perceived this evaluation as being conducted by neutral or independent experts,<sup>5</sup> although only one part was completed by academics and the rest was evaluated internally by public employees. This raises questions about the independence of the evaluation and its conclusions.
- Neustart recorded the successful completion of a probation order differently to the evaluation requirements necessitating additional work on the part of the evaluators.
- The main information source used by the evaluators was the file analysis. Records are completed to meet the needs of the probation officers and the organization and the evaluation team had no control over content, quality or reliability. When information is not present the evaluators do not know whether this is a result of failed practice or poor record keeping, so some of the negative results may have been over-estimated.

### III. CONCLUSION

On the 6th March 2015 the Baden-Württemberg government announced that it had decided to place the probation services in the public sector, without giving any reason for why this decision had been made. On the same day, Neustart gave a press release stating this decision was “neither understandable nor meaningful”. However, this decision needs to be understood in relation to a judgement made in November 2014 by the Highest Administrative Court which denied Neustart any authority to issue directives upon probation officers who have the status of civil servants.<sup>6</sup> Moreover, the court maintained that the Probation Law contains “indissoluble contradictions” and is both incomplete and unclear. The fact that among the 382 probation officers 183 are civil servants required the establishment of a new framework

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<sup>4</sup> For a critical assessment of Neustart balance, see the position paper of the Judge association ‘Neue Richtervereinigung’ of May 2014.

<sup>5</sup> *Südwest Presse*, 06.03.2015.

<sup>6</sup> A civil servant has brought the case in front of the court. *Bundesverwaltungsgericht Leipzig*, 27.11.2014 (*Aktenzeichen 2 C 24.13*)

for the delivery of probation services also plays in the favour of a new establishment of state control on probation services. Otherwise the issue of authority to issue directives would remain unchanged and thus unlawful. Within this context, the BW MoJ has drafted new probation law and clearly stated that such a “legal risk” shall be completely excluded while drafting the new probation law and not continuing the collaboration with Neustart.

The decision to discontinue delegating probation services to Neustart is in line with the political statement of the government (Social-democrats and Greens) since both parties have strongly criticised the partnership with Neustart. In this context, the court decision from November 2014 and the 2015 regional political configuration in Baden-Württemberg can be considered as the main reasons of the decision to act “against” Neustart.

As expected, Neustart director Volkmar Körner presented a different interpretation of the Court decision and communicated that there remained several opportunities to improve and clear the weaknesses and imprecisions of the law.<sup>7</sup> It seems that this issue is not closed and will continue to be discussed and negotiated between BW MoJ, Neustart and probation officers who are civil servants. According to the latest news,<sup>8</sup> the possibility of continuing to involve Neustart in another form to deliver probation services is being discussed in the BW MoJ. Many voices advocate keeping the actual structures and performances that are considered satisfactory, which would strongly involve current staff members. The spokesman for legal affairs of the Green party, M. Jürgen Filius, declared that “they were analyzing the foundation of a company with 51% of the shares held by the State and 49% by a private agency”. Two potential benefits mentioned in relation to this approach are not needing to start a new structure from the scratch, and keeping the State budget stable.

The evaluation was conceived and conducted at a time when some key players believed in the importance of policy being guided by evaluation research. Even if the judicial decision was ideologically and politically motivated, we can hope that the evaluation outcomes will be useful for the coming changes in BW probation services and thus help to keep developing a quality-oriented and offender-centred supervision approach.

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<sup>7</sup> *Südwest Presse*, 06.03.2015

<sup>8</sup> *Stuttgarter Nachrichten*, 13.03.15.

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