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Evaluation of the Conditional Penalties (Mutual Recognition and Enforcement) Act (Wvs) and the Measures Involving Depriva- tion of Liberty Act (Wvm)

- Summary Final Report-

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Summary

Objective and structure of the study

In 2012, the Conditional Penalties (Mutual Recognition and Enforcement) Act (Wvs) and the Measures Involving Deprivation of Liberty Act (Wvm) entered into force. The Wvs seeks to prevent recidivism through a personal approach that aims to stimulate behavioural change. The Wvm has extended the range of possible sanctions that a court can impose: the imposition of measures involving deprivation of liberty is no longer limited to the context of a suspended sentence. Regioplan has evaluated both acts on the instruction of the Research and Documentation Centre (WODC). The evaluation focuses on the policy logic of both acts, on the implementation and on the practical implementation and effectiveness.

Parliamentary Papers were examined for the reconstruction of the policy logic of both acts. The evaluation framework sets out the objectives as intended by the legislator as well as instruments for achieving those objectives. The evaluation framework was subsequently translated into indicators at the instrument level. The evaluation framework was presented to and discussed with employees of the policy department and legislative draftsmen of the Ministry of Justice and Security for assessment and possible supplementation.

To render transparent the process of implementation of both acts, policy-focused talks were held with staff of the Council for the Judiciary (n= 1), the public prosecution service (OM) (n= 3) and the probation service (n= 3).

The practical implementation of the Wvs and Wvm was examined using registration data of the Central Fine Collection Agency (CJIB) and the probation service (IRIS). Furthermore, interviews were conducted with employees of the probation service (n= 23), the OM (n= 9) and the Judiciary (ZM) (n= 4) in four districts. Relevant case law was also studied. The extent to which the indicators in the evaluation framework are moving in the intended direction was studied in order to determine effectiveness. Finally, the provisional results and improvements to the application of the Wvs and Wvm were discussed during an expert meeting with employees of the chain partners involved (n= 4).

Policy logic

The ultimate goal of the Wvs is to curb crime and reduce recidivism by means of two intermediate goals, to wit 1) to bring about behavioural change through the imposition of conditional penalties with special conditions and 2) to increase the effectiveness of penalties with special conditions and of probation supervision through the simplification and extension of the operational period, the general condition which renders cooperation with probation supervision mandatory, the statutory basis of special conditions, electronic supervision, immediate enforcement of the conditions and probation supervision and immediate apprehension in the event of non-compliance with the conditions.

The ultimate goal of the Wvm is to protect society and reduce recidivism. The Wvm also has two intermediate goals, to wit 1) to prevent the convicted person from committing a crime that impairs the living environment of the citizen or that causes harassment to victims or witnesses by the imposition of measures involving deprivation of liberty and 2) to increase the decisiveness of criminal law and the effective enforcement of the measure by means of three instruments: expansion of the penal instruments available, immediate enforcement of the measure involving deprivation of liberty and immediate apprehension and detention as a substitute penalty.

If indicators for the instruments develop in the desired direction, it is plausible, based on the policy logic, that a condition for achieving the objectives exists. This depends on the policy theory, on which the policy logic is based, being valid. It is not possible to establish a causal link between the development of the indicators and the target range.

Implementation

Prior to the coming into force of the Wvs, much was invested in the optimisation of conditional penalties with the implementation of the Judicial Conditions (JC) programme. The JC programme was comprehensive and its programme elements largely corresponded with the objectives of the Wvs, to wit, an increase in the number of special conditions at both ends of criminal proceedings and an improvement to the process of implementing conditional (parts of) penalties. This resulted in a practical implementation that was already developing along the lines of the desired result of the Wvs before the Wvs came into force. Probation service staff, public prosecutors and judges were informed in the usual fashion about

the application of instruments that would become available with the coming into force of the Wvs. Owing to the close relationship between the Wvs and the JC programme, the implementation process was longer and more intensive than is usually the case with new penalty methods. The chain partners were prepared in the usual manner (information provision, automated systems) for the implantation of the Wvm.

Practical implementation

With the coming into force of the Wvs, the probation service, the OM and ZM have gained new possibilities of application when advising on, demanding and imposing conditional penalties with special conditions. In the period 2013-2017, the number of conditional penalties imposed and supervisory duties increased relative to the total number of convictions and registered crimes. The new possibilities for application with respect to the extension of the operational period, electronic supervision, immediate enforcement and immediate apprehension are used relatively little in connection with considerations of proportionality. It has not been possible to determine how often the possibility of immediate apprehension in the event of non-compliance with the special conditions by the individual is applied nationally. However, the interviews conducted reveals that this occurs with some regularity. The danger criterion the examining judge uses for provisional enforcement of the conditional penalty turns out in practice to result in fewer applications of the provisional enforcement of the conditional penalty than the legislator (likely) intended when introduced.

The expansion of the general condition with the obligation to cooperate with probation supervision turns out to sometimes result in a lack of clarity in the execution phase. Consequently, supervisory duties with only conditions to restrict behaviour are often wrongfully forwarded to the probation service. From the perspective of the practical implementation, the expansion of the general conditions turns out to have no added value as this condition has not been further specified.

The anchoring of the special conditions has not provided new possibilities to the probation service, the OM and the ZM. However, the anchoring has resulted in an improvement to the practical implementation as special conditions have been formulated in more concrete and uniform terms since the coming into force of the Wvs. It is striking that the residual category of 'other special conditions' is still frequently used given the need for individualised imposition of special conditions.

The Wvm offers judges a new penalty possibility to impose restrictions tailored to the situation so that the convicted person is restricted in their freedom of movement. In the period 2013-2016, measures involving deprivation of liberty were imposed more frequently. However, the actual number during this period was modest. According to public prosecutors and judges with experience in demanding and imposing measures involving deprivation of liberty, the added value of the measure compared to conditional penalties with special conditions is threefold: a measure involving deprivation of liberty does not lapse when detention as a substitute penalty is enforced, the danger criterion for the immediate enforcement is less severe and the deterrent, in the form of detention as a substitute penalty, is considered more effective.

Target range

The quantitative indicators for conditional penalties with special conditions are in general developing as the legislator had intended: relatively more frequent conditional penalties, relatively more frequent specification of conditions, with an appropriate probation, tailored as much as possible to the individual, with greater clarity regarding the substance of the probation supervision and without an increase in the number of failed supervisions. Since the development towards a wider application of conditional penalties with special conditions was already under way, the Wvs has primarily confirmed an existing trend. The impact is the greatest for the probation service, which is receiving clear supervision duties more often and is able to supervise more effectively.

However, no trend in the intended direction can be observed for a number of indicators. This concerns immediate enforcement first and foremost. In the years immediately following the amended legislation, the number of immediate enforcements rose, after which the trend bucked. Secondly, it concerns the provisional enforcement of the conditional penalty. Within this context, a fast response to a violation of

the special conditions is limited owing to considerations of proportionality. Furthermore, the Supreme Court recently excluded application of provisional enforcement of the conditional penalty in the case of immediate enforcement.

On the one hand, Wvs provides for more effective and enforceable supervision since the form the supervision takes is clear to both the individual and the chain partners. On the other hand, it is not always possible in practice to respond quickly and effectively to violations of the conditions. This raises the question as to whether this could have been the intention of the legislator. This has negative consequences for the possibility to enforce effectively and adequately when the conditions are violated. Finally, the figures show that no substitution is visible between conditional penalties with special conditions and short unconditional custodial sentences (less than two months).

As is the case with the Wvs, this study does not allow us to make any statement about the final target range of the Wvm, i.e. protection of society and reduction of (specific) recidivism. In the past years, the number of measures imposed has been small, with the number of applications varying per district. Interviews with chain partners reveal that the Wvm is a relatively unknown method of penalty, which may limit the understanding of the added value of the measure involving deprivation of liberty. On introducing the measure, the legislator also expected that it would not be applied often.

Conclusions and suggested improvements

The study shows that the Wvs generally meets a need and the intended conditions for behavioural change and reduction of recidivism are applied in practice. The anchoring of the special conditions has resulted in an improvement in the practical implementation because the special conditions are formulated in more concrete and uniform terms. This benefits the probation supervision. The Wvs meets the need for an approach tailored to the individual, which is in line with the legislator's intentions. Less clear, however, are the immediate enforcement of the special conditions and the fast and decisive response to violations.

The Wvm is a little-used measure for special situations, in which (other) penalties are not considered appropriate. Nevertheless, the low number of applications may possibly also be related to the limited understanding of the added value of the Wvm, which itself is connected to the relative ignorance of the penalty possibility.

Following the study results, improvements in the application of the Wvs and Wvm were formulated with respect to the practical implementation and the legislation.

Regarding the implementation:

- In exceptional cases, it is unavoidable that the court will impose special conditions without first receiving a recommendation from the probation service. In these cases, it is necessary that the court provide explicit reasons as to why it has imposed probation supervision and special conditions. Explicit reasons serve to provide the probation service with reference points in respect of the supervision.
- Formal responsibility for supervision is vested in the public prosecution service; however, this is sometimes less clear in practice. It would be better if the wording on the duration of the supervision was changed from 'as long as the probation service considers it necessary' to 'as long as the public prosecution service considers it necessary'.
- The examining judge frequently reviews the provisional enforcement of the conditional penalty in relation to a danger criterion and not (only) in relation to the recidivism risk. Reviews in accordance with the objective of the act should take place more often.
- The application of the Wvm can possibly be stimulated by drawing the attention of the chain partners involved to the added value of the measure involving deprivation of liberty.

Regarding the legislation:

- The general condition of 'mandatory probation supervision' is a source of confusion because it is not always applicable (only where behaviour-influencing conditions have been imposed or in the case of

behaviour-restricting conditions in combination with electronic supervision). Furthermore, the legislator has not specified what 'cooperating with probation supervision' entails. Consequently, this general condition should be scrapped. However, the Enforcement of Criminal Law Decisions (Review) Act may already be enough to tackle the problem.

- For provisional enforcement of the conditional penalty, the term has been set to a maximum of 30 days. It would be good if a term were also determined by the TUL session. Currently, these have less priority during scheduling.
- The opinions of OM and ZM are divided on the adjustment of the criteria for immediate enforcement. A broader application of immediate enforcement is considered desirable in some situations, but this does not sit well with the principle of proportionality owing to the infringement on the rights of individuals. The respondents consider it important that the legislator expresses an opinion about the possibility of provisional enforcement of the conditional penalty in the case of immediate enforcement, as the legislator did in respect of the application of detention as a substitute penalty in respect of measures involving deprivation of liberty which were ordered as immediately enforceable.
- The amendment of measures involving deprivation of liberty is not possible. The added value of measures involving deprivation of liberty will increase if these could be changed during the term, as is the case with special conditions as part of the conditional penalty.



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