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# From 'community service' to 'autonomous work penalty' in Belgium. What's in a name?

*Kristel Beyens*
*Vrije Universiteit Brussel*

## Abstract

*In Belgium, community service (dienstverlening) for adults was introduced in 1994 as a condition of probation at the sentencing level and as a condition of mediation at the prosecution level. It became the so-called 'work penalty' (werkstraf) in 2002. This change in the terminology and the legal and penological basis, from an alternative sanction embedded in a rehabilitative approach to just another neoclassical form of punishment primarily aiming for retribution, ushered in another sentencing practice and led to a rapid increase in the number of work penalties imposed. This article describes the legal provisions governing the 'work penalty' and the peculiarities of its implementation in practice. It explores the possible explanations of the success of this sentence and the implications of that success for its execution.*

**Keywords:** Community service - Work penalty – Belgium - Sentencing, - Implementation

## Introduction

In Belgium, community service (dienstverlening) for adults was introduced in 1994 as a condition of probation at the sentencing level and as a condition of mediation at the prosecution level. It became a so-called 'work penalty' (werkstraf) in 2002. This changing terminology represented a new legal status and expressed the importance of more 'classical' penal objectives and the search at that time for more credible 'alternative sanctions'. This change achieved its intended increase in the use of work penalties: within a few years the number of work penalties in Belgium increased at an unprecedented rate, leading to problems of capacity with respect to the execution of the sanction.

The work penalty as a main or stand alone penalty can be regarded as one of the most important innovations in the set of punishments in Belgium. Since the introduction of the Belgian penal code in 1867 no other main penalty has been added to the well-established duo of the prison sentence and the fine. At the same time the introduction of the work penalty is a continuation of an existing practice that started in 1994 with the introduction of community service as a condition of probation. The change of its status to a stand alone sentence ushered in a significant change in the sentencing behaviour of judges and in the implementation of community service. This article describes the legislation, the aims and characteristics of the work penalty, its imposition and execution. It explores possible explanations for its success and the implications for the organisation of its execution.

In contrast with its quantitative success, empirical research on the use and implementation of community service and the work penalty is rather scarce in Belgium. Community service in

particular is insufficiently studied. However, after the publication of the law on the work penalty in 2002, a number of legal analyses were published (e.g. Dupont, 2002; Guillain, 2002; Jacobs & Dantinne, 2002; Vandromme, 2002; 2003; Vander Beken & Flaveau, 2002; Vander Beken, 2003; Vandromme, 2002; 2003). Recent and reliable statistical sentencing data are not available, which hampers an in-depth analysis of the imposition of this sentence at the sentencing level. Beyens (2000a; 2007a) and Lefevre (2009) analysed the sentencing behaviour of judges and give some insight into their reasons for imposing community service and work penalties. In 2005 a conference was organised to reflect on three years of the practical application of the work penalty. All the contributions have been collected in a special issue of the criminological journal Panopticon (Beyens & Aertsen, 2006). Until now there have been three evaluations of the practice of the work penalty. Dominicus (2004) undertook a quantitative evaluation of the first year of implementation and added data with regard to the year 2005 (Dominicus, 2006). Further, the Belgian government funded two short-term research studies on the execution of this sentence. Luypaert, Beyens, Françoise, Kaminski and Janssens (2007) made an overview of all the actors involved in the implementation practice and of the supply and distribution of work places in the community and made a critical analysis of the organisation of the implementation of the work penalty and community service. Dantinne, Duchêne, Lauwaert, Aertsen, Bogaerts, Goethals and Vlaemynck (2009) conducted a survey with a non-representative sample of persons who were made subject to a work penalty. They complemented their quantitative data with interviews with some of the offenders and professionals involved in its implementation.

**Historical development, legal framework, aims and terminology**

Since the 1980s, the Belgian political and judicial establishment has been through severe crises of legitimacy. During the same period, insecurity – or feelings of insecurity - became an important political topic. Political reactions against this loss of trust in the police and the judiciary were diverse. The introduction of community service has to be situated into this context of policy initiatives to tackle the crisis of legitimacy (Snacken & Beyens, 2002; Kaminski, 2007; Snacken, 2007). Community service was introduced in 1994 at two points in the criminal justice system, i.e., at the prosecution and at the sentencing level.

At the prosecution level, community service became a modality of 'penal mediation' for offences punishable by up to two years of imprisonment, allowing prosecutors to drop the prosecution if the victim and the offender reached an agreement on compensation for damages (Act of 10 February 1994). This mediation leads to a contract which must be confirmed by the prosecutor. Community service, therapy and training can also be part of the contract. The prosecutor can impose between 20 and 120 hours of community service to be completed within six months.

At the sentencing level, community service became a condition of probation, which itself can only be imposed together with a suspended or a conditional sentence (imprisonment or fine) (Act of 10 February 1994). Community service thus became implemented in a rehabilitative punishment framework that did not really fit with the 'classical' judicial culture (Beyens, 2000a; Beyens, 2007a; Beyens & Scheirs, 2010). The length of community service was between 20 and 240 hours. Although the idea of community service was not new, its introduction took place under political and therefore time pressure (cf. the legitimacy crisis). As a result, technical-legalistic and budgetary factors pushed policy makers towards a quick fix solution by initially introducing community service as a condition of probation (Dominicus, 2006). This form of community service has, however, never been a particular success. The judiciary did not use it as a real replacement for imprisonment, but rather as an additional measure with a conditional or a suspended sentence, which puts the use of this

sanction in a net widening perspective. Explanations may be found in the judges' limited acquaintance with and knowledge of the changes in the legislation, its unclear legal status as a condition of probation and its ascribed nature as a 'favour' to the offender. This resulted in its limited use, associated with a small selection of offences and first offenders (Beyens, 2000a; 2007a). Community service was clearly regarded as an 'exceptional' sanction or measure that lacked the required sense of retribution and dissuasion, which are important classic objectives for the Belgian judge. The use of the term 'favour measure' (gunstmaatregel) by the judiciary also points to the perception of a lack of punitive substance to community service. Magistrates had concerns about the practicability of its implementation and did not consider it to be a 'real' punishment. One judge even referred to community service as a 'childish' sanction by a judge (Beyens, 2000a).

However, it was clear from the beginning that the introduction of community service as a condition of probation was only a temporary solution, and that in the near future it would be 'upgraded' to an autonomous main penalty. Indeed, eight years later, in 2002, community service obtained a fully fledged position in the penal code as a main and autonomous sentence option by the Act of 17 April 2002, and became known as 'autonomous work penalty'. Together with imprisonment and the fine it thus became the third 'main sanction' in the Belgian penal code. From a legal point of view it was, however, not tenable to have the same sanction at two levels of the criminal justice system - i.e., at sentencing and prosecution level - and legal scholars criticised this dual legal status of the sanction. As a consequence, with the introduction of the work penalty, community service as a condition of mediation and probation was abolished in 2002. However, as a result of demands from the field, the possibility for the prosecutor to settle a mediation case with community service was reintroduced in 2005 and still exists today (Act of 22 June 2005). It has been argued that prosecutors 'like' community service, because it gives a retributive flavour to penal mediation (Beyens, 2000b), which might explain their demand for its reintroduction.1

Because the use of community service has been rather marginal compared with the use of the work penalty, this article will mainly focus on this last penalty, which has in the meantime obtained a vested position in the Belgian penal landscape.

## Act of 17 April 2002

Taking into account the previous underuse of community service, it was the explicit aim of the legislature to introduce the work penalty as a direct substitute for imprisonment. Therefore it was decided to give it the status of an autonomous and a principal penalty. Work penalties can be imposed by the different courts, namely police courts2, correctional courts3 and even the Courts of Assize.4 Work penalties can be imposed for a wide diversity of offences and only very serious crimes, such as kidnapping, rape, sexual offences with minors, murder and manslaughter, are explicitly excluded by the Act. To encourage the use of work penalties, the Act stipulates that the judge can only refuse to impose a work penalty if he or she gives explicit reasons for this decision.

[1] See Beyens (2000b) and Beyens & Raes (2005) for an extensive and critical analysis of penal mediation in Belgium.

[2] Police courts are competent not only for all petty offences but, since 1994 (Act of 11 July 1994), also for specific misdemeanours such as traffic offences leading to unintended death or injuries.

[3] Correctional courts have jurisdiction in all other misdemeanours and for cases of felonies in which mitigating circumstances have been accepted.

[4] The Courts of Assize are competent for the most serious felonies.

Work penalties can range between 20 and 300 hours. Police courts can impose work penalties of between 20 hours and 45 hours, and correctional courts between 46 and 300 hours. Data for the year 2005 shows that penalties of between 46 and 60 hours are the most popular. In that year, in 40 per cent of all cases, judges chose to impose a work penalty that approximates to the minimum correctional sentence. If the defendant has a criminal record, a work penalty can be up to 600 hours. However, Dominicus' analysis shows that work penalties of more than 300 hours are very exceptional (0.2 per cent of all work penalties in 2005) (Dominicus, 2006: 47). The judge determines the number of hours and can give indications on how it should be implemented (for example, the kind of work or work place). In practice it is decided by the justice assistants5 in the execution phase how and where the work penalty will be executed (infra). Too much interference by the judge in this work assignment process is not generally appreciated by the justice assistants, because the instructions of the judge could turn out not to be feasible in practice, which can pose legal problems.

To emphasise its autonomous character and to avoid net widening as much as possible, the Act states that unpaid work cannot be combined with a prison sentence or with a fine.6 Another remarkable novelty compared with probation and community service or conditional or suspended prison sentences in Belgium is that there are no limits with regard to the criminal record of the defendant. A common penological critique was that a lot of offenders were excluded from these sentence options, because of the limits in the law with regard to their criminal record. Offenders who have previously been sentenced to imprisonment or a work penalty can, however, still have a work penalty imposed. This entails a real change in the use of community penalties in Belgium, where previously they were in fact only imposed on a limited population of first offenders (supra). Although the magistrates behaved rather conservatively or hesitantly in the beginning, we see that today offenders who have committed serious crimes or who have a criminal record can receive a work penalty. This results in a growing group of persons who are made subject to a work penalty, creating difficulties in an implementation system that relies upon volunteers (Luypaert et al., 2007).

The defendant, or his lawyer, has to give his consent to the imposition of a work penalty at the court session. Due to the prohibition found in international conventions and national constitutions on forced labour outside the prison context, this is a widely established practice. However van Zyl Smith (1994) rightly points out that consent may be given for extraneous reasons, such as the desire to avoid a prison sentence. This is also confirmed by Bloch, Vermeiren, Maes and Verhaeghe (2006) and Dantinne et al. (2009). To ensure that offenders give informed consent, the Act stipulates that judges have to inform the defendant about the implications of agreeing to the sentence. However, this article in the Act does not guarantee a genuine informed consent in practice. Judges are usually under too much time pressure to communicate sufficiently and do not provide enough information about implementation practice to be able to inform offenders adequately about the requirements and challenges of the penalty.

It is very interesting to note that it was the explicit aim of the legislature to avoid social stigmatisation and to neutralise as much as possible the negative impact of the conviction in the future life of the convicted offender. Consequently, the law stipulates that the work penalty may not appear on the certificate of good behaviour which is, for example, required when applying for a job in Belgium. However, the sentence appears on the central sentence register7, which is accessible, among others, by police forces and magistrates. This is unique

[5] Justice assistants can be compared with probation officers.

[6] To avoid offenders who have been taken in remand being excluded from the opportunity to receive a work penalty, the combination with a prison sentence that 'covers' the period of remand is, however, possible.

[7] All the Belgian criminal records are maintained in this central sentence register.

for a main penalty in Belgium and very constructive with regard to the possibilities of rehabilitation.

The Act of 17 April 2002 provides the possibility of a pre-sentence investigation. The public prosecutor, the investigation judge, the investigation courts or the sentencing judge can request a so-called 'social enquiry report' ('maatschappelijke enquête') or a 'pre-sentence report' ('beknopt voorlichtingsrapport').8 The pre-sentence report was introduced in order to simplify and accelerate the procedure for carrying out a pre-sentence investigation. The aim is to assess the appropriateness and suitability of community service, probation orders or work penalties. It has been a point of debate whether these reports should be compulsory or not. It was decided that the full discretion as to whether or not to ask for a social report would be left to the sentencing judge, resulting in a rather marginal demand for and use of this social information. In 2003, 31 per cent of work penalties were accompanied by a social report; in 2008 this percentage had declined to only 24 per cent (FOD Justitie, 2009; Beyens & Scheirs, 2010). This means that increasingly work penalties are being imposed without a social report. Organisational and budgetary arguments with regard to cost saving and the risks of delaying the judicial procedure have been prioritised over maximising the conditions for an accurate and informed sentencing process. Taking into account the wide application potential with regard to offence and offender, more serious cases may be considered for a work penalty. Adequate sentencing, supported by sufficient information on the social conditions of the defendant, is therefore crucial to avoid problems in the implementation phase (Luypaert et al., 2007: 185).

As the execution of a work penalty cannot be enforced, the Act stipulates that, at the point of sentence, the judge has to impose a substitute sentence to be enacted in the event of breach of the work penalty. The substitute sentence can be a prison sentence or a fine. Just as there are no tariffs to determine the number of hours of work penalty, neither are there tariffs nor standards defined to convert an hour or a day of work penalty into a prison sentence or a fine. This leads to a lot of disparities in practice. In the event of breach it is the prosecutor who decides whether or not to execute the substitute sentence. Dominicus (2006) shows that, in 2005, 49 per cent of the substitute sentences were prison sentences and 60 per cent were fines, which gives 9 per cent of cases with a combination of both sentences (which is illegal…). With regard to the length of the substitute prison sentences, the judges have a strong preference for sentences of 6 months and 12 months: 77 per cent of all substitute prison sentences are less than 12 months and the mean sentence length is 8 months.

Finally, a final Belgian peculiarity: since the infamous Dutroux case, attention to victims has increased and since 1996 all new Acts concerning criminal law refer in one way or another to the interests of the victims. Here also the law stipulates that the judge can take into account the interests of the victims when imposing his sentence. It is, however, unclear and difficult to assess how this article influences the actual judicial decision making process.

**Stated and real goals**

As in many other countries, in Belgium the search for alternatives to prison in the 1960s fitted with a general tendency towards humanisation of punishment, giving priority to rehabilitation and reintegration as goals of punishment. However, this rehabilitative philosophy did not catch on very well with the classical oriented sentencing culture, aiming for retribution, denunciation and deterrence. This might explain its initial lack of success with the judiciary

[8] Act of 22 March 1999, *B.S.* 1 April 2000; Act of 17 April 2002, *B.S.* 7 May 2002.

(Beyens, 2000a). At the same time, the search for alternative sanctions was closely linked to the problem of rising prison populations and prison overcrowding.

In Belgium, the aims of punishment are not stipulated in the law. In the preparatory Parliamentary works9 multiple aims are assigned to the work penalty. It is promoted as a money-saving alternative to the short prison sentence and it is supposed to appeal to the (classical) ideas of proportionality, responsabilisation and compensation to the society. It is called a constructive sanction having a reintegrative and rehabilitative character. At the same time the punitive dimension of the work penalty is pointed out through emphasising its restriction of freedom, by having to comply with work schedules, being subject to external control, stigmatisation with respect to family members and colleagues in the work place and, especially, the threat of a more serious substitute sentence if the obligations are not complied with.

The work penalty can thus be regarded as a typical 'chameleon' sanction (Beyens, 2006; Van Kalmthout, 2006) that can appeal to everyone and that can be compatible with any penal policy (Jacobs & Dantinne, 2002; Kaminski, 2007). Because (short) prison sentences are not executed, or only partly executed, in Belgium, work penalties are supposed to be able to counter the (public's perceptions of) impunity of offenders and to enhance the legitimacy of the penal system.

Kaminski (2007) rightly points out that the listed objectives refer to different dimensions of the penal system; namely a reductionist – regulatory dimension, a penological dimension, an economic dimension, and a dimension that refers to the legitimacy and credibility of the penal system. However, this mixture of arguments is consistent with Morris and Tonry's (1990) notion of intermediate sanction (Beyens, 2006). The work penalty has found a place between the two extreme poles of (rehabilitative) probation and (retributive and deterrent) imprisonment. This intermediate position undermines its substitutive character, but given its quantitative success in Belgium it may be concluded that it apparently fills a need in the sentencing scale.

When studying the aims of punishment, we should distinguish between discourses at different levels. How does the official (parliamentary) discourse influence or relate to penal practice at the different levels (sentencing and execution)? In 1977 the Dutch criminologist Denkers (1976) highlighted the difference between the 'stated' and the 'real' goals of punishment. Also, in recent Anglo-Saxon literature, the contingent relationship between official discourse and practices, the role of penal workers and their capacity to, consciously or subconsciously, resist policy, has been pointed out by Tata (2007). McNeill, Burns, Halliday, Hutton and Tata (2009) recently described this phenomenon as a 'governmentality gap'. Looking at the Belgian case, it is argued that the 'classical' and punitive discourse that is embraced by politicians and the judiciary is much less supported by the agents who are involved in the execution of the work penalty, and that their 'real goals' still fit within a rehabilitative framework of support (infra). However, we see that there is a growing divergence and tension between the central services, on the one hand, who are in the first place concerned about managerial issues such as increasing numbers and case loads, and the fieldworkers on the other (cf. changing role of rehabilitation).10 This enhances different implementation practices and confirms the sentence's 'chameleon' character.

[9] Preparatory works, *Parl. St*. Kamer, 1999-2000, nr. 50-049/001, 4-5.

[10] There is ongoing but not yet published research on this topic in Belgium by Aline Bauwens. The statement in this article is however based on my own frequent exchanges and personal contacts with actors in the field.

However, in spite of these differences, it is clear that the change of community service from a condition of probation into an autonomous work penalty has transformed its legal and penological basis from that of an alternative sanction oriented towards rehabilitation to just another neoclassical form of punishment, primarily aiming for retribution (Beyens, 2006).

**Implementation of work penalties**

To understand fully the impact and position of a penalty, it is crucial to comprehend its implementation at the different levels of the criminal justice system and to understand why and how decisions are made and by which actors. The work penalty is a very complex sentence in its execution, because of the diversity of actors involved (Beyens, 2006a; Luypaert et al., 2007). Also the views and the lived realities of the persons who are made subject to work penalties are important to understand the alleged punitive, constructive, reparative or rehabilitative nature of the sentence.

**Imposition**

Beyens (2000a) showed that the credibility and experience of judges with community service was previously rather marginal in Belgium, while the work penalty quickly found a vested place in the judicial decision making process. Sentencing data in Belgium are outdated and unreliable. To gain an idea of the evolution of work penalties we can, however, make use of data with regard to the number of new files arriving at the Houses of Justice each year.

**Table 1** : Yearly number11 of work penalties at the Houses of Justice : 2002–2008

| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|---|---|---|---|---|---|---|---|
| Number | 556 | 4.597 | 7.405 | 9.067 | 9.524 | 9.847 | 10.131 |
| Index | | 100,0 | 161,1 | 197,2 | 207,2 | 214,2 | 220,4 |

Source : FOD Justitie (2009)

Table 1 shows the spectacular growth in the number of cases in a short period: after the first year, 4597 cases were already in execution, which is huge by Belgian standards. This figure doubled in three years and the numbers keep on rising, with 10,131 work penalties imposed in 2008. At the time of writing, in 2010, there are no indications of a downturn in this constant increase.

In 2005 there were 87 new work penalties per 100,000 inhabitants (Dominicus, 2006: 43). Looking at the judicial districts, the numbers ranged between 28 and 287 work penalties per 100,000 inhabitants, which is a clear indication of considerable sentencing disparities. These disparities are confirmed by De Pauw, Raes and Van Look (2006), who studied a limited number of files of drug-related crimes in the Brussels court over the period 2002–2003. They found that only half (15/29) of the sentencing judges in this court imposed work penalties and that, of these 15 judges, only three imposed more than half (57%) of the total number of work penalties.

Lefevre (2009) repeated Beyens' (2000a) sentencing research by using the same four vignettes with a small sample of judges (n = 9), aiming to evaluate the judges' openness towards work penalties and trying to compare the sentencing decisions with those studied by Beyens in 1995. Except for the fraud case, where judges opted for a conditional or unconditional prison sentence or a fine, the results showed a considerably greater willingness

[11] Although it would be preferable, we do not have available data on the daily population of persons who are made subject to a work penalty.

to impose work penalties than 15 years ago. The autonomous status of the work penalty is put forward by the judges themselves as being of decisive importance in this regard. All the reservations with regard to community service that Beyens identified are retrospectively confirmed by the judges in Lefevre's research. In tune with the legislation, judges also seem to be willing to impose work penalties on offenders with a criminal record. One judge mentioned that remand custody can have a positive short sharp shock effect, and that this can be a reason for him to impose a work penalty after the offender has experienced remand custody. This emphasises the importance of deterrence and also illustrates the demand for having the option of combining a prison sentence and a work penalty. Judges dislike it if a work penalty is requested by the defendant (or his lawyer) only to preserve a blank certificate of good behaviour (see also Bloch et al., 2006), because they regard it as a misuse and a perverse effect of the advantage of this penalty. This is also confirmed in other informal conversations with judges: defence lawyers who are only interested in this benefit of the work penalty, without taking into account other circumstances, are not taken seriously.

Compared with community service, the higher credibility of the work penalty is also related to the fact that a substitute sentence has to be imposed. According to the judges, this 'big stick' can exert pressure on persons made subject to a work penalty to complete their sentence. This point must however also be situated in the very complex context of the non-execution or partial execution of prison sentences of up to three years in Belgium, which is the result of a policy to fight prison overcrowding. According to the ministerial circular No. 1771 of 17 January 200512, prisoners who are sentenced to a maximum of six months imprisonment are immediately released; after one month's detention if they are sentenced to a maximum of seven months imprisonment; after two months' detention if they are sentenced to a maximum of eight months imprisonment; or after three months' detention if they are sentenced to a maximum of one year. Prisoners sentenced to more than one year but a maximum of three years imprisonment may benefit from provisional release after having served a third of their sentence. To enhance the credibility of the work penalty, it is stated in particular that substitutive prison sentences for work penalties up to six months must be executed, however, following early release rules, someone with a prison sentence up to four months is released after 15 days, and after 30 days in case of a prison sentence of between four and six months. This situation has two consequences. Firstly, judges see the work penalty and its substitute sentence as a more credible sentencing option than a short prison sentence, because work penalties are actually executed and short prison sentences not. The positive side of this situation is that it counters the risk of net widening. However, with regard to fairness and consistency of the punishment scale, a work penalty becomes in this situation a more serious penalty than a short prison sentence, a consequence which can, of course, be questioned. Secondly, substitutive prison sentences are almost automatically converted into house arrest with electronic monitoring, which leads to the situation that people who receive a work penalty can end up with a (short) period of electronic monitoring.

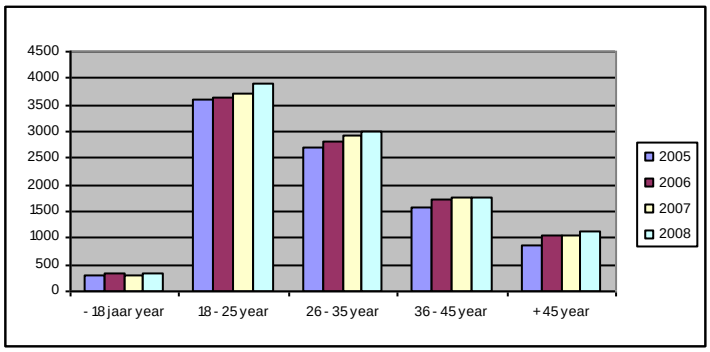
**Offenders and offences**

Contra-indications to receiving a work penalty are related to language and nationality. Although statistical data in this regard are not available, there are sufficient indications to state that Belgium has a 'white' work penalty population and a 'coloured' prison population (44 per cent of prisoners have a non-Belgian nationality) (Beyens, 2007b).
With regard to the population of persons who were made subject to a work penalty, there are only data available with regard to age and gender.13

[12] Provisional release has never been regulated by any statutory provision, but is an administrative measure.
[13] Statistical data on the imposition of community penalties are very scarce and poor. I thank Anabelle Rihoux and Roel Peeters from the Directorate-General of the Houses of Justice for providing the data below.

Figure 1 shows a stable and predominantly young population: between 2005 and 2008 the group of 18–35 year olds made up about 70 per cent of the population. About three per cent of the population are minors, aged less than 18 years old, which is a group that, following the Belgium law, cannot be punished in the adult system… Compared with Dominicus' (2006: 48) data for 2005, we see that this distribution is very robust in time and very similar to the prison population.14

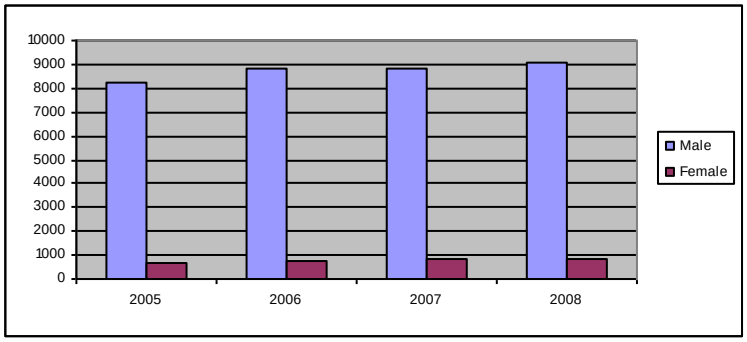
**Figure 1.** Age distribution: 2005–2008 (absolute numbers)




Source : Directorate General of the Houses of Justice

Figure 2 shows a stable gender distribution with an overwhelming proportion (between 91 and 92 per cent) of male offenders. Female offenders are underrepresented with 8 to 9 percent, though less sharply than in the prison population, where the distribution is 4 per cent female and 96 per cent male prisoners.

**Figure 2**. Gender distribution: 2005–2008 (absolute numbers)




Source : Directorate General of the Houses of Justice

**Table 2**. Employment status: 2005 (per cent)

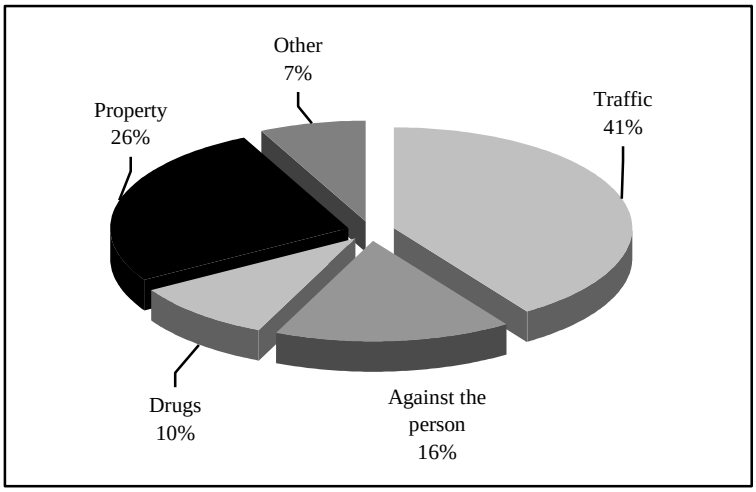
| | Percent |
|---|---|
| Active | 35% |
| Non-active | 39% |
| Student | 11% |
| Unknown | 15% |

Source : Dominicus (2006: 48)

[14] We only have data on the age distribution of the prison population with regard to the period of the 1980s (Beyens, Snacken & Eliaerts, 1993 : 304-306).

With regard to employment status there are no recent data available. We rely on Dominicus' (2006) data from 2005 to see that the group of 'non-actives' is the biggest (39 per cent), followed by an active group (35 per cent). However, these figures can only be regarded as indicative, as we know that these kinds of data are not very reliable in Belgium. There is a considerable group whose employment status is 'unknown', which can switch the proportions very easily. At 11 per cent, students are well represented, and this figure confirms the observations of Beyens (2000a) that judges are particularly reluctant to send students to prison. Because they are still at the start of their professional career, a blank certificate of good behaviour is utterly important for their integration in society. According to many of judges, students are thus a favourite group for rehabilitative sentences. These data are also put into perspective by the research of Dantinne et al. (2009) whose (non-representative) survey sample of persons who were made subject to a work penalty in 2009 contained 62.7 per cent employed, 13.8 percent unemployed and only 2.8 percent students. From these data, one could cautiously conclude that the work penalty is primarily a sentence for offenders who are already regularly employed.

**Figure 3**. Types of offences: 2005 (per cent)




Source : Dominicus (2006: 46)

With regard to the offence distribution, adequate recent data are not available. Dominicus' (2006) study shows that, in 2005, road traffic offences were the most 'popular'. We know that the work penalty for this offence is mainly imposed by the police courts, which have jurisdiction in most traffic offences. Property offences are the second biggest category. However, these categories are too general to analyse the seriousness of the offences. To know whether work penalties are indeed imposed in more severe cases, it would be a very interesting exercise to compare with the former community service. Contacts with professionals involved in the execution of the work penalty tell us that the number of 'problematic' cases has increased.

**Execution and management**

The work penalty must be carried out in performing public services within twelve months after the conviction. Luypaert et al. (2007) describe the complex configuration of agents involved in the execution of the work penalty: (1) the houses of justice and the justice assistants, and (2) the 'dispatching' and 'work floor projects' ('werkvloeren') and (3) the voluntary 'work places' ('prestatieplaatsen'). Characteristic of the Belgian executive practice is that the structure for subsidising the second group of agents was established initially in 1994 from an employment approach, rather than from a criminal justice approach. This

brought about a disorganised and fragmented supply of services, without any vision or concern about matching the work places with the needs and diversity of the offenders subject to work penalties.

(1) The Directorate-General of the Houses of Justice and the 27 houses of justice (one in every judicial district) are, as 'para-penal' actors, responsible for the execution of all community penalties in Belgium. The daily supervision and follow-up is carried out by justice assistants, who are trained in social work to bachelor degree level, and have thus a high affinity with a rehabilitative approach to punishment. However, due to the fact that the work penalty is defined as an autonomous main penalty, the Directorate-General has required that the follow up of the work penalty should be stripped of social guidance and supervision. A follow up of a work penalty consists of looking for a suitable work place, making the contract with the work placement and monitoring compliance with regulations. Consequently the case load of the justice assistants is adjusted to this (limited) task. This evolution of the 'rehabilitative' philosophy towards a rather 'naked' follow up is also related to the pressure of the increasing numbers of offenders made subject to a work penalty. In the search for more adequate management tools, the so- called 'Business Process Reengineering' was introduced in 2005. This entailed a move towards more standardisation and less freedom in the execution of the different tasks of the justice assistants, amongst other things by strictly defining and limiting the number of contacts with the offenders. However, this managerial approach is still in the process of implementation and there is still divergence in practice between the judicial districts.

Although this approach of the Directorate-General is challenged by the (more senior) justice assistants, we also observe that the field is adapting slowly (but surely) to this transformation of rehabilitation and that newly recruited justice assistants seem to accept this new offender management approach more readily. The research of Dantinne et al. (2009) is interesting with regard to the offenders' perceptions of their contacts with the justice assistants, the dispatchers and the supervisors at the work placement: the majority (80 per cent) of the sample of offenders described the contacts as 'helping', 55 per cent as controlling, and a minority (34 per cent) see the justice assistant as 'punishing'. Helping and controlling thus do not seem to be contradictory. Interviews with justice assistants reveal that, in spite of the official policy, and especially in cases of social vulnerability of the offender (personal problems of all kinds), social support and guidance are offered.

(2) In 22 of the 27 judicial districts, local 'dispatching projects' have been set up, which fulfil an intermediate function between the justice assistants and the work placements (Luypaert et al. 2007). Dispatching projects take over two important functions of the justice assistants; finding a work placement for the persons who have to serve their work penalty, and supervising the execution of the work penalty. However, there is a lot of criticism of the system of funding the 'dispatching projects': (1) they are subsidised on a yearly basis on quantitative criteria, and (2) they do not receive working costs. This leads to job uncertainty, dissatisfaction and pressure to receive enough cases on a yearly basis to survive. Furthermore, this subsidy policy of the government has initiated a fragmented organisational structure entailing considerable differences between the judicial districts and also between the French and Dutch speaking parts of the country. In his recent White Paper 'Straf en Strafbeleid', the Minister of Justice, Stefaan de Clerck (2010), acknowledges this problem and states that the tasks of the justice assistants and the dispatching projects must be better attuned in the near future. The intention is also expressed that the temporary subsidy system should be replaced by a more structural and efficient subsidy policy, based on more transparent quantitative as well qualitative assignment criteria.

(3) The work penalties are executed in public services of the state, the cities, the provinces, the communities and the regions. Importantly, also non-profitmaking organisations and foundations with a social, scientific or cultural objective can provide unpaid work for offenders. They all cooperate on a voluntary basis, without being paid for their services to the government. The only advantage they receive is that some work can be done by a person who is made subject to a work penalty. This work may not replace the work of a regular employee. Such organisations become, however, responsible for monitoring and controlling the compliance with the work penalty, which is an important responsibility and something for which their staff is not trained. Secondly, there are the also the so-called 'work floors' that are financed by the same subsidy system as the dispatching projects ('Global Plan'), which can offer a more intensive and direct supervision of the offender. They suffer, however, from the same budgetary shortages as the dispatch projects.

**Work supply**

Luypaert et al. (2007) made an inventory of the supply of available work placements in Belgium: on the basis of a survey (93.5 per cent response) in 2006 they listed 4862 available work places to execute a work penalty, for about 9500 offenders. The available work is mainly manual (54 per cent) (e.g. in zoos, public parks etc.). Other categories are administrative work (9.6 per cent), social work (3.4 per cent) or catering (5 per cent).

Some places impose restrictions concerning the nature of the offence (no offenders convicted of theft, violence or sexual offences), or skills or characteristics of the offenders. Such restrictions are often imposed by places with a specific setting or a vulnerable public, for example, hospitals, homes for the elderly or the Red Cross. A limited survey of the work places in the district of Bruges (response of 78 per cent) in 2007 reveals that 45 per cent of the work places imposed restrictions (Preventiedienst Brugge, 2007), which can be regarded as a substantial number.

Although the supply of work places is fairly well distributed all over the country, we found that most of the judicial districts run short of work supply in the evenings and/or week-ends, which is particularly problematic for convicted persons who have a regular job. This leads to long waiting lists and a lengthening of the punishment. Sometimes the period of twelve months of execution period is exceeded and has to be prolonged by the probation commission (infra). To match convicted persons to suitable work places, the justice assistants or the dispatchers try to take into account the needs of the persons who are made subject to a work penalty, such as their preferences for activities, distance between home and work place, hours, etc. However, in the research of Dantinne et al. (2009) 80 per cent of the respondents mentioned that they did not have any say in the assignment of the work place, which indicates that the freedom and participation of the offenders themselves is rather limited.

Due to a too thrifty use of pre-sentence reports, agents involved in the execution of the work penalty complain about inappropriate sentencing, resulting in them having to follow up offenders who are, according to them, not suitable for a work penalty, due to personal problems (e.g. problems of addiction, aggression, health conditions, language…). From the point of view of equality, these offenders should not be excluded from the possibility of receiving a work penalty on these grounds. They could be accommodated through the creation of special 'work floors' with specialised staff. However, this would require a special investment from the government, which has not yet been announced.

## Compliance and termination

The justice assistant has to report on the progress of the work penalty to the probation commission, which is a board presided over by a magistrate.15 In the event of problems arising, the probation commission reports to the prosecutor, who decides whether or not to execute the subsidiary fine or prison sentence. Committing new crimes while serving a work penalty does not in itself imply a breach of the penalty.

**Table 3.** Reasons for termination: 2005–2008 (N and percentages)

| | Completed | Partly completed | Deceased | Total |
|---|---|---|---|---|
| 2005 | 6176 (86.9%) | 882 (12.41%) | 49 (0.69%) | 7107 |
| 2006 | 7246 (85.52%) | 1193 (14.08%) | 34 (0.40%) | 8473 |
| 2007 | 7624 (82.94%) | 1529 (16.63%) | 39 (0.42%) | 9192 |
| 2008 | 7499 (80.94%) | 1722 (18.59%) | 44 (0.47) | 9265 |

Source : Directorate-General of the Houses of Justice

Table 3 shows a rather high proportion of completion cases, although it declines from 87 per cent in 2005 to 81 per cent in 2008. The increasing number of serious cases (as indicated by the seriousness of the offence or the criminal history of the offender) might explain this change. The law does not provide any clear standards or criteria to define the reasons for breach or revocation. However, from the research by Luypaert et al. (2007) and Dantinne et al. (2009), we know that there is a lot of room for discretion and negotiation between the offenders, work places and the justice assistants before the problem is reported to the probation commission. The probation commission may decide to refer the case to the prosecutor, but alternatively, it may give a warning or offer a 'second chance' (which happens very often). This second chance can imply that the justice assistant or the dispatching service has to look for another work place or that the person who has breached his contract is sent back to the same work place. The prosecutor can also decide to send the offender back to the original work place. This last option is not very much appreciated by the persons who have to supervise the offender on the floor because, according to them, it undermines their credibility and legitimacy in the eyes of the persons they are set to supervise (Luypaert et al., 2009). There is no opportunity for appeal by the offender and the procedure of termination can vary between the districts. Research by Dantinne et al. (2009) shows that most failures happen at the beginning of the execution process (for example, not showing up on the first day). They point out that 'problematic' offenders mainly accumulate problems related to different dimensions of their lives (social, psychological, relational, economic). They list the following reasons for failures: absences, arriving late and not respecting fixed working hours, lack of motivation and avoidance of taking responsibilities, misbehaviour (sleeping, surfing the internet, playing computer games, smoking cannabis, drinking alcohol, forgery of their working schedule), ill health, and having to combine a regular professional job and a work penalty.

However, further research on the definition of 'success' and 'breach', their explanations and the decision making process at the different levels of the execution phase, is needed to understand the complexities of interactions between the offender and the penal system.

[15] This probation commission was created in 1964 with the introduction of probation in Belgium.

## Evaluation

Recidivism rates are regarded as an important indicator to measure the effectiveness of punishment. However, in Belgium systematic studies of recidivism are nonexistent.

To date, work penalties (still) have rather high completion rates in Belgium, which can be related to different factors: highly motivated offenders, good or strict selection procedures, good quality of the follow up, not very strict follow up, etc. These hypotheses have to be further and systematically investigated. However, there are some studies of the perceptions and satisfaction of the actors involved in the execution of the sentence (work places and the dispatching projects) (Luypaert et al., 2007; Preventieproject Brugge, 2007; Dantinne et al., 2009) and of the persons who are made subject to a work penalty (Dantinne et al., 2009). These studies give some interesting indications of the effectiveness of the daily practice of the work penalty in Belgium.

With regard to the satisfaction of the dispatching projects, we have already pointed out their dissatisfaction about the subsidy policy and the encompassing feelings of insecurity about the stability of their position. The lack of reimbursement of working costs16 and the refusal of the government to pay specific costs (such as medical risk analysis and special clothing for manual work) has even led to the termination of engagements of several work places, resulting in a loss of placement possibilities (especially in the French speaking part of Belgium). Another tension is related to the dependency of the dispatching projects upon the justice assistants, who have the information about the offenders and their offence. Bound by their professional confidentiality, justice assistants refuse to give information about the offence to the dispatching projects and work places. In the event that the nature of the offence is a contra-indication for admission of an offender to a work place, the lack of access to this kind of information may cause difficulties and even hamper the matching of offenders to particular work places. This issue of professional confidentiality can be regarded as symptomatic of the sometimes difficult and hierarchical relations between the houses of justice and the services in the community.

The evaluation research in Bruges also shows, however, that 88 per cent of the work places involved in the research comment they have more positive than negative experiences with offenders and 61 per cent evaluate their cooperation as advantageous. At the same time, 34 per cent indicate that having a person who was made subject to a work penalty in their service means no relief of work, but rather an additional burden. However, this does not result in termination of their engagement: they continue to receive offenders because they regard it as their social duty or because they are forced to do so by their superiors.

Research into the views and perceptions of the persons who are made subject to a work penalty can be relevant to evaluate the meaning of the sanction. The research by Dantinne et al. (2009) gives some interesting indications as to how the supposed goals are experienced by the offenders.17 The work penalty is conceived of as punishment that combines multiple aims: punitive, preventive, dissuasive, pedagogic; helping and controlling (in order of importance). The research indicates that there are large differences between the degree of control, follow-up and structure that is offered at the work places. We might deduce from

[16] Such as administrative and travelling costs.

[17] These research findings are mainly based on quantitative research using a nonrepresentative sample of 217 persons (response rate of 13%) who were in the course of their work penalty. The choice of a quantitative research method, using a questionnaire with closed questions, could be questioned in this context.

these data that classical and re-integrative aims are combined. The supposed society- or victim-oriented aims (reparation to the society, responsabilisation of the offender) are, however, hardly acknowledged in the discourses of the offenders and of the beneficiaries. The supposed deterrent effect of the substitute sentence is put into perspective by the finding that one-fourth of the offenders in the sample respondents are ignorant about the judicial consequences of non-compliance, because they do not even know what the substitutive sentence is. The reasons for consent given by offenders are; avoiding a prison sentence (26%) or a fine (20%) or keeping a blank certificate of good behaviour (16%).

The research also indicates that the experiences at the work place and its effects on the offender are very diverse. Some offenders (albeit a minority) want to continue working for the organisation after completing the punishment, as volunteers or by applying to be engaged as regular employees. They see it as an opportunity to establish a social position, which can be regarded as an indication of the constructive character of the work penalty. This positive evaluation can be related to the motivation of the offender, but also to the way he/she is received at the work place and the opportunities to build positive relationships and enhance self-esteem.

## Conclusion

In a relatively short period of time, the work penalty has achieved a vested position in the Belgian sentencing system due to its diverse ascribed aims and its legal status as an autonomous main penalty: judges like it, politicians like it and the public also likes it. The analysis of the legislative process and its implementation illustrates the difference between the alleged stated and actual goals, and gives substance to the idea of 'transformation of rehabilitation' (Garland, 2001) from a soft, purely offender-oriented measure it has evolved towards a punishment that appeals to the classical objectives of retribution and dissuasion (at least at the level of the rhetoric). An important aspect of the work penalty is his 'activation' and making him or her accept responsibility, which seamlessly connects to the ideas of the late modern active welfare state in which we are living today (Giddens, 1998; Beyens, 2006). The work penalty fits in this logic of rights and obligations, where citizens must take responsibility for themselves to comply with a social contract and make a contribution to society by means of unpaid labour. This is a completely different perspective on responding to crime than that of helping or accompanying by means of probation conditions, which fits in the ideology of the modern welfare state.

The introduction of the work penalty was intended as a front-door policy (Rutherford, 1984) to tackle the rising prison population. Although the non- or partial execution of short prison sentences has encouraged the use of the work penalty as a real substitute for imprisonment, its effect on the size of the prison population cannot be demonstrated. The establishment of this sanction has even enlarged the general amount of punishment: there has been a general increase of 14% in the daily prison population between 2002 and 2008 (2002: N = 8605; 2008: 9858) and a net increase of about 10,000 work penalties on a yearly basis. With regard to the rise of the prison population, it should be noted that this increase is totally due to the rise of sentences of more than three years. However, the spectacular drop in the number of convicted prisoners sentenced to less than three years in prison is, in the first place, caused by the non- or partial execution of short prison sentences and their replacement by electronic monitoring. Due to a lack of reliable sentencing statistics, it is impossible to determine the influence of the substitutive effect of the work penalty. The least we could say is that the free space in prison is immediately taken up by other categories, such as long-term prisoners and remand prisoners.

The work penalty is a typical example of a community-based sentence: it is executed in the community, by the community and for the community (Nelken, 1994). It can be argued that the work penalty fits in what Garland (2001) and Loader and Sparks (2002) have described as 'new government of crime'. The civil society becomes involved in crime control and, through the introduction of civil actors who operate outside the strict limits of the criminal justice system, there is a blurring of the 'modern' penality into an undefined, seemingly limitless system of penal control. Persons who are made subject to a work penalty become controlled by their fellow-citizens, who are lay persons and who do not receive specific training to execute this task of crime control. This leads to a form of 'governing at a distance' by partnerships and different networks in society. These civil actors receive discretionary power with respect to important aspects of the implementation of punishment, such as giving or refusing access to certain work places, decisions about compliance and breach of contracts. This in turn leads to a fragmentation of control in the implementation phase. Although the central organs of the judicial system penal actors keep the ultimate responsibility, this entails organisational problems of cooperation and hierarchical relationships. The existing subsidy system and its different subsidy channels enhance this insecure and non-transparent configuration of different services and work places.

We see an important tension between the involvement of the lay community, on the one hand, and the lack of professionalisation of the execution of the work penalty on the other. It is important that the work penalty can be executed in a civil organisation where the offender can function in a non-penal work environment and take advantage of relationships with fellow citizens. From the point of view of rehabilitation and desistance, an individual approach is extremely important and the establishment of collective work placements should be avoided as much as possible.

The Belgian government has been eager to implement the work penalty and has taken the (brave) option to enable courts to impose this sentence for serious offences and offenders with a criminal record. However, little or no investment is made in the development of a consistent punishment framework, with clear sentencing objectives. This policy option also has not been accompanied by a commensurate investment in the professionalisation and support of the actors who are involved in the imposition and execution of the work penalty. The choices that have been made at the political level are mainly budget and management driven. Many work penalties are imposed today without a social inquiry report, leading to sentencing decisions that bring difficulties for the actors responsible for the execution of the sanction. The economy driven logic is even more striking at the implementation level, which is confronted with a growing group of offenders having to serve a work penalty. A considerable amount of these offenders need support to complete their sentence. Justice assistants are not supposed to invest in this support and the actors in the community are not trained for it, receive barely adequate financial compensation for this important and difficult task and/or have to work in very unstable and insecure working conditions. Parallel to the prison system, a shortage of capacity to execute work penalties has come into being. The government should however be aware of a maximum capacity of volunteers in the society willing to contribute to the execution of punishment. The question, therefore, as to how far a government can go to use its civilians to take care of its convicted citizens, becomes very urgent.

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**Email:**
Kristel.Beyens@vub.ac.be

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