

SUMMARY

INTRODUCTION

In the administration of criminal justice, a sizable number of former judgments in absentia remain on the side as a result of the impossibility delivering the judgment to someone (to the person) and enforcing it. This does not serve the credibility of the government well. A deeper insight into this is required before tackling these problems. What is the nature and the magnitude, what are the causes, what has already been done, and which supplementary regulations could be taken, like the introduction of a so-called domicile system, if necessary. In this context, a domicile system is understood as the specification by the defendant to the police or public prosecutor of an address where he can be reached and where judicial papers intended for him can be delivered. Delivery of a judgment to the address given as domicile would then be equivalent to delivery to the person.

OPERATING PROCEDURE

Commissioned by the WODC, research was undertaken into the problems mentioned above in the latter half of 2004. The central question of the research was as follows. Which problems present themselves in practice with the delivery and enforcement of judgments in absentia and in which magnitude? How far can the domicile system be considered as a solution? The research involved four methods of research. To start with, quantitative data files from the CBS and the public prosecutor were analysed concerning the settlements of cases in absentia in the period 2001 - 2003. Subsequently, 450 criminal case records of cases in absentia were studied at the offices of the public prosecutor in Amsterdam, Arnhem, and Almelo. Then twelve experts in practice were interviewed in the afore-mentioned districts. Finally, the delivery and enforcement practices of Germany were brought into consideration. In Germany, the domicile system is familiar.

QUANTATIVE IDEA OF CASES IN ABSENTIA

From the research, it emerges that in the period 2001 - 2003, 126,083 judgments in absentia still had not become final after fifteen days (the period for instituting an appeal to a higher court). That was 35 percent of the total number of judgments in that period (363,480). In the period mentioned above, 75,355 (60 %) of the afore-mentioned judgments in absentia still became final, the majority (95 %) within 20 days after the definite decision. The number of cases in absentia that did not become final was 50,726 (40 %). Thus, in the end, 15 % of all former sentences had not become finalised.

The data mentioned above has been derived from the CBS over the period 2001 - 2003. The data from the CBS only concern courts of law (in this case, magistrate courts). Data was also requested from the public prosecutor which are from the

year 2001 and also includes cantonal court cases. From these latter data, it appears that 98,989 judgments in absentia were still not final after fifteen days. The larger part became final after one year: 76,634 (78 %). After two years, 83,406 (84 %) were final. Within that period, 13,832 were not finalised.

From the cases in absentia which did not become final (50,728; 40 %) [CBS] in the period of research 2001 - 2003, the defendant was found guilty in almost all of the cases and a punishment was given (97 %). In about 15,000 (30 %) of the cases, an unconditional prison sentence was given as the main punishment. In about 28,000 (55 %) of the cases, an unconditional fine was given. This concerns judgements relevant to assault and battery, theft / receiving stolen goods, public order disturbances, and traffic offences.

Also, from the research into the case records (450), it emerges that it mainly concerned cantonal law cases (284; 63 %) and magistrate cases (147; 33 %). Mainly, it concerned theft (40; 9 %), breach of public order (AVP) (185; 41 %).

Furthermore, in these cases, it appears that in the most cases (299; 66 %) the summons was served by the court registrar. From 291 case records it could be seen if, and how, the notification of the verdict was delivered: 107 cases to the person (37 %) and for 177 cases (61 %) the means of delivery was unknown. Ultimately, 167 cases were eventually final (through serving to the person or otherwise). From the research into the case records, it appears that in many cases in which the summons was unable to be delivered to the person, the verdict could just as little be delivered.

It appears from the research into the case records that it, roughly, concerns two sorts of defendants and convicted. Firstly, a group of defendants and convicted consisting of those who are not, or incorrectly, registered in the GBA because they frequently change their address or use the GBA address only as a postal address and actually reside elsewhere (for example, the homeless, drug addicts or illegal immigrants). Secondly, a category of notorious (traffic) offenders who deliberately let the actual operation of the case just simply happen.

BOTTLENECKS IN THE PRACTICES OF DELIVERY AND IMPLEMENTATION

The research appears to show that the actual delivery could qualitatively be better operated. The current delivery procedure is complex and subject to error. TPG Post persists with the GBA address provided by the office of the public prosecutor and, as a rule, undertakes but one attempt at delivery, during office hours. The real problem is that the defendant / convicted does not always actually reside at that address, or does not react if the postman rings to deliver the notification in absentia. It also pays the defendant and the convicted to not bother to act when the postman rings to deliver the notification in absentia. In most cases, in practice, it seems that if the delivery of the summons or the notification in absentia are unable to be delivered to the person, the judgment would just as little be enforced. The offices of the public prosecutor maintain no surveillance over the

actual implementation of the delivery by the TPG Post and they do not intervene in the delivery procedure. With the enforcement of the convictions in absentia, similar problems are at play as with delivering to the person. The effort of the police with the enforcement of monetary fines varies per region, but, taken as a whole, it could be better. As a rule, in police practice, activities in the area of enforcement are not attributed any great priority. Also, the shortage of cell capacity has a negative influence upon imprisonment as an alternative.

PREVIOUSLY ENCOUNTERED REGULATIONS

In order to improve the delivery practice, several of the researched offices of the public prosecutor have successfully switched from the bureaucratic manner of working, as written about above, to a more person-directed manner of working. Thus, what is necessary is being done to improve the effectiveness of the delivery and the enforcement. In the broad sense, this manner of working involves the mobilisation of the police of the office of the public prosecutor or the enlistment of a special delivery team. In practice, it appears that the police of the office of the public prosecutor and the delivery team are more successful in the delivery of judicial papers than TPG Post. They undertake more attempts, work outside office hours, and work in a person-directed and more determined manner. Moreover, all of the researched offices of the public prosecutor have taken administrative regulations to improve delivery and enforcement, such as controlling and regular revision of the file of undelivered cases, in the framework of attention to quality.

GERMAN METHOD

The delivery of the verdict is less troublesome in Germany. Most cases are final within a year if no appeal to a higher court is instituted. In the German practice of law it is easier to actualise a legal delivery as a rule. In the German practice of law, for a delivery, precedence is given to whether the defendant actually lives at the address which he has given to the police at a certain time and, thus, has the opportunity to become informed about the judicial papers. It is assumed that if a defendant gives an address, that he actually lives at this address. Furthermore, a legal delivery is also possible through placing the judicial papers in the letter box, under certain conditions. This is considered to be equivalent to delivery to the afore-mentioned address.

It should be mentioned that, for this delivery procedure, it involves cases with lighter punishments which carry no prison sentences (under which the *Strafbefehl* and *Bussgeldbescheid*) which have a specific statutory remedy. A legal means is available to oppose the legal consequences of such a delivery: *Wiedereinsetzung in den vorigen Stand*. If this appeal, which is subject to strong conditions, is honoured, the enforcement is halted and the criminal proceedings make a new start.

POSSIBLE SOLUTIONS

From the research, no explicit preference has been given for a domicile system as a solution for the problems with delivery. The problem is that the previously mentioned group of defendants is difficult to get hold of to deliver (to the person) judicial papers to anyway (and later the implementation). The employment of a GBA address or an address given by the defendant (given domicile) would not realize many changes according to respondents.

In the end, the point for most of the respondents was that the judicial papers could be delivered to the address (to the person) where the defendant actually lives or visits with great frequency. The opportunity to deliver to the person is the greatest at that address.

Nevertheless, as a supplement to those previously mentioned, the following regulations are suggested to deal with the afore-mentioned problems. In the first place, the current means of working could be improved, including the intensification of the previously mentioned administrative regulations, an improved training of the TPG Post personnel, and an improved delivery (to the person) of the summons. Financial stimuli could also be introduced to improve the delivery procedure.

In the second place, the innovative methods of working which are presently being developed on an ad hoc basis could be extended. For example, by developing further the person-directed approach, such as the actual tracing of the person for the delivery of the judicial papers, or delivering (making more than one attempt) judicial papers outside office hours. A condition is that time and money should be allocated for this. It is expected that this means of working will be effective with the category of notorious offenders who are registered at the GBA, but who neither, nor hardly, react to attempts by the postman to deliver the judicial papers to the person.

For the category defendant / convicted who are often found registered at various (GBA) addresses or who actually reside elsewhere (for example, the homeless drug addicts or illegal immigrants), the recommendation merit further research or the delivery regulations could be more flexible. For example, through delivery to a third party (supervisor) at an emergency address or via recorded delivery. The German system offers interesting leads in this respect.