

Expulsion from a profession or removal from office

Summary

Introduction

When someone is expelled from his profession or removed from office, this means that he is disqualified for a certain period from practicing his profession or holding down his office. Expulsions are often imposed in situations in which the convicted offender has shown to be less suitable for practicing his trade or holding his office, for instance because he or she has committed an offense while actually exercising that right. Such cases call for the possibility of removal from office or expulsion from a profession.

During the 19th century, the principal idea was that by punishing people for the crimes they had committed, they would automatically also be 'dishonoured', which meant they would lose their right to practice particular professions or to hold down specific offices. Later, after an amendment of the law, the decision to 'expel' or 'remove' someone from his profession or office was left more often to the judge.

The rules for these disfranchisements (not only regarding professions or offices, but also regarding other rights) are laid down in the first volume of the Penal Code (article 28 Sr ff). The applicability of expulsion from a profession or removal from office is regulated in other volumes of the Penal Code under the heading of individual offenses. Disfranchisement is also part of laws other than those of the Penal Code, and of the disciplinary rules of a number of occupational groups as well. The study described in this report, however, exclusively relates to penal expulsion from a profession or removal from office, not to disfranchisement with regard to other rights. This report deals with expulsion imposed by the disciplinary judge only indirectly. Briefly, it also pays attention to other methods to stop someone from working in a function in which he has committed a particular offense, such as the Certificate of Good Behaviour (in Dutch: *Verklaring omtrent het Gedrag*, VoG).

Presentation of the study's question

In the study described here, we have tried, with the aid of a study of legal history, an analysis of data files and sentences, interviews, a vignette study, and the distribution of a questionnaire through the Internet, to gain more insight into the number of cases involving expulsion or removal, the perceptions of the prosecutors and judges involved about their objectives, and the enforcement of the expulsion or removal imposed. The study's central question was:

Which considerations are involved for the public prosecutor when demanding, and for the judges when imposing, the additional penalty of expulsion from a profession or removal from office? With regard to whom and in which situation is this penalty actually imposed? Does this penalty attain its goal?

The legislator

The analysis of our legal history shows that, from the establishment of the Penal Code in 1886 on, the legislator has never used a very clear systematic while indicating which criminalizations would include the possibility of an expulsion or removal, and which would not. The reasons for making expulsion or removal possible later on, in case of (new) criminal offences, were not always clear either. In addition, the legislator has not clearly explained why the right to decide which criminal offences require the possibility of expulsion or removal, and which offences do not require such a possibility, is still reserved to the legislator, instead of leaving this decision more often to the judge.

The study shows that prosecutors and judges are often unfamiliar with the modalities in which an expulsion or removal can be imposed (in both non-suspended and suspended form) and with the duration (both maximum and minimum) of an expulsion or removal. The legal formulation in article 31 Sr, about the duration and the starting time, causes a lot of confusion among judges and prosecutors. From this, as well as from the fact that only a few expulsions are demanded and imposed, we might draw the conclusion that the possibilities offered by expulsion or removal are of little interest to those functioning in legal practice.

An outline of cases

The different consulted sources show that, since 1995, approximately 123 cases involved an expulsion or removal.¹ In addition, a questionnaire distributed among prosecutors and Solicitors General has brought to light 27 cases in which an expulsion or removal was demanded. Two-thirds of these cases overlapped the 123 cases mentioned earlier.

Expulsions or removals are predominantly imposed in sex crime cases and cases of fraud. The offences involved in sex crime cases have primarily been committed by teachers, physicians and physiotherapists, and other kinds of therapists. In many of these cases, the victims are underage, handicapped, dependent on the suspect, or vulnerable in other respects. Beside the sex crime and fraud cases, there is a group of cases involving an offence falling under the Economic Offences Act (WED), and a group called 'other'. This last group consists of a considerable variety in kinds of offenders and kinds of offences. As far as there are any data on previous convictions, these indicate that more than a quarter of those expelled from their profession or removed from office has been sentenced for a criminal offence before. No data are available regarding the question to what extent expelled or removed offenders have been sentenced earlier in the context of the profession or the office from which they have been expelled or removed.

Definitions of 'profession' and 'office'

Legally, there are more options for removal from office than for expulsion from a profession. The number of different sorts of criminal offences that can give cause for a removal from office is greater than those concerning profession. Furthermore, removal from office is possible for *all* offices, while expulsion from profession is not possible for all professions. Thus, the distinction between the two is of interest to both the suspects and the prosecutors and judges.

We asked respondents (prosecutors and judges) which definition of 'profession' and 'office' they use when confronted with a case in which they consider an expulsion or removal. The

¹ In reality, the number of cases involving an expulsion or removal is probably a bit higher.

answers show a lot of uncertainty among the respondents. A number of them observed that they would consult the jurisprudence, if they were to be confronted with the problem of having to define an occupation as either an office or a profession.

Different respondents see being charged with a 'public duty' as an important characteristic of an office, as they do the status of being an 'official'. According to the respondents, it is not easy to define what an 'office' is, and there are many definitions in circulation. A number of respondents understand 'profession' as containing all the activities not falling under the heading of 'office'. Some think that receiving wages is an essential part of the concept of 'profession', but others disagree.

Most judges participating in the study preferred to circumscribe 'profession' very precisely; otherwise, the suspect or convicted offender does not know what to expect. They were willing, however, to provide a broader definition if that would help to prevent a convict from finding another job that would create an opportunity to commit similar offences again. Of the prosecutors, a remarkably larger part was of the opinion that 'profession' can be defined broadly. They thought this was necessary to attain the objective of an expulsion: the prevention of future behaviour in the context of the practice of the suspect's profession. Yet, they also observed that leaving the suspect without means of support was not their goal; in their view, stretching the definition had its limit.

Punishment goals and reasons for imposing or not imposing an expulsion or removal

With regard to expulsion or removal from a profession or office, the most important punishment goal of judges and prosecutors is to prevent similar criminal offences in the context of a profession or office. The first matter of importance in considering an expulsion or removal is the idea of protection. For this reason, many regard expulsion or removal as more of a measure than a punishment. Nevertheless, objectives that are characteristic of punishment, such as retribution and the confirmation of norms, certainly play a role in the respondents' considerations as well. They surmise that the suspect will actually experience an expulsion or removal as punishment.

'Prevention of recidivism' constitutes a quarter of all the grounds used by judges to impose an expulsion or removal from a profession or office, and is mentioned in 45% of all studied files. The other grounds for the imposition of an expulsion or removal refer to the suspect's judicial history; if he has been convicted before for similar offences, this could be a reason for expelling or removing him. The absence of insight into one's own mistakes can also be a reason to impose an expulsion or removal. Sometimes, respondents took the view that society must be informed that certain offences will not be tolerated. The study shows that there is no difference between the considerations of prosecutors and judges regarding the grounds for expulsion or removal from a profession or office.

When a suspect does not have any earlier convictions, or when he no longer works in his earlier profession or office, sometimes judges are of the opinion that an expulsion or removal is not under consideration, even when it has actually been demanded. The judges also take into account the activities of the professional group; if a disciplinary procedure has already been started, the judge sometimes decides not to impose an expulsion or removal.

It is striking that having a judicial history plays a more important role in imposing or demanding an expulsion or removal in sex crime cases than in cases of fraud. Apparently, minimalizing the possibility of recidivism carries greater weight in a sex crime case.

The supervision of observance

Little is known about the actual compliance with expulsions or removals. There is almost no supervision of their enforcement, at least not by the organisations charged with that task, like the public prosecutor and the probation and after-care service. Other organisations, such as the schools inspectorate, the Amsterdam Bar, the Royal Dutch Medical Association (KNMG), and the Royal Dutch Society for Physiotherapy (KNGF), play a certain, indirect role in the supervision of the enforcement, but this role is limited as well. With regard to the supervision of expulsions or removals, the schools inspectorate is the most active agency, relatively speaking. Yet, this is often done indirectly, through the Certificate of Good Behaviour (VoG).

The Certificates of Good Behaviour (VoG) and disciplinary law seem to play a more prominent role in the prevention of similar criminal offences in the context of the execution of one's profession or office. Yet, the respondents indicate that even these instruments do not always provide complete cover. Not all employers ask for a Certificate of Good Behaviour and the incapability to provide one does not always constitute an obstacle for employment. In addition, disciplinary cases depend on someone filing a complaint. However, not everyone who uses the services of a professional and harbours a complaint is willing to start up a disciplinary trajectory.

It is doubtful whether sentenced offenders really do comply with imposed expulsions from a profession or removals from an office. Apart from the possibility to drop a professional from the Individual Healthcare Professions Register (BIG Register), limited or no check seems to be kept on the question whether someone who has been expelled from his profession or removed from office has found new employment within the same sector. Judicial sentences imposing this additional punishment are not automatically sent to the professional association. Consequently, these organizations do not always know about the imposed judicial expulsions or removals, and thus, have been unable to take the appropriate measures. The interviewees gave examples of convicted offenders who accepted another function, or opened a new practice at another location, which set them up in a situation in which they might commit similar criminal offences again. For convicted offenders, there seem to be escape routes. All the same, a part of the respondents still does expect imposed expulsions from a profession or removals from office to be effective.

Once it has become known that there is cause for an expulsion or removal, dismissal procedures are frequently started up by employers. It turns out, on the other hand, that less than a quarter of the suspects is still active in his function during the criminal proceedings.

An answer to the central question

The main question of this study was, in short, which considerations are involved in an expulsion from a profession or a removal from office; in which cases this penalty is actually imposed; and whether or not this penalty attains its goal. Below, the answer to this question is presented in summarised form.

Considerations of the public prosecutor and the judge

The study justifies the conclusion that prevention and protection are the main objectives when expulsion from a profession or removals from office are either demanded or imposed. In this respect, we have found no differences between public prosecutors and judges.

The kinds of cases

Expulsions from a profession occur far more frequently than removals from office. Teachers, physicians, physiotherapists, and other therapists make up the largest group of professionals on whom an expulsion is imposed. In addition, there is a variety of other functions in which expulsions occur. Often, these cases involve suspects who had authority over their victim or abused their power. In most cases, the victims were vulnerable because they are young or handicapped, or because they were dependent on the offender.

Attainment of the objective

It proved to be impossible to establish whether the objectives mentioned most often with regard to expulsion from a profession or removal from office, prevention and protection, are indeed attained. There is no systematic information on the compliance with these expulsions and removals. For the people partaking in this study, it is doubtful whether such an enforcement exists, among other things because there is little active supervision. In addition to this, both the registration of and information provided on imposed expulsions and removals are limited. At the same time, however, a number of respondents do expect these expulsions and removals to be effective.

The Certificate of Good Behaviour (VoG) and disciplinary law also play a certain role in preventing a convicted offender from accepting another function that will facilitate recidivism during the execution of his professional duties. Judges and public prosecutors indicate that they sometimes decide not to demand or impose an expulsion or removal when a disciplinary trajectory has already been started up.