LXXVI

C.S.O.'s
in The Netherlands

dr. Menke W. Bol

MINISTRY of JUSTICE
The Hague – Netherlands
1985

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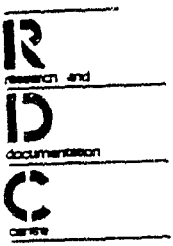

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CONTENTS

1. INTRODUCTION

On 8 December 1971, three young offenders were convicted by a Court in Arnhem of having committed acts of violence in a public place. Their sentences included an "alternative penal sanction", namely a special condition that they should do work at a nursing home and a home for invalids. This decision led to considerable discussion in the Netherlands on the admissibility of such a condition.

The fact that the Court saw fit to impose this type of condition can perhaps be explained on the basis of dissatisfaction with the existing sanctions, which include a punishment which has been a cause for concern both at home and abroad for a number of years - the short, unconditional custodial sentence.

For years (and even for centuries) there have been those who have argued for 'doing work instead of doing time". A rather unpleasant variation on this theme - hard labour for life - was introduced in the Netherlands in 1809, with the coming into force of the Code Pénal, only to disappear again when this code was replaced by the current Criminal Code in 1886. Three primary sanctions have been applicable since 1886: imprisonment, detention and fines. In the twentieth century, there have been various attempts to find alternatives to unconditional custodial sentences. Thus, suspended sentences were introduced in 1915, and in the same year the possibilities for release on parole were extended. The Fines Act followed in 1925, its primary purpose being to make the imposition of monetary penalties in place of custodial sentences more widely available. In addition, there were attempts to use the special conditions of Article 14c of the Criminal Code so as to impose alternative sanctions and to make humane changes in the way unconditional custodial sentences were applied. More recently, the Penalties for Property Offences Act of 1983 has also aimed at offering alternatives to custodial sentences.

In November 1980, the Minister of Justice issued a circular which announced that experiments with community service would be conducted in the Netherlands for a period of two to three years. "Community service" was taken to mean that a person accused of having committed a criminal offence who would probably otherwise/ formerly have been given a short, unconditional custodial sentence, would instead perform useful tasks for the benefit of society.

Eight court districts were chosen for the experiments, and the Minister's circular also announced that the experiments would be monitored in a research project to be conducted by the RDC (the Ministry of Justice's Research and Documentation Centre)

This research project commenced on 1 February 1981 under the supervision of Dr. J. Junger-Tas, with M.W. Bol being responsible for carrying out the project and reporting on it, assisted by J.J. Overwater. Three interim reports based on the research were issued (Bol and Overwater, 1983), and the final report appeared in June of 1984 (Bol and Overwater, 1984).

The following section contains a description of experience with community service in the Netherlands, based on the results of the RDC-project as set out in the final report. Section 3 gives a concise survey of community service elsewhere in Europe, with most attention being devoted to Britain, where the Community Service Order has been applied since 1972. In the fourth section, certain important aspects of community service are examined in greater detail. This is followed by some brief concluding comments.

2. COMMUNITY SERVICE IN THE NETHERLANDS

2.1. Experience with community service

Community service can be imposed both by the public prosecutor and by the District Court or Court of Appeal. There was a significant shift towards the court modalities during the research period of May 1981 to May 1982. The "modalities" are the various procedural means whereby community service can be applied. The term has gradually become established, having been introduced by the VED

(Committee to prepare community service experiments) in 1980.

As of 1 May 1982 it appeared that in almost 70% of cases community service was ordered by the District Court/Court of Appeal, while in a good 30% it had been set up in agreement with the public prosecutor; in January this ratio had been fifty-fifty.

Seven different modalities were adopted by the public prosecutors, the most common being an unconditional decision not to prefer charges, if the community service was performed as agreed. In three of the eight experimental districts, the prosecutors' modalities were not (or were no longer) applied in 1983. To the extent that they were applied elsewhere, in three districts the main modality was an unconditional decision not to prefer charges following successful community service, in one district it was a conditional decision and in the remaining district postponement of the decision whether to prosecute.

The courts applied three different modalities, the major one being postponement of judgment. Of the court . modalities, community service as a special condition was applied by four courts, while community service with postponement of judgement was employed in six of the eight courts. Community service in the context of a pardon has officially constituted an option since April 1982. Up to April 1983, 134 requests for a pardon had been made in the Netherlands; of these 79 were rejected by the State Secretary for Justice, while 55 cases were adjourned pending the performance of community service. It seems that a relatively large number of older offenders/recidivists were involved here. Those seeking a pardon had committed offences causing no damage more often than was the case with other persons performing community service.

It is striking that in those court districts where there has been so much experience with community service that it is possible to talk of a routine approach, the judicial authorities have been satisfied with simply establishing the number of hours to be worked. The further details of the community service are left to a coordinator and/or the probation service. A preparing committee (VED), installed by the Minister of Justice, had advised that

community service be applied instead of unconditional custodial sentences where the unconditional part had a duration of 6 months or less, and had proposed an "equivalent" community service with a maximum of 150 hours. In practice, the ratio seems to have been 3 months unconditional to the 150 hours. Where the community service was to replace a longer custodial sentence, there was a tendency to increase the hours to over 150. Projects for more than 300 hours were, however, exceptional.

In 1983 there was a consistent policy in the sense that most courts and prosecutors were agreed that there should be some form of tariff system for the establishment of the number of hours of community service. There is, however, no consensus yet on the actual ratio, though the 6 months unconditional to 150 hours proposed by the VED is generally considered to be disproportionate (i.e. too mild).

Unemployed persons performing community service were, in general, required to work more hours than persons in employment. In one district there was even a fixed factor: the unemployed got twice as many hours. Just over a quarter of those involved did their community service on a full-time basis, a quarter did it part-time, and just under a third did it in the evenings and at the weekend. In this respect too there were marked differences between the employed and the unemployed.

The duration of periods of probation for persons performing community service varied from a week in some court districts to six months in others. There was a similar inconsistency on the questions of how and whether community service was included in judicial records. In some districts community service was noted in criminal records, in others it was not.

In more than half of the community service projects the work done was maintenance, repair and decorating, mostly for welfare institutions. Odd jobs, and work in woods and gardens constituted about a third of the projects. In general, there was no direct

elationship whatsoever between the nature of the offence and he nature of the work.

n five districts, coordination and the keeping of address lists r a "project bank" have been allocated to the probation service since the summer of 1983. In two districts, private rehabilitation organizations have taken over the project banks, and in one district a special coordinator has been appointed.

In three court districts, checking up on the progress of the community service, as well as reporting back to the judiciary on this, is always accomplished through the probation service. In one district this is the case only when private rehabilitation organizations object to carrying out this task. In three districts, reporting back is always done through the private organizations.

In general, it has been possible to find sufficient and appropriate community service projects.

Approximately 90% of all community service (including that taking place in association with a pardon) was carried out as agreed. Age, sex, the fact of having or not having a job, the type of community service,the type of offence and the previous criminal record did not appear either to increase or decrease the chances of a successful outcome. Where community service lasted for less than the recommended minimum of 30 hours, and also where it lasted for more than the recommended maximum of 150 hours, there were significantly more projects which were not carried out as agreed.

When community service was not carried out as agreed, this was attributable to circumstances beyond the control of the person concerned in over half of the cases (illness, family circumstances, etc.). The unconditional custodial sentences which were imposed after community service had not been completed successfully had an average duration of two months.

From a comparison of the proposals accepted and rejected by the judiciary, it appears that there were no substantial differences with respect to the characteristics of the persons involved, but that there were differences in the type of offence.

A relatively large number of those committing offences against property had their offer to do community service rejected: while almost a half of those performing community service had committed a property offence and almost a quarter a traffic offence, approximately three-quarters of those rejected had committed a property offence and only 7% a traffic offence. Those rejected had more often committed an offence causing damage than had those performing community service.

There were more first offenders (37%) among those performing community service than among those rejected for it (26%). The reason for rejection given by a good half of the judges who were questioned was that the offence was too serious and/or the chance of further offences too great. This appears to reflect the fact that persons performing community service had less frequently been held in pre-trial detention, and for shorter periods. Almost 30% of the judges and prosecutors questioned gave as a reason for rejection that they had not intended to impose or ask for an unconditional sentence.

Even after the official period for the collection of material - May 1982 to November 1983 - the RDC registered certain limited information about each person performing community service. This was no longer done only for the eight experimental districts, but for the entire country. It appeared that in the non-experimental districts community service projects for young offenders against property were set up even more frequently than in the experimental districts. Further, housework was done relatively more often, and maintenance, repair and decorating work less often. In the experimental districts themselves, there were in general no remarkable changes, though a continued shift in favour of court modalities could be detected.

2. Community service as compared with custodial sentences and fines

A comparison of persons performing community service and persons given short custodial sentences revealed that the most important difference between them was that among the former category there were proportionally many more young first offenders who had committed an offence against property. Traffic offenders who did community service tended to be older than the property offenders.

No significant differences were found with respect to damage and injury resulting from the offence. While those sentenced to short custodial sentences for any sort of offence were kept in pre-trial detention, among persons performing community service virtually only the property offenders were held for more than four days.

Comparison of those subject to the three different sanctions showed that the age pattern of each group had its own characteristics. Those fined were distinct from the other two groups in that they more often had a job[1]; their group also contained far more traffic offenders (see Fig.1). Damage, pre-trial detention or a previous offence were less common than among the other two groups.

From the very beginning, many feared that the introduction of a new sanction would have a "net-widening" effect. No reliable answer could be established for the question whether the experiments with community service resulted in an increase in the total number of sanctions imposed (net-widening in the broad sense). There was no indication of a shift in the direction of heavier sentences as a result of the introduction of community service (net-widening in the narrow sense).

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[1]This should not lead to the conclusion that "class justice" is being applied. Rather, it indicates that in many cases, the judiciary consider community service or a custodial sentence only when the offender does not have sufficient financial resources to pay a fine.

In the period 1981-82 it appears that in three of the eight experimental districts between 14 and 20% of all contemplated unconditional custodial sentences were replaced by community serivece. In four districts this percentage was between 7-12, in one district it was 1.4.

2.3 Opinions on community service

2.3.1 General

An important part of the RDC research was an evaluation of the opinions of various persons and institutions concerned with community service. This section contains a report on the results of this evaluation. First, however, mention should be made of a category of persons who fall outside the scope of this part of the study, but who are no less important within the totality of penal justice because of this. These persons are the victims of serious crimes and their relatives. The group which was investigated contained seven persons who had received serious or even fatal injuries (all resulting from traffic offences), and others had suffered minor injuries. In a few of these cases, the researchers gathered during the course of interviews that the relatives had fully concurred with the proposed community service. It has, however, subsequently appeared that the views of relatives were not always sought in such cases.

2.3.2 The Projects

In each of the eight districts various institutions were asked if they were prepared to provide one or more places for persons performing community service. A questionnaire was sent to the management of all these institutions for the purposes of research, there being one version of the questionnaire for those who had reacted postively and another for those who had reacted negatively.

Of those who had provided places, 70% responded to the questionnaire. The most common reasons given as the motivation for having provided a work project were a positive view of the experiments, or a feeling that social considerations required this. Having had experience with one or more persons doing community service, 85% of managements

spoke positively or very positively about the placement of such persons. Almost two-thirds would again react positively to a new request to make a project place available. Almost 12% of those replying to the questionnaire said that their image of criminal offenders had been changed by their experiences in a positive way, hardly anyone that it had changed in a negative way.

Over half of the institutions which had reacted negatively to the request to provide projects agreed to co-operate in the research. Among the reasons for their refusal were that they had too few staff or that protests from residents or clients were feared. Over 40% would again react negatively to a new request to make a project available, 3% would react positively in the future. (The others did not answer this question.)

One hundred and fifty-eight randomly chosen "contacts" (persons working at the institutions, who were concerned with the practical guidance of those doing community service) were interviewed personally. They were asked about their general opinions and experiences. They had given guidance to a total of 408 persons performing community service, of whom more than 90% had done the work as agreed. Most contacts made it clear, in advance, what work would be given. In general, the contacts had been confronted with few problems, with the two most common being that the persons doing community service did not keep to certain arrangements, and that guidance by the probation service left something to be desired. Most of the contacts had a concluding talk with their charges at the end of the project. Forty-three per cent of those interviewed were always or sometimes involved in reporting back to the judiciary. In general, a good half were not happy to be involved in reporting back. In almost a quarter of the institutions one or more persons who had done community service stayed on as a volunteer after the project. Only one contact said that the fact that someone had stayed on had prevented a project place from being offered to a new person.

Over half of the contacts had the impression that those performing community service had found the work useful and/or educational; 11% disagreed. None of those questioned said that their image of criminal offenders had been changed negatively, and for over 13% there had been a positive change.

2.3.3 Persons performing community service

Following the completion of their project, 205 of the persons performing community service were found to be willing to be interviewed (a response of app. 50%). Only two of them had not carried out the work as agreed; the other 203 had done so. Thus, in looking at the results presented here, a distortion towards a favourable viewpoint should be borne in mind, since it is to be expected that it would be those with very positive experiences who would agree to be interviewed. For almost half those interviewed, the motive for offering to do community service was that they preferred not to go to prison, for almost a quarter the motive lay in family or social circumstances. A good half of them were able to make a choice from a number of projects. According to the contact persons, the number of hours to be worked was practically always fixed during the introductory meeting or interview at the latest, but 42% of the persons performing community service said they learned of this only later.

Forty per cent of those performing community service themselves explained their pesence at the place where the work was done and over 50% consented to this information being give by others.

The great majority of those interviewed felt that they had been accepted at the place of work.

Twothirds said that definite arrangements were made to check that the work was carried out; for one third there were no definite arrangements.

For over 90% of those interviewed, community service had been a positive experience, with the atmosphere at work and the fact that they had been able to make themselves useful being the main reasons.

The 7% who had not found the work a positive experience attributed this primarily to the type of work they had had to do. Almost half appeared to have retained ties with the institution after the community service had ended.

When asked if they would again choose to do commmunity service if the occasion arose, over a third said that such an occasion would never arise again. Almost two-thirds of those interviewed said that they would again offer to do community service.

More than half of those who had performed community service thought that the number of hours they had had to work was in proportion to the seriousness of the offence committed, or that they had come out of the affair reasonably well. Almost 11% thought the number of hours excessive.

Although 62% of those interviewed difinitely saw community service as a punishment, 98% still preferred community service to a custodial sentence.

2.3.4 The judiciary, the legal profession and the probation service

A final evaluation was conducted among members of the judiciary, the legal profession and the probation service in the eight experimental areas. In general terms, the questions used corresponded to those of an opinion poll conducted before the experiments began[1)].

At the time of the final evaluation, the probation service found the following modalities expecially appropriate: an unconditional decision not to prefer charges or recommendation of pardon if the outcome of community service was successful; postponement

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1) see: Hullu, J. de, Opvattingen over dienstverlening (Opinions on Community Service), The Hague, RDC, 1981

of judgment (with specification of penalty[1]) and the various modalities involving suspension of pre-trial detention. They had a preference for the use of community service in cases of violence against property, other offences against property and traffic offences. Two-thirds saw community service as a punishment, and a substantial majority thought the maximum of six months a reasonable period for substitution by community service. The social workers in the probation service felt a greater need than the other interviewees for a specially appointed co-ordinato and two-thirds of them admitted that the experiments had been time-consuming.

It is evident that public prosecutors found the imposition of a special condition in a suspended sentence to be an especially appropriate modality. There was a preference for community servi in connection with violence against property and other property offences. A good half saw community service as a punishment and thought it particularly appropriate for first offenders. Three--quarters found the maximum sentence of six months too long and thought that it should not exceed three months. With respect to work projects, the public prosecutors appeared to have a slight preference for projects in the welfare sector.

A majority of the legal profession thought the same modalities appropriate as did the social workers of the probation service, an had the same views with respect to the offences. They thought tha community service could also take the place of heavy fines. Three-quarters thought community service suitable for persons with drink problems, over half saw it as a punishment and found the six months unconditional sentence a reasonable period for substitution by community service.

A majority of judges found postponement of judgement (with specification of penalty) and the special condition in a

[1]This means that the length of the unconditional custodial sentence which will be imposed if the community service fails is fixed in advance.

conditional sentence especially appropriate modalities. They took the same view on the suitability of offences as the public prosecutors. Almost three-quarters saw community service as a punishment and a quarter thought that community service was particularly suitable for young offenders.

A final question in the concluding evaluation concerned the success of the community service experiments. Ninety per cent of those interviewed qualified the experiments as a reasonable to great success.

COMMUNITY SERVICE ELSEWHERE IN EUROPE

1. General

According to a special issue of the International Review of Criminal Policy (Alternatives to Imprisonment 1980), community service is also applied outside Europe, for instance in the United States, Australia and Jamaica. According to De Cant (1982) it has been tried in Israel, but could not be introduced because of a shortage of supervisory personnel. This section will give a brief survey of community service within Europe.

The survey is based primarily on a report compiled for the Conférence permanente Européene de la Probation (1983). It should be noted immediately that only "real" community service will be discussed, and not the so-called "corrective labour" imposed in many Eastern European countries - excluding Poland (see Alternatives to Imprisonment,1980).

3.2. Great Britain

The Community Service Order (C.S.O.) was introduced in England as a penal sanction as long ago as 1972; for a critical analysis, see Junger-Tas (1981). A C.S.O. may last from 40 to 240 hours, and must be completed within a year. According to Ralphs (1980), seven years after introduction, 20,000 orders were imposed each year, approximately two-thirds involving persons under 25 years of age. Almost two-thirds of the cases involved property offences; 5% to 10% of the offences involved violence against persons. The proportion of traffic offences is very low in England. According to Duguid (1982), most of those performing community service in Scotland are also relatively young. Although property offences also formed the major group here, the average percentage of violent offences against persons was somewhat higher than in England, namely 15%. The percentage of traffic offences was 5%.

After six years of experiment, the success rate in England (i.e. the percentage of work projects completed as agreed) was approximately 75%.

Van Nieuwenhoven - Van den Berselaar (1982) described the foremost differences between England and the Netherlands as follows:

> In England, the C.S.O. was introduced on the basis of a new law, the Criminal Justice Act 1972. In the Netherlands, there were simply a number of non-binding guidelines.[1]
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> The position of the English Probation Service with respect to community service is different from that of the Dutch probation service. The English Probation Service has established a Community Service Centre in each district for

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[1] According to the chairman of the V.E.D. (1983), this was a deliberate choice, first, because of the risk of over-organizing and structuring matters, second, to mobilise inventiveness and initiative within the experimental districts.

the implementation of C.S.O.s. These centres are manned by probation officers and administrative staff, and are under the supervision of an "organisor" appointed by a Community Service Committee, a sub-division of the Probation and Aftercare Service. The probation officers take care of preparation, organisation and (after initial reluctance) checking-up and reporting back to the judicial authorities. Contact between these officers and persons performing community service is through intermediaries, known as "supervisors", who can be volunteers, students or persons giving technical guidance on a project (cf. the Dutch "contact persons").

In England there has been a highly developed network of voluntary organizations for many years. People are more used to the idea of work being done by volunteers than is the case in the Netherlands.

It is striking that, from the very beginning, only 45% to 50% of all C.S.O.s were imposed to replace a custodial sentence. There was an increase in the number of C.S.O.s between 1974 and 1978, but no decrease in the number of custodial sentences. The C.S.O. is thus in danger of losing its role as an alternative to custodial sentences (see Junger-Tas, 1981.)

After England and Scotland, Ireland will shortly introduce a statutory C.S.O. There has already been positive experience with a sort of community work which resembles the C.S.O., but which is rather an alternative form of implementing a prison sentence than a real alternative sanction: groups of prisoners are allowed to carry out work under supervision outside the prison (work for which there would otherwise be no funds). The intention is to give the period of custody some constructive content, and although the scheme has been applied on a small scale, it has been qualified as very successful.

3.3. Germany, Austria and Switzerland

Austria and Switzerland do not yet have community service; the Federal Republic of Germany, on the other hand, does. There is, inter alia, the Brücke Project for young persons in Munich (see Justitiële Verkenningen, No. 4, 1980, pp. 4-13). For adults, the public prosecutor can suspend prosecution in favour of community service in "trivial" cases. The courts can also do this, with the agreement of the prosecutor. In some of the federal states a fine which cannot be paid can be replaced by "freie Arbeit", the number of hours to be worked being derived from the amount of the fine. In Hamburg and Berlin the experiments went wrong for organizational reasons; in Hesse, on the other hand, they have been successful so far.

3.4. Belgium and Luxembourg

In Belgium, community service is not yet an official option, though there have been occasional experiments with it. Events in the Netherlands are being closely watched (e.g., de Cant, 1982; Van Lindt, 1983).

In Luxembourg, a ministerial regulation has made it possible to substitute community service for custodial sentences of up to one year. The system has been applied on a limited scale.

3.5. Southern Europe

In Italy, work for the community can only be a substitute for a custodial sentence which was itself a substitute for a fine. One day of community service equals 50,000 lire; the maximum is 60 days. This alternative form of carrying out sentences is intended only for the less serious forms of delinquent behaviour. In France, community service is a fully-fledged alternative sanction, with experiments taking place on the basis of a new law. Some research has been done from a Dutch base by Professor Tak of Nijmegen (see Justitiële Verkenningen, No. 7, 1983, pp. 37-8).

In France,as in England, community service may last a minimum of 40 hours and a maximum of 240, and must be completed within a period of a year. It may be imposed as an independent punishment, or in combination with a conditional sentence. Up to now, there have been no real failures.

Portugal[1] has community service as an alternative to custodial sentences of up to 3 months. The work may take from 9 to 180 hours, and may be done only outside normal working hours.

3.6. Scandinavia

In Denmark, community service experiments were commenced in the autumn of 1982. It is too soon to assess their success; it appears that things are moving slowly because of a lack of enthusiasm. In Sweden too there seems to be a similar lack of enthusiasm. It is thought that the degree of state provision and trade union activity leaves little scope for community service. Finally, an experiment was recently begun in Bergen, Norway. This has yet to be evaluated, and there has been no decision yet on whether there will be experiments on a wider scale.

4. DISCUSSION AND CONCLUSIONS

4.1. Introduction

In this final chapter a number of important aspects of community service will be examined in greater depth. The chosen aspects have been dealt with to a greater or lesser degree in the research. There will be a general discussion of each subject with reference to the results of the research. These results can to some extent be seen as an indicator of the feasibility of measures to be taken in the future. Views expressed by Dutch writers in the field are also referred to wherever they appear to be interesting, but the literature has been consulted only on a limited scale. At the end of each section the views of the researchers will always be given.

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[1] No information on Spain was available for this report.

4.2. The legal nature of community service

It is not entirely clear with many alternative sanctions and alternatives to sanctions if they have a penal character, and if they do, to what extent. Since the 1970s various "diversion" experiments have been started in the Netherlands which have attempted to shift the accent from punishing to helping, from the offence committed to the underlying problems. In these endeavours there were some who were facilely inclined to regard criminal proceedings as a form of martyrdom to be avoided at all cost. In more recent times, however, there appears to be a growing realisation that a more or less compulsory passage through the welfare channels is seen as no less unpleasant, and that where action under the criminal law cannot be avoided, criminal proceedings conducted according to the rules constitutes a fundamental right for the protection of the accused. A climate thus arose in which the nature of an alternative like community service remained ambiguous for some considerable time: it was seen by some as a type of welfare assistance, while others took the view that the accused, given the deprivation of liberty, did have a right to legal protection. In order to put an end to these uncertainties, it seems important to establish in advance whether there was or was not a desire to see community service as a punishment. The decision on this has far-reaching consequences, both for the status which community service is to have in the legal system, and for its future organization.

According to the research results the majority did indeed see community service as a punishment: 62% of those doing community service held this view, over 70% of judges, two-thirds of the probation service and over 50% of both public prosecutors and legal practitioners.

From the specialist literature it seems that there is now agreement that community service is a punishment. Tigges (1981) says that it is vitally important that the judiciary has and retains confidence in the fact that community service possesses a certain punitive character. Van Veen (1983) says: "the

sanction is so severe that it should not be imposed without due process." De Beer and Van Kalmthout (1982) and Huisman (1983) also defend this line. At a special session of the (private) Probation and Aftercare Association (ARV) in February 1984, a proposition was accepted recommending that community service be regarded as a punishment.

The present authors believe that community service is a sanction which radically limits freedom of action, and therefore should be qualified as a punishment. In the remainder of this chapter community service will, therefore, be treated as a punishment.

4.3. Penal objectives

In any attempt to incorporate community service as flexibly but responsibly as possible into existing penal legislation and the current organizational structure, the actual objective of this new punishment should not be forgotten.

It is generally accepted that community service is a more humane punishment than imprisonment, and that that alone is sufficient reason to make great efforts to establish its wide-scale use. A question can, however, be asked about the extent to which it fulfils the classic penal objectives as they appear in the text books: retribution, protection and deterrence.

Retribution/conflict resolution

Punishment for punishment's sake. While in earlier times retribution sometimes seemed to be very little different from vengeance, modern writers emphasize that what is of primary importance is to impose a punishment which has been deserved. In this sense, a retributive element can certainly be attributed to community service. The fact that society can be recompensed through community service can also be seen as a contemporary form of retribution. The same goes for conflict resolution. According to Van Tricht (1982), community service is a form of abstract conflict resolution, in those cases where no relation between the offence and the community service can be

detected. It appears that there is seldom actual conflict resolution through community service (in the sense of the resolution of the conflicts between the parties concerned).

Protection of society

Since the person performing community service is not removed from the community, it may be suggested that this new sanction has no protective aspect whatsoever. There is thus reason to punish with community service only those offenders who may be considered not to constitute a danger to society.

Deterrence

Given that over 62% of persons performing community service saw the work as a punishment, and only a few as a "pastime", it may be taken that community service will also have a more or less deterrent effect in the future. It is not yet known to what extent there is (or has been) recidivism among persons doing community service. According to English research (Junger-Tas, 1981), recidivism was not worse than in comparable groups. A study of recidivism will probably be conducted through the WODC though it will be difficult to ascertain whether a lower rate of recidivism (if such is the case in the Netherlands) has indeed been the result of community service. Many other factors, often difficult to pin down, could be equally responsible.

4.4. Relation to other punishments and measures

If community service is incorporated into the law, it will be important to decide exactly what its place should be vis à vis the existing sanctions known to the law.

The Minister of Justice's guideline was, that community service should serve only as an alternative to a short, unconditional custodial sentence. If one considers the results of the final evaluation, a different picture emerges: it is true that 40.7% of those replying thought that community service should only

replace an unconditional prison sentence, but almost 45% took the view that it should also replace heavy fines or fines accompanied by other (e.g. conditional) punishments. The vast majority of those replying thought that it should be possible to combine community service with a ban on driving (91.6%) and with confiscation of property (80.4%).

Various views are to be found in the literature on the subject. De Beer and Van Kalmthout (1982) think that it should be possible for community service to replace a heavy fine, a suspended custodial sentence and a long-term driving ban. Van Veen (1984) would like to see community service incorporated into the law as a primary sanction (see section 4.6), exclusively as an alternative to custodial sentences. At the special session of the ARV (February 1984), two propositions were put forward on this subject; one was formulated by Van Kalmthout, and corresponded to his above-mentioned opinion, the other came from Huisman, and was as follows: Community service should only be considered to be, and imposed as, an alternative to an unconditional custodial sentence. In order to prevent this from becoming purely theoretical, community service should only be applicable in the stage between sentencing and the carrying out of the sentence. A poll showed that there was a slight preference for Huisman's proposition.

The present writers are of the opinion that the viewpoints of both Van Kalmthout and Van Veen can be defended, but think it unlikely that the risk of practice differing from principle can be eliminated by a procedural provision, as Huisman suggests.

4.5. Maximum sentences

If community service replaces unconditional imprisonment for up to a certain number of months, it would appear obvious that a maximum number of hours of community service should replace a maximum number of weeks/months of unconditional imprisonment.

The research showed that the VED ratio of 6 months to 150 hours was generally thought to be unbalanced: practice has revealed

that a ratio of a maximum of 3 months to 150 hours was considered to be more appropriate; Van Veen was also of this opinion (1984). In August 1983, the Minister of Justice changed the ratio to 3 months against 150 hours. At the time of the final evaluation, the argument used by respondents who saw 3 months as the maximum was that above that limit, the seriousness of the offences would be such that it would endanger the acceptance of community service by the public. Nevertheless, the present writers - like another group of respondents - suppose that the courts would now and then be glad to have the possibility of running over to 300 hours/6 months.

If community service were to be an independent punishment, not prescribed by law only as an alternative to unconditional custodial sentences, then it would be sufficient to have a statutory provision fixing a general maximum number of hours for which community service might be imposed.

4.6. Modalities

It appears from the final evaluation that the two most "popular" modalities were postponement of judgement (with specification of penalty) and community service in the context of a pardon. All respondents (the public prosecutors, the judiciary, the probation service and the legal profession) were in agreement about the first of the modalities. With respect to pardons, the representatives of the judiciary were more cautious than members of the probation service or the legal profession.

Many public prosecutors and legal practitioners were also in favour of community service as a special condition. In the area of prosecutors' modalities, an unconditional decision not to prefer charges following successful community service appeared to be the variant most in demand, particularly among the probation service and the legal profession - perhaps because these groups are the most "diversion-minded"?

Some writers have argued for the abolition/non-introduction of the prosecutors' modalities. Into this category fall Huisman (1983) and Van Veen (1984). A proposition formulated by Van Kalmthout at the ARV session mentioned above reads as follows: "Community service can be imposed as part of a deal only if it is presented to the court for approval .... the accused person should be adequately informed by the public prosecutor about the nature and details of the accusations against him, and about the punishment which the prosecutor intends to call for."

With respect to court modalities, Remmerts de Vries (1982) sees no objection to using community service as a special condition in a sentence, possibly pending a legal provision. He raises the delay in the legal process caused by postponement of judgment as an objection to that modality. Huisman (1983) rejects community service as a special condition for two reasons: first, because he does not believe that community service is an instrument which influences behaviour (which a special condition should be); second, because this modality would allow community service to replace punishments other than imprisonment (which he opposes). According to Van Kalmthout (Special Session ARV, 1984), it should also be possible in certain circumstances to impose community service as a special condition in a suspended sentence, for release on parole or linked to a pardon (in which cases it should be specifically aimed at influencing conduct).

Van Veen (1984) argues for the adoption of community service as a primary sentence replacing a custodial sentence, which can also be imposed in combination with a partially conditional punishment. According to Van Veen there is no call for community service as a special condition, given its punitive character.

If it is assumed that the legislature views community service as a punishment, then its first inclination will be in the direction of legal regulation of one or more court modalities. It will wish to see all the basic rules of criminal procedure

observed, and its aim will be to incorporate community service as flexibly and simply as possible into the structure of the existing criminal law.

In this perspective, community service can only be seen as a primary or an additional punishment, possibly with a proviso that it must serve as an alternative for one or more other punishments fixed by law (either main or alternative punishments) or a part thereof. In order to prevent forced labour from being introduced through the back door in this way, there should possibly be a condition that the person concerned should agree to the community service to be imposed.

Making community service available as a special condition would not be an entirely logical step. Application in the context of a pardon is, however, quite possible, given that with pardons one can be dealing with the substitution of one punishment by another, at the request of the offender. It will no longer be possible to count the community service itself as an innovation once it has been adopted as a punishment in the law. Is it possible to have a prosecutors' modality if community service is seen as a punishment? Bearing in mind the fact that a primary punishment such as a fine can, in fact, also be "imposed" by the prosecutor, as part of a deal, one may suppose that an analogous arrangement could be set up with respect to community service. This is a modality which has not been applied anywhere so far, and could not therefore form part of this final evaluation. As far as its practical application is concerned, it probably most closely resembles unconditional dismissal of charges if the community service is successful. Permitting a prosecutors' variant would substantially advance the rapidity of the legal process; such a modality should, however, be subject to the approval of the courts. A relatively severe punishment is at issue (compared with the fine), and there must be precautions to see that the public prosecutor does not tend to take over the judge's role. In addition, it is to be recommended that there should be definite guidelines on community

service for public prosecutors, particularly to avoid the "net-widening" effect. It might be feared that public prosecutors would all too easily consider community service where previously a less severe punishment, or even no punishment at all, would have been called for (for unemployed first offenders for example).

Other prosecutors' modalities, such as community service linked to a conditional decision not to prefer charges, appear to be less appropriate.

Community service as a punishment should be clearly distinguished juridically from reparation for the benefit of the victim, even though in some cases the work project could be provided by the victim. For all the modalities, a question could be raised as to the extent to which the procedure to be followed needs to be legally or otherwise laid down. It would seem to be in the interests of the accused/offender to know from the very beginning precisely what awaits him, and what the consequences of non-compliance are (see further 4.9). This would appear to be desirable from the psychological as well as the legal point of view.

4.7. Age limits

Community service for adult offenders seems to be imposed for the most part on young adults (18-20 year olds).

Alongside the experiments with community service for adults, experiments with young people were also begun, in 1983, under the guidance of the Slagter Working Party[1]. These experiments have since been conducted in numerous court districts. It appears to be mainly young persons of 16 and over who are ordered

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[1] Research has been conducted through the Ministry of Justice (CWOK) by P.H. van der Laan and T.A.G. van Hecke, under the supervision of Dr. J. Junger-Tas.

to do community service. If one takes into account the fact that offences are often jointly committed by groups of youths in the age group 16-20, it would seem obvious to propose a legal regime which is broadly similar for young persons and adults. In this connection it is to be recommended that the advice given to the Minister of Justice by the VED and by the Slagter Working Party should be complementary to the greatest possible extent.

There has long been a strict dividing line between criminal law for young persons and that for adults. This seems to have originated in the old idea that there are two types of human beings: children and adults. It seems that only in the twentieth century has it been realized that human development is a gradual process. Even now, however, there are many who think that young offenders should, in the first place, be helped and/or educated, while adults have earned a punishment. For young persons, their "good" is more important than the protection of their legal position, for adults it is the other way round. Criminal law affecting young persons is offender-oriented, while with adults more emphasis is put on objectively equal treatment.

This easily leads to a greater readiness to see community service for young persons as more 'helpful' than punitive than is the case with adults. In other words, it can be assumed that mainly the prosecutors' modalities will be used for young offenders. Should this be a reason to suggest to the Minister separate regulations for minors and adults doing community service? This would not entirely tie in with the plans of the Anneveldt Committee[1].

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[1] A committee on the reform of the criminal law as affecting young persons. It is working for the introduction of a criminal law for adolescents (a separate criminal law for 16-24 year olds).

4.8. Equality before the law

Simply stated, there are two possible views on the concept of equality before the law. One proceeds from the assumption that all persons are equal before the law and that, therefore, like offences should produce like punishments. According to the other view, no two people are identical before the law, and courts will have to impose an objectively more severe punishment for some offenders than for others who have committed the same offence, in order to ensure that the subjective level of punishment is the same; only then can there be true equality before the law.

With respect to community service, various means have been tried to promote equality before the law in one way or another, probably with different ideas of what the concept means. Attention will be given here to four topics in which equality before the law is brought into question in connection with community service. These are: (a) the use of a "tariff" to fix the number of hours to be worked; (b) the application of a multiplication factor to fix the number of hours for the unemployed; (c) the duration of periods of probation; (d) registration in judicial records.

(a) The tariff system

There appears to be a tendency in the practic e of community service to apply a kind of tariff system for the conversion of a certain number of days of unconditional imprisonment into a suitable number of hours of community service. In three court districts it appears that such a system was strictly applied; in two it was applied in a general way, and in the remaining three districts it was not applied at all.

Over half of those questioned as part of the RDC final evaluation thought a tariff system to be highly desirable, and another 16%, although not considering it desirable, thought it unavoidable.

The literature consulted during this research project does not deal extensively with tariffs. One of the propositions accepted at the ARV Special Session suggested that a standard conversion table should indeed be established.

As long as community service must remain a specific substitute for short, unconditional custodial sentences, the present writers agree that the establishment of such a standard would seem an obvious requirement.

(b) The unemployment factor

The research showed that in only one court district was a fixed multiplication factor applied to the unemployed: such persons had to do twice as many hours as those in employment. Apart from this, there was no fixed multiplication factor in any of the eight experimental districts, though there was everywhere an inclination to make the unemployed do more hours. De Beer and Van Kalmthout (1982) describe this as an example of inequality before the law. According to an ARV proposition, the absence of a particular employment situation should not constitute a multiplying factor in fixing the number of hours. Paradoxically, however, the application of an "unemployment factor" is probably the result of an attempt to achieve equality before the law.

The present writers feel that use of such a factor is not necessary, if the restriction is made that the unemployed should not do more hours of community service per week (or per day) than those who are employed.

(c) Duration of periods of probation

The duration of periods of probation for those doing community service were not uniform during the experimental period. In some court districts the periods were "normal", in others they were standardized at 3 to 6 months, elsewhere (for example, a week) were imposed. Some persons doing community service saw it as a double punishment.

that a long period of probation followed the work project. If community service became a primary punishment, the problem of probation would no longer arise.

(d) Registration in judicial records

The research showed that the community service was not registered in judicial and criminal records in the same manner in all districts. In the opinion of the authors, if community service is seen as a punishment, it should be included in criminal records. It would not be fair to other offenders to discriminate in this respect in favour of those doing community service.

4.9. Legal certainty

In section 4.6 reference was made to the legal and psychological importance to the accused of knowing exactly what he may expect.

The RDC research showed that the legal authorities almost universally preferred proposals to be as fully worked out (i.e., specific) as possible. Whenever time was short, however, there was a tendency to be content with less, and to leave the further details to the coordinator and/or the probation service. In precisely those court districts where community service was much used, and therefore became routine, the courts were satisfied with less detailed proposals, e.g., with fixing only the number of hours.

In connection with the predictability or certainty of the reactions of the court, it should be pointed out that with the court modalities "community service as a special condition", and "community service in the context of a pardon", it is clear in advance what will happen in the case of non-fulfilment. It is a different matter though if judgment is postponed. During the experimental period, there were only two court districts in which the punishment which would follow non--fulfilment of the agreed project was laid down in advance.

Among the prosecutor's modalities, "unconditional dismissal of charges following successful community service", is undoubtedly the modality providing the person concerned with the greatest certainty. Of all the prosecutors' modalities this was the one most frequently applied in the experimental period. The least certain is the prosecutors' modality, "postponement of the decision whether to prosecute". This was relatively often used in only one court district during the experimental period.

When the final evaluation is looked at to see which modalities were preferred, then the answer is those which indicated most certainly what would happen after a successful (or unsuccessful) work project.

There was little discussion of this in the literature consulted. According to Van Kalmthout (ARV Special Session, proposition, 1984), the scope and the number of hours of community service should be fixed by the legal authority concerned.

The only way to provide the accused/offender with legal certainty from the very beginning, would be for the agreements made with respect to community service, including the response to be expected from the court after the successful or unsuccessful conclusion of projects, to be worked out in detail and recorded in writing.

Given the experience in the experimental court districts, it is apparently not sensible to expect too many aspects to be settled in advance, if practicability is taken into account. Nevertheless, the aim should be for as many details as possible of each community service arrangement to be agreed in writing in advance. For practical reasons, and to speed up proceedings, the designation of an actual project place could possibly be left to the community service coordinator/probation service, though that also has the disadvantage that no account can be taken of the nature of the work in fixing the number of hours.

Although fixing the punishment requested by the public prosecutor in advance promotes certainty for the accused, such a requirement also has its disadvantages. There is the objection that, if the community service is prematurely ended, the court cannot take into consideration the part of the work already completed. However, if partial execution of alternate punishments becomes possible in the future, this problem will not arise.

4.10. The role of the probation service in the organization of community service

The probation service played an important role in community service during the experimental period. Among the new tasks which were taken on (in addition to more traditional ones) were: preparation and guidance of community service, creation and management of address lists of project sites, exercise of supervision over and reporting back to the authorities on the progress and outcome of the work. All these jobs were carried out by members of state and private probation services, though the division of labour between them varied somewhat from district to district.

The probation service (especially the private part) originally had serious objections to carrying out supervisory and reporting tasks. The final evaluation showed, however, that the probation service was increasingly willing to accept mediation and reporting back as its tasks. While the first opinion poll (1981) revealed that an average of 29% of those questioned took the view that the probation service would have to take care of the reporting back, at the final evaluation this average was 60%. A poll taken at the ARV Special Session showed that the majority of those present thought that the probation service should also accept responsibility for reporting back to the authorities, and should be prepared under certain conditions to do the reporting back itself.

De Beer and Van Kalmthout (1982) think that, even without supervision and reporting back, the probation service already

has an impressive list of tasks connected with community service, more extensive and more labour intensive than was initially intended by the VED. They seriously question whether the probation service would accept the long-term supervisory role as part of its legal obligation, if and when statutory regulations are introduced. Given the above-mentioned research findings and the experiences of the ARV Special Session, it seems likely that the probation service would accept this role. Nevertheless, some probation workers remain unhappy with the supervisory and reporting roles. They see supervision of the performance of community service as part of the execution of the punishment, and therefore as a task for the Public Prosecutor's Department. The present writers would raise two arguments against this view. In the first place, two aspects peculiar to community service are that it makes a call on society to cooperate in its performance, and that it takes place within the community context. If individuals and institutions are good enough to make projects available, they should be subjected to as little inconvenience as possible (see also 4.11). They should not therefore also be expected to be responsible for reporting back to the public prosecutor, and it is therefore right that the probation service should act as go-between. In the second place, reporting back to the public prosecutor does not imply that the probation service is itself carrying out punishments. It is simply providing information upon the basis of which the public prosecutor can decide whether the community service has been properly performed.

Although the division of labour within the probation service varied from district to district, at the heart of matters there was always the community service coordinator; in practice, this person appears to have become virtually indispensable. The final evaluation showed that less than 10% of those questioned saw no necessity for such a person in the future.

It would indeed seem desirable that in each district at least one person with a central role should be appointed within the

probation service, in order to coordinate the many tasks mentioned above. Such a person could, moreover, be made responsible for reporting back to the Public Prosecutions Department, which could then be charged with the overall supervision of the performance of the community service. There are other reasons why there will continue to be a need for a coordinator in the future; there must be a central figure who has an overall view if organization and efficiency are to remain at the level which they have now reached. In addition, the existence of such a person is of great importance for the maintenance of good relations with the project sites (see further, 4.11). The argument that there are no resources for coordinators could be countered by the fact that the introduction of community service could reduce the number of short prison sentences by 10% to 20%. In small court districts it would be enough to have just one coordinator for both young persons and adults.

4.11. Projects

The survival of community service in the future will depend to a large extent on the willingness of the community to continue to provide work projects. The question is this: how can those now providing or who may provide projects be made to feel so positive over the long term that they would remain willing to give a chance to a person doing community service even after one or more disappointing experiences? One means to achieve this might be for such institutions to be dealt with in a manner which causes them as little inconvenience as possible. It is therefore not desirable to saddle such institutions with an obligation to report back to the Public Prosecutions Department, unless they make it known that they are genuinely willing to do so. The research project showed that over half the "contacts" questioned ("contacts" being the persons within the institutions who are responsible for the practical guidance of those doing community service), did not find it desirable that they should have to report back to the authorities. In the opinion of the authors there should also be an effort to avoid project providers being approached by a variety of

persons with a variety of roles. It would be better if they were always approached by, and could always turn to a trusted and experienced person, for instance the community service coordinator.

Our research showed that up to now it has been possible to find a sufficient number of suitable projects, and that there have been only ad hoc attempts to expand the address lists. Even so, at the time of the final evaluation, the greatest concern for the future was that too few suitable projects would be found. Thus, there is a threat of a problem of under-capacity not only with respect to prisons, but also with respect to community service. An active policy by the project banks is therefore advisable, inter alia, through seeking greater cooperation with voluntary organisations, etc.

4.12. Conclusion

Community service offers a chance to provide an adequate reaction to serious offences, without removing the offenders from society. The success of community service possibly provides an incentive for further experiments, also with new types of "alternative reparation", for which the probation service in particular has argued in recent times. Into this category would fall compensation measures, help to victims, etc.

For the time being, however, the incorporation of community service into the criminal law is still awaited. In the expectation that it will eventually receive formal status, it is being imposed in all court districts in the Netherlands on an increasing scale. This development is to be welcomed, yet it gives rise to some concern on account of the temporary and voluntary nature of the guidelines governing community service. The temporary acceptance of great differences among the various districts means that not only are legal certainty and equality before the law endangered, but that it will be more difficult in the future to roll back established practices. There is therefore an urgent need for an adequate transitional arrangement, mostly with respect to organizational matters.

It is to be hoped that such a measure will be introduced sooner rather than later, and that it will be followed in the foreseeable future first by definitive statutory rules governing community service, and second by clearly formulated guidelines for public prosecutors. In this way, the introduction of community service will signify a definite step forward in the development of criminal law in the Netherlands.

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FIGURE 1.

Natureof offence committed by those doing community service compared with nature of offence committed by those sentenced to short prison terms and fines (May 1981 - May 1982: eight court districts)