

INSTITUTION-BUILDING IN THE JUSTICE AND HOME AFFAIRS AREA IN POLAND: ANCILLARY BENEFITS OF TWINNING

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Abstract¹

*This article examines the intricacies of institution-building in the ex-communist states seeking membership in the EU. The requirement to improve institutional capacity to implement the *acquis communautaire* is one of four EU criteria for accession, next to the necessity to adopt the *acquis* as well as to fulfill specific political and economic stipulations. Institutional twinning, an innovative instrument of European external cooperation, aims to reinforce judicial and administrative capacity in the candidate states so as to prepare them for the functioning in the EU. Does twinning lead to mere technical and “guaranteed” outcomes or can it also lead to other unanticipated results? This article aims to answer those questions on the basis of a case study of Poland’s Justice and Home Affairs area, specifically borders, asylum and immigration matters,*

between 1998 and the country’s accession to the EU on May 1st 2004. It

will be shown that the JHA twinning programs effected both technical and behavioral changes in Poland. That is, the process of “cleansing” the state’s administration of communist standards and practices engendered not only tangible changes in the structure, organization and the functioning of Polish institutions, but it also Europeanized the administrative public culture in Poland.

Introduction

For those who study the enlargement of the European Union, it is common knowledge that the instrument of twinning facilitates vital institutional reforms in the countries seeking membership in the Community. It was introduced in 1997 as a result of a reform proposed in *Agenda 2000* which earmarked thirty percent of the EU’s PHARE assistance to institution building and seventy percent to investment support in each candidate state². Twinning projects are projects of mutual cooperation in a specific policy field between administration of a candidate state and its counterpart in an EU country. They aim to introduce the former to the EU’s “best standards and practices. Their formula relies on a secondment of a full-time and long-term expert from that EU state to the analogous department in the country

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² Special Report No.6/2003 concerning twinning as the main instrument to support institution-building in candidate countries together with the Commission’s replies, 17th of July 2003, p.4.

seeking membership in the Community³. In this scheme both states commit themselves at the high political level and at a practical, namely human resources and financial level, to reach commonly agreed targets in a joint implementation process. They sign a twinning covenant which specifies their obligations⁴. In turn, the Commission, which is a guardian of fair, transparent and consistent application of the twinning rules, endorses it. It sets the legal, financial and procedural parameters for twinings as well as their priorities⁵.

While twinning programs have a significant valuable and tangible effect on reforming policies, laws, practices and institutions in the states seeking

membership in the EU (Dymerska 2007), it is worth exploring whether their effects extend beyond the “guaranteed results” and bear ancillary benefits. In order to answer this query I shall focus on the scrutiny of twinning programs in the Justice and Home Affairs area in Poland between 1998 and 2004, which marks the country’s accession to the EU. This analysis, which constitutes a component of my broader doctoral work on “guided Europeanization”⁶ in the ex-communist states, relies on interviews with individuals involved directly in the twinning process from the Polish administration and the parallel administrations from the EU member states leading the programs. Before we turn to assess the evidence, however, a few words are in order concerning the anticipated outcomes of twinning in the JHA field in Poland.

³ Every twinning project includes a Member State Project Leader who continues to work at his home administration but who devotes part of his time to conceiving, supervising and coordinating the overall thrust of the project. He is a high-ranking official, but he is not an advisor, but rather he directs the implementation of the project. He is assisted by a full time expert, Resident Twinning Advisor (RTA), from a Member State to work on a day-to-day basis with the beneficiary administration.

⁴ Before the contract is signed, the process of its creation involves (1) design of project fiches that comprise gap analysis by the accession state of its needs in a specific area, (2) covenant writing that is a reality check on the feasibility of the fiche and involves possible re-design, (3) selection of twinners by the accession state that involves the submission of the “Expression of Interest” from the Member States, participation in the presentation of proposals dependent on available resources of the Member State institutions, selection of the Pre-Accession Advisor.

⁵ Institution Building in the Framework of European Union Policies. A Reference Manual on “Twinning” Projects, (Revision May 2005), European Commission, p.21.

⁶ In order to understand the process of Europeanization in the ex-communist states, I propose to look at the process as an amalgamation of three concepts, that is “Europeanization” (Radaelli 2003), “policy transfer” (Dolowitz and Marsh 2000) and “socialization” (Finnemore and Sikkink 1998, Schimmelfenning 2000, Checkel 2001), which I dub “guided Europeanization.” The idea posits that there are five specific mechanisms which are the facilitators and bearers of reforms in a post-communist setting, namely lesson-drawing, socialization, conditionality, obligation and negative sanctions. I assert that those mechanisms help us understand the motivations for cooperation between the EU states and their ex-communist neighbors, and the intricacies of this collaboration which lead to domestic changes in the Central and East European countries in terms of their policies, structures and even norms and cognitions.

Institutional Twinning in the JHA Area in Poland

Upon the official opening of accession negotiations in this chapter on May 6th 2000, the EU expected the Polish government to:

1. Upgrade the management and control of Polish borders,
2. Implement the Geneva Convention, the New York Protocol, and the Aliens' Act in an efficient way,
3. Intensify the fight against organized crime, specifically in such areas as production and smuggling of drugs, human trafficking, money laundering, smuggling and trade of stolen cars and weapons,
4. Step up efforts to ratify international conventions in the Justice and Home Affairs area,
5. Secure resources for institutional development and enhanced coordination among relevant bodies in Poland so as to improve their credibility and technical efficiency,
6. Focus on aliens' rights and visa regime for citizens from the former USSR and other neighboring countries⁷.

The EU's strategy to improve the administrative and institutional capacity in Poland in the JHA area prior to gaining membership in the Community had several objectives. Broadly speaking, it aimed at raising awareness about migration, assuring a common

understanding of migration phenomena and preparing Polish authorities for adequate control and surveillance of illegal immigration. That is, its intent was to deepen the country's role in the West European migration regime, which is particularly evident in the Commission's specific emphasis on the protection of borders in the *avis*, Accession Partnership and regular reports on the Polish progress to accession. By endorsing the EU's guidelines in its National Partnership for the Adoption of the *Acquis* between 1998 and 2002, the Polish government put itself on a steep learning curve. It had to harmonize its visa policy with the *acquis*, effect changes in its migration and asylum policy field and align its border policy with the EU stipulations. This was a daunting task, particularly since migration and asylum matters evolved in Poland from a blank canvas because Communism effectively "immunized" all the ex-communist states from the influx of foreigners. That is, states behind the Iron Curtain did not have to develop relevant solutions to address such phenomena until the opening of borders between West and East in Europe in the early nineties exposed them to the previously unknown immigration. In consequence, the newly emerging democracies had to devise responses to manage the inflows of aliens to and through their territories from scratch.

⁷*Partnership for Accession*, Center for European Information, Office of the Committee for European Integration, Warsaw, December 1998.

Engendering Change Through Twinning

Notwithstanding the scale of the necessary reforms, the country succeeded in adopting and implementing them. Among others, twinings helped the Polish government not only to implement changes in its domestic legislature towards foreigners, structure, organization and the function of institutions dealing with borders, immigration and asylum; they also eliminated many of the systemic leftovers from the communist approach to administration, which hindered its efficiency and performance after 1989 (Dymerska 2007). Through training and education, twinning programs focused on reducing inefficient “paper communication” among administrative elites, fostered close communication and exchange of information among them and improved citizen orientation practices (Dymerska 2007). By and large, as I find elsewhere in my research, the ensuing reforms of the JHA field can be attributed to a great extent to the EU's “stick” and “carrot” mechanism whereby compliance with the *acquis* stipulations leads to rewards in the form of financial and technical assistance, whereas failure to implement the required change may result in tangible cost as well as reputation costs. (Dymerska 2007):

“Money was always a good argument to achieve something.”⁸

“We used carrots, but also we used sticks. During negotiations we quickly identified weak and strong points. When you have a weakness, in order to remedy it you can promise a country: look by next year if you change your penal code, we will give you money for training. This kind of bargaining was certainly a part of the game. Also in terms of sticks, if you don't do it, forget about the money in whatever sector. The use of both sticks and carrots is very common in the EU”⁹

Conditionality, however, was not the only mechanism that induced institutional reforms in the JHA area in Poland. In addition, socialization played an important role in the process (Dymerska 2007). In particular, social learning and intense social interaction between the Pre-Accession Advisors (PAAs) and the Polish administrators facilitated many of the necessary institutional changes. This statement has to be considered in the context of the Polish yearning for international recognition and legitimacy in order to gain membership in the EU. Furthermore, it has to be kept in mind that the Polish governments' identities and interests were in flux as concerns the JHA issues due to the lack of tradition in dealing with those matters prior to the fall of Communism. Under such auspicious circumstances, social

⁸ Interview with a former PAA to Poland, Brussels, May 2006.

⁹ Interview in the European Commission, Brussels, May 2006.

learning and intense social contact were a very effective means of inducing Polish compliance with the EU requirements:

”Networking and regular contact, parties, dinners are very important. This is where the decisions are prepared and sometimes made. It is so important. Poland was very good at it. I cannot highlight enough how important is the informal contact. I would say that 10% is decided formally and 90% is decided informally or at least prepared. This is my experience.”¹⁰

“This informal contact cannot be understated when it comes to twinning. Those people were able to get together, spend a lot of time together, where in the afternoon and in the evening after the seminars and workshops they were able to go out together. Those informal contacts they bear fruit later, at work.”¹¹

In addition, many of the JHA reforms were possible to adopt and implement thanks to the PAAs’ unique awareness of multifarious Polish subtleties and ways of dealing with them. It was essential that the advisors understood the “do’s and don’ts” of their interaction with the Polish partners during twinings, which included historical sensitivity towards Poland and its citizens that barred certain behaviors and rhetoric and the necessity to treat

the Polish administrators as equals so as to build trust and forge personal relationship with them (Dymerska 2007):

“For me it was very difficult to find balance between how to do A in order to get to B. Being polite, but at the same time to push, but not too hard, because Polish people do not like to be pushed because of history. So it was a bit difficult.”¹²

Sensible interaction between the PAAs and Polish administrators brought about many observable and necessary reforms in the administrative standards and practices in the JHA area. Let us look at them in more detail, particularly at those changes that extend beyond the anticipated reforms through institutional twinning programs.

Ancillary Benefits of Twinning

The long presence, cooperation and interaction between Western civil servants and their candidate counterparts generated outcomes beyond the “guaranteed results” of twinning. For the beneficiary state, next to altering its administrative practice and culture, it contributed to the understanding of Poland’s place within the European administration, eradicating of inferiority complexes related to Western Europe, building the awareness of European community and common interest, and even establishing friendships between people from

¹⁰ Interview in the European Commission, Brussels, May 2006.

¹¹ Interview in the Polish Ministry of Interior Affairs, Warsaw, August 2006.

¹² Interview with a former PAA to Poland, Brussels, May 2006.

Poland and those from the EU member states¹³. For the leader country, the close interaction with the beneficiary state was equally important. It allowed for building mutual trust and eliminating stereotypes and biases about the government of Poland and its capacities. As such, socialization in twinning through intense social contact and social learning was very important for both parties and must not be underestimated. Its consequences were long-ranging and went beyond the duration of the twinning programs. As one of my respondents aptly remarked to my question regarding the importance of informal contacts and social interaction between twinning partners:

“This is especially important after the twinning. That is, people get to know one another during the twinning and feel at ease calling their colleagues in the “old” member states. Borders become less and less of an issue, they almost disappear.”¹⁴

Social interaction and social learning during JHA twinings facilitated building awareness of participation in the policy-making in the third pillar in Poland. Despite strong determination to pursue cooperation in this field and

fervent political commitment¹⁵, the absence of an actual sense of input was palpable in the early stages of the pre-accession process¹⁶. It was only with the initiation of the twinning programs in the JHA area that the Polish government began to slowly realize that it was working and cooperating on a part of a bigger whole, namely European policy in-the-making concerning borders, immigration and asylum¹⁷. While this was much easier to comprehend on the operational level and the level of high politics, for the ministerial echelon this was problematic¹⁸. That is, political elites understood that institution building in the JHA area was necessary to join the EU and that non-compliance with its requirements would jeopardize Polish accession to the EU. However, for the ministerial level, institution building in the JHA field seemed unnecessary, especially in the context of the lack of experience and the lack of prior beliefs concerning immigration, asylum and the European construct of borders:

“We were talking about a world about which we knew very little. We did not have asylum problems or immigration problems. For us this was a problem of the West. We did not have great aspirations in this field.”¹⁹

¹³ Interviews in the Ministry of Interior and in the Permanent Representation of Poland to the EU, Brussels and Warsaw, May 2006 and August 2006.

¹⁴ Interview with a former PAA to Poland, Warsaw, May 2006.

¹⁵ Interview with a former PAA to Poland, Warsaw, May 2006.

¹⁶ Interview with a representative of the Polish Permanent Representation in Brussels, May 2006.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

Considering this, the practical approximation of the JHA area through twinning was immensely important. It forced the government of Poland to begin work on devising long-term strategies related to the matters of borders, immigration and asylum, and seeing them in the context of wider European politics. It was through twinning workshops, seminars and also study visits in the EU member states that the Polish administrators understood they were participating in a European-wide process, not just one on a bilateral level²⁰. This shift in perception from bilateral interaction to a European interaction with a common goal can be attributed to social learning and intense social contact. Socialization helped the Polish administrators to understand the concepts of common interests and what it means to be a part of the European community:

“In the perception of many of the Polish administrators cooperation can be divided into bilateral and international and that is where it ends. There is “your side” and “our side”. “Please forward to the Union side...”—when I read those notes I already can tell who is at what stage of the development of perception [about the European Community—J.D.] in Poland. There is still a category of people who do not ponder the deeper sense of this undertaking.”²¹

²⁰ Interview with a representative of the Polish Permanent Representation in Brussels, May 2006.

²¹ Ibid.

The social learning however, was a time-consuming process. This was in part due to the sudden reconfiguration of the function and intricacies of the Polish administration caused by the process of accession to the EU and the subsequent need to slowly digest and absorb the ensuing changes:

“Administration [in Poland—J.D.] was associated with under-paid workers and job security. Now there are travel opportunities, excursions, prestige, you have contact with abroad, you sleep in great hotels, and you have the money to spend. For people who were coming into this kind of world, it took a long time to readjust and absorb it. They had no idea what was happening [as concerns European politics in the JHA area—J.D.], they were exploring new processes, they did not see any point in all this.”²²

As such, people were taking a long time to understand how they fit in the European nexus and what it means to be a part of it. This in turn impacted the process of building trust towards the EU. The Polish elite's perception of the Community was generally positive, with a desire to join it, prior to the opening of accession negotiations; yet, afterwards it was difficult for elites to perceive of it so positively²³. For the Polish government, it was very tough to comprehend and accept the EU as both its authority and partner in accession²⁴.

²² Ibid.

²³ Interview with a representative of the Polish Permanent Representation in Brussels, May 2006.

²⁴ Ibid.

Furthermore, it was difficult for the Polish administration to understand that it was working as a whole towards one goal, and to eliminate a common practice of inter-ministerial rivalry for a better deal with the EU:

“For Poland a win-win situation is a completely new notion, for the people who participate in this process on a practical level. There has to be interest that someone attempts to realize, some hidden agenda or to hinder something. There is no such perception that in the administration we all have a common goal. We are all together, there are no winners and losers, there is common good that we are building, and no one wants to hurt one another. These ideas that if we have more for the farmers, there are going to be fewer kindergartens [persists among some—J.D.]. But we can kill two birds with one stone.”²⁵

In this respect, socialization in the twinning programs was immensely helpful in that it permitted Poles to understand the idea of a common goal. Furthermore, it allowed the Polish administrators to realize that their commitment to reaching the JHA objectives is a necessary component of a more efficient and secure Europe. This was in part made possible by the process of hands-on learning from the functioning of immigration, borders and asylum institutions of the EU member states’ administrations. . Beyond that, considering that socialization through

twinning programs facilitated the forging interpersonal contacts and informal interactions, it enabled people to work closely together and to get to know one another. This in turn allowed the Polish elites to eradicate the inferiority complex felt towards their EU counterparts:

“Those people were able to meet and spend a lot of time together (..) in that sense Europeanization persisted in that Poles ceased thinking that they are worse. I remember in 1993 or 1994 the French proposed us a visit to France for 100 of county leaders²⁶ (..) The results were fantastic, for some of them this was the first time they were abroad. They came back to Poland so happy and would say: wow, they have the same problems we do (..) They told the French about their ideas and it turned out that the French liked them, that they are good ideas. This was spectacular that as the curtain fell down how fast we understood that inferiority complexes and complexes of backwardness need to be eliminated, that we are not stupid.”²⁷

“Informal contacts, when it comes to twinings, cannot be underappreciated. Poles realized through them that they are not inferior.”²⁸

As such, by virtue of comparing Polish problems and infrastructure in the JHA

²⁵ Ibid.

²⁶ In Polish, this the term is ‘wójt’. Those people are heads of a group of villages.

²⁷ Interview in the Ministry of Interior, Warsaw, August 2006.

²⁸ Ibid.

field to those in the EU member states, Poles were able to identify areas requiring improvement and learn ways of addressing them. For the Polish border guards, such visits to borders of the other EU states were often the times of glory in the later stages of the twinning programs as they were able to see that their infrastructure and equipment provided through twinings was among the best in Europe. This gave them a lot of confidence and pride about what they represented and also enabled them to feel like a part of the EU-wide process of Europeanization of the JHA area.

Such intense social contact during study visits, but also general day-to-day contact among Polish administrators and twinning partners fostered the process of socialization. All of my respondents, without exception, concur that the power of interpersonal relationships was pivotal to effecting institutional reforms in Poland: “Forging relations with people is the basis of functioning in the EU.”²⁹ For the Polish administrators this closeness ensured a sensation of “normalcy” of interaction on a social level as they began to truly feel like genuine members of a wider European family. As a result, the inferiority complex felt towards Western Europe, for the most part, ceased to exist:

“I remember that around the millennium we were in Brussels at

²⁹ Interview with a representative of the Polish Permanent Representation in Brussels, May 2006.

some dinner. There were many Poles and people from different member states. We all sat together, mingled; there was no more of that division of tables: Poles only and they. We spoke together, laughed, joked. I noticed that we began functioning normally on the social level.”³⁰

The intense contact between twinning partners has additionally contributed to raising awareness about different administrative cultures and practices. In turn, it allowed them to cast their own judgments about their effectiveness and their way of doing things. For the Polish administrators, in many instances, study visits helped to eradicate their biases:

“I was in 1996 on some training in Spain and I have completely changed my mind about them. I was afraid of this mañana attitude, and then it turned out that they are so excellently prepared, so concrete.”³¹

For the Western PAAs, the long-term residence in Poland often turned them into Polish advocates who would fight unfair stereotypes and biases on the country’s behalf. The following evidence confirms that this was a direct result of intense social contact and social learning:

“This is very important, the twinning. You see it afterwards

³⁰ Interview in the Ministry of Interior, Warsaw, August 2006.

³¹ Interview in the Ministry of Interior, Warsaw, August 2006.

how important it is to establish cooperation between the old and the new member states. To see for the old member states who had a very funny perception of the new member states. When my colleagues would come with me to the new member states they would ask me: can I pay with a credit card there, can I exchange money there and things like these. Just to see for themselves: come on, in some ways those countries are more modern, or technically more modern than the old member states, and people are much more dynamic in fact. (..) It is good to bring people together. The interpersonal relationships are very important.”³²

“When my wife and I arrived here we got on the tram and young people stood up to give up their seats. We were so astounded! In the theater people would be dressed up. Amazing! In Germany it has never been for years. Whatever develops in America comes to Germany, 20 years later, in particular everything that is bad.”³³

The unexpected behavioral change that resulted from socialization in the twinning programs was an immensely important by-product of twinings. Aside from the fact that it facilitated greater understanding of Poland’s place in the European Union and in Europe, it allowed its government to realize that it

is a part of the European-wide process in the JHA area for the common good of all the EU member states. In addition, the Polish government realized the sole purpose of the JHA twinning programs was to improve its administrative and institutional capacity so as to assume obligations of the EU *acquis* concerning immigration, asylum and external borders:

“At the end I think they realized that we are not against them, but we are doing something for them and that (..) I want to achieve something together. At the beginning they did not believe me.”³⁴

“Poland I think understood that Germany was on her side.”³⁵

Perhaps one of the most interesting comments summing up the effects of reforms in the JHA area comes from one of the reports in the first, 2003 monitoring mission to Poland. It clearly exposes the side-effect of twinning, namely its ability to engender behavioral change:

“Altogether the undersigned did get the impression that the relevant authorities did not only see their task in bringing Poland in harmony with Schengen- and EU-Standards, but also by participating in the assessment in a very constructive manner and thus showing that *not only their acting but also their*

³² Interview at the European Commission, Brussels, May 2006.

³³ Interview with a former JHA PAA to Poland, Warsaw, May 2006.

³⁴ Interview with a former JHA PAA to Poland, Brussels, May 2006.

³⁵ Interview with a former JHA PAA to Poland, Warsaw, May 2006.

thinking is more or less in line with the Acquis. In implementing they are prepared to act as fully responsible partners responsible for a specific section of the external border in the future.³⁶

Conclusion

The above analysis, though brief, provides sufficient evidence to conclude that the instrument of institutional twinning led not only to the required technical reforms in the JHA area in Poland, but also to the altering of norms and cognitions among Polish political and administrative elites. While conditionality triggered institution building, socialization facilitated its implementation. In the process, next to the emergence of new laws, policies and institutions, twinning programs engendered behavioral change among Polish elites so that their norms and perceptions came to closely mirror those of their Western counterparts. This unanticipated consequence of twinning was greatly facilitated by two elements of socialization, namely social learning and intense social contact. This brings me to question whether technical and behavioral reforms in the JHA area in Poland would have occurred in the absence of institutional twinning. That is, was the promise of membership in the EU the key propeller of change? While the Polish government felt great emotional pressure to become an EU member and many may assert that this

assured the success of twinning, it appears that it simultaneously wanted on its own initiative to introduce many wide-ranging domestic reforms that were simply consistent with those offered by twinning:

“In my opinion Polish reforms were not entirely EU-oriented and EU-driven. This was very difficult for many to understand. We began introducing those reforms because we wanted to do them at the domestic level—the entire amendment of penal code, reform of the judiciary...We wanted to have justice in our courtrooms and independent judges, not because we wanted to woo Europe. We wanted to ensure just processes and fundamental freedoms. This was our intrinsic need. It was only our luck that this went hand in hand with what Europe expected of us. So those reforms awaited by our citizens fit perfectly with the accession process to the EU.”³⁷

Considering the Polish case, to what extent can we generalize about the power of institutional twinning in generating “guaranteed results” as well as ancillary behavioral changes among elites in the other Central and East European states? While it is difficult to draw proximate conclusions to this question, I suspect that twinning tends to induce tangible changes across different policy fields in all of the ex-communist states seeking membership

³⁶ Peer Review. First Monitoring Mission in JHA, 24-27 March 2003

³⁷ Interview with a representative of Permanent Representation of Poland to the EU, Krakow, August 2006.

in the EU simply because reforms are a required and necessary condition prior to gaining accession. To the contrary, I expect to see twinning bring about behavioral changes among administrators in those policy fields in which they have limited tradition and no pre-fixed positions on given issues and hence are more opened to habitualize and perhaps later internalize the standards and practices of “appropriate” Western behavior. However, in order to show whether twinning programs led to “guaranteed” as well as ancillary outcomes, we would have to conduct a larger comparative study not only across more countries, but also across more policy areas. Such an analysis would be useful for a few reasons. First, it would show whether there are factors inherent to Poland, which my study has overlooked, explain why twinings produced both technical and unanticipated changes. Second, such a comparative study across different policy fields would show us whether the JHA area is unique or whether other policy sectors are subject to similar stimuli. This would also help us to determine whether institutional twinning can follow different trajectories in different states and in different policy areas. In the meantime, the broad utility of the instrument of twinning cannot be understated in the process of effecting both technical and behavioral changes in the states seeking membership in the European Union.

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