

The Interpretation of Dreams

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“I have a dream” said Martin Luther King and described his multi-racial vision for America. Few could have predicted the twists and turns of the journey that followed and the eventual election of the first Black President of the USA. If Martin Luther King were alive today would he recognise or deny the fulfilment of his dream?

We may all have dreams or visions of a perfect criminal justice system, a system that balances the interests of victims, offenders, the community and the state in which justice is done and is seen to be done. Reformers in every country have a vision, and the development of alternative sanctions and measures under the generic title of ‘*Probation*’ has been one of the key elements of that dream in the European Union (EU) accession and pre-accession states, some of the neighbouring countries of the Council of Europe (CoE), and beyond. Turning the *Probation* dream into reality is a complex task, and within the wider probation family there is a long tradition of international co-operation that at its best lives up to the early probation principles of ‘advise, assist and befriend’.

There are many examples of this co-operation and development through goodwill, information exchange and assistance, but sustainable development requires more than this – it comes at a cost. International co-operation and assistance is now a complex field of business with many stakeholders and protagonists. Turning dreams into reality has become a business in its own right and in this paper we want to explore how three key variables interact to create the final incarnation:

- the beneficiary’s vision
- the nature of the funding stream and the influence of its administrators
- the delivery partner

THE BENEFICIARY’S VISION

There have been several key drivers behind the reform or creation of probation services in Eastern Europe and the neighbourhood states. In Great Britain *Probation* historically had its roots in 19th century philanthropy but there are many earlier examples of alternative sanctions and models of restorative justice in other European cultures. More

recently, in our experience, developments have been driven by:

- the desire in former communist countries to break with the past and to create an inclusive state that really does serve the people (Czech Republic, Croatia);
- the influence of the Council of Europe through the establishment of standards for prison and alternative sanctions (more or less everywhere)¹;
- reports on inhumane or degrading prison conditions by the European Committee for the Prevention of Torture that have advocated conditional release, alternative sanctions and other measures (Azerbaijan, Turkey, Bulgaria, Romania, Croatia);
- the requirements of EU Accession in respect of justice reform. (Although the Aquis Communitaire does not actually mention probation the EU has supported the establishment of probation services in almost every accession or pre-accession state);
- the requirements for justice reform contained in EU Partnership Agreements with neighbouring states (Georgia, Azerbaijan, Kazakhstan);
- the impact of negative judgements by the European Court of Human Rights in respect of the enforcement of sanctions (Turkey);
- the political impact of rising crime rates and the need for credible alternatives to imprisonment to manage population pressures (Croatia, Turkey and others);²
- a recognition that the use of modern technology, especially electronic monitoring, can make control in the community more effective (Bulgaria, Croatia, Poland, Russia, Turkey).

The balance of these drivers has varied from country to country and has generally led to revisions of the penal codes that have refined existing alternative sanctions, adding options such as unpaid work (community service), drug treatment orders, electronic monitoring, supervised conditional release, supervised conditional or suspended sentences, and others, using well proven sanctions derived from Western Europe. In some countries, notably the Czech Republic, the desire to create an inclusive model has led to a desire to avoid court proceedings altogether by the use of more informal methods of restorative justice.

At this point many jurisdictions have said “we need a *probation service*” and have sought assistance in structural reform and the implementation of new sanctions. It is at this point too that dreams and reality have begun to part company.

FUNDING STREAMS

A diverse range of funding has been used to support the development of probation services in the wider CoE area:

- EU Accession States, Pre-Accession States³ and Candidate Countries⁴:
 - Twinning
 - Technical Assistance
 - Structural Funds
- EU Neighbourhood States⁵, the EU Strategic Partnership with Russia and the EU Central Asian Policy⁶
 - Technical Assistance
 - Twinning
 - Sector Budget Support
- World Bank
- UNICEF
- Bilateral Funding

There other sources of funding not included in this , but we want to focus on some general issues about project scope and definition that affect them all, and then look at how three of these funding streams can impact on and alter the beneficiaries original vision.

PROJECT DEFINITION

Legislation is not Strategy: In many jurisdictions the lack of an overall strategy for the criminal justice system has been a problem. Related to this is the way Roman law is developed. Generally speaking, following a Parliamentary discourse on basic principles the Penal Code defining the sanctions and measures is passed first, with attention then moving onto the Code of Criminal Procedure. In most countries it is only after these have been completed that attention is focused on implementation (the Law on the Execution of Penalties with detailed Regulations) eg defining who should deliver a service

and/or creating a *probation* service. Looked at from an Anglo-Saxon law perspective, this sequencing has not helped, as generally the Penal Code and Procedural Code have had little to say about the purpose of the various sanctions or measures, nor the methods of intervention, even if these were discussed in the Parliamentary process by those introducing the new laws. This can lead to a pre-occupation with the *mechanics of supervision* in the Law on the Execution of Penalties divorced from the *purpose of supervision* in terms of re-integration, rehabilitation, protection of victims or the reduction of recidivism through changes in criminal attitudes and behaviour.

Our view is that a strategy, which needs to include vision, purpose and values, should be developed first. Legislation, which needs to incorporate the purpose and values, is part of the implementation of that strategy and in all the elements of the legislative process the strategic goals need to be retained. Other elements of implementation are institution building (including enabling legislation concerning structure, staff, and funding), followed by implementation and practice development. This has not been widely appreciated, and ironically many projects include strategy development as an activity after legislation has been passed and institutions created. Where a strategy or wide consensus has been developed first, as in the case of the Czech Probation and Mediation Service, project definition and scope is much easier to specify.

Commitment at the highest level: An example of the difficulties created by the lack of an overall strategy at the project definition stage occurred in Romania, where the development of work with victims was a major part of an EU Twinning Project. During the course of project implementation a debate began regarding the reassignment of work with victims to another government agency and that part of the project could not be delivered. This underlines the importance of getting commitment to and understanding of a project fiche at ministerial level. Even this is not an absolute safeguard, as in at least three countries the Minister of Justice has changed either between project definition and implementation or during implementation.

A solid set of assumptions: Another pre-requisite at the stage of project definition is the identification of all the assumptions underlying project activities. In Turkey neither the Procedural Code nor the Law on Probation had been formulated at the time the EU Twinning Project Fiche was drawn up and some of the assumptions in the Fiche proved incorrect and insurmountable. For example the Fiche and Twinning Contract required the development of an Equal Opportunities Policy consistent with EU legislation and directives, but this could not be achieved as it requires changes in the country's Constitution.

A common understanding of processes and terms: Most readers will be familiar with differences between Anglo-Saxon and Roman Law concepts and procedures. In the majority of Roman Law jurisdictions the finding of guilt and sentencing processes are not separate, so introducing *Pre-sentence reports* that are designed to be used after a finding of guilt and before the sentence is passed can present a major process problem. Translation of technical language can also lead to difficulties: 'control' is an example of a word that can have very different meanings and phrases such as 'use of a weapon' and 'financial advantage' in assessment systems based on OASys⁷ have required care in understanding.

THE IMPACT OF THE FUNDING STREAM ON PROJECT DESIGN AND IMPLEMENTATION

Twinning

Twinning is well known in the pre-accession phase and can still be used for a period post-accession. The aim is to help the beneficiary state to meet the requirements of the *Acquis Communautaire*, and providing the development broadly fits into this category the EU will provide support. Twinning matches a government department with one or more government departments from elsewhere in the EU who have appropriate expertise to share. Prior to 2004 this meant that Western European models of probation were dominant, but in more recent years Twinning Projects have benefitted from partnerships between long-established member states such as the UK and more recent members such as the Czech

Republic. In the Neighbourhood states, together with Sector Budget Support, Twinning is replacing Technical Assistance as the preferred funding mechanism in certain areas. This reflects a perception in the European Commission (EC) that private sector consultants are not necessarily at the cutting edge of best practice compared with their government colleagues.

The drawing up of the Project Fiche is an activity in its own right, and increasingly the EC is funding projects to assist the Beneficiary to write the fiche. The Fiche is intended to help in the selection of the partner state(s) and outlines the desired outcomes in the log frame matrix. In theory it is an invitation to the member states to make proposals as to how the outcomes could be achieved. Once the partner state has been selected there follows the negotiation of a detailed Contract which is then approved by the EC Delegation, the Beneficiary States' Central Contracts and Finance Unit and the European Commission in Brussels.

In practice the trend towards projects commissioned to write the fiche is leading towards quasi tender documents which define not only the outcome but also the means, leaving less room for a creative response by the member states. For example, training content, target groups, numbers and delivery methods are all prescribed together with a deadline for delivery. In preparing the fiche the consultants are also being asked to prepare a model budget to help the EC and CFCU evaluate the bids. Both of these developments are regrettable, as they reduce the opportunity for innovative solutions to the Beneficiary's goals. Since there is also a considerable time gap between the preparation of the fiche and the start of the project it also means that either development is delayed or the fiche itself becomes out of date. This is the case in Croatia, where the Minister has decided there is a pressing need for the new service and cannot wait for the EU funding cycle to catch up. The overall effect of these trends is that Twinning Contracts can become an exercise in programming of funds rather than funding of programmes.

Sector Budget Support

Sector budget support has been widely used by the EU in Africa and is now being increasingly used in the European Neighbourhood states. It gives cash direct to the Treasury in the Beneficiary country, released in annual tranches against agreed outcome criteria. For example, in Azerbaijan the energy and justice ministries are intended beneficiaries, with each ministry getting at least €15m. The overall objectives have to be consistent with the EU Partnership Agreement with the country concerned, and funding is often driven by more overtly political goals than in the accession states, such as securing stable energy supplies.

The EC employs independent experts to work with each ministry to identify priorities over the next three years and to agree targets for approval by the EC in Brussels. The final agreement is signed by the Beneficiary Minister and the Head of the EUD, and it is then up to the ministry to deliver using whatever mechanisms it chooses. The ministry might approach an EU member state for assistance or hire independent consultants. The agreement stages outcomes and releases money according to an estimate of the cost of each component. The obvious advantage to the beneficiary is that the ministry retains total control over its business and has flexibility in execution. In the words of one senior Ministry of Justice official in a beneficiary country, "all my dreams have come true!"

The beneficiary government has to meet three general conditions:

- i. A well defined sectoral policy is in place or under implementation.
- ii. A credible and relevant programme to improve public financial management is in place or under implementation.
- iii. A stability-oriented macroeconomic policy is in place or under implementation.

Without these pre-conditions being met the Sector Budget agreement cannot be implemented. The first two conditions are often problematic owing to the lack of departmental strategies and plans and a failure to implement financial management reforms aimed at tackling corruption. The EC may provide

an adviser to help with this stage, and later will employ a full-time monitor to verify delivery prior to authorisation of each budget tranche. There are a number of other tests regarding feasibility, management and delivery capacity which the ministry has to pass.

In Azerbaijan the Justice Sector agreement includes the development of a strategy to create a new probation service, prison reforms including education, training and health, the development of legal advice centres and the establishment of a judicial academy. So far the Azerbaijani government has agreed projects with Norway and the Council of Europe to assist in the delivery of the plan.

Technical Assistance

The overall objectives of Technical Assistance projects have to be consistent with the EU Partnership Agreement with the country concerned, and as with Sector Budget Support funding is often driven by political goals such as improvements in human rights issues. Technical assistance projects are scoped and designed by the beneficiary ministry working with a consultant who produces agreed Terms of Reference (TOR).

In effect these are the least flexible projects as they are contracts tendered under the Framework Agreement by independent consultancy firms drawn from the list of approved contractors such as ECO3 and GTZ⁸. The TOR contains specific details on the services and products to be delivered and the timelines, and it is difficult to deviate from these requirements. The TOR also contains requirements regarding the qualifications and experience of the personnel, and requires a partner organisation from the beneficiary state to be involved, often an NGO or a University. The Russian Federation probation project is an example, and very large projects to reform criminal justice including the development of probation services are currently being tendered in Georgia and Kazakhstan.

Bilateral Projects

Bilateral projects can be divided into projects that reflect the strategic priorities for the international sections in Ministries of Justice and those that are developed on the basis of key relationships between

influential individuals. In either case it is important to recognise the motivation and goals of both partners and how this might influence project design. Both types of bilateral projects usually provide greater flexibility than those funded by multi-national institutions. Sustainability in the first category is always at risk from political priority shifts and the impact of an economic downturn and the second category is dependent on key individuals and their vision and talents. Additionally this category only offers limited short-term assistance.

Project implementation

A general observation is that of a lot of project development is related to the question: “how do we do business around here?” and this is connected to wider civil service reform. It would be helpful if the EC did more to address this in the form of projects on institutional reform at ministry level.

It is easy to forget how much political and social change has occurred in many established EU Member States, particularly in north-west Europe, in the past twenty years and the impact that this had on public sector institutions. Key elements of this change are the rise of consumerism vis-à-vis public sector services, a drive for greater efficiency and effectiveness in the use of tax-payers money and recognition of the need for cross-government approaches to many of the challenges of modern society. The response to these demands has included the introduction of management approaches and techniques from the private sector. Many public sector managers have received extensive management training and are expected to meet demanding targets for performance. In some jurisdictions they are also encouraged to look for ‘best-value’ by considering whether to provide their services directly or to outsource them to other organisations from the private or NGO sectors.

In new Member, pre-accession or Neighbourhood States, these reforms have either not occurred at all or are in an early stage of development. As a result the successful implementation and sustainability of projects requires an understanding of the specific stage of institutional development that the beneficiary administration has reached. Thus failure or slow progress with project initiatives is not necessarily a reflection of a lack of political will in the beneficiary

country or goodwill and receptiveness amongst the counterpart managers but because the necessary management culture and tools are not yet developed.

Examples include the basic approach to management where a top down style combined with poorly developed internal communication means that it is difficult to get a consensus behind organisational objectives. Rigid hierarchies and a failure to delegate decisions also mean that senior personnel become embroiled in detail. Other problems include failures in project management because the necessary authority and resources are not made available to the project manager; lack of performance management information, particularly in regard to quality and outcomes; and a lack of staff development opportunities with little systematic training, poor supervision arrangements and appraisal systems that do not link individual performance to organisational objectives.

These are the fundamental management weaknesses that affect institutional development in many East European jurisdictions today. These weaknesses could be found in most public sector organisations in the United Kingdom and other Western European countries twenty years ago. Subsequent reforms have not made the Public Sector immune to political and economic pressures, nor do they guarantee constant improvement but by comparison they have created a climate where change and change management is part of the organisational culture. Reform of these management fundamentals is essential if there is to be a return on the investment of EU Member State expertise and cash by the Beneficiary country in the development of new *Probation* services.

IN THE LOOKING GLASS

This is our message to beneficiary countries: You have a dream. It is a dream about justice, fairness and a better society. Somebody says ‘I can help you make dream that a reality.’ That help will always come at a price, and the outcome will almost certainly be different to your dream. Whether this is acceptable to you or not is a mixture of politics and pragmatism. Some things you can live with to humour the funding agency or your partners, others will either be impossible or will stick in the throat.

Sometimes we will party, sometimes we will shake our heads in despair at our partners.

This is our message to Member States who provide expertise and advice: Understand the beneficiary country; understand the political and resource realities and expect to be humbled by how much can be achieved at the beginning with enthusiasm and commitment. Do not assume that systems, methods and tools that have been used in your own jurisdiction can be simply exported. Not only do they need to be adapted legally and technically but they also need to be ‘owned’ by the beneficiary: this means understanding the local political, economic and cultural drivers and helping managers and professionals find their own solutions to their strategic goals. Be ready for the second wave, when professional management approaches must follow the initial enthusiasm if the changes are to be sustained and developed further.

Finally, though, if you read, *Probation in Europe*⁹, it is clear that there are many dreamers and that in many cases those dreams are coming true right across Europe. This is something the international *Probation* community can be proud of.

NOTES

¹ The 47 CoE signatory states include all EU members plus Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Iceland, Liechtenstein, Moldova, Monaco, Montenegro, Norway, Republic of Macedonia, Russia, San Marino, Serbia, Switzerland, Turkey, and Ukraine.

² The relationship between crime and rates of imprisonment is not a straightforward one. In some parts of Central and Eastern Europe, following significant increase in crime rates from 1990, overall crime rates did not rise significantly after the mid nineties. However prison populations continued to rise: ... ‘the public, the media and the politicians were all alarmed by the changes in the nature of crime, with the emergence of new and previously unheard of forms of criminality, such as transnational organised crime, economic crime and, in some countries, contract killings. This climate of fear in countries where the legal provisions had not yet caught up with these new forms of criminality, led to crime in general being more likely to result in pre-trial detention, subsequent imprisonment, longer terms of imprisonment and conditional release being more sparingly allowed. (Walmsley 2001). In contrast in both Romania and Azerbaijan the prison population has fallen considerably for reasons that remain unclear.

³ The EU Pre-Accession States are Turkey, Croatia and Macedonia.

⁴ The EU Candidate Countries are Albania, Bosnia/Herzegovina, Kosovo, Montenegro and Serbia. Iceland has also recently filed an application.

⁵ The EU Neighbourhood Policy covers Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

⁶ The EU Central Asian Policy includes the European Initiative on Democracy and Human Rights in Central Asia covering Kazakhstan, Kyrgyzstan and Tajikistan.

⁷ OASys is the Offender Assessment System used in the National Offender Management Service of England and Wales and a number of other jurisdictions.

⁸ The European Consultants Organisation (ECO3) is based in Brussels and has been responsible for the implementation of over 700 framework contracts in the areas of Culture, Governance and Home Affairs; Health; Education, Employment and Social; Support to Industry, Commerce and Services; and Macro economy, Public finances and Regulatory aspects. Federally owned Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) supports the German Government in achieving its development-policy objectives. GTZ has operations in more than 130 countries in Africa, Asia, Latin America, the Mediterranean and Middle Eastern regions, as well as in Europe, Caucasus and Central Asia. The company employs nearly 13,000 staff.

⁹ Kalmthout, Anton M and Durnescu, I Probation in Europe 2008. Wolf Legal Publishers, Nijmegen. Available from CEP.

REFERENCES

Walmsley, R., (2001) An overview of world imprisonment: global prison populations, trends and solutions. United Nations Programme Network Institutes Technical Assistance Workshop. Vienna, Austria.