European Journal of Probation
University of Bucharest
www.ejprob.ro
Vol. 2, No.1, 2010, pp 22 – 40
ISSN: 2006 – 2203

ONLY FOR MINOR OFFENCES: Community Service in the Netherlands

Miranda Boone
Willem Pompe Institute for Criminal Law and Criminology,
University of Utrecht

Abstract

Community service for adults was introduced in the Netherlands in the first half of the 1980s as an alternative to custodial sentences. In 1989 it was accepted as a third formal sentence in the Penal Code for adults. Since that time the number of orders increased to 40.000 on a yearly basis. In general, the probation service has managed to deal successfully with this growth. It did have consequences, however for the involvement of the community and the degree of individualization and support. The initial object of decreasing imprisonment by offering an alternative has not been achieved. In terms of reducing recidivism, community service seems to be relatively successful, however.

Keywords: Community service - the Netherlands – Sentencing - Probation service

Introduction

Community service orders for adults were introduced in the Netherlands in the first half of the 1980s as an alternative to custodial sentences. After 25 years, it is mainly the sheer numbers that catch the eye: 40,000 community service orders are imposed by the courts or the prosecution service on a yearly basis, of which 35,000 are successfully completed. Despite that, a great deal of debate is still ongoing concerning the punitive nature of community service orders. Public opinion seems to accept community service orders for minor crimes and first offenders, but are apparently rejected for more serious crimes and offenders. At least, regarding the discussions in the media and on the internet, a proper study concerning the public confidence in community sentences has been conducted more than 15 years ago. This presumed lack of confidence, however, can have major consequences for both the applicability of the community service order in the future as well as for the sentencing freedom of the courts.

In this paper different questions regarding the community service order will be addressed: Which aims were attributed to community service orders in the 25 years of their existence and what do we know of the results? How are community service orders imposed, organized and carried out? For what types offences are community service orders imposed and for which categories of offenders? Some remarks will be made concerning the legal position of offenders who have been subjected to a community service order. Finally, some expectations and doubts for the near future will be elaborated.

Historical development, legal framework, aims and terminology

History

The history of community service in the Netherlands started in the mid 1960s when prison sentences were heavily criticised. Two points of criticism were stressed in particular. First, exclusion and stigmatisation were seen as harmful side-effects of the prison sentence that qualified it as an inhuman reaction that should only be used very selectively. Second, while the conviction was shared that both society and the criminal profited most from the rehabilitation of the offender, there was great disappointment concerning the rehabilitative potential of the custodial sentence. There were therefore initiatives to develop alternatives to imprisonment. Possibilities to enhance the use of financial penalties were investigated (Commissie Vermogensstraffen 1969 and 1972) as well as to increase the use of suspended sentences (Mulder and Schootstra 1974). In this climate also unpaid labour for the benefit of the community was proposed as an alternative to imprisonment.

Initiatives to reduce non-suspended prison sentences in favour of less harmful alternatives (e.g. fines, suspended sentences and the community service order) were welcomed with enthusiasm in the mild penal climate of the 1970s. Despite this, none of the initiatives resulted in concrete measures until the following decade, when a shortage of cell capacity came into being and the penal climate was becoming harsher. The Bill on Financial Penalties was finally adopted in 1983, while far-reaching changes in the legal regulation of the suspended sentence were only implemented in 1989. Besides effectiveness and humanity, another argument in favour of community sentencing was brought into the discussion at this time: the shortage of prison cells. Experiments with community sentences started at the beginning of the 1980s and went hand in hand with increasing prison populations and a growing lack of prison capacity.

From the beginning it had been clear that the probation service was the intended organization to implement and supervise community service orders. Within this organisation there was a great deal of resistance, however, because probation officers, who were mostly trained as social workers, had difficulties in combining law enforcement tasks with their counselling work. It even seems plausible that the substitutional character of community service orders (in the sense of its ability to replace prison sentences) was initially emphasized to convince the probation service of the extent to which such tasks fitted the probation service's core objectives. In the Budget of 1982, threatening phrases were uttered: In the light of the current economic situation it has to be considered if certain probation activities can be intensified while other, less important tasks can be decreased or brought to an end (Parliamentary Documents II 1981/82, 17100, chapter VI, nr. 2, p. 35). A year later the Minister of Justice concludes with relief: 'Although there has been some hesitations within probation with respect to unpaid labour, it seems to have become convinced yet that this sanction is a good alternative for unconditional imprisonment.' Actually, the probation service was bitterly divided on this issue. In an early letter to the Secretary of Justice, the organization agreed to prepare and oversee unpaid labour, but refused to control and report on failures (Boone 2000 and 2005). Persisting with this refusal, however, would have been the starting point for dismantling the entire organization (Heinrich 1995: 255). So in 1986 the preparing, implementing and overseeing of unpaid labour was added to the Probation Bill as a new task.

After a few years of experiments with several juridical measures, unpaid labour was introduced in 1989 as a third formal sentence (besides custodial and financial penalties) in the Penal Code for adults. The sentence was called Dienstverlening (the provision of services), a term which was defined in the law as 'unpaid labour to benefit the community.' Unpaid labour could be imposed instead of a ''considered'

non-suspended prison sentence of six months at most'. This complicated formulation was chosen to stimulate the substitutional character of the penalty. The judge in question first had to determine the length of the prison sentence and he then had to decide whether this sentence could be replaced by a community service order. Since nobody can read the mind of a judge, the formulation in the law could not be considered as a guarantee to prevent a judge from imposing a community service order in cases where he would otherwise have imposed a fine or a suspended prison sentence. The choice of a formal sentence had as a consequence that most of the other juridical possibilities were ruled out. For example, community service orders could no longer be imposed as a suspension of pretrial detention or as an out of court settlement by the Public Prosecutor as had been possible during the experiments with this sentence. The reason for this is that (formal) sentences can only be imposed by a judge after a hearing in court.[i]
The voluntary character of this judicial alternative was stressed by requiring both an offer and consent on the part of the offender. First, the offender had to offer that he was willing to carry out a community service order and after the judge had decided to impose such an order the offender also had to give his consent thereto. The second condition was related to the international stipulations concerning the prohibition of forced labour and requiring informed consent. The maximum amount of hours that could be imposed by the former Bill was 240 to replace six months imprisonment, in other words, 40 hours of work was equated with one month imprisonment.

Current legal framework and terminology

In 2001 the legal framework of community sentences changed, primarily to enable growth. By that time, community sentences were no longer exclusively seen as a possibility to replace prison sentences, but as autonomous sentences in their own right that were – in terms of their severity- placed between prison sentences and fines. This change of character was illustrated by the change of terminology: they now became task sentences. Different opinions regarding the aims of community sanctions were also reflected in a change in the terminology. From 1996 onwards the term task sentence came into use, a term that was also adopted in the 2001 Bill. According to the Minister of Justice at that time, this terminology was chosen to note the fact that the alternative period of the sentence had come to an end (Beleidsnota Taakstraffen 1996:4). The most important changes to and the characteristics of the current legal framework of community service orders will be discussed below.

A first addition to the existing legislation was the creation of a legal basis for training orders in the Penal Code for adults. Training orders were being applied in all kinds of legal variations, but not as a formal sentence, at least not for adults, as these orders had been given a legal basis in the penal stipulations for juveniles since 1994. Formalising the training order had the same kind of restrictions on its application in other phases of the criminal procedure as on the community service order, namely that its application in other juridical measures was no longer possible. For this reason, training orders will probably be again removed from the Criminal Code in the near future (see below).

Also combinations of community service orders, training orders and prison sentences were made possible in the new Bill, despite the earlier point of view that this possibility enhanced the chance that the judge was going to impose heavier sentences (Parliamentary Documents II, 1986/1987, 2007, nr.3, p.5). The maximum number of hours that can be imposed was doubled to 480, but this remained at 240 if only a community service order is imposed. The community service order has to be completed within a year, with one possibility for the prosecutor to extend this term by another year.

In the 2001 Bill, task sentences (containing both the community service order and a training order, although I only discuss the former) became 'autonomous sentences', meaning that they were no longer exclusively meant as an alternative to prison sentences. It was emphasised in the Green Paper preceding the new Bill that 'in cases where offenders had been given the benefit of the doubt in the past and were punished by a suspended sentence because there was no alternative thereto, they may be sentenced to a community service order from now on' (Beleidsnota taakstraffen 1996, p. 30). So, a judge no longer had to impose a community service order instead of a prison sentence of a certain duration; he could now impose a community service order and determine a period of detention if the offender failed to carry out the community service order in a satisfactory manner. For every 2 hours in the task sentence, 1 day of detention in the case of default could be imposed.

Related to this, the procedure leading to the early termination of the order and the execution of detention in the case of default changed in the 2001 Bill. Under the former law a new court hearing was required before such detention could be executed. Since 2001 the Prosecution Service can demand such default detention immediately after it receives a notification that the community service order has failed. The prosecutor thereby informs the convicted person of his decision and of the number of hours of the community service order that remain and the length of the default detention. The convicted person does have the opportunity to appeal within 14 days (Sec. 22g subsec. 3), but the appeal does not suspend the execution of the default detention. This means that the default detention can be executed before a court hearing has taken place.

One of the most important changes under the 2001 Bill, however, was the possibility for the prosecution service to impose a community service order as a condition for a *transactie* (an out-of-court settlement or compromise by the Public Prosecutor) with the offender, a possibility that was still unthinkable under the 1989 Act because of the 'supposed punitive character of a community sentence order' (Parliamentary Documents II, 1986/87, 20074, no. 3, p. 9). The point of view that the community service order was too harsh a sentence to be applied by the prosecutor was not subject to any further political discussion in the debates preceding the 2001 Bill. The only arguments that were mentioned for this fundamental change were that the transaction was more accepted now compared to 1989 and that the 'transaction model' was also successfully introduced in the penal stipulations for juveniles. Only the maximum amount of hours was reduced to 120.

Next, the stipulations that had to guarantee the voluntary character of the community service order in relation to the prohibition of forced labour were abolished. The requirement that the offender has to offer to carry out a community service order was already a 'dead letter' at the time it was abolished. In cases where the offender did not spontaneously offer to carry out a community service order, the judge or prosecutor would remind him of this possibility. The abolition of the requirement that the offender has to give his consent to an order (although refusing to consent to such an order is still a counter-indication for the prosecution service) was instigated by the desire to impose a community service order in cases where the offender is sentenced in absentia. According to the legislator at the time, this consent could also be expressed by merely commencing the work imposed (Handelingen II, 1999/00, p. 2940). In my opinion, this situation contravenes the legal requirements concerning forced labour because both the European Court of Human Rights as well as the Council of Europe in its 'European Rules on Community sanctions and measures' do require 'informed consent'. It is impossible for a judge to verify this requirement if he sentences the offender in absentia.

One can even wonder whether the requirement of 'informed consent' is fulfilled when the offender gives his consent by way of an oral statement in court. A final amendment in the 2001 Bill was to the effect that the judge is no longer obliged to determine the nature of the work that has to be performed. In practice, the probation service already decided on the content of the work after the judge had given his verdict. This situation was legalised in 2001, because of efficiency reasons, although it raises the question whether the offender knows what he is agreeing to at the moment when he gives his consent.

Currently, two important changes to the legislation are being prepared. First, the Minister of Justice has submitted a proposal to exclude violent and sexual offences from the ambit of task sentences. A 'no task sentence, despite a special circumstances policy' is already encouraged for these types of offences according to a guidelines for the prosecution service, but the Minister wishes to see further guarantees that task sentences will no longer be imposed for serious offences attracting a maximum custodial sentence of six years or more. A second consequence of this proposal will be that in cases of recidivism task sentences can only be imposed in very exceptional circumstances. Judges and experts have strongly criticised this proposal, not only because of the insufficient empirical basis, but also because it constitutes a major breach of sentencing freedom that needs a much more fundamental discussion.

Aims

An extensive study of the political debates during the period preceding the first experiments with the community service order (in the 1970s) has made clear that the desire to increase the effectiveness of sentencing in terms of rehabilitation was the direct reason for the introduction of the community service order in the first place (Boone 2000). Time after time politicians emphasised that the rehabilitation of offenders was the most important aim of sentencing and that the custodial sentence had failed to achieve this aim. Retribution was totally rejected as a sentencing aim in this era. Advocates of alternative sentences were completely convinced that both the offender and society would profit most from rehabilitating the offender. Besides, research from that time showed that in terms of rehabilitation, the prison sentence could be seen as a failure, although it was only in 1953 that the resocialisation principle was prominently introduced in Penitentiary law (Boone 2007, Nelissen 2000). In those early debates concerning alternative sentences, the substitutional character of community service orders seemed to be less important. If the Minister of Justice of that time, for example, used the term alternative sentences, he defined them as sentences that could be an alternative to both a prison sentence and a suspended sentence (Handelingen II, 1973/74, p. 799).

The substitutional character of the community service order was, however, emphasised in the report preceding the introduction of the community service order (Commissie Alternatieve Strafrechtelijke Sancties 1979). The imposition of unpaid labour was only allowed subject to the condition that it was 'almost certainly applied as an alternative to a short prison sentence' (Commissie Alternatieve Strafrechtelijke Sancties 1979). This proviso can be characterized as remarkable since the first evaluation of the British community service order showed that this sentence replaced prison in only 40-50 per cent of cases (Pease, Billingham and Earnshaw 1977), a fact that had been brought to the attention of the committee that prepared the introduction of the Dutch community service order (Commissie Alternatieve Strafrechtelijke Sancties 1979). Besides the sincere intention to humanise the sentencing system, there were different reasons to emphasise the substitional character, however. First, it was a strong argument to motivate the probation service to take responsibility for implementing and supervising community service orders (see above). Second, the

factual situation changed at the end of the 1970s. From that time onwards both the number of non-suspended prison sentences as well as their moderate length started to increase and the result was a lack of prison cells (Berghuis 1994). In the political debates of that time alternative sentences were then connected to the need for more prison cells (Boone 2000).

From halfway the 1980s, it became visible that community sentences were also simply seen as a good addition to the existing sanction arsenal, independent of their positive results. From this time on the application of the community service order was encouraged in all kinds of official documents, without any reference to the number of prison sentences that it was intended to replace. In the influential policy document *Society and Crime (Samenleving en Crimininaliteit*, Ministerie van Justitie 1985), the Minister stated that the aim was to increase unpaid labour to 4000 cases per year. Similar aims were expressed in the subsequent policy document entitled Justice on the Move (recht in Beweging, Ministerie van Justitie 1990) and in successive explanatory memoranda on justice budgets.
The rationale behind these purely quantitative aims becomes more understandable when one reads the conclusions of the commission that was established to investigate the broader opportunities for applying non-custodial sentences (Commissie Heroverweging Instrumentarium Rechtshandhaving 1995). In the eyes of the commission, community sentences were also seen as an important instrument to reinforce the credibility of the criminal justice system. In cases where a criminal justice response had failed to occur or was considered to be too weak, community sentences were seen as a relative cheap and appropriate tool for 'solving the lack of criminal justice enforcement'. The opinion expressed by the commission was that the response to crime was too weak in general and that there were not many possibilities left to replace prison sentences by non-custodial sentences, and that these sentences could provide a valuable contribution to law enforcement in general (Commissie Heroverweging Instrumentarium Rechtshandhaving, p. 41).

This change of opinion concerning the aims of community sentence orders also explains the weak reaction to a study which indicated that offenders who were subjected to unpaid labour showed more similarities to offenders subjected to suspended sentences than to offenders on whom an unconditional prison sentence was imposed (Spaans 1995). The same study showed that the results of community service orders were not much better compared to prison sentences in terms of reducing reoffending (Spaans 1995), a finding that is refuted by a recent study by the way (see above). While the study of 1995 can be interpreted as a complete failure of the initial goals of community service orders, they did not result in a drastic reform of the policy towards community sentences. On the contrary, for a further expansion of community sentences it was sufficient that the results were no worse compared to prison sentences according to a following report by the Justice Department (*Substitutie van Vrijheidsstraffen*, Ministerie van Justitie 1995).

Special prevention, a human and individualised approach to the offender and rehabilitation remain the official aims of the community service order, according to the explanatory memoranda of the 2001 Bill (Parliamentary Documents II, 1997-1998, no. 3, p. 1 en 2) and the latest annual reports and information on the probation service's website. In practice, however, the introduction of group projects, the lack of weigh that is given to individualising the order and the fact that most community service orders are carried out without any personal support (see above), show that these objectives are no longer seen as qualifying for the community service order. High expectations concerning the rehabilitative character of sanctions seem to have shifted to the later introduced training orders and more recently (back) to the special conditions for a suspended prison sentence.

Punitive nature and public acceptance

A debate that seriously started after the introduction of the community service order in the Penal Code in 1989 and that has still not come to an end concerns the punitive nature of the community service order. The idea was that now the community service order was legalised as a formal sentence, the punitive nature should also be reflected in its content. First, the topic was discussed among academics. Several punitive elements have been attributed to community sentences since they were first applied, for example the duty to make an effort (Balkema 1993), the confrontational method of working (Ploeg and De Beer 1993), shame (Kelk 1994) and stigmatisation as a result of greater visibility in comparison to the prison sentence (Ploeg and De Beer 1993). In 2000 a study was published by Van Mulbregt concerning the opinions of offenders, judges, public prosecutors and lawyers with regard to the punitive nature of the community service orders. It was interesting to note that the three groups of professionals mainly referred to punitive elements inherent to the sentence itself, while the offenders referred to arguments related to it. The burden which the community service order caused to relatives and the fear for reactions from within the own community were of great importance to many convicts. As many as 75% of all respondents agreed to the statement that the judicial contact as such is a considerably heavier weight than the implementation of the community service order itself (Van Mulbregt 2000).

It is important to differ between the different elements that can contribute to the perception of the community service order as a punishment for certain offenders and the concept of intended punishment that lies behind community service orders. Continuing on the same lines of the debate about the punitive nature of prison sentences, my own opinion has always been that the punitive element of community sanctions must lie in the length of time during which they curtail a person's freedom. As with prison sentences, additional suffering should be avoided, at least as a purpose of sentencing (Boone 2000). On the contrary, the content of a community service order should be determined by its contribution to the rehabilitation of the offender and not by its punitive nature, as is also stressed in the European Rules on community sanctions and measures of the Council of Europe. This does not change the effect, however, that for other reasons –in particular to encourage specific and general deterrence- the community service order should infringe a good that in general is appreciated in society.

This doctrinal point of view is however challenged by public opinion concerning the community service order. In 1993, Van der Laan et al. could still conclude that broad support existed in Dutch society for the community sentence (Van der Laan 1993). They presented seven cases to a representative sample of 1027 persons. Also in more serious cases, for example public violence resulting in moderate injury, tax fraud and drunk driving causing serious casualties, a substantial number of the samples supported the community service order or a training order (respectively 63%, 33% and 38% for the three mentioned cases) eventually combined with a fine. Since that time, however, every now and then the imposition of a community service order has led to a great deal of media attention and political and public disapproval. In 1995 a famous international footballer caused a fatal car accident while exceeding the speed limit by 40 km per hour. Two weeks later he committed another traffic offence, this time without casualties. He received a community service order of 240 hours for both incidents. Two years later another celebrity, this time a famous opera singer, was responsible for a comparable road traffic accident. He was drunk at the time of the accident and he also received a community service order of 240 hours. Both cases led to an overwhelming amount of media attention. These two incidents seem to follow the community service order, because they are cited every time a new incident attracts attention. The general opinion is that a community service order is much too lenient

for crimes such as these and that it is only because of the status and fame of the offenders that they escaped prison. This is partly true because the reputational damage that the offender suffers as a consequence of the negative publicity is often considered as a mitigating factor by the judge. It could also be the case, however, that the crimes involved are often crimes in which judges generally differ from the public opinion concerning the deserved punishment for the crime in question. Traffic offences, for example, can have very serious consequences, but are rarely committed intentionally. Recently, the head of the Public Prosecution Service requested a new study regarding public acceptance of the community service order.

A television programme on the community service order in 2007 probably had an even more negative impact on the public acceptance of the community service order. The television programme reported that task sentences were also imposed for serious offences such as murder and rape. Fierce debates followed on the internet and in the media. Members of Parliament asked the Minister of Justice to exclude this possibility by law. A study demonstrated that the programme makers had used unreliable data, e.g. formal definitions of crimes that did not correspond to the seriousness of the actual offences (Klijn e.a. 2008). As a result, murder and manslaughter and 13 out of 15 cases of attempted murder appeared to be wrongfully disclosed as cases in which a community service order had been imposed. The 28 cases in which the judge had imposed a community service order contrary to the demand of the prosecution service were presented to two independent professors of criminal law. In one case they agreed that a community service order was not sufficiently severe for the offence committed. In six cases they had different opinions and in 21 cases they were satisfied with the punishment imposed (Klijn e.a. 2008)
The study proved that the commotion resulting from the television programme was not the result of reliable facts. Nonetheless, the result of the continuing debate has been that the Minister of Justice has proposed a restriction on the sentencing freedom of judges (see above). In case this Bill is accepted, recidivists and offenders of (serious) violent and sexual offences will categorically be excluded from community service orders, despite the fact that it can occasionally be the most appropriate sentence in these cases as well.

Implementation

Imposition of orders

Since the legislation of 2001, community service can be imposed by both the judge and the prosecutor. The judge determines the number of hours that such an order should entail, with a maximum of 240 hours for community service orders and a maximum of 480 hours for educational sentences and combination orders. The former Bill stated that the judge also determined the content of the sentence, but for reasons of efficiency decisions concerning the type of work that the convicted person had to perform were in practice left to the probation service after the trial. According to the actual Bill, the judge *can* stipulate the nature of the work or the kind of educational sentence. Normally, the probation service will decide on the content of community sentences, although in the case of training orders the judge often mentions a specific form of training. The Probation Service does not have to provide advice beforehand on the desirability of a community service order, since the availability of a pre-sentencing report for the court is still an exception in the Netherlands, in particular in less serious cases (Boone et al, 2009), so a requirement as such would lead to much less community service orders.

Community service orders can still be imposed by the judge for all types of offences, although this may have changed by the time this paper is published. According to a prosecution guideline, community service orders are strongly dissuaded in cases of serious violent or sexual crimes, recidivists who have previously been subjected to a

community sentence, offenders who refuse to pay compensation, a mental inability to carry out a community sentence, any inability as a result of an addiction and a refusal to accept the community service order. Despite being criticised for imposing community sentences in cases of serious offences, judges are also sometimes criticised for imposing community sentences on offenders who lack the capacity to carry out a community service order. In a study concerning the ability of the judge to render tailor-made orders, judges explained that they first look at the seriousness of the offence when they have to take a sentencing decision. If the seriousness of the crime requires a community service order, it is difficult to impose a custodial sentence instead because of the incapacity of the offender. They are confronted with what they consider to be a gap between a community sentence and a short prison sentence (Boone et al. 2009).

The prosecutor can propose a maximum of 120 hours unpaid labour as a an out of court settlement or compromise for not prosecuting a suspect (a *transactie)*, Sec. 74, paragraph 2f PC). If the offender accepts this condition, he waives his right to a public trial before an independent judge. Contrary to the other conditions that can be proposed in the case of a community sentence, the prosecutor has to point out to the suspect that he has the possibility to be assisted by a lawyer (Sec. 578 CCP). The offer is made to the offender by the prosecutor or a junior clerk at a specific hearing on task sentences. The condition has to be fulfilled six months after its acceptance. The prosecutor has the competence to extend this term (once only) by another six months. If the offender fails to comply, the right to prosecute the offence will revive.

Since the beginning of 2009, the Prosecution Service has the power to impose punishment orders (*strafbeschikking*). The difference with an out of court settlement is that punishment orders can be imposed against the will of the offender. The Prosecutor is not allowed to impose sentences which deprive a person of his/her liberty, but he can impose a maximum of 180 hours of community service for offences which can attract a maximum prison sentence of six years. In practice, these offences will be comparable to those for which an out of court settlement can now be offered, for example road traffic offences, fishing without a licence, shoplifting, common assault not occasioning bodily harm and small-scale vandalism. Punishment orders will gradually replace out of court settlements on a step by step basis. In 2009 they could only be imposed for traffic offences.

Execution

The Prosecution Service is responsible for the execution of community sentences. It can gather information about the execution of a community service order by asking the probation service (Sec. 22e PC); it can change the content of a community order (Sec. 22f PC); and it can demand detention in a case of default (Sec. 22g PC). In practice, however, the execution tasks are fulfilled by the probation service. It is important to note that there are three different probation organisations in the Netherlands, mostly characterised by the type of offender. One organisation has responsibility for addicted offenders (Stichting Verslavingsreclassering GGZ), another organisation (Leger des Heils (the Salvation Army)) takes care of homeless offenders and the final organisation (Reclassering Nederland) deals with all the other categories of suspects and offenders. Only the main organisation (Reclassering Nederland) decided to establish specific units for community service orders (Poort and Zengerink 2009), while the other organisations have integrated the implementation of community service orders with their other activities.

The execution of the community service order contains four phases. First, the judgements of the courts and the decisions of the prosecution service are sent to a central point and are divided between the three organisations. Second, the offender is

invited for an intake interview at one of the probation service organisations and has an orientation interview with a probation officer. Third, the offender is placed in and is introduced to a specific project and is supported and supervised while he (or she) is working. Finally, the community service order is rounded off and a positive or negative report is sent to the prosecutor by the probation officer (ISt 2005, p. 11).

In general, the probation service has managed to deal successfully with the enormous increase of community service orders. Besides some local problems, there are enough projects available. There have been some complaints about unacceptable delays in the execution of orders in the first half of this decade, but they seem to have been solved in general (ISt 2005, RSJ 2005). Work processes have been improved and the use of group projects has been intensified. A drawback of this increase has been, however that an increasing number of community service orders, however, are carried out without any individual support (Poort and Zengerink 2009). And although most community service orders are carried out without any real problems, a substantial part do encounter problems, mostly related to problematic characteristics and circumstances pertaining to the offenders in question (see below, ISt 2005, Lünneman et al. 2005). The Implementation of Sanctions Inspectorate (*Inspectie voor de Sanctietoepassing, ISt*) of the Department of Justice concluded in 2005 that the specific units of Reclassering Nederland contributed to a much more flexible response to fluctuations in the inflow of community sentence orders, while the small-scale units of the two other organisations were better prepared to organise tailor-made orders for specific, more problematic groups of offenders (ISt 2005, p. 4). Also other studies or advice bodies recommended a more intensive level of support and supervision for these specific groups (Lünneman 2005, RSJ 2005). These recommendations resulted in new initiatives from the Probation Service to combine community service orders with a more intensive level of counselling for specific groups with the aim being to reduce recidivism rates (Poort and Zengerink 2009, Poort and Eppink 2009). The idea is that certain groups of offenders first need help in solving other problems concerning, for example, finances or housing, before they are able to carry out the community service order. These initiatives, however, have encountered quite a few practical and principal objections and are not yet operable.

Type of work

Most community service orders are carried out in government or private organizations involved in health care, environmental protection, and social and cultural work. In addition to private projects, group projects exist which are meant for those who do not fit within a private project, for example addicted persons and persons who have committed a sexual offence. Finally, a difference exists between weekday projects and weekend projects for offenders who have a job and cannot take (sufficient) days off. According to a review of community service orders carried out in 2007, maintenance work, gardening, cleaning and kitchen work or a combination of activities were the most common (Eggen en Kalidien 2008). In 2008 around one third of all community service orders were carried out in a group project (SRN 2008).

Under the former Bill, community service was also called ‘unpaid labour to benefit the community.’ The last part of this concept has been omitted from the actual Bill which has made it possible to attract more commercial projects as well. There are several objections to this extension, however. First of all, it may encourage exploitation. For this reason both the International Labour Organisation (Labour Convention no. 29, par. 2 section 2 under c) and the Council of Europe (European Rules on Community Sanctions and Orders, rule 67) reject this option. The Dutch legislator, however, has expressed the opinion that the extension is in line with international obligations because the community service order is carried out under the

supervision of the *public* prosecutor (kamerstukken II, 1997-1998, 26114, nr. 3, p. 4). One only sees a problem in the case of false competition. The extent to which commercial projects are used is not so easy to discern because every probation district has its own list of projects and the national organisation does not have much say in this. A quick scan has determined that the use of commercial projects is not widespread, but there are some semi-commercial projects such as, for example, the manufacture of toys that are sold at a profit.

Offenders and orders

The call for a quantitative growth has had its effects as can be observed in the tables below. While the number of community service orders reached the respectable total of 6000 at the end of the 1980s, this figure tripled to around 20,000 in the 1990s, mostly due to intensifying the fight against social security fraud (Poort and Zengerink 2009). Since the beginning of this century, a further duplication has been realised. While in 1995 some 15% of sentences imposed consisted of a community service order, this proportion increased to 30% in 2006 (Van der Heide et al., 2007 p. 32). This increase is certainly connected to the permanent lack of prison cells in the same period (Van der Heide et al.,2007)

Since 2007, a slight decrease becomes visible however. Besides, also the average number of community service orders is declining since 2005. This is mostly due to a sharp decline of the community service orders consisting of 180 hours or more (a decrease of 32% compared to 2005); the number of community service orders consisting of less than 40 hours increased with 13%. These figures partly reflect the overall development that less serious crimes are brought for the judge (Boone and Moerings 2008) and could also be partly the result of a changed policy amongst judges since the commotion surrounding the above-mentioned television programme.

Most community service orders are imposed by a judge (86%), the other 14% are proposed by the prosecutor as a condition for not prosecuting the offender (the possibility for the prosecutor to issue a punishment order only came into being in 2009).

Table 1 The number of imposed community service order

Year	2000	2004	2005	2006	2007	2008	2009
Number	20,000	33,729	41,609	41,753	40,216	39,1116	38,494

(as a sentence or a condition for not prosecuting, SRN 2009)

Table 2 Average length of an order

Year		2004	2005	2006	2007	2008
Length (in hours)		83,2	80,1	77	72,5	69,4

(SRN 2009)

Recent data on gender and age were published in Criminaliteit en Rechtshandhaving (Crime and Law Enforcement), a periodical overview published by the Department of Justice. Most offenders carrying out a community service order are male, but the proportion of women is much greater than is reflected in the prison population (6.6%, www.dji.nl). Almost half of the offenders are under 30 years of age. The other half are rather equally spread over the other two age categories (see below). This is not very different to the division among the prison population (www.dji.nl).

Table 3 Characteristics of offenders

Gender	**% offenders**
Male	86
Female	14
Age	
18-30	44
25-40	25
>40	32

(WODC 2008)

In their study on the factors that contributed to the success and failure of community service orders Lünneman et al. (2005) collected data from a random sample of all offenders on whom community service had been imposed between 1st of July 2002 and 30th of June 2003. They paid attention to all the different kinds of characteristics of the offenders. Half of the offenders were somehow employed or at work (table 4). Almost three quarters of the offenders were born in the Netherlands (72.1%). The remainder were mainly from the main immigrant groups in the Netherlands: the Dutch Antilles (3.8%); Morocco (3.4%), Turkey (3.4%), Surinam (4.5%). This means that the community service order is much more 'Caucasian' than prison where, nowadays, only half of all inmates have been born in the Netherlands (www.dji.nl). Almost one fifth of offenders were addicted (to either hard drugs, soft drugs, gambling, alcohol or medication) which is, once again, less than the proportion of inmates who are addicted (30%, Moerings 2009). Wermink et al. found in a recent study that offenders on whom a community sentence has been imposed are one and a half times more likely to be a woman and five times more likely to have been born in the Netherlands (Wermink at al. 2009).

Table 4 Employment status

Employment status	**% offenders**
Employed	50.1
Unemployed/disability	39.1
Remainder[ii]	10.8

(Lünneman et al. 2005)

There are interesting developments regarding the types of offences to which community service orders are applied. Between 2001 and 2007, the proportion of community service orders imposed for violent offences increased from 25% to 40% Van der Heide et al. 2007, p. 32). An important reason for this was the shortage of prison cells at the end of the 1990s. Many prisoners were occasionally subjected to early release before the formal date of the statutory release date, a state of affairs that prompted judges to imply a community sentence instead of a short prison sentence, a situation that continued after the capacity problems had been solved (Van der Heide et al; Boone and Moerings 2008).

Table 5 Types of offences

Offence	**% in 2008**
Violence	32
Property	27
Drugs	13
Traffic	13
Remainder	15

(WODC 2008)

Enforcement, compliance and termination

If the offender does not carry out the community service order in a satisfactory manner, the probation officer can issue one warning at most according to the Dutch regulations. If the offender then still fails to comply, the probation officer will send a notification to the Prosecutor, who can demand detention due to default. The offender does have the opportunity to appeal, but the appeal does not suspend the execution of the default detention. About 25% of all community service orders are not completed successfully. This is a duplication of the failure rate that existed in 1990 (Tak en Van Kalmthout 1992), but has remained rather stable over the last years. Half of these 25% failed because the offenders never turned up after the decision by the judge or prosecutor, the other half because they failed to complete the sanction. Circumstances that constitute sufficient reasons to terminate the community service order, are not specified in the ministerial order concerning the execution of the community service order. The obligations of the offender are specified, however, in the 'twenty rules' he has to sign before he starts to carry out the community service order.

Table 6 Reasons for termination

	Completed	Not started	Not completed	Total
2007	31,370 (75.57 %)	5510	4747	41987
2008	31,030 (75.35%)	5444	4708	41182

(SRN 2008)

Lünneman et al. looked at the factors that contributed to the success or failure of community sentences. Except for the kind of project (group or individual) or the point in time when it was executed (on weekdays or in the weekend), all factors included in their study contributed to the outcome of the sentence. However, none of the variables strongly correlated with the community service being completed. The most important success factors were participation in the labour market and family life. The most important failure factors were addiction to hard drugs and an earlier period of detention. Put in terms of profiles, people who had not earlier come into conflict with the law, who had regular employment or were studying and on whom community service was imposed as a condition for an out of court settlement were most likely to succeed (a 96% success rate). People who were addicted to hard drugs, who were not in regular employment and who had previously come into conflict with the law had the most likelihood of failure (a 41% success rate).

The procedure surrounding the decision to terminate the community service order is a very important one, because it determines the difference between the restriction and the deprivation of liberty. Nevertheless, several aspects thereof have been criticised or are topic of debate in the Netherlands. Concerning the official warning that precedes a decision to breach, the Implementation of Sanctions Inspectorate concluded in its advice that in practice different procedures were followed (ISt 2005). Although, in most cases, this decision is carefully taken, sometimes improper arguments play a role, for example earlier mistakes by the probation officer or pressure by the offender (ISt 2005). Different to the decision to breach, the official warning is not always checked by an executive. Complaints about decisions taken by a probation officer can be lodged at a special complaints board of the probation service (Provision on community sentences, Sec. 22). Although the procedure satisfies the minimum rules of the Council of Europe, one may wonder how independent such a board is and whether a provision which is comparable to that for prisoners would not have been preferable, despite the possibility of an appeal to the courts (RSJ 2000).

A recurring complaint by the probation service towards the judiciary and, to a lesser extent, the prosecution service is that they give offenders a second chance after a breach. Judges, however, often consider the probation and aftercare reports in these procedures to be too summary and unconvincing. If the convicted person has a credible explanation and there is no one from the probation and aftercare service at the hearing to give their view, the convicted person is often given the benefit of the doubt and the court adjourns the case (Boone et al. 2009).

Defining and measuring effectiveness

The most important aims of community service orders identified above are rehabilitation (in a broad sense), substitution of the prison sentence, humanisation of the sentencing system and reinforcing the credibility of the criminal justice system. In an earlier stage of the debate on alternatives to imprisonment, also conflict solution and restorative justice were mentioned. None of these objectives have been the subject of any systematic research, however, with the exception of reduction in recidivism rates. In the concluding contribution of this volume, we drop the question in how far this lack of data reflects a lack of ambition concerning the other goals. It would be of much interest and importance for example to know more about the way the community service order contribute to the aspects of rehabilitation that consider the well-being and social integration of the offender.

Something can be said regarding the substitutional character of community sentences. One could say that a high level of substitution serves the first two aims mentioned (rehabilitation and humanisation), but not necessarily the last. The last systematic study on this topic was published in 1995. Based on the criminal records of offenders, Spaans compared the seriousness scores of 600 offenders who had received a community service order with the similar scores of 600 offenders who had been subjected to a short prison sentence. He came to the conclusion that an estimated 45-50% of the community service orders substituted short-term unconditional sentences (Spaans 1995). Looking at the short prison sentences (under six months) that community service orders ought to replace, one sees an increase in short prison sentences from 19,000 to 23,000 between 1995 and 2003 and a decrease since that time. Combined with the continuing increase in community service orders since 2002, one could imagine a replacement of short prison sentences by community service orders since 2002/2003, a conclusion that was strengthened by interviews with judges (Van der Heide et al. 2007). It can be predicted, however, that this development will come to an end as soon as judges are substantially restricted in their freedom to impose community sentence orders. This reversal is probably already visible in the figures presented above.

The only objective on which we have substantial information is a reduction in recidivism rates, which can be seen as a very thin indicator of rehabilitation. Recidivism rates of people on whom a community service order is imposed are about 50% seven years after the imposition of the sanction (Wartna, Tollenaar en Essers 1999). Despite the eagerness of some researchers, a randomised control experiment has not been permitted in the Netherlands to date. Therefore, it is very difficult to make clear statements about the effectiveness of the community service order compared to other sentences, in particular the prison sentence. Recently, however, a very important study has been published that overcame most of the limitations. The authors compared the recidivism rates of all offenders between 18 and 50 years old who had received a community service order or a maximum prison sentence of 6 months in 1997. They used varied techniques to control selection effects: an extensive set of control variables (criminal history, the type of offence, age, gender, country of origin), ‘propensity score matching’ and ‘matching by variable.’ Their conclusion is

that offenders who have received a community service order do much better than offenders who have served a prison sentence. In the first year after conviction

recidivism rates were 67% lower for property crimes and 60% lower for violent crimes. These results hold true for the first eight years. After eight years, recidivism rates are still 50% lower (Wermink et al. 2009).

These results can probably be partly explained by the variables that could not be controlled such as, for example, addiction, housing, labour participation and family life, in particular since the study by Lünneman et al. proved that these factors were the best predictors for the success or failure of community service orders. As far as these variables also influenced preceding criminal behaviour, they are partly involved in the model, according to the authors. Not involved are the 25% of community service orders that are replaced by imprisonment at a later stage. This part could even improve the results of community service orders.

Conclusion and closing statements

The field of community service orders in the Netherlands has undergone an impressive increase in the more than 25 years of their existence. Nowadays almost 40.000 community service orders are imposed on a yearly basis. The fact that this increase could be realised and appeared without too much incidents must be attributed to the efforts of the probation service. Besides, there is convincing evidence that the community service order is much more effective than imprisonment in reducing recidivism. The initial objective of decreasing imprisonment by offering an alternative has not been achieved. At least, imprisonment did not decline but increased dramatically in the same 25 years, including or even in particular short prison sentences that community service orders were supposed to replace (Boone and Moerings 2007). So, net-widening has definitely occurred on a large scale. Despite that, community service orders are obviously considered as satisfactory sanctions in cases that are too serious for a fine and too lenient for imprisonment. In this sense they must be seen as a valuable contribution to the Dutch sanction system that can no longer be thought away.

Notwithstanding the good news, recent developments in the field of community service orders have led to (at least) three types of concerns for the near future. A first concern is that the full potential of community service orders is not used at all. The average number of hours imposed is very low and has been decreasing even further in recent years, mostly due to a downfall of the longer orders. After a short period in which community service orders were also imposed for more serious offences (as a result of a shortage of prison cells), their use in recent years is obviously restricted again to minor offences. Debates in the media and on the internet indicate that this development is probably in line with the lack of public acceptance of community service orders for more serious offences and offenders, but public acceptance has not been a topic of a proper study recently. Much more research is needed therefore to the conditions under which community service orders are accepted by the public.

Related to this concern is a second worry, namely that the community service order is also used selectively in other senses. Research indicates that certain categories of offenders, for example non-nationals, disabled and addicted persons have a much lesser likelihood of being ordered to carry out community service orders. As far as more problematic offenders are selected, they have much more chance to fail, partly as a result of a lack of support. Van Kalmthout did a comparable observation in 2000 and stated that ‘this corresponds with the characteristics of the prison population, which is changing dramatically and becoming more and more the refuse dump for certain categories of offenders for which no community projects are available;’(Van

Kalmthout 2000). Applied in such a way, community service orders must be considered as another illustration of a strategy of bifurcation (Cavadino and 2006). Recent initiatives in the Dutch probation service to combine community service orders with a more intensive level of counselling for certain categories offenders can probably be a first step in turning this development.

Finally, much more attention should be paid to the legal position of offenders who are sentenced to community service, in particular in the phases of imposing and ending community service orders. First, one can wonder in how far the international requirement of informed consent is still satisfied since the abolition of the stipulation that the offender has to give his consent in court, in particular in cases where the offender is sentenced in absentia. Second, the legal guarantees of offenders diminish significantly when community service orders are imposed by the prosecutor. In the phase of ending the order attention should also be paid to the legal guarantees that are taken into account if the community service order is translated into imprisonment and to the division of powers between the judge, the prosecution service and the probation service.

Email:
m.m.boone@uu.nl

References

Balkema, J.P. (1993), Alternatieve sancties in plaats van en tijdens de detentie, *Justitiële Verkenningen*, 1993 (19), no. 9. p. 80-88.

Beijerse, Jolande uit en René van Swaaningen (2007), Non-custodial sanctions, in: Miranda Boone and Martin Moerins (eds), *Dutch Prisons*, The Hague: BJu Legal Publishers.

Berghuis, A.C.(1994), Punitiviteitsfeiten, in: M. Moerings (ed), *Hoe punitief is Nederland*, Arnhem: Gouda Quint BV, p. 299-313.

Boone, Miranda (2000), *Recht voor commuun gestraften, Dogmatisch-juridische aspecten van taakstraffen en penitentiaire programma's*, Deventer Pompe Reeks Deel 31, Deventer: Gouda Quint.

Boone, M.M. (2002) *Imposed versus undergone punishment in the Netherlands*, in: Ewoud Hondius and Carla Joustra, Netherlands Reports to the Sixteenth International Congress of Comparative Law, Antwerp: Intersentia, p. 475-489.

Boone, Miranda (2005), Community Justice in a safety culture: probation service and community justice in the Netherlands, in: Jane Winstone and Francis Pakes, *Community Justice, Issues for probation and criminal justice, Devon:* Willan Publishing, p. 283-301.

Boone, Miranda (2007), Selective rehabilitation, in: Boone, Miranda and Martin Moerings, *Dutch Prisons*, The Hague: BJu Legal Publishers, p. 231-249.

Boone, M. and Martin Moerings (2008), Detentiecapaciteit en Detentieomstandigheden in Nederland, *Tijdschrift voor Strafbeleid en Gevangeniswezen, FATIK*, 26 (120), p. 5-11.

Boone, M., A. Beijer, A.A. Franken and C. Kelk (2009), *De tenuitvoerlegging van sancties: maatwerk door de rechter?* Pompe Reeks, The Hague: Boom Juridische Uitgevers,.

Cavadino, Michael and James Dignan (2006), *Penal Systems, A comparative approach*, London: Sage.

Commissie Alternatieve Strafrechtelijke Sancties (1979) *Dienstverlening (interimrapport).* The Hague: Ministry of Justice.

Commissie heroverweging instrumentarium rechtshandhaving (1995), *Het recht ten uitvoer gelegd. Oude en nieuwe instrumenten van rechtshandhaving*. The Hague: Ministry of Justice.

Commissie Vermogensstraffen (1969). *Interimrapport*. The Hague: SDU.

Commissie Vermogensstraffen (1972). *Eindrapport*. The Hague: SDU.

Eggen, A.Th.J. and S.N. Kalidien (2008), *Criminaliteit en Rechtshandhaving 2007*, ontwikkelingen en samenhangen, The Hague: Boom Juridische uitgevers, CBS, WODC.

Heide, Wiege van der, Frank van Tulder and Caspar Wiebrens, Strafrechter en strafketen: de gang van zaken, 1995-2006, *Rechtstreeks*, 2007, no. 3.

Heinrich, J.P. (1995). *Particuliere Reclassering en overheid in Nederland sinds 1823*. Arnhem: Gouda Quint.

Inspectie voor de Sanctietoepassing (2005), *Uitvoering Werkstraffen Reclassering*.

Kalmthout, A.M. van (2000), Community sanctions and measures in Europe: a promising challenge or a disappointing utopia?, *Crime and Criminal Justice in Europe*, Strasbourg: Council of Europe Publishing, p. 121-133.

Kelk, C., De zeer grote wenselijkheid van een gespecialiseerde sanctierechter, *Sancties* 1994, aflevering 4, p. 229-237.

Klijn, Albert, Frank van Tulder, Ralph Beaujean, Toon van der Heijden and Gerdien Rodenburg (2008), *Moord, doodslag, taakstraf?. Een Zembla-uitzending nader bekeken*, Raad voor de Rechtspraak, Research Memoranda, 4 (1).

Lünneman, Katinka, Guillaume Beijers and Marieke Wentink (2005), *Werkstraffen: succes verzekerd? Succes-en faalfactoren bij werkstraffen van meerderjarigen*, Verweij Jonker Instituut Utrecht.

Ministerie van Justitie (1985). *Samenleving en Criminaliteit: Een beleidsplan voor de komende jaren*. The Hague: SDU.

Ministerie van Justitie (1990). *Recht in Beweging. Een beleidsplan voor justitie in de komende jaren*, The Hague: SDU.

Ministerie van Justitie (1997). *Substitutie van vrijheidsstraffen, Interdepartementaal beleidsonderzoek substitutie van vrijheidsstraffen door taakstraffen*. The Hague: IBO-ronde 1996; report no. 8.

Ministerie van Justitie (2001). *Nota Effectieve Reïntegratie: Een gemeenschappelijke uitdaging voor de reclassering en het gevangeniswezen*. The Hague: DPJS.

Moerings. M. (2009), Medische verzorging, in: E.R. Muller and P.C. Vegter, *Detentie, Gevangen in Nederland (second edition)*, Alphen aan den Rijn: Kluwer.

Mulbregt, J.M.L. van (2000), *Het betere werk, Verwachtingen en ervaringen met betrekking tot het strafkarakter van een werkstraf*, PhD thesis, The Hague: Boom Juridische uitgevers.

Mulder, G.E. and Schootsra, H. (1974). *Prae-advies over de voorwaardelijke veroordeling*. Handelingen 1974 der Nederlandse Juristen-Vereniging, deel I, tweede stuk. Zwolle: Tjeenk Willink.

Nelissen, Peter (2000), *Resocialisatie en Detentie: een onderzoek naar de houdingen van gedetineerden en gevangenispersoneel ten aanzien van de voorbereiding van de terugkeer in de samenleving*, PhD thesis, University of Maastricht.

Pease, K., Bilingham, S., and Earnshaw, I. (1976). *Community Service assessed in 1976.* Home Office Research Study no. 39, London: HMSO.

Ploeg, G.J. and A.P.G. de Beer (1993), De inpassing van de taakstraf, *Justitiële Verkenningen*, 1993 (19), no. 9. p. 7-38.

Poort, R. and J. Zengerink (2009), De reclassering en de werkstraf, *Sancties*, p. 158-168.

Poort, R. and K. Eppink (2009), *Een literatuuronderzoek naar de effectiviteit van de reclassering. Onderzoek verricht ten behoeve van de Adviescommissie Onderzoeksprogrammering Reclassering*, The Hague: Boom Juridische Uitgevers, WODC.

Raad voor Strafrechtstoepassing & College van Advies voor de Justitiële Kinderbescherming (2000), *Zicht op uitzicht, Jaarverslag*, The Hague.

Raad voor Strafrechtstoepassing en Jeugdbescherming (2009), *Advies wetsvoorstel voorwaardelijke veroordeling*, The Hague.

Raad voor Strafrechtstoepassing en Jeugdbescherming (2005), *Advies tenuitvoerlegging Werkstraffen*, The Hague.

Tak, P.J.P. and A.M. van Kalmthout (1992), *Sanction-Systems in the member states of the Council of Europe: the Netherlands, Part II*, Deventer/Boston':Kluwer, p. 663-807.

Spaans, E.C. (1995). *Werken of Zitten: De toepassing van werkstraffen en korte vrijheidsstraffen in 1992*. Arnhem:Gouda Quint.

Van der Laan, P.H. (1993), Het publiek en de taakstraf, Een maatschappelijk draagvlak voor de taakstraf, *Justitiële Verkenningen* (19), nr. 9, P. 89-110.

Wermink, Hilde, Arjan Blokland, Paul Nieuwbeerta & Nikolaj Tollenaar (2009), Recidive na werkstraffen en na gevangenisstraffen. Een gematchte vergelijking, *Tijdschrift voor Criminologie*, 51(3), p. 211-228.

[i] The only two remaining possibilities, besides sentencing, were the possibility to impose a community service order as an alternative to imprisonment for the non-payment of a fine and as a condition for granting a pardon. In this paper I will only discuss the community service order as a formal sentence and the (later introduced) community service order as condition for an out of court settlement by the Public Prosecutor, because they are most used and do not differ so much from the other two in the way they are carried out.

[ii] Including following full-time education (4.9) and persons of retirement age (0.9)