

Justitiële verkenningen

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The shady side of sanctioning

Summaries

Towards a new sanctions-system?

P.C. Vegter

The sanctions-system that was laid down in the Penal Code of 1886 was clear, simple en sober. Although the same Code is still in force, little remains of the original arsenal of penalties. Nowadays the system is more complex especially for custodial sanctions (prison sentence) and for modern sanctions (community service). In February 2000 a paper was issued by the Minister of Justice. It expressed the need for a new regulation of the different sanctions and execution modalities. The author agrees with the necessity of a revision of the sanctions system. In case of a revision three central items should be especially looked at. First of all there is the question of the aims of punishment. Then the position of the judge in the judicial system should be taken into consideration. Finally it is useful to look after the character of the prison sentence. Is it more than deprivation of liberty? Especially the suspended sentence offers the opportunity for more legal space for sanctions.

Balanced measures; a new perspective on sentencing

A.M. van Kalmthout

Since 1886 the Dutch Penal Code has been revised many times. Because of these partial changes, the sentencing judge is no longer the only authority that can apply sanctions. In the pre-trial phase the public prosecutor and sometimes the police can apply the same sanctions as the sentencing judge, in the post-sentence phase the prison authorities and the probation service more and more determine the concrete content and consequently the gravity of the imposed punishment or measure. On the one hand, the role and meaning of the sentencing judge has decreased, but on the other hand, he has a large measure of freedom and a wide range of options in determining the type, degree and mode of punishment. With respect to the mutual relation of the several penalties and measures, the Penal Code shows a lot of inconsistencies, contradictions and inequalities. For these reasons the current sentencing practice urgently needs to be revised in order to be more clear, transparent and in accordance with the equality principle. To achieve this the author proposes to make a distinction between the objective aspects of the offence (based on the severity and guilt) and the subjective aspects (personality, personal circumstances, treatment perspectives, personal ability in proportion to the sanction). This system that to a certain extent is already being applied in many countries with respect to fines (day fine system) and sentencing guidelines (punishment units) can be used as a model for other sanctions too.

Creativity and conditional sentencing

F.W. Bleichrodt

The conditional sentence originates from trying to positively influence the convict's behaviour and to reduce the enforcement of imprisonment by substituting rules of behaviour for incarceration. An important part of the conditional sentence is the possibility of attuning conditions to the individual convict. The Dutch Minister of Justice proposes to fence in the possibilities of making special conditions. The proposals of the Minister seem to harm the possibilities of individuation of the sanctioning. In this contribution it is argued that the regulation of the conditional sentence should be modernised.

Conditional release (parole); a re-introduction

B. van der Linden

The Minister of Justice intends to re-introduce conditional release (parole) in the Dutch penal system. In the eighties conditional release was abolished and replaced by a system in which each inmate is automatically and unconditionally released after having served two thirds of the prison sentence. This automatic release mechanism has been heavily criticized. After a description of the recent developments of parole in the United Kingdom and the USA, the functions of conditional release are being debated. There can be many motives for introducing an early release system, like influencing institutional behaviour of inmates, relieving the pressure on prison capacity and special prevention by making the transition from prison to free society more gradual. According to the author special prevention should be the primary motive.

Exchange of information in the penal system; the Centraal Justitiele Incasso Bureau as information broker

J.E. Huisman-Troost

Many institutions are involved in the execution of sanctions. The Public Prosecution is legally responsible for the execution but the prison system executes the prison sanctions, the probation service does the community sanctions and the Centraal Justitiele Incasso Bureau collects the fines. Most clients in the penal system have several sanctions to be executed at the same time and often one organisation is frustrated by the other. Nowadays the exchange of informations between institutions is technically feasible. But it will only work if all the participants realise that the quality of their work improves by this exchange. Until now no one uses the available information about how many and what kind of sanctions are still to be executed for an imprisoned criminal and his history in this respect. Did the criminal pay his fines and did he perform his community sanctions properly? Information of this kind is available at the Centraal Justitiele Incasso Bureau, which has in the last ten years developed into a central administrative backoffice for the penal system.

The execution of community sanctions; towards a better redistribution of powers

M.M. Boone

This article advocates a redistribution of powers between the courts, the probation service and the public prosecution service when it comes to the execution of community sanctions. To that purpose both fundamental as well as practical arguments are put forward. Among others, the following proposals are made: to

separate the duties of the probation service regarding community sanctions from its other duties (aid and assistance and information to the court); to bring that part of the probation service which deals with community sanctions under the responsibility of the public prosecution service; to let complaints about the execution of community sanctions not be treated by the probation service itself, but either by an independent execution judge or a complaints department which is comparable to the complaint departments that exist in prison.

On the expansive growth of the community sanction

G.J. Ploeg

It seems as if not much progress has been made as to the acceptance of the community sanction over the past ten years. Both its effectiveness as a punishment and as a means of reintegration are being questioned. Still, an increasing number of people are being placed in community sanctions, which in turn also increase in number and variety. The author argues that these types of sanctions may rely on stronger societal support than is sometimes suggested. He also claims that the probation service exercises sufficient control to guarantee execution of the sanctions in the way intended by the judicial authorities. The probation service is not expecting serious problems as a result of the further increase which will probably arise from recent changes in Dutch penal law. In combining execution and reintegration, community sanctions offer a potentially successful perspective on the reduction of recidivism and thus contribute to safety in society.