**Another ‘elephant in the room’: ‘ethical practice’, the therapeutic alliance and CJS legitimacy**

One thing in common most offender treatment methods have is that they refer to ‘ethical’ practice. Europe has seen various soft law ethical guidelines (European Probation Rules; Probation Institute’s Code of Ethics) lay down very general principles. Most treatment methods also recommend a ‘therapeutic alliance’ is built between practitioner and client; in spite of the fact that said treatment is usually court mandated and involuntary.

However ‘one cannot legislate kindness’ (van Zyl Smit et al., 2015) and this is putting one’s blind faith in ‘Who Works’ (the ‘elephant in the room’: Paparozzi and Guy, 2015) and in institutions. It simply assumes that probation staff and institutions are intrinsically moral and always make good. Yet, scholars increasingly accept the reality that probation is not necessarily painless (Durnescu, 2011), and does not necessarily achieve bigger picture good (Phelbs, 2013; Robinson et al., 2013). It cannot be presumed that people, institutions, and procedures are secondary ‘non-programmatic’ factors.

However, no democratic legal system ever relies on general statements in order to ensure these principles are observed in ‘real life’ situations. Such systems require consent, proof, defence, legal action and appeal, access to the file, and to a unifying supreme court, along with adversialism (or the continental softer equivalent ‘*contradictoire’*). It is time legal constraints and safeguards are put in place in order to ensure that due process rules are woven into the use of risk assessment tools and programmes; that they should be submitted to the same burden of proof as any other criminal justice system action; time probation institutions are submitted to the same strict level of control that has increasingly been required of prison services in European legal systems.

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