

Elaboration of a model framework for the alternative approaches in criminal proceedings against delinquent drug users on the different stages of criminal proceedings. Practical evaluation and policy support.

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1. Definition of the problem

During the past few years, the insight has grown that people with addiction problems do not belong in prison. Recently, this position was adopted unanimously by various domestic and foreign experts within the framework of the parliamentary working group charged with the study of the drugs issue (Gedr. St., Lower House, 1062/1-3, 1996-97, 1023p.).

More and more, preference is given to so-called alternative measurements for various reasons. For example, a stay in prison often facilitates the reach for drugs. Besides, overpopulation in prisons, which has to a large extent been caused by drug related problems, makes the management of penitentiaries problematic.

In addition, it is important to emphasise that criminal law should increasingly be seen as ultima ratio: basically Justice should 'not be called in until the end of the circuit'. The administration of criminal law can, after all, not control a social phenomenon, let alone solve it, whilst the court can and may not be the only place of social regulation. Furthermore, the ultimum remedium philosophy implies that " when intervention by Justice is inevitable " within the administration of criminal law attempts are made to limit the criminal law intervention as much as possible. Ideally, possible intervention by Justice occurs at the earliest possible level of the administration of criminal law in the given circumstances.

By imposing an alternative measurement, a bridge can be made to assistance for drug users. By means of this social work, drug-related crime can be dealt with at the cause by focussing on the underlying addiction problem.

2. Methodology and aims of the project

The survey population was limited to young adults, more specific to delinquent drug users between 18 to 25 years. Moreover, the research was restricted to the legal districts of Flanders. Firstly, a detailed study of relevant literature has been carried out. Secondly, the researchers opted for a qualitative analysis of the practical knowledge of the field of research.

In order to evaluate the effectiveness of alternative measurements a 'multi-actor model' was used to question the key figures within the judicial field, within the social sector and naturally the drug users. The preference was given to a face to face conversation.

The study has been carried out using the snowball-method : starting with some key figures, eventually the prosecutors specialised in drug matters, juges d'instruction and probation services within nearly all judicial districts of Flanders were contacted. Moreover, several types of social institutes in charge of the reception and treatment of (delinquent) drug users have been consulted (ambulatory reception centres, therapeutic centres and crisis centres). With regard to a qualitative analysis of the functioning of alternative measures, it was essential to question delinquent drug users by means of a life-style interview. It should be mentioned that these respondents, taking their not seldom existing drug career into account, profited from various kinds of alternative measurements. This allowed, by interviewing approximately forty respondents, to record experiments concerning the various alternative measurements.

In the survey the various alternative processing modalities per level of criminal law

administration are discussed. A brief system description is given for each modality as well as an account of the findings of the empirical investigation, an evaluation based on the literature and an analysis of the policy-relevance of the modality in question. With regard to the latter aspect, the findings are each time tested against the circular letter about the prosecution policy concerning the possession of and retail trade in illegal drugs by former Minister of Justice S. De Clerck (17 April 1998).

The idea is to chart in this way the structural and individual obstacles, which hinder a more intensive application of the alternative processing possibilities. By removing these obstacles, the bridge function between the administration of criminal law and the social work sector can after all be optimised.

3. Research results

At the various levels of the administration of criminal law, there are 'bridges' to the social work sector. However, a symbiosis between Justice and social work is unlikely due to the diverging orientations of the various institutions.

For example, a successful processing of drug-related offences primordially requires (further extension of) constructive co-operation between the judicial sector and the social work sector. It is useful to check in which clearly demarcated areas and in which way the two sectors can come to an interactive attitude from a clear, current position and definition of their objectives without going down the path of mixing goals. It should be emphasised that the necessary respect for each other's functionality and specificity, including professional secrecy, should be the fundamental starting point. Moreover, an adequate application of alternative measurements requires that is provided with the necessary means.

When a model framework was elaborated for alternative judicial measurements, the aspect of trafficking in drugs was not focused. When the word 'detention' is used, it should be interpreted as 'detention for own use'.

At Public Prosecutions Department level there is firstly the settlement, which application is only desirable to a marginal degree in the processing of drug-related offences. Due to the fact that the settlement can, among other things, lead to social deprivation, an improper use should be avoided. This is why the study proposes to only provide for the settlement as an option for cases of non-problematic use. It is also pointed out that the problematic aspect cannot be apparent from the 'sustained regular use', this in contrast to what is stipulated in the current drugs circular letter.

Therefore, in such cases a settlement due to the possession of cannabis products could be proposed if the person in question causes a social nuisance repeatedly and/or with particular intent, and due to the possession of other illegal drugs if there is nuisance or there is a real risk of it.

A second possibility for processing at the level of the public prosecutor's office is offered by the praetorian probation order. The research reveals, among other things, that the application of this possibility strongly depends on the person of the public prosecutor. Moreover, a net-widening effect should be avoided.

With regard to the possession of cannabis products, this modality can be reserved for problematic use, in which case the person in question is directed to the assistance for drug users. However, it is obvious that the application of the praetorian probation order should be seen as a last resort for this category of drug users. In case of non-problematic use, the application of the praetorian probation order can only be recommended when a user repeatedly and/or with particular intent causes social nuisance when the use of a settlement does not seem opportune due to the social-economic situation of the person in question. With regard to the possession of other illegal drugs, the praetorian probation order can be used to propose an education on the non-problematic users who cause nuisance or when

they incorporate a real risk of doing so. This above all concerns young, experimenting users who would benefit from correct information about the consequences of their drug use. If there is evidence of problematic use, referral to social work is necessary.

Finally, the Public Prosecutions Department has the possibility of initiating proceedings for mediation in criminal proceedings. This modality must be used when in addition to possession the presence of drug-related crime can be observed. A broad margin should be used by the selection of the files which qualify for penalty mediation, so that even relatively serious offences can be processed at Public Prosecutor level. After all, in too many judicial departments a 'prudence reflex' can be noticed. This is why more serious cases are being refused for a mediation. Just like in case of the settlement, the danger of a net-widening effect is quite realistic.

Within the framework of the wet op de voorlopige hechtenis [Pre-trial detention Act], a suspect who has been detained for committing a criminal offence can profit from release on certain conditions. The research has shown that this modality offers a lot of potential, but that its optimum application is hindered by a number of practical bottlenecks. From this point of view, the use of a transit institution is proposed as a link between the examining magistrates and the social workers so that the existence of a temporary pre-trial detention situation can be eliminated as much as possible. Regarding this modality, it has to be underlined that better treatment results can be expected when clear agreements, concerning the reactions which can be foreseen when the conditions are not being fulfilled, are being made between the judicial actors and the social work sector.

At the level of determining the punishment, the judge has extensive possibilities within the framework of the Probation Act. Hereby, the reflection has to be made whether this possibility is still socially acceptable. As goes for the alternative measurements on the level of the Public Prosecutions Department, the application of the probation seems to be highly dependant on the person of the judge. Finally, it is recommended to limit, as much as possible, the space of time between the facts and the judgement.