

Offender Supervision in Europe

COST Action IS1106



Working Group 2: Decision-Making & Offender Supervision

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Introduction

This briefing summarizes the activities from the fourth year's activities in Working Group 2 of the COST Action about Offender Supervision in Europe (COST IS1106: www.offendersupervision.eu). The main aim of the Working Group is to explore the decision-making processes involved in the imposition and administration of Offender Supervision at different stages of the criminal justice system.

Building on our work in year 3, we continued exploring and developing a vignette methodology that can be used to research and compare decision-making processes in and across countries.

Panel at ESC Conference in Porto

We presented a panel at the European Society of Criminology conference in Porto in September of this year, called *Understanding breach processes in a European context*. The papers drew upon first insights gained from our comparative vignette methodology designed to examine the process of decision-making in regard to breaching offenders for non-compliance across different European jurisdictions. The presentations were based on thematic analysis of country reports of breach processes in 12 European countries and focused on key analytical themes through which the different systems can be compared and evaluated. The following papers were presented:

- *'Legitimacy, Fairness and Justice in the breach process: European Perspectives'*, by Christine Morgenstern, Luisa Ravagnani, Alessandro Zaniboni and Consuelo Murrillo .
- *'Parties, roles and responsibilities in the breach process'* by Esther Blay, Miranda Boone, Ineke Pruin
- *'To breach or not to breach?' Discretion in breach decision-making processes'* by Kristel Beyens, Gill McIvor, Anders Persson

- ‘*Legitimacy, Fairness and Justice in the breach process: Comparative Perspectives*’ by Anthea Hucklesby, Jose Cid, Maria Anagnostaki and Niamh Maguire
- ‘*Breaching community sentence in the EU: some reflections on statistics*’ by Klara Kerseszi, Alfredas Laurinavicius

Book Proposal on Enforcement of Offender Supervision in Europe

In Athens we discussed the first draft of a book proposal on breach processes (for details see our Year 3 briefing). Between Athens and Porto we continued to work on the book proposal and sent it to Routledge for review. Happily it was accepted for publication. The title of the book will be *The Enforcement of Offender Supervision in Europe: Understanding Breach Processes* and it will be published in Spring 2017. The book provides a comparative analysis of the process of breach across 13 different European jurisdictions by identifying and elaborating a number of key analytical themes through which the different systems can be compared and evaluated. It is informed by and hopes to advance the research activities of the Action, particularly the Action’s work on developing new comparative methodologies to examine the process of decision-making involved in the breaching of offenders for non-compliance.

The key themes and emerging concerns that will be considered include: the degree and nature of discretion exercised by decision-makers; the roles and responsibilities of the different actors involved in the breach process; and legitimacy, due process and procedural requirements.

Zagreb Meeting

The working group members met in Zagreb on 8 and 9 October 2015. We discussed the feedback of the reviews on the Routledge book proposal. In small groups we worked further on the thematic chapters and reported back the results to the whole working group at the end of the meeting. We revised the guidelines for the country chapters and discussed and agreed on the outline for the presentation for the final COST conference in Brussels in March 2016.

Outputs year 4

- Several of the WG members contributed to the *Community Punishment in Europe* book edited by Gwen Robinson and Fergus McNeill that was published in 2015 (Beyens, Blay, Boone, Evans).
- Our contribution to a special issue of the *European Journal of Probation* on methods used in research on Offender Supervision was published in December 2015:

Maguire, N., Beyens, K., Boone, M., Laurinavicius, A., & Persson, A. (2015). Using vignette methodology to research the process of breach comparatively. *European Journal of Probation*, 7(3), 241-259. doi:10.1177/2066220315617271 <http://ejp.sagepub.com/content/7/3/241.abstract>

Summary of our work, 2012-2016

In the first year of the Action we conducted a literature review on decision-making and supervision in the (then) 12 countries involved in the working group. We presented these results at the first international COST conference in Liverpool and published these in the *Offender Supervision in Europe* book, edited by Fergus McNeill and Kristel Beyens (2013). In sum, we found that research on this topic was located in only in a few countries. We also found that there was a paucity of research on the decision-making *process* itself. We did not find much information on the influence that the different agencies which are involved have on each other and whether a different construction of or organisation of decision-making processes could lead to different outcomes. Another clear outcome of the research was the finding that breach and revocation were very under-researched topics. A comparison of the legal procedures of these countries involved in the COST Action showed that extreme variations exist in procedures and outcomes in relation to breach and recall and in the extent to which discretion can be and is exercised.

For these reasons, the COST working group on decision-making decided to start a pilot study on breach processes. The aim of this study was to design a methodology to compare decision-making in breach processes across different jurisdictions and to explore the explanations for and the consequences of these differences. Firstly we had to agree on the content of the concept of breach in the context of our research. We defined breach to mean ‘the decision-making processes following the (perceived) non-compliance of the offender that can result in terminating, altering or keeping the original order’. The main question of the pilot study was: ‘How do differences in legal procedures and cultures influence decision-making following (the construction of) non-compliance?’ This main question raised several sub-questions, such as:

- What are the legal criteria for breach?
- What parties are involved?
- What factors influence the decision-making process (offender-related, decision-maker-related or organizational)?
- How much leeway exists for discretion?
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Members of 12 countries contributed to the pilot and interviewed two or more practitioners in their jurisdiction along the lines of the vignette we developed for breach in the sentencing stage or breach in the release phase (or both). The methodology is described extensively in our contribution to the special issue of the *European Journal of Probation* (Maguire et. al. 2015).

Finally, we decided to work on a book proposal that aims to deepen our understanding of the processes of breach in the context of unpaid work orders and early release from prison across a range of different European jurisdictions. This book will be published by Routledge in Spring 2017.

Conclusions and recommendations

Selectivity and Community Sanctions

Based on our observations we found a striking similarity in relation to the types of groups that are typically excluded at the front door sentencing stage from receiving community sanctions; for example, foreigners, mentally ill people etc. Community sanctions need to be made more accessible to these groups to avoid the unnecessary and inappropriate use of imprisonment.

Discretionary Decision Making

In relation to breach processes, we observed considerable differences between different jurisdictions in the dynamics of discretionary decision-making. In many countries decision-makers use much more discretion than is technically provided for by the law. Often this is necessary to maintain the dignity and respect of the persons subject to supervision, to secure its success and to fulfil the spirit of relevant law (rather than just the letter of the law).

Methodological Innovations

In our work to date we mapped the differences and similarities in decision-making processes and procedures. Further research is needed to discover whether and how these differences lead to different outcomes; for example, a fair distribution of measures among different groups of offenders and to successful implementation and compliance. We developed an innovative comparative methodology using vignettes to study these questions. More such work is required.

Members of Working Group 2 (2012-2016)

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Louise Kennefick (Ireland)
Klara Kereszi (Hungary)
Alfredas Laurinavicius (Lithuania)
Gill McIvor (Scotland)

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Christine Morgenstern (Germany)
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