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COMMUNITY SERVICE

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Community Service
Gemeinnützige Arbeit
Dienstverlening
Travail d'Intérêt Général

A new option in punishing
offenders in Europe

Edited by
Hans-Jörg Albrecht and Wolfram Schädler

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PREFACE

The "amazing triumph of Community Service as an alternative to other sanctions" over the past three years displays international parallels. Following initial developments in Great Britain, the rapidly growing significance of Community Service has been recognized within the legal systems of Denmark, the Federal Republic of Germany, France and the Netherlands.

This common trend in Europe and in North-America, which represents a reinforcement in the shift from custodial to non-custodial sanctions, appears not least to be the result of overcrowded prisons and it demands that the various experiences acquired in each of these countries be compared and discussed.

In order to make the exchange of information as intensive as possible, the first joint conference on the use of Community Service was held from November 6th-8th, 1984 at the university of Tilburg. In addition to their hosts from the Netherlands, experts from Belgium, the Federal Republic of Germany, France, and Norway participated in this first meeting on this subject.

By the end of this first conference, the intensity and the value of this exchange of information had clearly demonstrated the need for another conference, which was to be held in Wiesbaden from December 10th-12th, 1985 with a slightly expanded circle of participants.

This conference again impressively confirmed the fact that a relatively small group of experts makes a relatively short but very intense exchange of information on the status of Community Service in these countries possible.

The conference demonstrated also that mere comparison of legal systems does not represent a fruitful approach to comparative assessment of a penalty such as Community Service. Law in the books and law in action may fall apart as a consequence of the

implementation process which in the case of Community Service must be understood as a rather complicated system of interactions involving different agencies of the criminal justice systems as well as non-justice agencies providing opportunities for work. Thus, data on the outcome of Community Service in various dimensions have been included, as far as they were available.

The reports presented at the conference, together with an appendix containing material on the legal basis for Community Service within these European countries (and other European countries as well), have been recorded, as has a summary of the results of the conference.

We are hopeful that this publication can contribute to the meaningful evaluation of Community Service with the systems of sanctions used in Europe.

We wish to express our deep gratitude to the Deutsche Forschungsgemeinschaft for their generous financial support without which this conference would have been impossible, and we would like to thank the Hessian Minister of Justice, Dr. Herbert Günther, for granting a generous amount to cover the printing costs, and in this way promoting the rapid publication of the conference report. Also, thanks go to Mrs. Beate Lickert who did a great job in typing the manuscript, preparing the text for publication and providing valuable assistance in translating important parts of the reports.

Freiburg and Wiesbaden, March 1986

Dr. Hans-Jörg Albrecht

Dr. Wolfram Schädler

WELCOME ADDRESS

It is my honour to welcome you here on behalf of the Minister of Justice of the State of Hessen, Minister of State, Dr. Günther. I hope that you had a pleasant journey and that you are feeling comfortable here.

To begin with, I should like to take this opportunity to say "thank you" to all of those people and institutions who have been involved in making preparations for this conference and who are responsible for actually bringing it about. Firstly, may we extend our thanks to the Deutsche Forschungsgemeinschaft Bonn-Bad Godesberg for contributing to the financing of the conference. Secondly, there are Dr. Albrecht, Max Planck Institute for Foreign and International Penal Law Freiburg, and Dr. Schädler, Ministry of Justice in Hessen, who have been particularly helpful with regard to organization and planning. In these introductory remarks, we should not forget another person, Prof. Tak, from the university of Nijmegen, who just about one year ago invited to the first meeting which aimed at and concentrated on the topic of "working for the community" in Tilburg, Holland. It was at this conference that the idea of discussing "Community Service" on an international conference bringing together experts from all those European countries where Community Service has been implemented, was born.

We feel extremely privileged that you agreed on travelling to Germany in order to attend this conference and are especially honoured of being able to welcome you to the German State of Hessen. Certainly, we are immodest enough to consider Hessen to be the obvious choice as a meeting place for this conference, but Hessen has been the first Federal State not only to make a planned and concerted effort to push for "Community Service instead of imprisonment", but also to have such considerable success in this field that all other German States joined Hessen in implementing community service schemes. Particularly, for the benefit of those of you from abroad, I should like to point out here that from a political and constitutional point of view, the federal system of government quite often leads to difficulties and formalities. But

when new ideas or, better still, the thrust of innovation is present, the system's strength is brought out, this being a healthy and political competitive way of thinking and flexibility.

To return to the question of penal law, which in our professional capacity concerns us all, it cannot be denied that despite all the differences between the legal systems of individual nations, criminal political developments in Western-European nations display certain similarities. This is true both for developments in the crime rate as well as for the universally criticized over-crowdedness of our prisons. It is precisely this phenomenon, the prison overload, which has led to the introduction of community work as a penalty in many countries; something which, in my opinion, should not be regarded as only having one motive, for we are not only talking about reducing the number of people behind bars.

A famous German teacher of criminal law once stated that the history of criminal law was also the history of its own dismantlement. I would not go that far, but I do believe that, at least in Europe, the history of penal law has been one of humanization. We have moved away from the physical torture in the Middle Ages and indeed away from the death penalty to deprivation of individual liberty, which in itself is being made more and more fitting for human beings. We have adopted penalties such as probation and in many cases, most especially in the Federal Republic of Germany, we have resorted to meting out fines only. And yet it remains the task of anyone who is not satisfied with the way things are and would rather go one step further, to look for yet more alternative forms of punishment. Such sanctions must take notice of the postulate whereby one suppresses crime by implementing policies which are on the one side the most human and most appropriate with regard to the offender in question and which on the other hand above all else meet with public approval. Community Service is clearly such a sanction. For this reason, it is worthwhile for all of us to discuss this matter intensively. It remains for me to wish you a very successful and fruitful conference.

Dr. Karl-Heinz Groß
Ministry of Justice Hessen

COMMUNITY SERVICE ORDERS IN WESTERN EUROPE
- A COMPARATIVE SURVEY -

Peter J.P. Tak

1. INTRODUCTION

In 1975, the present Danish Deputy Director of the Prison and Probation Service drew up an **inventory of all national and European proposals** which had the aim of **reducing the number of prison sentences**. This was done to facilitate a study of alternative sanctions. The list comprised a total of twenty-three alternatives. Some, such as **fines** and **suspended sentences**, had long formed a part of the penal legislation common to Western European countries. Others dated more recently and had only been applied on a limited scale; included among these would be **intensive supervision, compulsory attendance**, and **Community Service**. Still less was said about other alternatives such as compulsory confrontation with the victim, or compulsory vocational training, except to note that they had been proposed[1)].

Ten years later the "Chronological Survey of the Introduction of Alternatives to Imprisonment in the Member States of the Council of Europe" was published in which twenty-two alternatives are listed[2)]. From this one is struck by the fact that a number of the alternatives are not so much replacements for the short prison sentence, but, in fact, an alternative form of **executing** a **short prison sentence** which had already been imposed. **Semi-detention, weekend detention**, and **suspended sentences** represent methods of implementing a sentence in the majority of Western European countries.

Some of the other alternatives to custodial sentences mentioned, have been laid down in the penal legislation with a view to offering judges greater choice in sentencing; but, in practice, have only been used on a very limited scale. One such alternative would be the sanction restricting or taking away rights. It seems that, in

many countries where this sanction is laid down in the Penal Code, it is nevertheless still not deemed by the judge to be a sufficient and practical alternative to the prison sentence. In France for example, the withdrawal or restriction of specified rights was established in law in 1975 (Penal Code, from Section 43.1) explicitly as an alternative to the short prison sentence, and yet its implementation remains limited to about 1 % of all sentences within the judicial districts of Aix-en-Provence and Paris[3].

Of the alternatives to short custodial sentences which have recently been developed in a number of Western European countries, only the Community Service Orders seem to have been applied on a greater scale.

2. THE HISTORICAL DEVELOPMENT OF THE COMMUNITY SERVICE ORDER[4]

The performance of work for the general good as an alternative to taking away a person's liberty has been recognized for a long time. **Von Hentig**, in his two-part work on the history of sentencing in a number of German towns, shows that, since the **Middle Ages**, they had opened up the possibility of avoiding the imprisonment which was consequent upon fine default by carrying out work for the community such as helping to build the town walls or clean the town's canal[5]. By the end of the nineteenth and the beginning of the twentieth century, Community Service as an alternative to a fine or its associated term of imprisonment was recognized in the penal legislation of a number of Western European countries (among others, Germany, Switzerland, Italy and Norway). It is also apparent from **Von Liszt**'s well known studies that **work as a penalty** in itself existed in a number of countries. This was forced labour without the removal of liberty as an alternative to the prison sentence[6].

The modern form of Community Service, however, differs substantially from the earlier forms. There is no longer any question of **forced labour**. The present day version is a voluntarily undertaken obligation, the purpose of which is to avoid a possible custodial sentence or its threatened implementation. Forced labour is incompatible with the Forced Labour Convention (The Geneva

Convention 1930), the Convention for the Protection of Human Rights and Fundamental Freedoms (the Treaty of Rome, 1950), The Abolition of Forced Labour Convention (The Geneva Convention, 1957), and the International Covenant on Civil and Political Rights (The New York Convention, 1966).

It is difficult to define a point in time when the ideas about alternative penalties, and Community Service in particular, took a concrete form within Western Europe. It is an established fact that the **Wootton Report**[7], together with the Report of the European Committee on Crime Problems which deals with certain alternative penal measures to imprisonment[8], have given a substantial boost to the development of alternative sanctions. Also of importance is resolution 76 (10), of 9th March 1976, of the Committee of Ministers of the **Council of Europe**, in which governments of the member states were asked:

3. To study various new alternatives to prison sentences with a view to their possible incorporation into their respective legislations and in particular:
   c) to look into the advantages of community work and more especially the opportunity it provides:
      - for the offender to make amends by doing Community Service,
      - for the community to contribute actively to the rehabilitation of the offender by accepting his cooperation in voluntary work.

It is indeed remarkable that an idea which was already being proposed more than a century ago, has, in almost every Western European country, only had attention focused upon it during the last few years.

It cannot be denied that **pragmatic considerations** have partly tipped the balance in this matter. Of course, the decision to experiment with, or to introduce these alternative sanctions into the statutory penal system, was also prompted by the desire to obviate the negative consequences of the prison sentence. Of course, this choice is also prompted by the desire to promote justice for the victim of a criminal offence, more than was the case in the past. But alongside these arguments increasing criminality throughout Europe has played a decisive role. It has made it plain that it is

financially impossible, in practice, to continue to respond to this increasing criminality with prison sentences by proportionately increasing the prison capacity.
The capacity problems in the prison system which exist in almost all European countries have **compelled** governments to look for other alternatives.

3. REACTIONS TO RESOLUTION 76 (10)

Almost all countries covered by the survey have considered this recommendation and have conducted studies into the desirability and feasibility of putting Community Service into the statutory penal system. These studies have often led to the appearance of Community Service in one form or another in these countries[9].
There are a few countries however which have not, or not yet, reached a decision about the possible introduction of Community Service Orders.

In **Spain**, extensive discussion on Community Service Orders took place during the preparation of the draft bill for a new Penal Code which was presented to Parliament in 1980[10]. The reasons why this alternative sanction was not proposed, lies in the fact that the necessary infrastructure, in particular a well organized probation service, does not exist. In place of this alternative to the short prison sentence, the new bill published in 1983, contains a provision similar to those of Germany and Austria laying down that the **short prison sentence** (up to six months) **may not**, in principle, **be imposed** unless there are special circumstances which make this necessary. These special circumstances have to do with the offence, the offender, or general or special preventative considerations[11].

In **Sweden**, following extensive reporting on possible alterations in the sanctions system, Community Service Orders as an alternative to the short prison sentence were rejected with ample argumentation[12].
The most important reasons for the **rejection of Community Service** can be summarized as follows.

- There are scarcely any figures available on the effects of the sanction, and in so far as these figures do exist, it appears that Community Service is given as an alternative to imprisonment in, at most, 50 % of the cases.

- Community Service Orders assume that the person performing the work is in possession of certain social skills. The majority of the current Swedish prison population - often drug addicts and/or alcoholics - do not have these skills.
- Swedish society is highly professionalised, so that the greater part of the available work is carried out by professional staff trained for the job. Because Community Service tasks may not compete with paid work, it can be expected that it would be difficult to find suitable community service projects.
- Finally, it was felt to be questionable whether work could be used as a sanction, now that work is generally seen as a privilege and forms an important part of social life.

Community Service is unknown in **Greek law** and its introduction is not being considered.

In **Belgium**, the commission which is reviewing the Penal Code discussed Community Service Orders in its final report; but felt compelled to reject both a statutory regulation and experimentation because of a shortage of personnel to supervise the performance of the Community Service[13].

Experience with Community Service Orders in other countries has shown that their success depends to a large extent upon a good infrastructure. The supervision of Community Service Orders in practice, in most countries, is, or will be, entrusted to the probation service; and since the work attached to it is time consuming the right decision would seem to be, to begin experimenting only after the practical problems have been solved. What is more, short prison sentences of up to three months are, in principle, not put into effect in Belgium[14]. Recently, Mr. Gillet, MP presented a draft bill on Community Service which is quite similar to the French regulation.

4. THE COMMUNITY SERVICE ORDER AS AN ALTERNATIVE TO THE SHORT PRISON SENTENCE

In Denmark, Germany, England, France, the Netherlands, Norway and Portugal a judge may make a Community Service Order as a

sentence in its own right, or to take the place of a short prison sentence within the framework of a suspended sentence.

England has had the most experience with Community Service Orders. Since 1972 a judge has been able to impose this sanction under the Criminal Justice Act. It can be stated without exaggeration that the English legal regulation has become a model for numerious European countries; and that the English experience with Community Service Orders has been of real importance to other Western European countries, whether in deciding to experiment with Community Service, or to create a statutory basis for it.

In **Germany**, since 1969, Community Service Orders (**Gemeinnützige Arbeit**) became possible within the framework of a suspended sentence to take one instance.

In **Portugal** the new Penal Code which came into effect on 1st January 1983 includes Community Service as an alternative to imprisonment of up to three months[15].

Finally **France** has, since 1st January 1984, a statutory regulation providing for Community Service Orders (**Le Travail d'Intérêt Général**). It can be imposed as a sentence in its own right, or as a condition under a suspended sentence.

Denmark, the Netherlands and Norway have been experimenting with Community Service Orders for several years. In **Denmark**, initial experiments with Community Service (**Samfundstjeneste**) began in 1982 in Copenhagen and North Jutland. In 1984, when the experiences seemed positive, the experiments were extended to the whole of Denmark.

In **Norway** experiments with Community Service Orders (**Samfunnst-jeneste**) have been running in Stavanger and Rogaland since 1984. The experiments were extended to the whole of Norway in 1986.
The same situation applies to **the Netherlands**. Experiments began in a few court districts in 1981, and it was decided in 1983 to put Community Service Orders (**dienstverlening**) into practice in all

districts. It has not yet led to alteration in the statutory system of sanctions because Community Service Orders can be imposed under a suspended sentence. The results of the experiments are being awaited before legal changes will be considered. Meanwhile a bill giving a legal basis to the Community Service Order as a sentence in its own right is in preparation. It is expected that it will be presented to Parliament in 1986.

Finally, in **Finland**, a Ministry of Justice commission for the prison system, proposed at the end of 1985, that experiments with Community Service (**Samhällstjänst**) should begin after the necessary preparations have been made[16].

5. THE COMMUNITY SERVICE ORDER AS AN ALTERNATIVE SANCTION FOLLOWING THE NON-PAYMENT OF A FINE

In Italy, Germany and Switzerland a Community Service Order can take the place of the prison sentence which would necessarily follow fine default.

In **Switzerland** this provision is laid down in article 49 of the Penal Code, although in practice it has scarcely been used up to now[17].

In **Italy**, since 1980, a person sentenced to pay a fine of not more than one million Italian Lire, may on request, have this fine converted into a Community Service Order (**lavoro sostitutivo**). One day's Community Service per week may be performed. For each day's Community Service the fine is reduced by 50,000 Lire. The maximum duration of the Community Service Order is sixty days (art. 105 Penal Code)[18].

Finally in **Germany**, Community Service plays an increasingly significant role as an alternative to imprisonment following fine default. Article 293 of the act introducing the new Penal Code of 1975, offered the federal states the opportunity to work with Community Service as an alternative to the imprisonment consequent upon fine default, and all the federal states have made use of it.

Since this form of Community Service is regulated, not on a national, but on a federal state level, the regulations governing it are variable. The hours of Community Service per imposed day fine vary between six and eight. Because, with a few exceptions, a maximum of 360 day fines may be imposed, the maximum number of hours theoretically lies between 2160 and 2880.

6. COMMUNITY SERVICE UNDER THE PARDON

In Germany, Luxembourg, the Netherlands and Norway a theoretical possibility exists to substitute a Community Service Order for an unconditional prison sentence or a fine by way of a pardon.

In **Norway** this opportunity has not yet been used.

In **Germany** on the other hand, a number of federal states allow this substitution for the imprisonment following non-payment of a fine to take place by means of a pardon.

In **Luxembourg**, ministerial regulations enable Community Service Orders to be substituted for prison sentences of up to one year via the pardon (**Travaux aux profit de la communauté**). One week's Community Service must be carried out for each month of the prison sentence[19]. Since 1976 more than 250 prison sentences have been replaced by Community Service Orders via this procedure.

In the **Netherlands**, the Pardon Act provides a statutory regulation for Community Service in the framework of pardon. Pardon may be granted under the condition that the convicted person fulfills a Community Service.

In **Germany**, in addition to the forms mentioned above, Community Service Orders are also possible within the framework of a conditional waiver (section 153a of the Code of Criminal Procedure), and a formal warning connected to a deferment of sentence (section 59 of the Penal Code).

7. GENERAL STARTING-POINTS FOR COMMUNITY SERVICE ORDERS

a) Which offences may be punished by Community Service?

The starting-point in almost all written statutory regulations and experiments concerning Community Service is that the Community Service Order must replace a proposed unconditional prison sentence, or another type of prison sentence (including the prison sentence following on from non-payment of a fine). Germany is an exception in this respect. In Germany, the Community Service Order can take the place of non-custodial sentences; namely the conditional waiver, the formal warning with a deferment of sentence, and the pardon.

During the (parliamentary) preparation of the regulations governing Community Service Orders, it has been emphasized in all countries that this alternative sanction seems to be appropriate for indictable acts of the **middle order of criminality**.

In a number of countries these acts are further specified as being principally crimes against property in the widest meaning of that term, and an indication is given for which expected prison sentences, Community Service could form an alternative (e.g. in Denmark six to eight months, Norway and Luxembourg nine to twelve months, the Netherlands six months, and Portugal three months)[20].

Other countries (Germany and France among others) merely note that the penalty lends itself as a reaction to the "Bagatell- und mittlere Kriminalität" or "la petite délinquance".

However, none of the experimental or statutory regulations limits the application of the Community Service Order to offences carrying a specific maximum penalty. Where the Community Service Order may be given under a suspended sentence, then the maximum suspended sentence forms a boundary (for example, in Germany two years, in Norway twelve months).

Still less are particular groups of adults excluded from Community Service on the grounds of their age or criminal record. French law forms an exception to this. It only allows recidivists to be considered for Community Service under a suspended sentence, and not for a Community Service Order in its own right.

In a number of regulations, particular offences are excluded from the application of Community Service Orders for the time being. This is the case in Denmark for example, for driving while under the influence of alcohol.

b) Number of hours of Community Service

All regulations, with the exception of the German one, set a minimum and maximum number of the hours of Community Service, and also a maximum time period during which the Community Service must be completed.

The minimum number of hours of Community Service varies. In Portugal it comprises nine hours, in Denmark, France and England forty hours, and in Norway fifty hours. The Netherlands have no minimum number of hours.

Similarly the maximum number of hours of Community Service shows differences. In Portugal it totals 180 hours, in Denmark and Norway 200, and in France, the Netherlands and England 240 hours.

The maximum period within which the Community Service must be completed comprises: in England, Denmark, Norway and the Netherlands, twelve hours; and eighteen months in France.

c) The consent of the accused

Almost all regulations provide in one form or another for the ascertaining of the accused's opinion as to whether he is prepared to do Community Service. In some systems consent is asked for explicitly (England, Denmark, Norway), in others he is advised beforehand of his right to refuse to do Community Service (France). In the Netherlands the initiative to undertake Community Service must come from the accused himself, and so the requirement for his consent is thereby fulfilled. However, in Germany the consent of the person undertaking Community Service is, in the case of a few modalities, not required.

Consent of some form is also necessary to avoid coming into conflict with a Constitution or international treaties which prohibit forced labour. However, the most important reason for ascertaining the opinion of the person who is to undertake the Community Service, remains, that the judge wants some certainty from the outset, that that person is **motivated** to carry it out.

d) Personal report

Not all regulatins require a personal report prior to the imposition of a Community Service Order as a matter of principle. In England, Luxembourg, the Netherlands, Denmark and Norway, the probation service has to investigate beforehand, whether the accused is in a state to perform the Community Service. In France and Germany this is optional.

e) Content of the sentence or court order

The judge who imposes the Community Service Order in court only fixes the number of hours and the period within which the Community Service must be fulfilled. The concrete filling-in of the Community Service Order, for example the place and the hours of work, has to be done by the **probation service** (in Denmark, Kriminalforsorgen; Norway, Kriminalomsorgen frihet; the Netherlands, Reclassering; Portugal, Instituto de Reinserção Social; England, Probation Service; and Luxembourg, Le Service Central d'Assistance Sociale); the **implementing judge** (in France, Juge de l'application des peines), or the **Gerichtshelfer** or the **Bewährungshelfer** (Germany). They also exercise control over the fulfilment of the Community Service Order.

f) Non-fulfilment of the Community Service Order

Non-fulfilment of a Community Service Order imposed as a sentence in its own right, leads, in **England** either to the imposition of a fine up to a maximum of £ 100, or to the recall of the Community Service Order and the imposition of an alternative penalty. In **France** non-fulfilment of a Community Service Order imposed as a sentence in its own right becomes a punishable offence in itself, for which a minimum of two months and a maximum of two years imprisonment can be given. In the **Netherlands** in cases of non-fulfilment, the Community Service Order is converted into a prison sentence of up to six months, and in **Portugal** of up to three months.

Non-fulfilment of a Community Service Order imposed under a suspended sentence, or to avoid the implementation of the conditional part of the penalty, can lead to the unimplemented

prison sentence being recalled (in the Netherlands, Norway and France), or to a prison sentence being laid down (in Denmark).
Non-fulfilment of a Community Service Order imposed as an alternative to the imprisonment consequent upon fine default, or under the pardon, leads to the implementation of the original penalty (Germany and Luxembourg).

8. CONCLUSIONS

With the exception of England, Community Service as an alternative sanction is still of too recent a date in Western Europe to answer the question as to what effect it will have on the total number of prison sentences imposed and served. What can already be established is that these **effects vary enormously** from one country to another. Rough figures for the separate countries show big differences. In Portugal the practical application seems to have remained very limited. In Denmark, France, Norway and the Netherlands, the number of Community Service Orders given in the first year of the experiments gave little cause for optimism, but as time went on and more experience was gained, the number of Community Service Orders increased. The same applies to a number of German federal states, in particular Hessen.
It appears that there are still countless problems in the day to day practice which stand in the way of a very widespread application of the Community Service Order. But equally it would appear that the basic idea of Community Service - viz. a reasonable, and from the criminal justice point of view, attractive alternative to the short prison sentence - has found a **good reception** within the broad circle of judicial authority and among others who fulfill a function within the criminal justice system.
What is beyond doubt is that the penalty systems of a large number of Western European countries can no longer be considered without including Community Service.
Considering the short period during which this alternative has been worked with in practice, the achieved level of this new punishment's acceptance in society looks especially hopeful for the future.

NOTES

1) Rentzmann, W.: Om alternativer til frihedsstraf. Nordisk Tidsskrift for Kriminalvidenskab, 1975, pp. 163.

2) Council of Europe, European Committee on Crime Problems: Alternative measures to imprisonment, Strasbourg 1985.

3) See Syr, J.H.: L'application de la loi du 11 juillet 1975 modifiant et complètant certaines dispositions du droit pénal dans le ressort de la Court d'Appel d'Aix-en-Provence. Revue de Science Criminelle et de Droit Pénal Compare, 1979, pp. 525.

4) For an historical survey see Grebing, G.: Sanctions alternatives aux courtes peines privatives de liberté. Revue Internationale de Droit Pénal, 1982, pp. 777.

5) von Hentig, H.: Die Strafe. Vol. 2: Die modernen Erscheinungsformen. Heidelberg 1955, p. 408.

6) Compare among others: von Liszt, F.: Kriminalpolitische Aufgaben. In: Strafrechtliche Aufsätze und Vorträge. Erster Band, 1875-1881. Berlin 1970, pp. 370.

7) Non-custodial and semi-custodial penalties. Report of the Advisory Council on the Penal System. HMSO London 1970.

8) Council of Europe, Strasbourg 1976.

9) For a detailed study of Community Service and sanctions systems, see Tak, P.J.P., van Kalmthout, A.M.: Dienstverlening en sanctiestelsels in Denemarken, Zweden, Noorwegen, Frankrijk en Duitsland. Staatsuitgeverij 's-Gravenhage 1985, p. 237.

10) See Conde, C., Ferreiro, P.: Los medios sustitutivos de las penas cortas de prisión. Poder Judicial 1983, pp. 65.

11) See art. 47 of the German Penal Code and art. 37 of the Austrian Penal Code.

12) See the report of the Committee on Probation Work: Nya alternativ till frihetsstraff, Slutbetänkande av Frivårdskommitten, Stockholm 1984. English summary pp. 225.

13) Commission pour la revision du Code Pénal, Rapport 1979, pp. 65.

14) See Simon-Kreuzer, E.: Die Geldstrafe in Belgien. In: Jescheck, H.-H., Grebing, G. (Eds.): Die Geldstrafe im deutschen und ausländischen Recht. Baden-Baden 1978, p. 302.

15) See Hünerfeld, P.: Neues Strafrecht in Portugal. Juristenzeitung 1983, pp. 673.

16) See the report: Utredning ångaende samhällstjänst. Helsingfors 1985.

17) See Beckmann, W., Wagensonner, A.: Die Freiheitsstrafe und ihre Surrogate in der Schweiz. In: Jescheck, H.-H., Grebing, G. (Eds.): Die Freiheitsstrafe und ihre Surrogate im deutschen und ausländischen Recht. Baden-Baden 1983, pp. 911.

18) See Bosch, J.: Neues Strafrecht in Italien. Juristenzeitung 1985, pp. 476.

19) Kimmel, F., Wagner, A.: Les travaux au profit de la communauté au Grand-Duché de Luxembourg de 1976 à 1982. Revue de Droit Pénal et de Criminologie 1983, pp. 88.

20) See de Figueiredo Dias, J.: Les nouvelles tendences de la politique criminelle au Portugal. Archives de politique criminelle 1983, pp. 193-207.

COMMUNITY SERVICE IN ENGLAND/WALES
- ORGANIZATION AND IMPLEMENTATION OF COMMUNITY SERVICE: AN EVALUATION AND ASSESSMENT OF ITS OUTCOMES -

Geoffrey C. Cartledge

1. INTRODUCTION

In 1966 the Government Advisory Council on the Penal System was asked to consider ways in which **alternatives to immediate custodial sentences** could be provided to criminal courts. This was a consequence of considerable concern existing about **increasing numbers of offenders** being committed to penal institutions, to the growing realization of the **ineffectiveness** of such tendencies and to the **high financial cost**. This Council produced a report in 1970 which contained firm proposals of which the most significant was that schemes of Community Service for Offenders be established.

In line with this recommendation provision for Community Service Orders was included in the Criminal Justice Act (1972) and experimental schemes were established in six county areas from the beginning of **1973**. It quickly became clear that the Community Service Order held great potential: it soon became popular with courts in that it provided **elements of punishment** and **reparation**; that it satisfied various elements in the community, notably those who gained benefit from work undertaken; that requiring offenders to give up **leisure time** rather than be wholy deprived of their liberty did not result in loss of income with consequent need for state financial support, nor did it present the prospect of family breakdown often associated with the removal of a key member; also that the experiments showed firstly that the schemes were **administratively viable** and, secondly, that the **Probation Service** was an appropriate agency to undertake this provision.

Further legislation was contained in the **Powers of Criminal Courts Act (1973)**, this providing for the establishment of schemes in all counties in England and Wales. From **1975** Community Service Schemes were available to courts in most large urban areas and also in some rural areas: growth from thereon was continuous and by March 1979 the Community Service Order was available as a disposal to all adult criminal courts in England and Wales. More recently, in 1983, the law was varied to the extent that it provided for Community Service to be available for **16 year old juvenile offenders** in addition to those aged 17 and above as before that time: the legislation which brought about this change was the **Criminal Justice Act (1982)**. Throughout this period of several years, in addition to the progressive extension of availability of schemes, there was also unrelenting growth in the numbers of Orders made by the Courts.

2. BASIC FEATURES OF PENAL LAW STATUTES

The various Acts of Parliament referred to have each successively had the effect of amending previous ones and are now summed up as follows:

a) A person aged 16 years or more who is convicted of an offence punishable with imprisonment may be made subject to an Order requiring him to perform unpaid work. The number of hours so ordered shall not be less than 40 nor, in the case of offenders aged 16, more than 120, or in the case of offenders aged 17 or over, more than 240.

b) Before making a Community Service Order a court is required to consider a report by a Probation Officer about the offender and his circumstances and be satisfied that the offender is a suitable person to perform work under such an Order; it is further necessary for the court to be satisfied that provision for him to perform work under such an Order can be made - for example that suitable work together with satisfactory supervision can be provided.

c) Before making a Community Service Order the court shall explain to the offender in ordinary language the purpose and effect of the Order, the consequences which may follow if he

fails to comply with any of those requirements, and that the court has the power to review the Order on the application either of the offender or of a Probation Officer. The court may not make a Community Service Order unless the offender gives his consent.

d) Having made a Community Service Order the court must immediately give copies of the Order to a Probation Officer assigned to that court and he shall give a copy to the offender and to the officer who is to supervise. The Order shall specify the Petty Sessions (court) Area in which the offender resides or will reside for the purpose of determining from which Area the supervising Probation Officer will be selected.

e) The conditions of the Order are to require the offender to report to the relevant officer and subsequently notify him of any change of address, and to perform for the number of hours specified in the Order such work at such times as he may be instructed by the officer within a period of 12 months from the date of the Order. Work instructions given to the offender shall, so far as practicable, avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he normally works or attends a school or other educational establishment.

f) If the offender fails to comply with any of the requirements of the Order, including any failure to satisfactorily perform the work which he is instructed to do, a Summons, or a Warrant for Arrest if this is necessary, may be issued requiring the offender to appear again in court. If it is proved to the satisfaction of the court that, without reasonable excuse, the offender has failed to comply with the conditions of the Order, the court may impose a fine of up to £ 100 and require that the Order continues, or may alternatively revoke the Order and deal with the offender for the offence in respect of which the Order was made in any other manner in which he could have been dealt with for that offence had the Community Service Order not been made.

g) Either an offender subject to a Community Service Order or the Probation Officer may apply to the court for an Order to be revoked. If the court agrees it may deal with the offender for

the offence in any manner in which he could have been dealt had the Order not been made, if the court considers it to be in the interest of justice so to do. It is also possible for a court to consider extending the period of 12 months within which the hours ordered are to be worked if it is considered to be in the interest of justice to do so in the light of circumstances which have arisen since the Order was made: an example of such circumstances would be an extended period of sickness.

3. WHO MAY SUGGEST THE IMPOSITION OF A COMMUNITY SERVICE ORDER?

The court has the absolute right to determine whether a person is suitable to work under a Community Service Order. It is therefore quite usual for a court, having established that a person is guilty of an offence, to announce that it is considering this course of disposal. As it is required that the court has available a report from a Probation Officer to assist in determining whether the person is or is not suitable to work under such an Order, the making of an order immediately is rare. The making of an Order on the same occasion is only possible if a Probation Officer who has to hand relevant information is readily available in court.

A Probation Officer who is preparing a Social Inquiry Report for the court, in circumstances where the court has not given any indication as to possible disposal, is entitled to offer an opinion or make a recommendation as to whether a Community Service Order is a disposal which should be considered by the court and to give reasons for this opinion or recommendation.

Finally the imposition of a Community Service Order may be suggested by a lawyer acting for an offender if he believes that his client's interest would be well served should such a course be adopted: in cases where an offender is not represented by a lawyer he may make such a suggestion on his own behalf.

In England and Wales the Prosecutor has no part to play in the sentencing process, his role being restricted to proving guilt: he

would not, therefore, be in a position to suggest the making of a Community Service Order or any other disposal.

4. OFFENDER AGREEMENT TO THE MAKING OF AN ORDER

As already stated under the heading of Penal Law Statutes, it is a legal requirement that the court puts to an offender quite clearly and in ordinary language the nature of a Community Service Order and the conditions which would be required, and then asks the offender whether he consents to the making of an Order in his case. Whilst it is rare that an offender refuses the consent, probably due to the fact that imprisonment would be a likely alternative, it is nevertheless necessary that the commitment to work is undertaken "willingly": it could otherwise arguably be held that an order would constitute compulsorily enforced work and that this would be in contravention of the the European Convention on Human Rights, as the effect would not be dissimilar from the use of slave labour.

5. ALTERNATIVE SANCTIONS

A Community Service Order may be made in respect of any offence for which an offender could be subjected to a custodial sentence: this effectively includes most criminal offences. The Community Service Order, alongside a number of other disposals, is therefore legally a sentence in its own right. It follows from this that failure to comply with a Community Service Order can result in one of the range of alternative sanctions, penalties or punishments which might have been imposed by the court had the Community Service Order not been made.

In practice however courts usually view the Community Service Order as being a **high tariff disposal** to be used in respect of offenders whose offences, or previous history of offending might well result in imprisonment but whose general pattern of behaviour does not pose a serious threat from which the public at large need protection. Its difference from other forms of conditional sentencing may be simply explained in terms of the Community Service Order depriving the offender of a substantial amount of leisure time and requiring the performance, to a good standard, of unpaid work for

the benefit of others, and thus having primary elements of punishment and reparation contained within it, whilst other forms of conditional sentencing have a primary objective of containing and reducing offending behaviour by means of advice, counselling and other support in the community.

In order to retain the credibility of the Community Service Order as a realistic alternative to immediate custody amongst sentencers and the public, it is firmly enforced. If an Order is "breached" (that is to say that there is a failure to comply with one or more of the conditions), and the matter is returned to the court, as already stated, the offender may be dealt with in any other way in which he might have been sentenced at the outset for the offence; this clearly includes the likelihood or possibility of imprisonment.

6. PUBLIC PROSECUTOR

In England and Wales prosecution is undertaken directly by the police: there is a Director of Public Prosecutions, but his role is normally only connected with deciding upon prosecution in very serious matters. In practice the police, themselves, often undertake the process of prosecution in the lower courts: in the higher courts, or in more serious matters, they are represented by lawyers.

It should be said that the present Government has announced its intention to introduce legislation during 1986 which would provide for a Public Prosecution Service: it is not yet clear whether such a Public Prosecutor would be intended to have powers of pardoning offenders in addition to the anticipated role of determining whether or not evidence for a prosecution is sufficiently strong, and undertaking the process of prosecution. With regard to the question of pardoning it should be noted that the police at present have limited discretion to caution offenders.

7. PROPORTIONALITY

There is no legal or judicially defined system of proportionality between hours of Community Service and either the length of custodial sentences or size of fines. Notional levels of relatedness

often emerge and judges and magistrates often use these informally. The lack of a defined system of proportionality can result in inconsistencies, but on the other hand does leave the courts with the maximum discretion to use the Community Service Order in respect of a wide range of offences of differing gravity and in different circumstances.

8. NUMBER OF HOURS

As already stated there is a minimum of 40 hours and a maximum of 120 hours for 16 year old offenders and 240 hours for offenders aged 17 and above: these hours are to be worked within a period of one year from the making of the Order. It is the responsibility of the Probation Officer to ensure that work is available to enable the offender to comply with the conditions of his Order and to instruct the offender as to the specific work requirements. Whether or nor an offender has been in "breach" of his Order at an earlier stage he will be deemed to have automatically failed to comply with the conditions of a Community Service Order if the hours ordered have not been completed within a period of one year. If there have been practical reasons why it has not been possible for the hours to be worked as ordered (for example ill-health) then an extension of time can be sought, and would normally be agreed to by a court. There is however no way in which an offender can escape working as ordered without the court sooner or later having to consider what action to take.

9. ACCOUNTABILITY

As the Community Service schemes in England and Wales have grown in size so have numbers of staff involved increased in number. In practice, in all except the most rural areas, the nominated officer would typically have assistants accountable to him who would be responsible for the immediate supervision of offenders subject to Community Service Orders. The officer in turn is accountable through the management structures of the Probation Service to the County Chief Probation Officer who, in turn, accounts to the County Probation Committee, which is largely comprised of magistrates and judges. By means of thorough and consistent staff supervision and

accountability together with comprehensive administrative systems it is possible to achieve a high level of consistency of enforcement of Orders. This, in turn, seems to commend itself to courts, which then have confidence in the Community Service Orders scheme.

10. DATA ON COMMUNITY SERVICE (1976-1983)

Community Service Orders are fully recorded within the system of compiling criminal statistics. From these it is possible to determine trends in respect of numbers of Orders made, length of Orders, category of offences in respect of which Orders are made, and numbers of offenders failing to complete Orders as required. Significant comparative information is in the form of Home Office Probation Statistics. From the Home Office Statistics (England and Wales) 1983 it can be seen that the use of Community Service Orders by Courts continues to increase. In 1977 10,000 Community Service Orders were made by courts; by 1983 this had grown to 32,000 Orders and by 1984 no less than 34,000 an increase of about 6 % on the previous year. An interesting comparison is provided by the fact that some 22,000 new Probation orders were made in 1977, 34,000 in 1983 and 36,000 in 1984. It will therefore be seen that the growth in the number of Community Service Orders is at a rate about double that of the making of Probation Orders by courts. In 1984 of 210,000 convicted male adult offenders 7 % were placed on Community Service and 7 % on Probation: of 39,000 adult female offenders 3 % got Community Service and 17 % were placed on Probation. Interestingly in the critical 17-20 age range, of 114,000 male offenders 13 % got Community Service whereas only 10 % were placed on Probation: of 14,000 comparable females the figures were 5 % to Community Service and 21 % to Probation.

Because the legislation specifies that a Community Service Order can be made in respect of a person "convicted of an offence punishable by imprisonment" it is difficult to assess what sentence would have been imposed had a Community Service Order not been made. A significant factor however is offenders' previous criminal records. The previous criminal records of those commencing Community Service Orders in the first half of 1983 were similar to those commencing

Community Service in each of the four preceding years. Although the seriousness of the previous criminal records of those commencing Probation has increased since 1979, a much higher percentage of those commencing Community Service in the first half of 1983 were known to have served a previous custodial sentence (40 % compared with 25 %) and a much lower percentage were known to have no previous convictions (11 % compared with 22 %).

In 1983 over 5,500 persons were sentenced by courts for breaching the requirements of Community Service Orders compared with 2,400 in 1979. Again there is difficulty in assessing circumstances which lead to various consequential sentences, for instance whether or not a substantial part of the Order has been worked before the breach occurred. It is interesting however that the lower (magistrates) courts gave an immediate custodial sentence to about 25 %, and the higher (Crown) courts in no less than 63 %, of breach cases in 1983, confirming the view that courts see Community Service as being a high tariff disposal.

10 % of those commencing Community Service in 1983 had been found guilty of violence against the person compared with 8 % in 1982. The proportion found guilty of theft and handling stolen goods fell from 47 % in 1979 to 41 % in 1983, whilst the percentage found guilty of burglary rose from 22 % in 1979 to 26 % in 1981 and 1982 but then fell slightly to 25 % in 1983. In comparison with those commencing probation in 1983 a higher percentage of those commencing Community Service had been found guilty of burglary and a lower percentage of theft and handling stolen goods. In 1983 11 % of those found guilty of burglary were given a Community Service Order; as in earlier years this was higher than for any other type of offence.

In 1983, as in preceding years, the distribution of offences for which those put on Community Service had been found guilty differed between those sentenced at magistrates' courts and those sentenced at the Crown Court. This largely reflects the different distribution of offences for which persons were sentenced at these courts. Between 1980 and 1983 the percentage of those given

Community Service by the Crown Court who had been found guilty of burglary increased from 31 % to 37 %; the corresponding percentage for those given Community Service by the magistrates' courts increased from 21 % to 22 %. 6 % of those sentenced for indictable offences by magistrates' courts were given Community Service, compared with 10 % of those sentenced by the Crown Court. There were, however, other very considerable differences between these types of court in sentencing patterns, largely reflecting the different types and seriousness of offences dealt with by these two types of court.

The legislation specifies that a Community Service Order can be made in respect of a person "convicted of an offence punishable with imprisonment" (S. 14(1) of Powers of Criminal Courts Act 1973). Different interpretations may be put on this phrase and courts may vary in the extent to which Community Service Orders are used as an alternative to imprisonment. While it is difficult to assess what sentence would have been imposed had a Community Service Order not been made, one of the factors which is taken into account when sentencing offenders is their previous criminal record.

The previous criminal records of those commencing Community Service Orders in the first half of 1983 were similar to those for persons commencing Community Service in each of the four preceding years. Although the seriousness of the previous criminal records of those commencing probation has increased since 1979, a much higher percentage of those commencing Community Service in the first half of 1983 were known to have served a previous custodial sentence (40 % compared with 25 %) and a much lower percentage were known to have no previous convictions (11 % compared with 22 %).

The previous criminal record of those commencing Community Service Orders varied with the type of offence of which the person had been found guilty. 30 % and 21 % of the small numbers given Community Service for sexual offences and robbery respectively and 19 % of those given Community Service for fraud and forgery were known to have no previous convictions; for all other types of offence the corresponding percentage varied between 8 % and 12 %.

84 % of those commencing Community Service in the first half of 1983 aged under 21 and 86 % of those aged 21 and over were known to have a previous criminal record. A much smaller proportion (33 %) of those aged under 21 were known to have served a previous custodial sentence than of those aged 21 and over (47 %) (tables 1 and 2). For 21 % of those aged under 21 the most serious form of criminal record was some sort of supervision (probation or supervision under the Children and Young Persons Act 1969), but this was so for only 12 % of those aged 21 and over.

There were variations between areas in the criminal records of those commencing Community Service Orders in the first half of 1983. For most areas the percentage who were known to have served a previous custodial sentence ranged from about 30 % (27 % in East Sussex and Warwickshire) to over 50 % (53 % in Bedfordshire and 56 % in Northumbria), but in Powys and Dyfed, where the numbers involved were small, it was about 20 %. The percentage who were known to have no previous convictions varied between about 5 % and 20 %, in all areas except Powys, but the figures for a few areas are unreliable because the percentage for whom the previous criminal record was unknown is large. This varied from half a per cent or less in 11 areas to 20 % in Warwickshire and Middlesex and 22 % in Mid Glamorgan.

There was little change between the second half of 1982 and the first half of 1983 in the number of hours specified in Community Service Orders (table 3). This followed a steady increase between 1977 and 1980, little change between 1980 and 1981 and some reduction between 1981 and 1982. About 20 % of persons commencing orders in the first half of 1983 had fewer than 100 hours specified in their order, whilst about 17 % had 200 or more hours specified. As in earlier years, the distributions of hours specified show that a higher percentage of females were given orders for less than 100 hours (about 30 % of females compared with about 20 % of males), whilst a lower percentage of females were given orders for 150 hours or more (fewer than 30 % of females compared with about 40 % of males).

Table 1: Persons aged 16 and under 21 commencing Community Service Orders by type of offence and previous criminal record at commencement of order

England and Wales 1983, HI

type of offence	previous criminal record at commencement of order*																	
	custodial sentence		Community Service Order		supervision		fine		other sentence or order**		previous sentence but details unknown		previous record unknown		no previous convictions		total	
	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%
violence against the person	230	26	40	5	160	19	220	26	40	4	10	1	30	3	130	15	870	100
sexual offence	10	47	-	-	-	18	-	18	-	-	-	-	-	-	-	18	20	100
burglary	690	34	70	4	420	21	360	18	80	4	30	2	70	3	290	14	1.990	100
robbery	10	22	-	-	10	14	10	20	10	11	-	2	-	4	20	27	60	100
theft and handling stolen goods	1.200	34	170	5	740	21	660	19	100	3	50	2	110	3	440	13	3.470	100
fraud and forgery	60	25	10	5	50	21	40	19	10	3	-	2	10	5	40	20	220	100
criminal damage	110	31	20	5	90	26	60	15	20	5	10	2	10	3	50	14	360	100
other indictable offence	280	37	50	6	150	20	160	22	20	2	20	2	20	3	50	7	750	100
summary offence	100	30	20	6	60	18	110	31	10	2	-	1	10	2	40	10	350	100
all offences	2.680	33	390	5	1.680	21	1.620	20	270	3	130	2	260	3	1.060	13	8.090	100

* Persons in this table have been classified under their most serious previous sentence at the time that the Community Service Order commenced using the following descending order of seriousness: custodial; Community Service Order; supervision; fine; other.

** Includes suspended sentence order.

Table 2: Persons aged 21 and over commencing Community Service Orders by type of offence and previous criminal record at commencement of order

England and Wales 1983, H1

type of offence	previous criminal record at commencement of order*																	
	custodial sentence		Community Service Order		supervision		fine		other sentence or order**		previous sentence but details unknown		previous record unknown		no previous convictions		total	
	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%
violence against the person	250	44	30	6	60	12	130	23	10	3	10	2	30	5	40	7	560	100
sexual offence	20	42	-	3	-	11	-	8	-	-	-	-	-	-	10	36	40	100
burglary	730	55	60	4	140	11	230	17	10	1	30	2	40	3	90	7	1.340	100
robbery	10	69	-	-	-	12	-	19	-	-	-	-	-	-	-	-	20	100
theft and handling stolen goods	1.850	47	220	6	540	14	610	16	80	2	80	2	160	4	390	10	3.940	100
fraud and forgery	350	38	20	2	110	12	170	18	30	3	30	4	40	4	170	18	910	100
criminal damage	120	49	10	5	30	14	50	20	10	3	10	2	10	3	10	5	240	100
other indictable offence	630	48	70	5	130	10	270	21	30	2	30	2	50	4	110	8	1.320	100
summary offence	140	42	30	9	30	10	80	24	-	1	10	4	10	2	30	8	340	100
all offences	4.100	47	440	5	1.060	12	1.550	18	170	2	200	2	340	4	850	10	8.710	100

* Persons in this table have been classified under their most serious previous sentence at the time that the Community Service Order commenced using the following descending order of seriousness: custodial; Community Service Order; supervision; fine; other.

** Includes suspended sentence order.

Table 3: Persons commencing Community Service Orders by sex and number of hours specified (%) (England and Wales)

	* 1976	* 1977	** 1978	** 1979	** 1980	** 1981	** 1982	** *** 1981 H1	** *** 1981 H2	** *** 1982 H1	** *** 1982 H2	** 1983 H1
males												
40 and less than 100	22	22	17	15	14	15	17	15	16	16	19	19
100 and less than 150	47	50	47	45	41	40	40	40	39	39	40	40
150 and less than 200	18	18	21	23	23	23	23	23	23	23	23	23
200 and up to and incl. 240	13	10	14	17	22	22	19	22	22	21	18	17
total	100	100	100	100	100	100	100	100	100	100	100	100
females												
40 and less than 100	37	37	29	28	26	28	29	28	27	27	32	31
100 and less than 150	43	48	48	45	44	40	43	40	40	42	44	41
150 and less than 200	13	9	14	17	17	18	16	18	19	19	14	17
200 and up to and incl. 240	7	6	10	10	14	14	11	14	14	12	10	11
total	100	100	100	100	100	100	100	100	100	100	100	100
total												
40 and less than 100	23	23	18	16	15	16	18	15	16	17	20	20
100 and less than 150	47	50	47	45	41	40	40	40	39	39	41	41
150 and less than 200	18	17	20	22	23	23	23	23	23	23	22	22
200 and up to and incl. 240	13	10	14	17	21	22	19	22	22	21	17	16
total	100	100	100	100	100	100	100	100	100	100	100	100

* Figures compiled on an all persons basis from returns of court proceedings.
** Figures compiled from returns made by the probation service.
*** Each person is counted once in each half year in which they commenced Community Service. The two half yearly figures do not add to the total because each person is counted only once in the annual total irrespective of whether they commenced Community Service in both half years or not.

In 1983 over 5,500 persons were sentenced by the courts for breaching the requirements of a Community Service Order by failing to report or perform the number of hours specified as instructed by the relevant officer; the number increased in each year from 1979 (2,400), in line with the rapid increase in the number of Community Service Orders given over the same period. The sentence most commonly given to them by magistrates' courts was a fine, which was given to over half in 1983; an immediate custodial sentence was given to about a quarter and a fully suspended sentence to about 1 in 12. At the Crown Court the most common sentence was one of immediate custody, which was given to about 63 % in 1983. Almost a fifth of those sentenced at the Crown Court were otherwise dealt with, the majority of them having their order revoked. For further details see table 7.31 of "Criminal statistics, England and Wales, 1983".

About **23,000** Community Service Orders **terminated** in the first half of 1983, 8 % more than in the first half of 1982 (table 4). About 75 % of these orders terminated on completion of the specified hours, just over 10 % for a failure to comply with the requirements of the order and just under 10 % for conviction of another offence. These percentages are similar to the corresponding ones for the five preceding years.

The reason for terminating Community Service Orders in the first half of 1983 varied with the number of hours specified in the order (table 5). The percentage of orders terminating on completion of the specified number of hours ranged from over 80 % for orders with less than 100 hours specified to less than 70 % for orders of 200 hours or more. Correspondingly the percentage terminated for a failure to comply with requirements ranged from about 9 % to 13 % and the percentage terminated for conviction of another offence from about 6 % to 13 %.

Table 4: Terminations of Community Service Orders by reason for termination

England and Wales

reason for termination	* 1976/7	* 1977/8	1978	1979	1980	1981	1982	1981 H1 %	1981 H2 %	1982 H1 %	1982 H2 %	1983 H1 %
specified number of hours completed	81	78	75	74	75	74	74	74	73	72	75	76
failure to comply with requirements	10	11	11	14	13	13	12	13	13	12	12	11
conviction of another offence	7	8	11	10	9	10	10	10	10	10	9	9
other change in circumstances	3	3	2	2	2	2	2	2	2	2	2	3
other reason			1	1	1	1	3	1	2	3	2	2
total orders (= 100 %)	6.400	10.230	15.050	19.900	25.360	36.440	43.890	17.230	19.200	20.840	23.050	22.570

* 1st April to 31st March.

Table 5: Termination of Community Service Orders by reason for termination and number of hours specified (%)

England and Wales 1983, H1

reason for termination	40 and less than 100 hours	100 and less than 150 hours	150 and less than 200 hours	200 and up to and including 240 hours	total
specified number of hours completed	82	78	74	67	76
failure to comply with requirements	9	10	13	13	11
conviction of another offence	6	7	10	13	9
other change in circumstances	2	2	2	4	3
other reason	1	2	2	3	2
total orders (= 100 %)	4.460	8.540	4.950	4.620	22.570

The reason for termination also varied with the age of the offender. The percentage of orders terminating on completion of the specified number of hours ranged from about 75 % for those aged under 21 to about 80 % for those aged 30 or over at commencement of the order. Correspondingly the percentage terminating for a failure to comply with requirements ranged from about 12 % to 9 % and the percentage terminating for conviction of another offence from about 10 % to 5 %.

The average time taken to terminate a Community Service Order in the first half of 1983 was just under 8 months, much the same as in earlier years. The average time taken varied with the number of hours specified in the order, from just under 6 months for orders of less than 100 hours to just under 10 months for orders of 200 hours or more. It also varied with the reason for termination - around 7

months for orders terminating on completion of the specified number of hours, 8 months for orders terminating for conviction of another offence and just over 9 months for orders terminating for a failure to comply with requirements.

11. THE ROLE OF THE PROBATION SERVICE

Community Service is an integral part of the work of the Probation Service in England and Wales. The Service provides Social Inquiry Reports that advise courts in sentencing; offers social work supervision to offenders who are made the subject of Probation or Supervision Orders by the court (Conditional Sentences); offers post-custody supervision to offenders on release from prison department and other institutions (Conditional Release); provides, in many areas, hostel accommodation for some categories of offenders who might otherwise have received custodial sentences; provides a range of daycare facilities; and also provides facilities for Community Service Orders Schemes.

Having one agency responsible for these several functions relating to offenders facilitates a good level of communication and cooperation between the several parts. It is helpful, in particular, that there is a close link between those officers who provide reports for courts, and the Community Service organisation which provides some of the information upon which these reports are based. There is also a good level of communication between court based officers and the Community Service staff who are required to enforce and control Orders.

It is usual for Community Service Orders to be supervised and managed by specialist staff. A typical model of operation would be for the manager of the Scheme to be a Probation Officer of senior grade, thus providing a consistent Probation Service base, but with a staff largely comprised of supervisors, who are often tradesmen or who have supervisory experience in practical trades. It is then clearly understood that Community Service is distinct and different from social "casework": Community Service, as already stated, requires the offender to give of his time and effort for the benefit of the community, whilst social casework is intended to give assistance to offenders.

12. COMMUNITY SERVICE AND OTHER SANCTIONS

A court may not make two Orders in respect of any one offence: other penal sanctions may not therefore, be combined with a Community Service Order. It may be however that a Community Service Order is made in respect of a different offence on an offender who is already subject to some other form of penal sanction or, conversely, that an offender who is subject to a Community Service Order may reoffend and, as a consequence, receive from the court some other sentence or Order. In these circumstances therefore it is possible for an offender to be subject to both, for example, a probation order and a Community Service Order. The court would expect to be advised however if there would be practical difficulties in operating two such orders at the same time.

13. OFFENCES

As already stated Community Service Orders may be used in respect of any offence which is punishable by imprisonment, and that in practice this means almost all criminal matters. The Probation Service does all it can to resist the use of the Community Service Order in circumstances of minor offences where imprisonment would have been exceedingly unlikely and where other lesser penalties would be considered more appropriate. Most courts also seem disposed to reserve the use of the Community Service Order for more serious situations where either the offence is more serious or the offender is before the court for a second or subsequent offence. By means of this cooperation of attitudes the Community Service Order is generally well able to be enforced, the offender fearing an alternative more punitive sentence or he fails to comply with the conditions. This in turn builds credibility in the eyes of courts which then are more likely to use the Community Service Orders disposal in serious situations.

14. AGENCIES WHICH BENEFIT

There is a wide range of organisations for which offenders undertake work when subject to Community Service Orders, and with which the Probation Service is involved in continuing negotiations for future work. These include churches, hostels, youth clubs, old

people's homes, individual homes of old persons, camp sites, park lands etc.. Work typically may involve building, digging, refurbishing property, redecorating; such tasks are usually undertaken by groups of offenders under immediate close supervision. There is also work undertaken on individual placement often involving gardening or decorating for individual old persons, supervising children in youth clubs, or assisting in old people's homes etc.: for an offender to be placed in such a situation the Probation Service must be satisfied firstly that the offender does not provide any substantial risk to the beneficiary; also that there will be an honest account of the number of hours worked satisfactorily in order for accountability to be complete. It is of course possible to assess how well or otherwise an offender has worked from observation of the work end-product.

In order to satisfy trades unions, especially in times of high unemployment, there is a close liaison with them so that they are satisfied that work undertaken by offenders subject to Community Service Orders is work which would not normally be undertaken by paid employees, and which, if not undertaken by offenders would be unlikely to be done at all.

15. THE EFFECT ON OFFENDERS OF COMMUNITY SERVICE ORDERS

A typical experience of an offender who is convicted by a court and where the court either requires, or is obliged by law to consider, a Social Inquiry Report, is that his case would be adjourned for three or four weeks during which a full report about his personal and domestic circumstances would be prepared by a probation officer: this would also comment on his attitude to the offence and include an opinion of the offender's likely response to, and the effect of, disposals which are likely to be considered appropriate by the court.

This involves a probation officer interviewing the offender at length, interviewing members of his family, consulting members of the medical and other professions to whom the offender may be known and verifying information as fully as possible to ensure accuracy, before being in a position to write a report which is

objective, clearly balanced between established fact and unverified statements and which can therefore include the officer's informed opinion and often a recommendation to the court.

If the officer has been asked by the court, or wishes, to consider the possibility of a Community Service Order being made, a referral to a Community Service Officer will be made giving relevant information to enable that officer to give an opinion as to whether the offender is a suitable person to work under the scheme; also whether within the local scheme, there is work available for that offender: in this it is important to ensure the protection of members of the public by the appropriateness of work and adequacy of supervision. Whilst this process is often satisfactorily completed by written or telephone communication between the Probation Officer preparing the report and a Community Service Officer, if there is serious concern about the offender's previous pattern of behaviour or any mental illness, in particular offences which were of a violent or sexual nature or related to drug or drink abuse, a Community Service Officer may personally interview the offender.

If the court makes a Community Service Order the offender will be interviewed by a Community Service Officer who will further explain the conditions of the Order and will advise the offender of the means, usually by post, by which work instructions will be given. The Officer will establish the times of each week at which an offender is normally occupied in employment or religious activities: also, in addition to noting any risk factor which may require close supervision, ascertaining any vocational or trade skills which the offender may possess. Whilst the primary objective is that the offender undertakes work as required, it is more likely to be satisfactorily performed, to the greater benefit of both the beneficiary of the work and to the offender, if a suitable work allocation can be made.

Unless a further interview in connection with subsequent change of work is necessary an offender who complies with his Order by working satisfactorily would not usually be required to attend for further interview. Failure to work as required would result in written warning, further interview and, ultimately, return to court.

16. COMMUNITY SERVICE AS AN ALTERNATIVE TO CUSTODY

An important issue is whether or not Community Service is an alternative to custody as provided by law, or as practiced by the Probation Service and seen by courts and offenders. A survey undertaken by Chief Probation Officers in 1984 revealed that of the 56 Area Probation Services in England and Wales 24 had an unequivocal policy that Community Service is a strict alternative to custody. Of the remainder a number pointed out that only the Law prevented them from being so unequivocal, whilst others were anxious to point out that their schemes were "primarily" for those who would otherwise receive custodial sentences.

In promoting the "alternative to custody" policy in the light of ambiguous legal phraseology Probation Service staff use considerable influence with courts in their prerogative of making to courts recommendations as to suitability. They are supported in this by the National Association of Probation Officers, the professional association and trade union which represents the majority of Probation Officers, which in a review of Community Service advocated its use only as an alternative to custody, this being in the interests of justice, and commented as follows:

"**Justice** – A Community Service Order is a demanding sentence which makes a considerable impact on an individual's freedom, and it is unjust to impose such a punitive sentence as an alternative to anything other than custody. The successful completion of an Order will prove less likely if the offender perceives the sentence as being unfair or excessive. One of NAPO'S overall objectives is to reduce the number of those in custody and whereas Community Service is very popular with the courts, its use as an alternative to non-custodial penalties is likely to devalue its validity in the case of an offender clearly destined for custody".

Chief Officers added further reasons why Community Service should be used as an alternative to custody as follows: that it is a clear statement by the sentencer that but for Community Service a custodial sentence would have been imposed, that it is clear to the offender what otherwise would have happened and gives him a clear

knowledge of the likely consequences should he decide not to comply in any sense, and that it is clear to the operators of the Scheme that they are dealing with a particular category of offender as perceived and judged by sentencers. Further points in support of this are that it would appear to be more just if those receiving the same sentence are subject to the same experience, rules, procedures and consequences, that in order to maintain credibility it is necessary to deal with offenders under this sentence in like manner should they fail, that it enables clear comparisons to be made between effects and costs of dealing with similar people in the community or in custody, and that if Community Service ceases to be an alternative to custody, its popularity as a sentence will not only devalue its validity, but also have resource implications, especially in providing suitable work opportunities.

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COMMUNITY SERVICE ORDER
- A NEW PENALTY IN THE DUTCH PENAL CODE -

Peter J.P. Tak

1. INTRODUCTION

In September 1985, after a period of over 4 years during which a large scale experiment with the Community Service as a so-called alternative sanction took place, the Ministry of Justice published a **Draft Bill on the Community Service Order** which is intended to become the legal framework for this new penal sanction.

Although this Bill, before its enactment (which is planned in 1987), has to go a long way through consultative bodies and the Parliament during which alterations can be proposed, it seems to be sure that the main ideas expressed in the Bill will be kept upright. This paper therefore deals with the content of the Draft Bill on **major points** on which a general agreement seems to exist.

2. AIMS OF THE BILL ON COMMUNITY SERVICE ORDER

The experiments with the Community Service have taken place on the basis of the ordinary penal code regulations. No specific regulations were enacted. It was the intention to carry out experiments first in order to analyse the legal and practical issues which should form the content of the new regulations on Community Service.

While the experiments had to fit in the not specifically adapted regulations, quite a lot of legal and practical problems have arisen.

The aims of the Draft Bill on Community Service therefore are:

- To provide an **explicit legal basis** for the application of the Community Service Order, and

- to provide **legal** and **practical solutions** for the problems arisen during the experiments.

The **main aim** of the Bill remains however the reduction of the number of short-term prison sentences. In many cases a short-term prison sentence seems to be an improper reaction on criminal behaviour, while this sentence isolates the offender from society or his social environment, nor does the penalty itself serve society or the victim of the crime in a positive way.

The new penalty may avoid those negative effects and may improve the prospects of rehabilitation of the offender. The wish to reduce the number of short-term prison sentences is not only based on humanitarian motives, but also on practical ones. The increase of the crime rate in general and the increase of the number of rather serious crimes as drug trafficking in particular have caused a lack of prison capacity and long waiting lists for offenders who have to serve short-term sentences.

3. SOME FIGURES CONCERNING SHORT-TERM PRISON SENTENCES

The annual number of prison sentences over the last five years has increased from 16.325 in 1980 to 18.626 in 1984. The number of short-term prison sentences (prison sentences up to six months) has increased from 14.321 to 15.185. Although this increase does not seem to be shocking, in fact it is because the number of prison sentences less than one month has decreased from 9.478 to 7.883 and the number of prison sentences from one month up to six months has increased from 4.843 in 1980 to 7.302 in 1985.

This increase has caused a **heavy prison capacity problem** which will partly be solved by a new prison building programme, partly be new legislative measures such as the Bill on the Community Service Order.

4. A FOURTH PRINCIPAL PENALTY

The penalties which can be imposed according to the Dutch penal code are distinguished into: principal sentences and ancillary sentences.

The principal sentences comprise **imprisonment** (lifelong or for a determinate period of at least one day and a maximum of twenty years), **detention** (of at least one day and at most sixteen months), or **fine** (of at least five and at most one million Dutch guilders).

The Bill proposes a fourth principal penalty: The Community Service Order which is in punitive value less than imprisonment or detention and more severe than a fine. This penalty **restricts** the **liberty** of the offender but **does not deprive** him of **his liberty**.

The judge may impose a Community Service Order for whatever crime in the case he had in mind to impose a firm prison sentence up to six months or a partly suspended partly firm prison sentence of which the firm part does not exceed six months imprisonment. In the opinion of the Minister of Justice, it would be inappropriate to use the Community Service for crimes which should be sentenced with a prison sentence of over six months imprisonment. These crimes are as a rule too serious to be sentenced with a penalty not containing a deprivation of liberty. It could be suggested then to increase the maximum number of hours unpaid work. The Minister was however unlikely to propose so because the risk is estimated as too high that the offender would fail to comply if the number of hours unpaid work were more than 240 hours. When the judge imposes a Community Service Order, he is obliged to mention explicitly in his sentence the term of imprisonment he had in mind to impose. The judge cannot impose a Community Service Order unless the accused on his own initiative offers to carry out such an order and expresses his **consent** with this penalty. The latter is necessary because of section 4 of the **European Convention on Human Rights** which prohibits the imposition of forced labour as penalty. In his offer the accused must at least mention the type of agency, institution or service for the benefit of which he will carry out the unpaid work and the type of work he is able and willing to carry out.

The Community Service Order is a penalty which consists of an **agreement** to carry out unpaid work for a certain number of hours of at most 240 within a period of six months for the benefit of a

private or public agency, institution or service such as neighbourhood-centres, hospitals, homes for elderly, sporting clubs, forestry, environmental protection institutions, schools, churches, etc.. In his sentence the judge mentions at least the number of hours of work, the period within which the work must be fulfilled, the institution, agency or service in whose benefit the work must be carried out, and the type of work.

When the judge refuses to accept the offer by the accused to carry out unpaid work as penalty, his decision must explicitly contain the **motives for this refusal**.

The judge may not decide to suspend the Community Service Order sentence.

The community service order sentence is recorded in the criminal record.

5. OTHER MODALITIES OF THE APPLICATION OF THE COMMUNITY SERVICE ORDER

Beside this modality, the Bill proposes another possibility to impose a Community Service Order: When a suspended sentence has been imposed of which the suspended part consists of a prison sentence of at most six months and during the probation period a **revocation of the suspended part** has been requested by the public prosecutor, the judge can refuse to consent with the execution of the prison sentence and instead impose a Community Service Order.

In a separate Draft Bill on Pardon, another modality for the application of the Community Service is proposed. Pardon may be granted conditionally. One of the conditions which may be linked to the **pardondecision** is that the offender performs during the probation period a certain number of hours unpaid work. The Draft Bill on Pardon refers concerning the details of the Community Service, to the Draft Bill on Community Service Order.

These are the only modalities for the application of the Community Service. **All other modalities** used during the experimental period, in particular the Community Service Order imposed by the public prosecutor as condition for a waiver of prosecution, **are** now explicitly **excluded.** The sanction is seen is so severe that it may **only be imposed by a judge** after a public trial. This safeguards the procedural rights of the offender.

6. ACCOUNTABILITY

According to section 4 of the Organisation of the Judiciary Act, sentences are executed by the **prosecution service.** Therefore, during the execution of the Community Service Order, the prosecutor is in charge to **check the proper fulfillment** of the order. The public prosecutor may extend the period within which the work must be carried out, he may alter the type of work or the institution for which benefit the service must be done, when the sentenced person does not or could not carry out the work properly.

When the sentenced person seems to be **unwilling** to obey the order or to carry out the work properly, the judge on request of the public prosecutor may decide that the prison sentence will be executed totally or partly. In his decision the judge takes into account in what extent the order was properly obeyed.

When the order is **fulfilled properly**, the public prosecutor informs the sentenced person that the execution of the penalty took place.

The Community Service is a penalty which can only be imposed on adults.

7. THE ROLE OF THE PROBATION SERVICE

Probation agencies will continue to be involved in the practical application of this penalty. Rules for this involvement will be given in **new Probation Regulations.**

The intensive involvement of the probation service will be expressed in the fact that it is considered:

- to bring to the attention of the judge and public prosecutor cases which seem to be appropriate to be punished with Community Service,
- to formulate the offer,
- to offer help and support to the sentenced person in carrying out the Community Service.

This provision of help and support is a part of the general tasks of the probation service.

One probation officer in particular - the so-called **community service coordinating officer** - will be charged to recruit community service projects, to establish and maintain contact with persons in charge within the community service order projects and to carry out supervisory and reporting tasks. These tasks belong to the other part of the probation activities: the information to the appropriate authorities in particular the judiciary.

8. THE BILL DOES NOT PROVIDE DETAILED RULES

The Bill does not contain detailed rules how in practice the order must be fulfilled. The **number of hours a day** a sentenced person will carry out community service work **is free for negotiation** between the offender and the person in charge within the institution, agency or service where the unpaid work will be done. The maximum number of 240 hours is based on the consideration that an employed offender seems to be able to work each week nine till ten hours during his leisure time and on the consideration that a legal **fixation** of the maximum number of hours a week **can be an obstacle to find appropriate** community service **projects**. This opens the possibilty for unemployed offenders to serve their community service order sentences in a rather short period of time.

The Bill does **not** contain the possibility to use the Community Service Order as **an alternative for a suspended sentence**, a **fine** or a **substitute imprisonment** in the case of fine default. The Community Service Order is seen as a more severe penalty than a suspended sentence or a fine. If in these cases the judge would

impose a Community Service Order, this would mean an aggravation of the penalty he had in mind to impose. It is not the intention of the legislation by introducing the Community Service Order, to provide the possibilities to apply more severe penalties than deems necessary concerning the severity of the crime committed.

9. JUVENILES

The new principal penalty will only be applicable on crimes committed by **adults**.

This does not mean that the Community Service does not play any role as a penalty for juveniles.

Since 1983 experiments with this alternative sanction for juveniles were running. Recently, an evaluation report was published by a working group.

In this report has been proposed to alter the Penal Code for juveniles and to make this alternative sanction applicable as substitute for both a prison sentence and a fine. A much wider range of modalities of application has been proposed. Beside the before mentioned modalities, two new modalities seem to be appropriate for juveniles:

- Community Service as condition linked with a conditional waiver;
- Community Service as condition linked with a suspended sentence.

The Community Service as penalty for juveniles must contain both **punitive aspects** and be of an **educational nature**.

It may be expected that in the course of 1986 a Draft Bill on Community Service by juveniles will be published.

10. PRISON CAPACITY SAVING EFFECTS

It is expected that in 1990 the annual number of Community Service Orders imposed by sentence will be approximately 4.000. If in all these cases an average prison sentence had been imposed, another **200 prison places** would have been needed for the execution.

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COMMUNITY SERVICE IN THE NETHERLANDS, A VIABLE ALTERNATIVE?*

Anton M. van Kalmthout

1. INTRODUCTION

Compared with other countries, the **penal climate** in the Netherlands can generally by typified as **mild**. This remark is referring in particular to the relatively small number of prison-sentences of six months or more. On the total number of imprisonment the afore said sentences reach to approximately 18 % a year. To give an indication: In 1984, the number of totally or partly unconditional imprisonments was 18.626. Close on 15.000 of these (82 %) concerned sentences of less than six months. Almost 8.000 of which were shorter than one month[1].

However, the mild phenomenon is partly just **ostensible**. Contrary to the relatively reserved application of long- and middle-term imprisonments, a relatively **large number** of offenders are sentenced to a short unconditional imprisonment[2]. That number, as well as the length of the imposed sentences, has been showing a tendency to **increase** during several years[3]. A reason for this development lies in the fact that yearly more offences are brought to the attention of the judicial power and submitted to prosecution. In many cases the available arsenal of sanctions that can be imposed by the courts is not sufficient enough to prevent imposing an imprisonment. The increasing extension of imprisonment is mainly due to the changed criminal policy in affairs of drugs and drug related crimes[4].

There is a lack of **capacity** to settle the increasing number of criminal cases in an effective way and within reasonable time. Like in most Western-European countries, the Dutch prison-system is no

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longer equipped to endure the strong augmentation and struggles with a severe shortage of prison-cells[5]. In 1975, this even led to a collective pardon and a reduction of two weeks of all condemnations[6]. This only brought a short-time relief. **Waiting-lists** containing some thousands of condemned persons, awaiting the execution of their sentences, have become a normal phenomenon[7].

However, **lack of capacity** and **high costs** of detention are not the only reasons that have urged the authorities and the legislator to take measures of a more structural character. **Imprisonment** itself - in particular the short-term imprisonment - has been subjected to discussion again since the middle of the sixties. During the last decades, it has become evident that the different purposes to be served by imprisonment as e.g. general and special prevention, conflict solution, treatment, rehabilitation and resocialisation are merely based on wishful thinking and not on empirically tested reality. As for the penal system, this led to the consequence that its own **legitimacy** also became subject to an increasing criticism, at least insofar as imprisonment was concerned. Stronger than ever, the necessity has forced itself to search for "less-personal-interfering" **alternatives** which - besides the lower costs - may possibly lead to better results.

Up to now, authorities have been reacting only capriciously to the above mentioned problems. There is no question of any consistency in criminal policy: On the one hand, there is an aspiration of creating and developing **priorities** in prosecution policy, concerning decriminalisation, depenalisation and development of non-custodial penalties, but on the other hand an opposite movement can be discovered. In spite of all intentions, the implementation of **new criminal offences** is increasing continuously in accordance to which the plans to extend the capacity of the prisoncells exceeding a thousand apparently cannot be averted any longer. It also seems that limits will be set to the practice of the public prosecutor to dismiss as many criminal cases as possible[8].

During the last years, a lot of **initiatives** have been taken to decrease quantity and term of prison sentences. Examples that can

be mentioned are: 1. extension of the application-area of a) fines and other property sanctions, including the so-called transaction with the public prosecutor[9], b) the conditional sentence[10] and c) the conditional release[11] and 2. a diminished use of the so-called "Ter beschikking stelling van de regering" (placement at government's disposal)[12]. All these modifications refer to a revision of existing legal sanctions.

The possibility pleaded for by the "**penal-reform movement**" during the seventies, namely to follow the road of **decriminalisation** and **depenalisation** had hardly been followed by the legislator. If any criminal offences have been or shall be wiped out of criminal laws, it occurs to be only those scarcely or not at all prosecuted. These offences are for instance: adultery (art. 241 Penal Code)[13], homosexuality (art. 248bis Penal Code)[14], some kinds of insult (art. 117 and 137 a-b Penal Code)[15], begging, vagabondage and bullyship (art. 432 Penal Code)[16], abortion (art. 296 Penal Code)[17] and possession of small quantities of soft drugs (art. 3, no. 11 paragraph 4 Opium Law[18]. The number of these offences just mentioned are in no proportion to the large amount of new punishable offences that caused the said extension of the Penal Code and that have contributed to the actual crisis within the criminal justice system.

The development and introduction of **new penal sanctions** is the third way of trying to find an adequate answer to the capacity problems. These sanctions are also called "**alternative sanctions**", because the primary purpose of these sanctions is to act as alternatives for the otherwise inevitable imprisonment. Since the beginning of the **eighties**, experiences with these alternative sanctions have been started in the Netherlands both for adults and for juveniles.
In this article, I will deliver a short report on these experiments. Emphasized will be experiments concerning the alternative sanction "**Community Service**" for adults. These experiments are in their final stage. Within a short time the draft based on the results of the experiments will be presented for approval to the parliament. The experiments with alternative sanctions for juveniles, which apart

from the Community Service, also comprise the so-called "**educational projects**" are not finished yet. The already available results and experiences in this matter do not give enough support to reliable conclusions at this moment[19].

2. HISTORY OF THE COMMUNITY SERVICE IN THE NETHERLANDS

In pursuance of England, the Netherlands on **1st February 1981** started an experiment with the purpose to find out whether short- and middle-term imprisonments up to six months could be replaced by the alternative sanction of "Community Service". This sanction contains the possibility for a defendant to spend a certain number of hours without payment and during his spare-time to carry out some activities on behalf of the community. Activities which were considered to be particularly suitable were: maintenance, clean-up, reparation, nursing and domestic work, and neighbourhood-, youth- and clubhouse-activities. They can be carried out in hospitals, museums, youth- and clubhouses, old people's homes, in volunteer organizations or sporting clubs and in other non-profit institutions in a public or private sphere[20].

The experiment was preceded by some other events. In **1969** the **Wiardi Beckman Foundation**, the scientific office of Labour Party (Party van de Arbeid) launched the proposal to test this sanction in practice, as an alternative for the harmful imprisonment.
This proposal was made in a report, titled "**De Vrijheidsstraf**" (the Custodial Penalty)[21]. It did not get a lot of response. In fact, the profound discussion about this new modality of punishment was initiated by a few lawyers from Arnhem. In **1971**, they proposed that three young offenders, who were sentenced because of ill-treatment should carry out activities in a home for old people and an institution for disabled persons, instead of being imprisoned[22]. This led to strong controversies and discussions in the news media and the professional press. This case was submitted seven times to various criminal courts, without getting a final judgement about the permissibility of such an order. Central question in the discussion was if such an order, packed and "cut up" as a special condition in a conditional (prison) sentence could

correspond with the principle of legality (nulla-poena), and with the International Conventions on forced labour. There was much difference of opinion.

With reference to this discussion, the conditional sentence and in particular the "Community Service" were the central themes at the yearly conference of the Dutch Union of Jurists in **1974**[23]. The recommendations of this conference and also the first positive experiences with the Community Service Order in England resulted in the installation of the "**Staatscommissie Alternatieve Strafrechtelijk Sancties**" (State Committee "Alternative Penal Sanctions")[24]. Complementary to the **Committee "Vermogensstraffen"** (Property-Sanctions), which was installed some years before, the new committee got the task to search for possibilities to reduce the number of unconditional custodial sentences by creating more diversification in the penal system. In concreto, the committee had been asked what penal sanctions could possibly be added to the general penal law.
In **1979**, similar questions were put to the committee "**Herziening Strafrecht voor jeugdigen**" (Revision Penal Law for Juveniles)[25].

In the beginning of **1979**, the committee "Alternative Penal Sanctions", also called the "**Committee van Andel**" - after its later chairman - published an interimreport. This was titled "**Dienstverlening**" (Community Service). Many alternative sanctions, that were also tested in foreign countries passed in review. The only alternative that was considered to be viable - though not without scepsis - was the Community Service. Much divergence of opinion, however, existed within the committee about premises and legal framework. Despite the foregoing it was proposed to set up an experiment on a small scale to find out whether a sanction like the community service would be also viable in the Netherlands. It was advised to set up an experiment with two models, namely the so-called "**voluntary**" and "**obligatory**" model. These two models manifested the completely different visions of premises and objections of criminal policy and penal law within the committee.
Central question in the discussion - which concentrated around two professors, namely the "**abolitionist**" Hulsman and the "**traditionalist**" Mulder, was: what had to be understood by the term

"**alternative sanction**"?[26]. According to the "**Diversion Movement**", blown from over the United States, Hulsman argued that this notion had to be understood as: extra-judicial ways of dispatch, which should come instead of a penal sanction. He also interpreted the term "alternative" as: "**Instead of a penal sanction**". In this vision, Community Service is only then acceptable, if no pressure will be put upon the offender by criminal machinery in effecting the Community Service. It should not have any penal consequences if agreements about Community Service, made between offender and probation officer and approved by the public prosecutor, are not fulfilled. Hence, the term "**voluntary model**". In addition to this, the public prosecutor would be **obliged** in some cases to approve of an agreement, as in some cases of a transaction (art. 74a new Penal Code), as a consequence of which the prosecutor will lose the right to prosecute.
On the contrary, the **obligatory** model which had been supported by Mulder and the majority of the committee, accepts the pressure of the penal system as unavoidable and necessary. Not-fulfilling the community service will therefore lead to (further) prosecution and punishment. In this view, the term "alternative sanction" means: a **penalty** of a different kind. As said, the committee decided to propose a compromise: both models should be experimented with. A number of conditions and criteria were drafted, to which the experiments should conform to.

Including some modifications, the recommendations were approved by the Minister of Justice. A "**Preparing Group Experiments Community Service**" (Voorbereidingsgroep Experimenten Dienstverlening) was installed and a date - 1st February **1981** - was fixed to start with the experiments. A circular was sent by the Minister of Justice in which the framework and the criteria of the experiments were put down[27]. A supplementary note of the Preparing-Group appeared in January **1981**[28].

Inspired by the Interimreport "Dienstverlening", the "**Commissie Herziening Strafrecht voor Jeugdigen**" (Committee Revision Penal Law for Juveniles) advised in July **1981** in its interimreport to conduct experiments with alternative sanctions for juveniles, too. Apart from

working-projects like Community Service, this committee also had in mind the so-called **educational projects** in analogy of the British "**Intermediate Treatment Programs**" and the "**Day-Training Centres**"[29]. To prepare and guide these experiments, a working group was installed which reported in July **1982**[30]. This report formed the basis of the experiments for juveniles that started in March 1983. Main difference with the experiments for adults was the fact that application of educational training- and activity projects did not only aim at displacing the short prison sentence. They also can be an alternative for non-custodial sentences, like fines.

The experiments with alternative sanctions for juveniles are also subjected to a study in order to evaluate the results. This study will probably lead to recommendations to the legislation with respect to their implementation in juvenile penal law. The final report of this researchteam and the conclusions and recommendations by the preparing committee are expected soon.
Up to the present, only two interimreports have been published. In my contribution I will therefore restrict myself to the main results of the experiments with Community Service for adults, about which the final research report and the final report of the preparing committee have been presented to the Minister of Justice in June 1984.
However, as far as the Community Service is concerned, it seems that there are no essential differences between the first results and experiences of the Community Service for juveniles and those for adults. However, the educational projects are proceeding very labouriously. The main reason for this is in particular the **reservedness** of the judiciary.

3. THE EXPERIMENTS WITH THE COMMUNITY SERVICE

3.1 The guidelines

Under the guidance of the "**Wetenschappelijk onderzoek- en Documentatiecentrum**" (Scientific Research- and Documentation Centre), the experiment started in February 1981 in **8 selected court-districts**. In August **1983**, the experiment was extended to the other **11 districts**, too[31].

The experiment took place at the basis of a number of **criteria, premises** and **preconditions**, which were formulated by the Minister of Justice and the Preparing Group and which were inserted in ministerial circulars and a note of the Committee[32]. The most important criteria and preconditions of these guidelines are:

1. The **proposal** to carry out Community Service has to be made formally by the defendant. Community Service will generally be excluded if the defendant, his/her lawyer or probation officer do not make any proposal;
2. Community Service is only possible if the defendant **confesses**;
3. Community Service can only be an alternative for an **intended imprisonment** of **six months** or less. Under pressure of practice, this was reduced to **three months** in August 1983;
4. The number of hours amounts to a minimum of **30** and a maximum of **150**;
5. Community Service may not interfere with **religious** and **political liberty**;
6. Community Service can only be imposed with **consent** of the involved person;
7. Activities may **neither be payed** nor be carried out in a **commercial** way;
8. In principle, no categories of offences or offenders will be **excluded**. This means for example that this sanction can also be imposed on **recidivists**;
9. The organization and coordination of community service belong to the working-area of the **probation service**. Concrete tasks of the probation service are: recruitment of projects, formulation of community service-proposals which are generally related to a social inquiry report, supervision of the Community Service worker and provision of the final report to the judiciary;
10. The Community Service worker has to be **insured** by probation service against accidents and legal responsibility.

Different to Great Britain, no particular **legal adjustment** was created for Community Service. According to the guidelines the experiments had to be set up within existing legal framework. The following **modalities of application** were mentioned in the ministerial guidelines: 1. unconditional dismissal (the Hulsman modality),

2. conditional dismissal, 3. conditional suspension of the decision to prosecute, 4. deferment of sentence, 5. conditional suspension of pretrial detention.
In August **1983** were added: the conditional sentence and free pardon.
In case of all these modalities, Community Service is moulded into the form of a special condition. Fulfilment of the Community Service has not always the same consequences. They depend on the chosen modality. In case of a conditional dismissal, a conditional sentence or a conditional free pardon, the case is closed definitely, so that the involved person knows where he stands. In case of a conditional suspension of pretrial detention and deferment of sentence, a further prosecution and conviction will follow, but this may not lead to an unconditional imprisonment.

3.2 First experiences

Guidelines and lack of uniformity in the way of application have been criticized strongly in literature. Next to that, many **practical** and **legal problems** occurred in this experimental phase. Those problems have to be ascribed to the plan, structure and introduction of the experiment[33].
But measured by the number of imposed Community Services during the last 4 1/2 years, the experiment can surely be regarded as a **success**. In August **1983**, the Minister of Justice not unjustifiably stated that our penal system can no longer be imagined without this kind of arrangement, which should be considered as one of the major innovations of our penal system in the last decades[34].
About 7.000 Community Services had been imposed during the period from February 1981 to August 1985. The number is still increasing every year. In 1985 it will amount to about 3.000. Therefore, it does not seem improbable that the government's tendency to extend the number of cases to 4.000 a year will be realized[35]. In case of extension of the available capacity (particularly in personal sphere), the national union of probation and aftercare organizations is even thinking about a realizable number of 6.000[36].

The first period of the experiment has been evaluated extensively by the Scientific Research and Documentation Centre of the Ministry

of Justice[37]. The application of Community Service has been followed closely by various authors[38]. In outline, these publications are giving the following image[39]: The average number of hours of Community Service projects is about 100 hours, which corresponds with one to two months of imprisonment. More than **90 %** of the Community Services were carried out in accordance with the agreement. Half of the failures have to be ascribed to predominant situations, like illness, family circumstances, etc.. In most of these, a solution could be found to avoid an imprisonment as a reaction for not having completed the total number of hours.
Other reasons for not having fulfilled the Community Service were: renewed problems with judicial authorities or refusal of work. Although, according to the guidelines, no offences are excluded on principle, it appears that Community Service scores frequently in case of crimes, concerning **property** (nearly 50 %), in particular the plain and qualified theft, burglary, fraud and forgery. Second in rank are **traffic offences** (about 25 %), taking into account especially drunken driving and leaving the scene after an accident. Nearly 9 % of the Community Service concerns aggressive crimes against persons and goods, like **vandalism. Sexual** and **drug** offences are scoring relatively low (3 %).

It appears that Community Service is especially imposed on young adults (18-20 years old). For this group, the so-called **prosecutor's model** was particularly applied.
In more than half of the cases, the Community Service workers were even convicted previously once or twice, and were tried because of more than one crime. It is remarkable that over 63 % of the Community Service workers were **unemployed** and generally had received less education. The greater part of the Community Service offenders is living on the dole.
After investigation of the experiences of the Community Service workers, it appeared that, regarding the character of the Community Service, the sanction has been undergone not as a form of social aid, but as a real, sometimes **heavy penalty**, about which the offenders were generally very positive.

Different from what was thought when the experience started, sufficient institutions were willing to participate in the experiment.

Apart from that, this will not take away that recruitment of projects and creating a long term relationship with these project-places put a lot of pressure on the capacity of probation-services in particular. Different from for instance Great-Britain and France, authorities hardly gave extra financial and personal support to the disposal of the experiment in order to give them a firm organizational basis. This was an important **bottle-neck**. Thanks to the extra support of probation officers as well as a large number of volunteers, it was succeeded to create a practicable organizational framework. However, the consequence of this was, for example, that in each district an **infrastructure of their own** had been built up with their special traits and pecualiarities. Obviously, it will be a difficult task to bring back the required streamlining and uniformity within and between the nineteen court-districts.

In more than 40 % of the cases, the character of Community Service activities concerned **maintenance, reparation** and **painting**. These activities had generally been carried out on behalf of neighbourhood centres, clubhouses, institutions for youth activities and sportclubs. In about 50 % of the cases Community Service has been carried out during **normal working-hours**. For obvious reasons this generally concerned offenders who were unemployed.

Although there are many differences in working-methods between the various districts, the practice of Community Service is proceeding mainly as follows:
A client will be informed about the possibilities of Community Service in a stage as early as possible. This is done by the police or a probation officer immediately after the defendant is taken into custody, or in a later stage when probation service is asked for a **social inquiry report**. Sometimes the initiative is taken by the lawyer. Together with the client the possibility for Community Service is discussed. If he agrees to this idea, there will be looked for an appropriate project. In many cases the probation officer or the lawyer will contact the prosecutor to inform about the penalty he has in mind. He will also inquire whether the prosecutor would oppose a possible proposal to the judge, because a number of

judges will accept Community Service only if the public prosecutor does not have any objections. According to the guidelines, a proposal can only be made if there are clear indications that prosecutor and judge will demand, respectively impose an unconditional imprisonment. This is also the usual situation. But, that does not alter the fact that if Community Service is preferred to a **conditional sentence** or a (heavy) **fine**, sometimes a proposal will be made and will often be honoured. In even fewer cases the proposal will be made directly to the prosecutor. In the beginning of the experiments about 50 % of Community Services were imposed by the **public prosecutor** and another 50 % by the **judge**. Two years later those proportions were respectively 20 % and 80 %.
This means that the so-called prosecutor-model is falling into the background more and more because of the serious objections to this form of extra-judicial dispatch. These objections are not only made by probation officers, lawyers and academic writers, but also by judicial authorities[40].

At court sessions an elaborated and detailed proposal will be presented to the judge; generally, it contains an agreement which had to be signed by the offender, probation-officer and project institution. The activities that have to be carried out, the feasible starting-date, the arrangements about supervision and final report, points of time that activities can be carried out and other relevant data are all mentioned in this agreement. The concrete number of hours is mostly not filled in, because probation officers and lawyers become more and more aware that this has to remain an exclusive task of the judge.

If a judicial authority - generally the judge - accepts the proposal, this will be taken up as a part of the sentence. Waiting for a special legal arrangement, practice has been showing a certain preference for the construction of a **conditional sentence**, by which Community Service is imposed as a particular condition with reference to the contract plus possible additions. The modality "**deferment of sentence**" has been applied - albeit less frequently.
The **supervision** during the project is usually entirely up to a member of the staff of the project institution. Whenever it is

required, there will be contact with the project coordinator within probation service or the concerned probation officer. Minor problems are solved along this way.
Afterwards, a report has to be sent to the judicial authorities, even when the project has ended positively. How and by whom this has to be done depends on what has been arranged by prosecutor or by judge in that respect. The task to report is generally instructed to probation service. It also happens that the community service worker himself or herself (5 % are women) is held responsible for the report. A combination is not unusual.

In some districts, this task is refused by probation service, because it neither wants to be involved in the execution of penalties, nor in supervising them, which is regarded as a task of the judicial authorities[41)].
If Community Service passed properly, the question whether the case is closed or not depends on the applied modality. If Community Service fails, then the consequences are on account of the involved person. The consequences are usually known previously to him or her: revocation of the suspended pretrial detention or conditional dismissal, execution of the imposed conditional imprisonment or, in case of deferment of sentence, re-opening of the case and being sentenced to an unconditional imprisonment. Judicial authorities can decide arbitrary whether the hours that possibly have been carried out properly have to be taken into account.

3.3 Problems that arose during the experiment

The experiment did not pass without problems, even though it can be regarded as a success in many respects.
One of the most important shortages was the circumstance that - unlike some other countries - no adequate legal structure was underlying the experiment. Within the existing legal framework of the Penal Code and in particular the Code of Criminal Procedure, the Community Service was and stayed a "**corpus alienum**". In a number of cases, the modalities and preconditions that were put down in the guidelines appeared not to be in tune - or only in an artificial way - with this new sanction. In addition to that can be

observed that the circulars and the guidelines did not have a coercive character, certainly not to judiciary. Therefore, a large number of application forms and rules were developed in practice, which had a lot of consequences for the basic principles in penal law, like: equality of rights, legal security, fair trial, presumptio innocentiae, nulla poena. Also the legal status of the defendant was at stake[42].

This large number of unofficial modalities and ways of application caused a considerable lack of uniformity and consistency in Community Service practice between and within the various districts. In practice, this led to a lot of unclarity and errors. For example, in more than 10 % of the Community Services the number of working-hours **amounted** to more than the prescribed **150**. Equally, judiciary did not accept for the greater part the ratio of 150 hours as a real alternative for six months of imprisonment. Hence, in August **1983** this number was reduced to **three months**. An essential role in many problems played the character of the Community Service, which was unclear from the beginning. Sometimes the sanction was typified as a kind of **social aid**, another time it was recognized as a **penalty**, heavier than a fine or a conditional imprisonment. By some judicial authorities this sanction is regarded as a **favour**, the offer of a last chance, while others are regarding it as one to which nearly every offender is **entitled**.

Frequently the question was put whether the application of Community Service had to stay confined to the field of the unconditional imprisonments or under circumstances it could serve as a desirable and useful alternative to other severe penalties, like (high) fines, conditional imprisonment, subsidiary detention or withdrawals of driving-licences[43]. Despite all guidelines and official reports, the Community Service has, roughly estimated, been applied as an **alternative to non-custodial penalties** in more than 10 % of all cases[44].

The offenders, who were **unemployed** - the biggest group among the Community Service workers by far - caused some particular problems. The greater majority of these is dependent on a social security payment. These payments have their basis in various laws and regulations, that are not always in conformity with each other.

The social security institutions are usually autonomous in making their decisions. Numerous times the question arose whether a social payment was in accordance with the Community Service. Social security institutions often take the position that costs of living during the execution of the Community Service have to be at the expense of the Ministry of Justice, like in the case of imprisonment, for which this sanction is an alternative. Projects that have to be carried out during normal working-hours are often rejected. However, more projects can be found to be carried out by day than by night or in the weekends. Because of the competing character with paid jobs, some projects are also rejected.

Another kind of problem occurs from the question whether it is allowed that not having a paid job acts as an **aggravating** circumstance. In some districts it is practice to impose more hours in similar cases on people who are unemployed than on people who have an employment. The maximum of the imposed number of hours amounts to 624. This general policy of some courts to impose a higher penalty to people who are unemployed is a very controversial topic in literature. It has been pointed out that this category already has a raised chance for imprisonment because in many cases a fine cannot be imposed. They also have an increased chance to come into touch with the law[45)].

The problem of **equality of rights** has been playing a role also in discussing the question how many hours of Community Service have to be regarded as the equivalent for an x-number of days, weeks or months of imprisonment. A fixed **tariff-system** like in case of fines and subsidiary-detention does not exist. Practice is showing a very whimsical image. This also goes for the question if any Community Service, which has been carried out properly, has to be taken into account and to what extent? In spite of advices from a lot of judicial authors and the National Union of Probation and After-Care Organizations, no arrangement was developed.

When the experiment started, it was stated explicitly that Community Service was not allowed to traverse the interests of the **victims**. However, the conclusion can be drawn that these interests

were hardly taken into account. Hardly a Community Service was combined with an obligation to settle the damage with the victim or was Community Service a part of a concrete restitution or reparation programme towards the victim. An exception has to be made for some cases where the damaged party was not a natural person, like the railway company and bus and tram companies. The victim was informed only in a few cases about the intended Community Service. Research in foreign countries has shown that initiatives like Community Service will go to pieces on long term if enough social basis is lacking. This will also happen to other alternatives which often are being regarded as "**soft options**". It does not seem a risk to state that this social basis lacks if the **concrete** conflict-regulation, in particular the settlement of damage with the victim will not be taken into account seriously, next to the Community Service as an **abstract** conflict solution and reparation ("Wiedergutmachung") to society.

4. THE FINAL REPORT OF THE PREPARING COMMITTEE

In the middle of 1984 the final report of the Preparing Committee appeared. This was mainly based on the experiences that were obtained during the experimental period. The advice of the Committee is to give the Community Service a fixed place in the Dutch sanction system and to turn to a legal arrangement at this sanction. According to the Committee, the starting-point has to be such that Community Service will be regarded as a **main penalty** in the sense of article 9 of the Penal Code, next to **imprisonment**, **custody** and **fine**. This penalty can be imposed only, if the offender agrees. Community Service can only be applied if the prosecutor or the judge intend an unconditional imprisonment with a maximum of six months. In order to guarantee that Community Service could be regarded as a real alternative to six months of unconditional imprisonment the maximum number of hours has to be raised to **240**. The condition that the involved person had to confess in order to get accepted for this sanction will be lapsed. But in the view of the committee the possibility that this sanction can be imposed by prosecutor in the pre-trial stage has to remain. The committee therefore proposes to insert the Community Service also under the

conditions the prosecutor can make under article 74, paragraph 2 Penal Law, that regulates the so-called "**transaction**" with the public prosecutor.
The **voluntary model** of Hulsman, based on the ideas of the "**diversion-movement**", was not adopted. In practice this model appeared not to have any viability.

The proposals of the committee particularly met critique upon two points. The authors are practically unanimous about the conception that the legislator should not comply with the **transaction modality.** Objections in case of transaction by means of Community Service are still stronger than objections in case of transaction by means of property sanction. Those objections have been put forward against extension of this power of the public prosecutor in the "**Property Sanctions Law**" of 1983[46]. Secondly, opinions are divided about the possibility and/or desirability to employ Community Service as an alternative to custodial penalties exclusively. It does hardly give any guarantees that it will really replace the imprisonment. This was an important argument for (the board of) the "**Coornhertliga**", a national union of critical criminologists, penal jurists and former inmates, which is dedicated to the reform of penal law, to reject implementation of Community Service in the Penal Code[47]. Others are pointing out to the peculiar characteristics of the Community Service as a **sanction in its own right**, which make it a useful alternative in certain circumstances, like for example to a high fine or subsidiary detention[48]. The risk of inversion (net-widening) and more repression from penal system is regarded as nearly nil, because Community Service always demands approval of the defendant.

It can be expected that the bill "Community Service" which is in preparation by now, will almost integrally adopt the proposals of the Committee. With one main exception, I think: In all probability the transaction modality will be excluded, because it is doubtful that this can rely on sufficient adhesion. The conclusion can be drawn that the Community Service in the Netherlands also seems to be a viable penal sanction. However, to what extent this new penalty can contribute to the aimed reduction of short prison

sentences on the long term, remains questionable. The intended and already by parliament accepted plans to increase the prison capacity with more than **1.000 new cells** are an evil omen in this respect.

NOTES

1) Jaarverslag van het Openbaar Ministerie: Justitiebegroting 1985-1986, Kamerstuk 19200, Hoofdstuk VI, nr. 3, pp. 127.

2) Steenhuis, D.W., Tigges, C.C.M., Essers, J.J.A.: Het Strafklimaat in Nederland, zonnig of bewolkt? Justitiële Verkenningen 1982, nr. 2, pp. 5.

3) Jaarsverslag van het Openbaar Ministerie: op.cit. (note 1), tables 6.1a, 6.2, 6.3.

4) Samenleving en criminaliteit, een beleidsplan voor de komende jaren, 's-Gravenhage 1985, a.o., pp. 45, p. 40, p. 146.

5) Ministerie van Justitie: De prijs van het gevangeniswezen hier en elders, 's-Gravenhage 1984.

6) Staatsblad 400; see about this pardonment: van Veen, Th.W.: Voorwaandelijke gratie, Eenmaal of andermaal, Delikt en Delinkwent 6 (1980), pp. 34.

7) The latest information is given by the report: Structuurplan en penitentiaire capaciteit, 's-Gravenhage 1985.

8) Cfr. Samenleving en criminaliteit, op.cit. (note 4), passim.

9) Realized in the "Wet Vermogenssancties" Staatsblad 1983, nr. 153. For a critical comment on this law see: Groenhuysen, M.S., van Kalmthout, A.M.: De wet vermogenssancties en de kwaliteit van de rechtsbedeling, Delikt en Delinkwent 13 (1983), pp. 8; de Jong, D.-H.: De afdoening van strafzaken buiten proces, praeadvies voor de vereniging voor de vergelijkende studie van het recht van Belgie en Nederland. 's-Gravenhage 1985; van Veen, Th.W.: Het nieuwe artikel 74 SR, een aardverschuiving, Delikt en Delinkwent 13 (1983), pp. 39.

10) Bill nr. 18764. For a comment on this bill see: Knigge, G.: De voorwaardelijke veroordeling opnieuw geregeld (wetsontwerp 18764), Delikt en Delinkwent 15 (1985), pp. 626.

11) Bill nr. 18764. for a comment on this bill see: Knigge, G.: De vervroegde invrijheidstelling: enige opmerkingen met betrekking to wetsontwerp 18764, Delikt en Delinkwent 15 (1985), pp. 385.

12) Law proposal nr. 11932. For a comment on this bill see: Hoffmans, Ch.: Ter beschikking gesteld, serie procescahiers, deel 2, Arnhem 1985 and idem, het wetsontwerp TBR in herziening, Delikt en Delinkwent 13 (1983), pp. 664.

13) Abolished by law of 6.5.1971, Staatsblad 291.

14) Abolished by law of 8.4.1971, Staatsblad 212.

15) Abolished by law of 25.3.1978, Staatsblad 155.

16) Bill nr. 18202.

17) "Wet afbreking zwangerschap" of 1.5.1981, Staatsblad 257.

18) Law of 12.5.1928, Staatsblad 167, as revised by law of 23.6.1929, Staatsblad 377 en 424; of 10.5.1978, Staatsblad 251 and of 10.3.1984, Staatsblad 291.

19) These experiments were based on the reports: "Alternatieve sancties voor strafrechtelijk minderjarigen", Interimadvies van de Commissie herziening Strafrecht voor Jeugdigen, Den Haag 1981 and "Werkgroep Experimenten Alternatieve Sancties Jeugdigen, Voorlopig raamwerk van uitgangspunten en richtlijnen voor experimenten met alternatieve sancties voor strafrechtelijk minderjarigen. Den Haag, July 1982.
For the first results and experiences see: Coördinatiecommissie wetenschappelijk onderzoek kinderbescherming, Alternatieve sancties voor jeugdigen: meningen en verwachtingen, 1. rapport. Den Haag, June 1983; Organisatie en uitvoering, 2. rapport, Den Haag 1985.

20) For a general survey of the Community Service and its application see: van Kalmthout, A.M.: Dienstverlening (werkstraf), Vademecum Strafzaken, Hoofdstuk 24, Arnhem 1982 ff. and Singer-Dekker, H.: Dienstverlening, Monografieën Strafrecht deel 4, Arnhem 1985.

21) Amsterdam, August 1969.

22) See about this famous case: Oomen, C.P.C.M.: "Werken" in plaats van "zitten", een gewenste nieuwe ontwikkeling in de strafrechtspraak?, NJB 1972, pp. 257; Wennekers, N., Quint, H., van Kalmthout, A.M.: Wie niet zitten wil, mag ook niet werken, Ars Aequi XXII, 3 (1973), pp. 115; van Kalmthout, A.M., Quint, M.: Met het systeemperspectief blijven we altijd zitten, Ars Aequi XXIII, 5 (1974), pp. 295.

23) See Mulder, S.E., Schootstra, H.: De voorwaardelijke veroordeling, in: Handelingen NJV, praeadvies 1974, p. 1-90 en: Beraadslagingen van 22 juni 1974, Handelingen NJW, deel II, p. 50-72.

24) Decision made by the Minister of Justice dd. 13 september 1974, Staatscourant 17 september 1974, nr. 180.

25) This committee was installed by decision of the Minister of Justice d.d. 27.6.1979.

26) See their contributions to the interimreport on respectively pp. 35 and pp. 50.

27) Ministerie van Justitie: Cfr. Circulare of 10.11.1980, Hoofdafdeling Staats- en Strafrecht, nr. 852/280.

28) Cfr. Voorbereidingsgroep Experimenten Dienstverlening, Aandachtspunten voor de experimenten met dienstverlening, Den Haag 1981.

29) See Alternatieve sancties voor strafrechtelijk minderjazigen, Interimadvies van de Commissie herziening strafrecht voor jeugdigen, 's-Gravenhage 1981.

30) Cfr. Voorlogig raamwerk van uitgangspunten en richtlijnen voor experimenten met alternatieve sancties voor strafrechtelijk minderjarigen, juli 1982. This provisional framework has been changed radically in April 1985.

31) See Minister of Justice: Circulaire van 11.8.1983, Hoofdafdeling Staats- en Strafrecht, nr. 695/283.

32) Cfr. the Note of the Preparing Group "Aandachtspunten voor de experimenten met dienstverlening ten behoeve van de reclasseringsraad, de reclassering, de staande en zittende magistratuur, de balie, de politie en de werkprojecten, januari 1981".

33) These bottlenecks have been described among others by: de Beer, A.P.G., van Kalmthout, A.M.: Dienstverlening, ook veel zwaluwen maken nog geen zomer 1, Delikt en Delinkwent 12 (1982), pp. 458 and II, Delikt en Delinkwent 12 (1982), pp. 586 and Singer-Dekker, H.: Dienstverlening, op.cit. (note 20), passim.

34) Minister of Justice: Circular d.d. 11.8.1983, Hoofdafdeling Staats- en Strafrecht, nr. 695/283.

35) Samenleving en criminaliteit, op.cit. (note 4), pp. 93-94, p. 101.

36) Cfr. the Notes "Anders Afdoen" I and II and the Press Report "Reclassering acht 6.000 dienstverleningen per jaar haalbaar" d.d. 20.6.1984.

37) The Research Center of the Ministry of Justice published four interimreports. The final report, that contains a summary of these interimreports too, appeared in June 1984.

38) More references to literature are given by Singer-Dekker, H.: Dienstverlening op.cit. (note 20), pp. 209; the special number called "Dienstverlening" of Justitiële Verkenningen nr. 6, August 1984 and the special number of Proces, nr. 4, April 1985.

39) For more specific statistical information see the tables in appendix 1.

40) Cfr. among others: van Kalmthout, A.M.: Het wettelijk kader van de dienstverlening. Thema nummer Justitiële Verkenningen, op.cit., pp. 106.; Schaffmeister, D.: Politiele en justitiële delicten, Praeadvies voor de NJV 1984, pp. 247; de Jong, D.H.: Rechtsbescherming in een beslissende fase, Arnhem 1985, pp. 23

and van Veen, Th.W.: De plaats van de dienstverlening in het strafrecht, in: Recht op Scherp, Zwolle 1984, pp. 233.

41) Cfr. Houter, G., van Haaren, Th.: De rol van de reclassering. Proces 1985, nr. 4, pp. 127.

42) See particularly the following court decisions: Nederlandse Jurisprudentie (NJ) 1982, 639; NJ 1983, 678; NJ 1984, 9; NJ 1984, 10; NJ 1984, 15; NJ 1984, 381, NJ 1984, 391; NJ 1985, 316; Nederlands Juristenblad 1985, p. 428.

43) Bol, M.W.: Dienstverlening, een nieuwe wending in het strafrecht, op.cit. pp. 28; Cremers, P.-H.: Erfahrungen mit der gemeinnützigen Arbeit im Sanktionensystem der Niederlande, Bewährungshilfe 1985, nr. 2, p. 137.

44) Cfr. van Kalmthout, A.M.: Het wettelijk kader voor de dienstverlening, op.cit. p. 86.

45) Cfr. among others: Bol, M.W.: Dienstverlening, een nieuwe wending in het Strafrecht, op.cit. pp. 35 and de Beer, A.P.G., van Kalmthout, A.M.: Dienstverlening, ook veel zwaluwen maken nog geen zomer, op.cit. (note 33), pp. 562.

46) See the references in note 40, as also Groenhuysen, M.S., van Kalmthout, A.M.: De wet vermogensancties en de kwaliteit van de rechtsbedeling, Delikt en Delinkwent 13 (1983), pp. 8 and idem: Transactie en voorwaardelijk sepot: Lood om ond zer? Delikt en Delinkwent 14 (1984), pp. 474; Fokkens, J.W.: Enkele kanttekeningen bij de wet vermogenssancties, Proces 1983, pp. 208.

47) Cfr. de Jonge, G.: Dienstverlening: een strafrechtelijk schijnsucces, NJB 1985, pp. 305.

48) See among others: Mulder, G., in the interimreport "Dienstverlening" p. 58 and 60; and idem: Verklaren voor recht, in: om het Recht, Arnhem 1984, pp. 197-198; Boll, M.: Dienstverlening, op.cit., pp. 28; van Kalmthout, A.M.: Het wettelijk kader voor de dienstverlening, op.cit., pp. 84.

APPENDIX 1

RESULTS OF CRIMINOLOGICAL RESEARCH ON COMMUNITY SERVICE IN THE NETHERLANDS

1. INTRODUCTION

In this appendix some statistical results of a piece of research concerning the Community Service in the court-district of Breda are presented. This district was one of the eight areas, where Community Service was implemented on an experimental basis. The results that will be presented here are not a complete output of the research, but just a part of it[1]. Here it is the objective to give some results of the first two years of the experiment in Breda, compared with the results of the research done by the Research Center of the Ministry of Justice (WODC)[2]. This research contains all eight experimental court-districts. The study about the application of the Community Service is done in the court-district of Breda in particular because the experiment in Breda has been developed most prosperously of all eight experimental districts: + 25 % of the Community Service arrangements, analyzed by WODC were produced by this district.

The WODC-research covered the period 1/2/1981 till 31/5/1982. The Breda-research concerned the period 1/2/1981 till 31/12/1983.

The research period has been longer because especially the second half of 1982 a certain general policy and infrastructure has been developed in respect to Community Service. Both studies contain Community Service proposals formulated and presented to the judicial authorities during these periods.

The WODC-research concerned 631 proposals. In the Breda-study **494** Community Service proposals were analyzed. The cases can be divided in proposals which were **accepted** or **refused** by judiciary. The division is as follows in both researches:

Table 1:

	BREDA		WODC	
	f	%	f	%
accepted	312	63,1	453	71,8
refused	182	36,9	178	28,2
total	494	100,0	631	100,0

Conclusion: There exists a **difference** in the proportion accepted/ refused Community Service proposals between the two studies. This difference can be explained by a different definition of the term "proposal". The WODC-research understands by this term a written, detailed plan. The Breda—study counts to the proposals the not detailed offers to the judiciary, too. Two other possible reasons for the difference mentioned above are the various research-periods and research-areas.

In paragraph 2 the accepted proposals will be presented. In paragraph 3 the refused proposals will be described.

2. THE ACCEPTED COMMUNITY SERVICE PROPOSALS

2.1 Sex

Table 2:

	BREDA		WODC	
	f	%	f	%
male	296	94,9	not	93,4
female	16	5,1	pub-	4,6
unknown	0	0,0	lished	2,0
total	312	100,0		100,0

Conclusion: There is **no significant difference** between both studies.

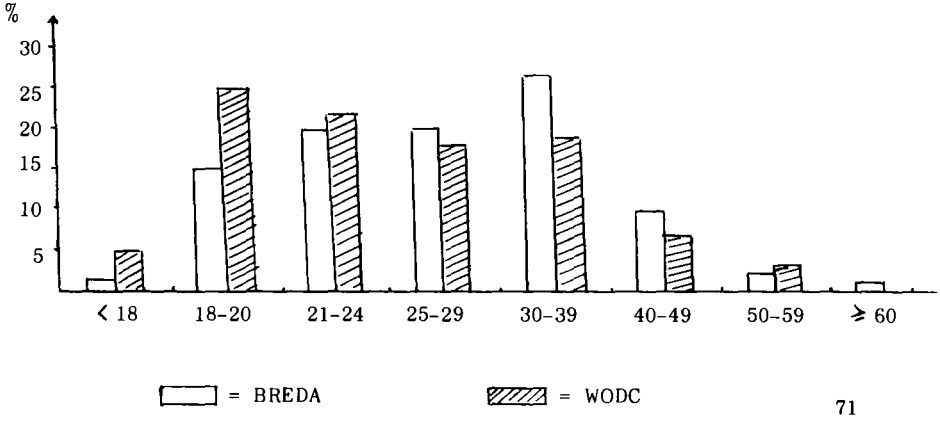
2.2 Age

Table 3:

	BREDA		WODC	
	f	%	f	%
< 18 years	2	0,6		5,2
18-20 years	49	15,8		25,3
21-24 years	64	20,6	not	22,4
25-29 years	64	20,6	pub-	17,5
30-39 years	84	27,1	lished	19,3
40-49 years	32	10,3		7,2
50-59 years	9	2,9		3,1
≥ 60 years	6	1,9		
unknown	2	mis-sing		
total	312	100,0		100,0

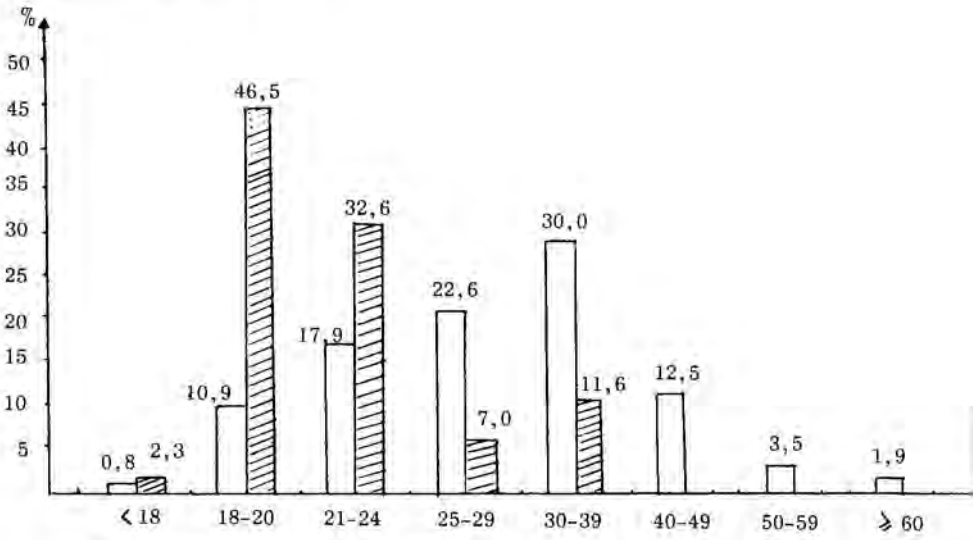
Those results in a diagram:

Diagram 1:



Conclusion: There appears to be a **significant difference** between both results. The WODC-research shows a younger population community service workers as in the Breda-research. Most community service workers, according to the WODC-research, are 18 to 20 years old. According to the Breda results, most community service workers are 30 to 39 years old (the average age is 30,0 years).

Anticipating 2.5 models and modalities: all accepted proposals are divided into four models (prosecutor; pretrial detention; judge and pardon). As far as the average age of the community service workers is concerned, there seems to be a **significant difference** between the Community Services, imposed by a prosecutor and those, imposed by a judge.



Conclusion: The **differences** in the age distribution are **obvious** when comparing the **prosecutor**-model and the **judge**-model. The community service workers whose Community Service sentence was imposed by a prosecutor are young: most of them are 18 to 20 years old. A possible explanation for this is the relation between the Community

Service experiment for adults and the experimental alternative sanctions for juveniles. In the experiment for juveniles, the most used model is the prosecutor model.

2.3 Is the community service worker employed?

Table 4:

	BREDA		WODC	
	f	%	f	%
employed				37,3
full time	102	33,3	not	
part time	10	3,3	pub-	
unemployed	194	63,4	lished	62,7
unknown	6	mis-sing		
total	312	100,0		100,0

Conclusion: The results of both studies are the same. About 63 % of all community service workers are **unemployed**. The statistic of Breda is more detailed concerning the employed community service workers: 33 % are employed full time and 3,3 % part time.

2.4 Offences

Table 5:

	BREDA		WODC	
	f	%	f	%
property crime	104	33,3		47,5
aggression:				8,8
against property	10	3,2	not	
against persons	12	3,9	pub-	
offence against morality	2	0,6	lished	0,7
traffic offence	127	40,7		23,4
drug offence	2	0,6		2,4
fire arms offence	10	3,2		3,1
economic offence	0	-		-
combinations	45	14,4		12,1
unknown	0	missing		2
total	312	100,0		100,0

Conclusion: Most offences are **property crimes** and **traffic offences**. Both studies display the same distribution. The difference is, that the WODC-research counts more property crimes than traffic offences. The Breda-study shows up with more traffic offences than property crimes.

2.5 Models and modalities

The **legal framework** exists in four models in which Community Service can be imposed:

1. prosecutor model
2. pretrial detention model
3. judge model
4. pardon model.

The two most important, most applied models are the prosecutor and the judge model. The WODC-research taught us that there was a change in preference from the prosecutor to the judge model. In January 1982 about 50 % of the Community Services were imposed by a prosecutor, about 50 % by a judge. In May 1982 **70 %** of the Community Services were imposed by the **judge** and about **30 %** by the **prosecutor**. One year later the proportion was **81 %** versus **19 %**. At the end of 1983, Breda was giving almost the same image.

Table 6:

	BREDA	
	f	%
prosecutor model	43	14,0
pretrial detention model	4	1,3
judge model	257	83,7
pardon model	3	1,0
unknown	5	missing
total	312	100,0

Looking at the modalities we see, according to the results of the WODC-study, that the most used modalities were[3)]

1. deferment of sentence (judge model)
2. conditional dismissal (prosecutor model).

Table 7: Prosecutor modalities (WODC)

	f	%
unconditional dismissal		14
conditional dismissal	not	30,0
conditional dismissal with community service as one of the conditions	published	23,8
rest		15,4
unknown		16,8
total		100,0

Table 8: Judge modalities (WODC)

	f	%
deferment of sentence	267	87,8
conditional sentence	27	8,9
rest	5	1,65
unknown	5	1,65
total	304	100,0

Conclusion: According to the WODC-results, the most applied **judge modality** was **deferment of sentence.** Hereby we must take into account that the modality conditional sentence was introduced officially in August 1983. This means after the WODC-research period.

The modalities which were applied in Breda were:

Table 9: BREDA

	f	%
unconditional dismissal	10	3,2
conditional dismissal	4	1,3
suspension of the decision not to prosecute	11	3,5
conditional sentence	145	46,6
deferment of sentence	97	31,2
rest	44	14,2
unknown	1	missing
total	312	100,0

Conclusion: The most applied modality in Breda was the **conditional sentence**, which was introduced by the Ministry of Justice on August 11th 1983. Before, this modality had already been applied in Breda. Although, in the beginning of the experiment, the modality deferment of sentence was often applied. But because of some juridical reasons like the legal position of the accused and the prosecutor's right to appeal, which are both less guaranteed in the modality of deferment of sentence, the conditional sentence became more and more the favourite.

2.6 The kind of community service work

First, it must be said that the questionnaires of both the Breda and the WODC-studies were not the same. The WODC-research has a separate category for the combinations. The Breda-study does not have this separate category.

As the next table is showing, the conclusion of both studies is that most Community Service activities consisted of **painting, repairing** and **maintenance**.

Table 10:

	BREDA		WODC	
	f	%	f	%
woods- and garden-work	41	11,0		12,1
painting, repairing and maintenance	235	63,0	not	40,2
administrative work	9	2,4	pub-	4,6
domestic work	52	14,0	lished	14,3
youth work	17	4,5		1,5
nursing	7	1,9		3,5
combinations	-	-		17,2
other work	12	3,2		3,8
unknown	-	missing		2,7
total	373	100,0		100,0

2.7 Number of hours

Table 11:

	BREDA		WODC	
	f	%	f	%
≤ 30 hours	6	1,9		7,7
31-60 hours	110	35,5		30,0
61-90 hours	64	20,6	not	17,9
91-120 hours	61	19,8	pub-	19,0
121-150 hours	67	21,6	lished	14,3
151-300 hours	2	0,6		4,9
> 300 hours	0	0		2,6
unknown	2	mis-sing		3,5
total	312	100,0		100,0

Conclusion: The results show that most Community Services comprised **31** to **60** hours. During the experiment the official maximum was fixed at **150** hours. In Breda, in 0,6 % of the cases this level was overstepped. The WODC-research reports a percentage of 7,5 %.

With exception of Breda, the number of the Community Services that comprised less than the fixed minimum of 30 hours is considerable. One of the most interesting outcomes of the WODC-research is that neither exmployment, nor the nature of the offence preceding Community Service were related to success or failure, but only the number of hours imposed. Relatively, more Community Services of more than 150 hours or less than 30 hours failed, than when the number of hours was determined according to the guidelines (= 30 to 150 hours).

3. REFUSED COMMUNITY SERVICE PROPOSALS

3.1 Introduction

Two remarks have to be made about this part of the appendix. The first concerns the plan of my research. A difference was made between a **first** and a **second refusal**. Altogether 182 Community Service proposals have been refused. 27 of the offenders whose proposals were refused in the first instance tried a second time to get an acceptance but were refused again. Those 27 proposals refused for the second time were not analyzed separately in the following tables.

The second remark concerns the WODC-study. In paragraph 1 of this appendix (introduction) table 1 mentioned a number of 178 refused proposals. But for the analysis of the refusals the WODC gathered only information about 85 of them. So, the percentages of the WODC statistics concern only those 85 cases. An exception must be made in respect to table 12 which comprises information concerning 157 refusals. This information was obtained by interviewing the judicial authorities. The analysis of the refusals in Breda (table 12) was based upon the files only.

3.2 Possible reasons why the proposal was refused

Table 12:

	BREDA		WODC	
	f	%	f	%
too serious because of the fact	30	19,7		41,0
too serious because of the fact and the person	-	-	not published	14,0
too serious because of the person	3	2,0		-
an unconditional sentence is not expected	49	32,2		29,0
offence will not be prosecuted	9	5,9		-
other reason	61	40,2		not publis.
unknown	30	missing		not publis.
total	182	100,0	178	100,0

Conclusion: The two most raised arguments to refuse were the **seriousness** of the fact and the appointment that an **unconditional sentence** is **not expected**.

3.3 Age

Table 13:

	BREDA		WODC	
	f	%	f	%
< 18 years	2	1,3		2,4
18-20 years	19	11,7		29,4
21-24 years	33	20,2	not	20,0
25-29 years	29	17,8	pub-	20,0
30-39 years	48	29,4	lished	15,3
40-49 years	20	12,3		4,7
50-59 years	9	5,5		1,2
> 60 years	3	1,8		0
unknown	19	mis-sing		7,1
total	182	100,0	85	100,0

Conclusion: The most refused proposals in Breda concern offenders being 30 till 39 years old. In the WODC-research this concerns the group of offenders between 18 and 20 years.

3.4 Were the offenders, whose proposals were refused, employed?

Table 14:

	BREDA		WODC	
	f	%	f	%
employed				± 33
full time	67	37,6	not	
part time	1	0,6	pub-	
unemployed	110	61,8	lished	± 67
unknown	4	mis-sing		-
total	182	100,0	85	100,0

Conclusion: The results of the Breda- and the WODC-research are nearly the same. Most offenders whose proposals were refused were unemployed. The percentage of those is not significantly different from the percentage of the unemployed offenders whose proposals were accepted.

3.5 Offences

Table 15:

	BREDA		WODC	
	f	%	f	%
property crimes	89	40,1		70,6
aggression:				9,4
against property	16	7,2	not	
against persons	27	12,2	pub-	
offence against mora-			lished	
lity and drug offence	16	7,2		5,9
traffic offence	62	27,9		7,1
fire arms offence	6	2,7		-
economic offence	0	0		-
other offences	6	2,7		3,5
unknown	0	-		3,5
total	222	100,0	85	100,0

The table above shows a **different approach** of cases in which the offender was charged with more than one offence. The WODC counted only the most servere offence in case of combination. In the Breda-study all offences were counted, spread over the main categories of offences. That is the reason for the total number of offences in the Breda-research exceeding 182.

Conclusion: However, there is a **significant difference** between the results of both studies. The WODC-research concludes a much higher percentage of refusals in case of property crimes and a much lower percentage in case of traffic offences, in comparison with the Breda-study.

3.6 By whom was the proposal refused?

Table 16:

	BREDA		WODC	
	f	%	f	%
prosecutor	40	22,5	not	22,9
judge	125	69,1	pub-	73,9
Queen	16	8,9	lished	not publi.
unknown	1	missing		"
total	182	100,0	85	

Conclusion: The most refused proposals were refused by a judge.

4. GENERAL CONCLUSION

When we combine table 1, table 6 and table 16 concerning the prosecutor-, the judge- and the pardon-model, we get the following results for Breda.

Table 17:

	BREDA					
	accepted		refused		total	
	f	(%)	f	(%)	f	(%)
prosecutor	43	(51,8) (14,0)	40	(48,2) (22,0)	83	(100,0)
judge	257	(67,3) (82,4)	125	(32,7) (68,6)	382	(100,0)
pardon	3	(15,8) (0,8)	16	(84,2) (8,9)	19	(100,0)
rest and unknown	9	(90,0) (2,8)	1	(10,0) (0,5)	10	(100,0)
total (%)	312	(100,0)	182	(100,0)	494	

This table leads to the conclusion that receiving a proposal is most probable in those cases in which a judge has to take the decision, and least probable when it concerns a pardoning case.

NOTES

1) The results of this research will be published in July 1986.

2) Bol, M.W., Overwater, J.J.: Dienstverlening. Eindrapport van het onderzoek naar de vervanging van de vrijheidsstraf in het strafrecht voor volwassenen. 's-Gravenhage, Ministerie van Justitie 1984.

3) The WODC-research has split the prosecutor- and the judge-modalities for the statistical output.

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LE TRAVAIL D'INTERET GENERAL: THE FRENCH OPTION IN SUBSTITUTING SHORT-TERM IMPRISONMENT

Nicole Maestracci

1. INTRODUCTION

Community Service was introduced into French legislation by the law of June 10th, 1983 which was adopted by Parliament unanimously. Thus, penal courts were able to apply a new punishment: The obligation to serve a certain number of hours of work in the public interest on a voluntary basis.

This new measure which can be used by penal courts since January 1st, 1984 was strongly influenced by comparable systems of punishment in other countries experimenting since several years with Community Service such as Great Britain, Canada, the United States of America etc.. **The aim of the new law** was to offer a **credible alternative** with respect to **short-term imprisonment** recognizing that short-term imprisonment has devastating effects on the imprisoned person, with deprivation of liberty separating the offender from his or her family and other relatives as well as increasing sharply the risk of recidivism.

Besides the aim of **avoiding negative side-effects** of short-term imprisonment, a critical overload of the French prison system has been another incentive to implement Community Service. The **overload problem** in French prisons is a chronic one. The French prison system provides 32.000 places but recently the prison population rose up to more than 44.000, the majority of them serving prison sentences of less than six months (78 %).

After all, the purpose of introducing Community Service was also to propose a visible and immediate punishment by obliging the offender

to serve useful work in the public interest leaving him the possibility to continue on his job and meeting his responsibilities towards the family.

Finally, the punishment of Community Service allows for the first time in the French criminal justice system that the community takes part actively in the correctional process.

The new disposition therefore **has been welcomed by the public opinion** which is in favour of the idea that Community Service in the public interest should be the preferrable option compared with a prison sentence, at least if petty offences are involved. The mass media, the press, radio and TV did in fact respond very positively and friendly to the new measure, regardless of the political orientation.

2. THE LEGAL BASIS OF COMMUNITY SERVICE

Community Service represents in the French Penal Code a sanction which is to be pronounced by a criminal court.

In the case of any offence which can be punished by imprisonment (up to five years) the judge may decide that the offender should serve Community Service in the public interest.

Community Service, as is stated in the French Penal Code may be used

a) as a sole, principal sanction if the offender has **no prior convictions** within five years preceding the crime in question exceeding imprisonment of more than four months or including any "criminal punishment".
b) As an **additional condition** in the case of a **suspended prison sentence.** In this case, no further requirements must be met. If Community Service is used as a condition of suspension of imprisonment, it can be accompanied by other obligations such as finding a job or housing, undergoing treatment or compensating the victim's material losses.

The law stresses that Community Service should be **unpaid work** which aa) **should not affect ordinary employment opportunities** and bb) **is not to represent an alternative to paid activities** already available in the local community.

Community Service is supposed to be served on a **voluntary basis.** Therefore, the **offender must be present** during sentencing procedures in the court room and he must **declare** that he accepts the sentence of Community Service in the public interest.

The principle of voluntary Community Service in fact is an undispensable condition of the succes of this measure which should not be considered to represent "**forced labour**" which is prohibited by the Conventions No. 29 and 105 of the International Bureau of Labour, by the European Declaration of Human Rights and the International Declaration of Human Rights.

The **number of community service hours** may range between the minimum of **40 hours** and the maximum of **240 hours.** The community service sentence must be completed during a period of time which is fixed by the court with the maximum time period being 18 months. The period may be extended if there are medical, familial or professional reasons serious enough to be taken into account by the correctional court. Time spent for transport to the place of Community Service as well as for dinner etc. does not affect the total number of hours of Community Service. An offender holding a paid job must not work more than 12 hours in addition to the regular weekly working hours (currently 39 hours per week).

There is no legal provision defining the relationship between the number of hours of Community Service and the amount of other sanctions such as fines or imprisonment. Therefore, correctional courts have a lot of **discretionary power** in deciding upon the amount of Community Service. It happens quite frequently, however, that before making up the mind about the Community Service, criminal courts assess the offence in question by fixing a prison sentence or a fine which in turn is transformed into a corresponding number of community service hours.

Community Service in the public interest may be used and applied **within the juvenile justice system** by the children's court in the case of minors aged 16 to 18 years. If a 16 to 18 years old juvenile is involved, the number of community service hours must lie in a range of 20 to 120 hours. According to the **dispositional guidelines** of the juvenile justice system, the community service sentence has to be adapted to the juvenile's educational needs and represent a rehabilitative measure aiming at the social reintegration of the juvenile offender.

If the Community Service Order is **not served properly**, to a sufficient degree or is not completed at all, the correctional court may order the appearance at the criminal court which made the original sentencing decision.

In the case of a Community Service Order which is part of a suspended prison sentence the criminal court revocates the suspension and the prison sentence has to be served. In the case of Community Service as a sole sanction, the criminal court is free to make a new sentencing decision which may be a prison sentence (suspended or immediate) or a fine.

3. AGENCIES INVOLVED IN THE EXECUTION OF A COMMUNITY SERVICE ORDER

The correctional court or the juvenile judge (in the case of a juvenile) are responsible for the execution of a Community Service Order. The correctional court establishes a list of places in the court district (tribunal de grande instance) where Community Service Orders can be carried out. Besides the search for Community Service places, the correctional court should establish relationships with those agencies which it perceives to be able to provide community service places (local communities, public administrations).

After the final sentencing decision, the sentenced offender is sent to the correctional court which will explain the obligations inherent to a Community Service Order and examine those community service places which could be appropriate to the offender with respect to

his personality and skills. If one of the community service places seems to be appropriate, the correctional court will establish contacts with the agency providing the community service place in order to get precise information about the work to be done and its modalities.

Finally, after the offender has seen a doctor who has to certify that the offender is able to fulfill the kind of work in question and does not suffer from a contagious disease, the correctional court makes a final decision (a decision against which an appeal is not possible) specifying precisely:

a) the work which the offender has to fulfill,
b) the number of hours which have to be served,
c) the name of the probation worker who is responsible for controlling the community service process and, if necessary, for providing additional help and assistance.

Any time the correctional court feels it is necessary, the decision upon the Community Service Order may be **modified** and **adapted to the actual situation** of the offender.

The **probation committee** (the president of which is the correctional judge) names a probation worker who is according to the decision of the correctional court responsible for the control of the proper serving of the Community Service Order by establishing contacts with the agency providing the place on the one hand and the offender on the other hand. Furthermore, the probation worker has to assist the agency organizing the community service place by providing relevant information and counselling. Finally, the probation worker has to assist the offender in terms of social or other assistance which might be necessary in order to overcome certain deficiencies on the part of the offender. For example, providing housing, meals, establishing contacts with other social services.

Community Service may be done in favour of **local communities** (city, department, district), **public administrations** and other public agencies or associations. These agencies have to be approved by

the general assembly of the district court. There is a diversity of jobs and work which may fall within the range of Community Service in the public interest. But Community Service essentially can be assigned to one of the following categories:

- maintenance and repair of monuments;
- work in favour of the environment (cleaning of beaches or parks);
- ordinary maintenance (painting, cleaning etc.);
- different kinds of repair (e.g. removing graffities);
- providing assistance to old or handicapped people;
- participation in training activities in different fields depending on the individual capacity of offenders.

This list is not exhaustive, but may be extended or varied along local needs.

The agency in which Community Service is done has in turn to ensure that

- the offender is **integrated** into the work environment and receives necessary training;
- the offender serves the **number of hours** of Community Service which is ordered by the decision of the correctional court within the **time specified** and that the service is of proper and **satisfying quality**;
- the correctional court or the probation worker receive regular information on the process of Community Service as well as on any time of absence or any other relevant incident. If the offender is assessed to be dangerous or to be in danger to make serious faults when working, the agency may **suspend the execution** of Community Service immediately followed by immediate information of the probation committee;
- the correctional court and the offender receive a certificate approving that the offender has accomplished the Community Service Order properly immediately after the service has ended.

4. SOCIAL SECURITY AND THE COMMUNITY SERVICE ORDER

There are two serious problems related to Community Service which concern

a) problems of responsibility if the offender himself suffers a **work place accident,**
b) problems of responsibility for damage and harm **caused by the offender** during Community Service.

In the French criminal justice system the **correctional administration** is considered to be the **employer** as defined by French social security laws. In the case of work place accidents and accidents during transportation to work, social security is guaranteed if an offender sentenced to Community Service is involved. On the other hand, damage caused by the offender during Community Service is reimboursed by the state, too.

The rules of the French Labour Law with respect to work during the night, with respect to work place security and the work of females and juveniles, are applicable in the case of Community Service, too. Because Community Service is unpaid work, it does not affect an unemployed offender's right to **apply for social security.**

5. THE COSTS OF COMMUNITY SERVICE IN THE PUBLIC INTEREST

Community Service in the public interest is a kind of punishment which is organized and executed in the community, therefore in principle it does not cause any costs. The agencies organizing community service places even provide quite often the costs of transport, of meals and the medical check. If the offender has no income at all, the probation committee is allowed to cover expenses for the basic needs of the offender (housing, meals).

The global budget of the probation committees has been augmented in 1984 and in 1985 in order to take into account the increasing financial needs due to the community service programmes.

In the average, one Community Service Order costs, varying along the different court districts, between **100 and 300 French Francs.** This amount seems to be minimal if we take into account the cost of a prison place which today is about 170 French Francs per prisoner and per day and about 400.000 French Francs for every new built prison place.

Furthermore, the correctional administration has a fund which may be used to give financial incentives to agencies accepting to organize and provide community service places. The correctional administration may grant financial aids to these agencies in order to compensate those costs related to the implementation of the first community service places.

6. COMMUNITY SERVICE IN THE PUBLIC INTEREST AND THE SOCIAL REINTEGRATION AND PROFESSIONAL INTEGRATION OF THE OFFENDER

In a quite important proportion of offenders, Community Service represents especially of young offenders, the first experience with employment and work. That is why those community service places which contribute to the integration of the offender in the work environment and the professional integration on a permanent basis were privileged in terms of funding. With respect to the professional integration of an offender sentenced to Community Service several programmes have been implemented which aim at organizing training courses or useful collective unpaid work in order to provide possibilities to continue professional integration of offenders after having completed the Community Service Order. One of the most interesting consequences of the introduction of Community Service Orders in the criminal justice system has been the fact that those agencies which provide and organize community service places display serious interests in reintegrating the offender in terms of social and professional reintegration. Furthermore, those agencies take care also of other problems of the offender by trying to find adequate housing, permanent jobs or training places.

Together with a number of mass media campaigns in favour of Community Service, this phenomenon today is contributing to alter the public's perception of petty offenders. The petty offender increasingly is not anymore perceived to represent an anonymous threat but is considered to be a socially handicapped person whose problems have to be resolved.

7. EXPERIENCES WITH COMMUNITY SERVICE IN 1984 AND 1985 AS REFLECTED BY COURT STATISTICS

In 1984, the first year Community Service Orders could be applied in France, 2.231 offenders were sentenced to do Community Service in the public interest. In 1985, this figure had more than doubled, more than 5.000 offenders were sentenced to Community Service.

As far as the **type of offence** is concerned, table 1 displays the distribution of different categories of crime underlying a sentence of Community Service Order. In both years, 1984 and 1985 it is predominantly the crime of **theft** which makes up almost two third of all offences resulting in a Community Service Order.

Table 1: Offenders sentenced to Community Service according to the type of offence

	1984 %	1985 %
theft	61,5	61,3
driving without insurance	5,9	6,0
assault	5,7	6,0
drunken driving	6,4	4,9
receiving stolen goods/ concealment	4,1	4,2
criminal damage, vandalism	2,8	3,2
driving without licence	1,4	2,1
others	12,2	12,3

Traffic offences such as driving without licence or insurance or drunken driving represent another significant proportion of crimes resulting in a Community Service Order. Obviously, the bulk of crimes which lead to Community Service comprises **petty offences** only.

This can be underlined by taking into account **procedural aspects** of the criminal process. In 1984 most of the cases disposed of by ordering Community Service were not settled by a public trial but by the so-called **"citation directe"**, that means by a summary procedure (64 %) whereas only 6 % were sentenced after a regular trial. Furthermore, 92 % of those offenders sentenced to Community Service were not held in pretrial detention, most of them (89 %) were not subjected to any kind of judicial control.

The **average number of community service hours** has been 103 in 1984. But the number of community service hours displays a large variation: More than half of the cases (53 %) had to serve less than 80 hours; on the other hand, 6 % of the offenders had to serve the maximum number of community service hours (240 hours).

With respect to the **time period** within which Community Service had to be served, it may be noted that in 1984 time periods mostly accorded by criminal courts were 18 months (28 %), 12 months (28 %) and 6 months (25 %).

As far as **defaults** are concerned, in 1984 **14,4 %** of those offenders sentenced to Community Service were returned to the criminal court because they did not serve the order at all or just partially.

In the average two months passed between the sentence and the beginning of Community Service. This short delay shows that Community Service Orders are at least **feasible** as far as processing offenders through the justice system is concerned. While in the average 55 days pass between a sentence and the decision of the correctional court, the time period between the decision of the correctional court and the beginning of Community Service is shorter ($\bar{m}$= 20 days).

If taking a look at those agencies which provide community service places and serve as employers, we may note that more than two third of them comprise public communities (70 %), essentially cities (64 %), while associations represent one fifth (22 %) and public facilities (8 %).

Table 2 displays Community Service broken down by the **nature of work**.

Table 2: Nature of Community Service

	1984 %	1985 %
maintenance and improvement of the environment	19,9	18,3
maintenance and cleaning of houses and equipment	18,4	19,4
maintenance of public streets/places	9,3	7,6
maintenance: others	18,5	15,5
administrative work	5,2	7,2
participation in training	1,5	1,2
assistance	1,4	1,6
multiple activities	15,0	12,7
others	10,8	16,5

Most of the work done by offenders sentenced to Community Service might be defined as **maintenance** of public facilities, houses, parks etc. (60,8 %). Insofar, there does not seem to exist a significant difference when comparing the structure of French Community Service Orders with those of other European countries where data are published. Obviously, Community Service Orders which are based upon personal contacts with people from the community and comprise assistance to the aged or the handicapped, are quite rare. Just 1,6 % of all Community Service Orders in 1984 required some direct work for other people.

What is known about the offender who is sentenced to Community Service? Tables 3 and 4 display the distribution of age and employment characteristics respectively employment history. But first of all we should take into account that Community Service is

ordered almost exclusively in the case of **male offenders.** Only 5 % of the offenders receiving a sentence of Community Service are females, a somewhat lower figure as could be expected reminding the overall distribution of the gender variable in the court statistics. In both years, 1984 and 1985 the age variable is skewed, demonstrating that more than two third of offenders sentenced to Community Service stem from the **younger age groups** (68,2 % respectively 68,3 % of community service offenders fall within the age category of up to 24 years).

Table 4 shows a quite clear picture as far as the **employment status** of the offender is concerned. **67,8 %** of all offenders sentenced to Community Service are **unemployed** at the time of their sentence, with those never having experienced any kind of professional activity playing a quite important role (15,1 %).

Table 3: Age of the offender at the time of the sentence

	1984 %	1985 %
less than 18 years	-	0,4
18 - 20 years	36,4	36,7
21 - 24 years	31,8	31,5
25 - 29 years	15,3	14,4
30 - 34 years	8,2	9,7
35 - 39 years	4,3	4,6
40 - 49 years	3,0	2,4
50 - 59 years	0,8	0,7
60 years and more	0,2	-

Table 4: Offenders broken down by occupational status 1984

regular employment	25,1 %
unpaid work	1,3 %
unemployed, but employment experience in the past	52,7 %
unemployed, never integrated in the labour market	15,1 %
retired	0,2 %
others (student, military service, housewife etc.)	5,6 %
all	100,0 %

Therefore, the **main characteristics** of the offender preferably subjected to a sentence of Community Service are the following:
The community service offender is

a) an offender having committed a **petty offence** (predominantly theft),
b) a **male** offender,
c) a **young** offender under the age of 30,
d) an **unemployed** offender.

Furthermore, almost **half** of the community service offender group in 1984 had a **prior record** (at least one criminal conviction).

But despite these characteristics pointing out that community service offender represent a **high risk group** as far as recidivism is concerned, another quite important characteristic shows that it could be that those offenders sentenced to Community Service did undergo nevertheless a **positive selection.** Almost all of them have a **place of residence** (97 %) at the time of the sentencing decision.

Earlier, it was shown that three main categories of employers provide community service places: communities (cities), associations, public facilities. As far as the distribution of different kinds of

Community Service is concerned, table 5 provides some insight in the nature of Community Service broken down by single agencies.

Among 100 sentenced offenders sent to associations, 50 work for an association the purpose of which is "**social intervention**": Red Cross, Catholic Aid, Popular Aid etc.; 20 offenders work in the socio-cultural field and the remaining 30 serve their sentence while engaging in various activities ranging from the preservation of the natural environment to family counselling and other help.

Table 5: Nature of Community Service and agency providing community service place

nature of Community Service	community and public administration	association	all
maintenance	55,9 %	10,3 %	66,2 %
administrative work, training, assisting the aged etc.	3,7 %	4,4 %	8,1 %
others	8,4 %	2,3 %	10,7 %
multiple activities	10,7 %	4,3 %	15,0 %
all	78,7 %	21,3 %	100,0 %

After all, among 100 convicted offenders 56 are ordered to do some work of maintenance for a community or a public facility, 10 do the same for an association.

Community Service which is done for communities comprises predominantly maintenance work: 72 % of community service offenders do this type of work if a community is providing the community service place. Only communities in the metripolitan area (Paris) offer community service places which are more diversified: While maintenance work makes up a relatively smaller proportion compared to the overall distribution (60 %), other services such as administrative work, assistance to the aged and the handicapped

and others are of more importance (6 %). This distribution might indicate some differences in the implementation of Community Service in metropolitan areas on the one hand and in rural communities on the other hand.

Among 100 offenders serving a Community Service Order 70 are sent to a community, 22 to an association and 8 to a public facility. This distribution is stable throughout France besides the distribution in metripolitan areas such as Paris, Mulhouse, Rennes and Besançon, where the proportion of associations is bigger than the average.

In fact, especially metropolitan communities are involved in the process of implementing Community Service. In 1984 482 communities (13 per 1.000) have received at least one offender sentenced to Community Service in the public interest. But on the countryside the rate is 3 per 1.000, in metropolitan communities 80 per 1.000. Almost half of the community service offenders served their sentence in small towns of less than 20.000 inhabitants but 25 % only have been sent to rural or metropolitan communities which belong to a metropolitan unit of less than 20.000 inhabitants: That means that the metropolitan character of those communities receiving community service offenders dominates independent from the actual size of the community.

As far as the involvment of associations is concerned, we may note that 196 different associations handled 471 offenders sentenced to Community Service in 1984. After all variation of activities proposed by associations is more important than that observable in public organizations. Among 100 offenders serving their sentence within an association less than 50 % (48 %) are engaged in maintenance work, but 21 % are involved in administrative work or in assisting and helping the aged or the handicapped, 20 in "multiple activities".

The data derived from official statistics indicate furthermore that the **employed offender** is much more likely to be engaged in what we may call **white-collar work** (administrative, assisting etc.) and less likely to be placed in a work setting where blue-collar work (maintenance) is to be done. This distribution might be explained by better training of employed offenders.

In the **juvenile justice system** Community Service Orders were introduced, as was mentioned above, in 1984, too. Data derived from the juvenile justice statistics demonstrate that 122 offenders sentenced within the juvenile justice system, received a Community Service Order. This is a somewhat small proportion compared with the corresponding figure in the adult justice system, but data covering January 1st, 1985 until June 30th, 1985 indicate that Community Service is on the rise in the juvenile justice system, too: 167 orders of Community Service were registrated during this period.

As far as the distribution of sex is concerned, juvenile offenders display the same distribution as do adult offenders. 95 % of those juvenile offenders sentenced to Community Service in 1984 were males. The age distribution demonstrates that juvenile judges prefer Community Service in the older age groups of juvenile offenders. 81,7 % are 17 years old or older.

The majority of juvenile offenders receiving a Community Service Order in 1984 had a prior record (52,8 %). Table 6 reveals that **property offences** play a dominant role among juveniles sentenced to Community Service. But contrarily to the results for the adult community service offenders, we can observe that **aggravated theft** makes up a quite important proportion of offences resulting in a Community Service Order. This might indicate that in the juvenile justice system where the seriousness of an offence is of less importance than in the adult sentencing decision, Community Service Orders go well beyond the field of petty crimes.

Table 6: Community Service Orders broken down by offence categories (juveniles)

offence	1984 %	1985 %
theft	54,4	30,0
aggravated theft	20,9	23,6
assault	5,7	8,4
vandalism	12,7	7,5
others	6,3	30,5

As far as the **nature of Community Service** is concerned, it has been mentioned that in the juvenile justice system the disposition decision should pursue the goal of rehabilitation of the juvenile offender only. But comparing the distribution of Community Service in the case of juvenile offenders on the one hand and adult offenders on the other hand along the nature of work offenders are engaged in, we have to observe that there do **not exist** considerable differences. Juveniles and adults are engaged in basically the **same type of work**. Although available data do not allow insight in the way different community service programs are implemented, the fact that juveniles essentially are engaged in maintenance work, too, sheds some light on the obvious problems to differentiate between juvenile and adult offenders in terms of rehabilitative aspects of work and labour.

Table 7: Nature of Community Service (juveniles)

	abs.	%
maintenance and improvement of the environment	14	19,2
maintenance of housing and equipment	19	26,0
maintenance of public streets/places	6	8,2
maintenance: others	17	23,3
maintenance work: all	56	76,7
administrative work	3	4,1
assistance in training etc.	-	-
assistance to the aged/handicapped etc.	-	-
other work	9	12,3
multiple activities	5	6,9
all	73	100,0

Finally, the number of community service hours ordered in the juvenile justice system is on the average 65.

Table 8: Number of hours of Community Service ordered in the juvenile justice system

hours	20/35	40/55	60/75	80/95	100/115	120
absolute	35	58	24	20	7	21
%	21,2	35,2	14,5	12,2	4,2	12,7

The experiences with Community Service in France so far have been assessed to be positive. Although there is no legal restraint for courts which would force them to use Community Service as an alternative to other, traditional kinds of punishment, especially imprisonment, the courts' response as can be demonstrated by court statistics, shows that Community Service Orders are seen to be appropriate for a considerable number of offenders. Although it would be too early to forecast the future development of Community Service Orders, it should be noted that from 1984 to 1985 in both the adult and the juvenile justice system the number of Community Service Orders did increase significantly. But further research is needed in order to test the political hypothesis that Community Service is able to replace imprisonment, especially short-term imprisonment and might be able to bring upon relief for the prison system.

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COMMUNITY SERVICE IN DENMARK
- REPORT ON THE EXPERIENCES WITH COMMUNITY SERVICE AS A PENAL SANCTION -

Jørgen Balder

1. BACKGROUND AND HISTORY OF COMMUNITY SERVICE IN DENMARK

It is recognized in most western countries that imprisonment involves high costs, humane as well as financial, to which must be added the fact that empirical examination shows that it has but little effect on reducing relapse into crime. These are the main reasons why **developing alternatives to imprisonment** for more than a decade has been **a major objective** of the Danish criminal policy. The **experiment with Community Service Orders** (CSO) is the most recent practical implication of this policy. In May 1982 the Danish Folketing (Parliament) agreed to a proposal of the Minister of Justice concerning an experiment with Community Service Orders. The political decision, which was motivated by the wish to limit the use of imprisonment, was made on the basis of a recommendation from the Permanent Committee on Penal Law Reform. The experiment was carried out in accordance with this recommendation.

Briefly Community Service Orders imply that offenders rather than serving a prison sentence are ordered to carry out within a determined performance period a specified number of hours of unpaid work for the community. The experiment was carried out in the autumn of 1982 in an urban and a rural region (the city of Copenhagen and the county of Northern Jutland). In May 1984 the experiment was extended to the whole country and carried out on a **national basis.**

2. THE BASIC FEATURES OF THE COMMUNITY SERVICE ORDERS EXPERIMENT

The **legal basis** of the experiment are the penal code rules about **suspended sentences.** Danish courts have wide access to settle

criminal- cases with suspended sentences. In the Penal Code it is merely stated that a suspended sentence may be used when the court considers the execution of the penalty unwarranted. The law further authorizes that the courts in connection with a suspended sentence may stipulate **special conditions** adapted to the needs of the individual offender.

The Folketing resolution explicitly says that conditions relative to Community Service Orders should be applied only to offenders who according to the present practice have been sentenced to relatively short, non-suspended terms of imprisonment. The practice up to now seems to indicate that Community Service Orders are used in cases where sentences up to 15-18 months of imprisonment would have been imposed. In the majority of cases Community Service Orders replace sentences of about 6-8 months of imprisonment.

The sanction of Community Service implies that offenders rather than serving a prison sentence are ordered to carry out within a determined performance period a **specified number of hours** of **unpaid work** for the community.

It is the court which on basis of ordinary meting out principles determines the number of hours of Community Service to be carried out as well as the length of the performance period.

The minimum and maximum number of hours of Community Service, which can be imposed are **40** and **200** hours. The length of the performance period is in general from **4** to **12 months** depending on the number of hours to be served.

The initiative to suggest the use of Community Service Orders can be taken by the **court** itself, the **public prosecutor**, the **defense counsel** and the local office of the **Probation and Aftercare Department**.

But explicit conditions have been attached as to the type of cases and offenders the performance of Community Service Orders may be imposed upon. The use of Community Service Orders is based solely on the court of justice's concrete assessment of the nature and degree of the offence, and on information pertaining to the personal situation of the accused.

Young offenders, who have committed **property offences**, which according to the present practice of law would lead to a non-suspended sentence up to 6-8 months of imprisonment are the

"**target group**" of the Community Service Orders experiment. Other types of offenders including older criminals can, however, be taken into consideration.

Up to the present Community Service Orders have in accordance with what is contained in the recommendation of the Permanent Committee on Penal Law Reform above all been used for younger offenders who have committed offences against property. A cautious practice has thus been followed in assault cases, narcotic cases and other cases which involve attack on persons. Nor have Community Service Orders been used towards persons sentenced for drunken driving.

Community Service presupposes that the offender is "qualified" to this sanction and that he **consents** to such a sentence in case he is convicted. The assessment of the offender's qualification is made by the local office of the Probation and Aftercare Department.

The assessment of the local Probation and Aftercare Department is based on information about the personal and social situation of the accused, obtained through a conversation with him and from authorities with which the accused has been in contact. In this assessment, the crime itself is a component to which relatively little weight is attached, whereas the accused's drug or alcohol abuse and his overall social situation is given a great deal of attention. Offenders, who have been found unfit for Community Service Orders by the local Probation and Aftercare Department, have been characterized by drug abuse and/or severe mental/social problems.

The task of finding work, which can be done as Community Service lies with the local office of the Probation and Aftercare Department. It is of decisive importance that this work is within an area, where paid labour is or will not be used. The jobs are therefore usually within **public institutions**, **public supported institutions** with **non-profit activities** or in work employing voluntary labour only.

To ensure that the person sentenced to perform Community Service is not employed in work reserved for paid labour, all jobs must be **approved** by the **local labour market committee** in which the master organizations of the labour market have a seat.

It is an important principle that the convicted person works closely together with persons permanently attached to the activities concerned. The large majority of the provided work assignments consists of practical duties, such as cleaning, gardening, handling of mail etc..

As soon as a sentence is ready for execution, steps are taken to put the convicted person to work. A meeting will for instance be arranged between the convicted person and the employer selected by the local office of the Probation and Aftercare Department, at which a plan will be worked out for the serving of the sentence.

The Community Service is usually carried out in the **evening** or on **weekends**, as it must be possible for the convicted person to attend to his normal duties or to take a normal job.

The individual employer decides the kind of work to be done and how to do it. The employer is only obliged to **report serious irregularities**, e.g. if the convicted person does not turn up or leaves his work before scheduled.

The staff of the local Probation and Aftercare Office makes unannounced visits to the places of work. Usually there is only one convicted person at work at the same time and place. A careful check is kept on the number of hours worked, and failure to appear at the place of work leads promptly to a reaction.

Isolated minor failures to appear at work lead normally to a **change** of the **working schedule**, so that the lost number of hours can quickly be recovered.

In more **severe cases** of **neglect** the convicted person is immediately **brought to court**, so that it may be decided whether the suspended sentence should be altered to a non-suspended sentence of imprisonment. In those relatively few cases where the local Probation and Aftercare office has brought the case to court on account of neglect of the Community Service Order, the court has altered the suspended sentence to imprisonment and a quick execution of this term of imprisonment has been arranged.

3. THE EXPERIENCES WITH COMMUNITY SERVICE

Until October 1985 **1459 cases** have been submitted to the local office of the Probation and Aftercare Department and **356 persons** have been sentenced to Community Service. Hereof 222 have been carried out. **28** of these cases have been reported to the public prosecutor for **not having fulfilled** the conditions regarding the carrying out of the Community Service and 13 cases were discontinued because of relapse into crime not occurring in connection with Community Service activities.

The **cooperation** between the various sections of the judicial system works **easily** and **effectively** and the experiences so far indicate in general that persons, who have been sentenced to Community Service consider this as a chance to break with their criminal past.

The **employers** of Community Service sentenced persons have expressed their **satisfaction** with the experiment. When the experiment is completed, a research will be made in order to reveal to what extent Community Service Orders have been used as an alternative to imprisonment. This evaluation will be carried out by a group composed of judges, public prosecutors, defence counsels and criminologists.

The experiences with Community Service Orders so far which can be analyzed on the basis of court and probation statistics, cover the period from September 1st, 1982 to October 31st, 1985.

As can be seen in table 1 displaying the distribution of offenders recommended to a Community Service Order by main types of crime, about 60 % of the cases concerned ordinary property offences.

Table 1: Distribution of offenders by main-types of crime by time of recommendations in cases submitted

	abs.	%
theft	504	34,5
robbery	185	12,7
other property crimes	404	27,7
damage to property	16	1,1
drug crimes	92	6,3
assault and battery	166	11,4
sexual crimes	25	1,7
other crimes dangerous to the public	29	2,0
other crimes	38	2,6
total	1.459	100,0

It is obvious that Community Service Orders focus on ordinary crimes in general whereby it should be noted that recommendations are made for serious offences including violent crimes, too. Assault and battery, robbery, sexual crimes represent about one quarter of all recommendations for Community Service.
Apart from the recommendation decision, the filter of the decision making process on the part of the local Probation and Aftercare Office results in about two third of all recommended cases found fit for Community Service.

Table 2: Recommendations made out by the local probation and aftercare department in cases submitted

	abs.	%
fit for Community Service	973	66,7
unfit for Community Service	293	20,1
consent not obtained	65	4,5
no recommendation made out yet	128	8,8
total	1.459	100,0

Approximately **4 %** of those offenders recommended for Community Service **did not consent** and had to be processed the traditional way. Every fifth offender was found unfit for Community Service by the Probation and Aftercare Office.
The sentencing decisions turn out to be a second important filter (table 3).

Table 3: Settled cases distributed by sentences

	abs.	%
acquittal	20	1,4
withdrawal of the charge	1	0,1
fine	8	0,5
suspended sentence	294	20,2
imprisonment	322	22,1
Community Service	356	24,4
other sentences	6	0,4
non-settled case	452	31,0
total	1.459	100,0

Only 24,4 % of those cases recommended for Community Service are actually disposed of by this measure. Another 20 % resp. 22 % of the cases originally recommended for Community Service Orders were settled by ordinary suspended prison sentences or by a sentence of immediate imprisonment.

Table 4 shows the offenders sentenced to Community Service broken down by age groups.

Table 4: Offender sentenced to Community Service by age

	abs.	%
15-17 years	1	0,3
18-19 years	38	10,7
20-24 years	111	31,2
25-29 years	72	20,2
30-39 years	81	22,8
≥ 40 years	53	14,9
total	356	100,0

Although the main groups are offenders between 20-24 years (about 30 %) and persons between 25-29 and 30-39 years (20 % resp. 22,8 %), the persons are in general older than anticipated.

Table 5 displays the structure of **main types of crime** among offenders sentenced to Community Service. Property offences make up about three quarters of the sentences, which is in accordance with the conditions and the aims of the Community Service experiment in Denmark. But the distribution of crime types indicates that the offence plays an important role in the court's sentencing decision. Serious or violent crimes such as robbery, assault and battery, sexual crimes make up a proportion of 11,5 % among those offenders actually sentenced to Community Service whereas among those recommended for Community Service this proportion made up more than 25 %.

Table 5: Offenders sentenced to Community Service by maintypes of crime

	abs.	%
theft	131	36,8
robbery	20	5,6
other property crimes	146	41,0
damage to property	2	0,6
drug crimes	23	6,5
assault and battery	17	4,8
sexual crimes	4	1,1
other crimes dangerous to the public	5	1,4
other crimes	8	2,2
total	356	100,0

As far as the number of hours of Community Service is concerned, table 6 shows that 50 % of the cases were sentenced to more than 100 hours of Community Service.

Table 6: Fixed number of hours of Community Service

	abs.	%
40 hours	19	5,3
50 hours	34	9,6
80 hours	62	17,4
90 hours	2	0,6
100 hours	59	16,6
120 hours	55	15,4
130 hours	1	0,3
150 hours	41	11,5
160 hours	5	1,4
180 hours	6	1,7
200 hours	70	19,7
220 hours	1	0,3
250 hours	1	0,3
total	356	100,0

A term of 200 hours is the one mostly used, indicating that there exists an even distribution in the sentencing outcomes.
The distribution of work sectors community service offenders are engaged in is displayed by table 7.

Table 7: Offenders sentenced to Community Service by work sectors

	abs.	%
children and youngsters, boy/girl scoutmovements	46	12,9
sportsclubs	67	18,8
senior citizen care	6	1,7
churches	35	9,8
animalprotection	15	4,2
re-use	37	10,4
social institutions	40	11,2
institutions for handicapped	7	2,0
other sectors	37	10,4
never started	6	1,7
total	296	100,0

Sports-clubs are the most used places of work. The distribution among the different kind of work sectors is, however, quite even.
One of the most important issues in implementing Community Service within the criminal justice system are the **failure rates**. The data compiled in table 8 let us conclude that up to now Community Service might be assessed to be a **feasible disposition** in this respect.

Table 8: The cause of termination of the Community Service Order

	abs.	%
report of breach of conditions	24	10,8
Community Service interrupted on account of relapse	13	5,9
finished Community Service	181	81,5
other causes	4	2,3
total	222	100,0

About four fifths of all those offenders having terminated their Community Service Order at October 31st, 1985 have fulfilled their Community Service Order satisfyingly. About 10 % had been reported to have broken the conditions of the Community Service Order and have been resentenced. About 6 % of the cases have been interrupted on account of relapse into crime. Insofar, the experiences with Community Service in Denmark should be regarded to coincide with experiences gained in other European countries as far as success and failure rates are concerned.

Although we do not know yet whether the new disposition measure of Community Service does help in saving prison places and in substituting immediate imprisonment, the data known about implementation of Community Service and the perceptions of those agents and agencies dealing with Community Service schemes indicate that the introduction of Community Service into the Danish criminal justice system had been a success.

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COMMUNITY SERVICE IN POLAND

Ewa Weigend

1. INTRODUCTION

The **crisis of imprisonment**, as far as increasing doubts with respect to the efficacy of custodial measures as a means of rehabilitation of offenders are concerned, has reached Poland, too. Formerly, the prison system was thought of as a viable means for curing any kind of delinquency, neglecting the disastrous effects on the personality of the imprisoned person and his chances of reintegration. But since the sixties, important changes in the Polish penal sciences as well as the penal law thinking in other socialist countries, took place. Imprisonment is seen to represent a necessary evil which should be replaced by other sanctions in the socialist criminal law in the future[1)]. Instead of imprisonment, other ways of punishing criminals should be implemented, punishment, which does not increase the gap between offender and society but contributes to the rehabilitation of the offender. This is especially true for the bulk of petty crimes which traditionally was punished by short-term imprisonment (up to one year). The need for alternative kinds of punishment in this area is obvious, because during short-term imprisonment negative side-effects of imprisonment (isolation, criminal infection, stigmatization) cannot be neutralized by treatment due to shortage of time[2)].

With respect to the problems caused by **short-term imprisonment**, the fine offers a feasible solution both in terms of administration and in terms of credible but not desocializing punishment. In fact, the **fine** is assessed in Poland positively as it is the case in most other European countries[3)]. But negative aspects of the fine are not overlooked: On the one hand the fine may have negative effects on family members and can be paid by others, thus not representing any burden for the offender himself, on the other hand, fines

should be seen to be inadequate if the offence was committed on reasons of economic distress. Finally, the potential range of fining offenders is limited because of deterrent and retributive considerations. In the case of serious offences financial penalties cannot be considered to represent an adequate response to crime.

In the Polish Penal Law there does not exist a kind of punishment corresponding fully to Community Service as it is implemented in Western-European countries. But those penal sanctions described in art. 34 Polish Penal Code come very close to Community Service. There are different kinds of "limited freedom", obliging the offender to serve supervised work in the public interest.

When in the sixties the Polish legislator began to work on a new penal code, one of the most important concerns was to strengthen those forms of punishment which could close the **gap between imprisonment and fines**. One of those penalties already known by the old penal code of 1932 represents the **suspension of a prison sentence**, the range of which has been enlarged by the new penal code: Since 1969 a prison sentence up to two years may be suspended, in the case of negligent offences, prison sentence up to three years can be suspended, if on the basis of the offender's personality it can be expected that he will not commit further offences and if the "social effects" of the penalty justify suspension (art. 73 Polish Penal Code). Approximately 50 % of all prison sentences currently are suspended[4]. As far as **Community Service** is concerned, art. 75 § 2 no. 4 Polish Penal Code provides for the courts to order certain kinds of work or Community Service as an additional condition in the case of suspension of a prison sentence. The basic idea underlying this measure is that serving socially useful work might enhance education and rehabilitation through the experience of rewarding effects by working for the society.

In the Penal Code of 1969 a provision was introduced which enables courts to **drop charges conditionally** (conditional dismissal art. 27-29 Polish Penal Code). In this case there is neither a full trial nor a formal verdict. If the offence is considered to be of minor social dangerousness and if the offender is assessed to belong to a

low-risk group, penal procedures are stopped and the offender is put on probation for a period of one to two years. If the offender (or suspect) does not commit a new crime during the time of probation and if he fulfills the conditions, there will be no indictment. If a new offence is committed or if any of the conditions is not fulfilled, the penal procedure is to be taken up again (art. 29 § 2 Polish Penal Code). In the case of conditional dismissal up to 20 hours of Community Service can be ordered, too (art. 28 § 2 no. 3, § 4 Polish Penal Code). The potential range of this measure (which is similar to § 153a of the German Procedural Code) covers all those offences which are punishable by imprisonment of up to three years (art. 27 § 2 Polish Penal Code)[5].

By introducing a new penalty "**limited freedom**" in 1969, the legislator has enlarged the range of penalties in the area of petty and medium crimes. The penalty of limited freedom is foreseen by the following Statutes, too: The Code of Transgressions of 1972; the Financial Penal Code; the Act concerning persons evading employment of 1982. Although the concept of limitation of individual freedom in the area of labour and the place of residence as a primary sanction represents something new in the Polish Penal Code, certain predecessors exist in the former codes. On the one hand, the Polish Criminal Code knew already in the 19th century the so-called **arrest** as a less severe alternative to imprisonment (playing an important role especially in the military penal codes of 1928, 1932 and 1944). Arrest means that the offender is not allowed to leave his home or receive visits in his home without the permission of the court. Although this kind of penalty is restricting the liberty of the offender seriously, he is left in his habitual social environment and is not subjected to the negative effects of the prison environment. Arrest therefore represents some middleway between deprivation of freedom and limitation of freedom[6].

Another predecessor of the penalty of limited freedom can be seen in **rehabilitative labour** rooted in the Soviet Penal Law and used in Poland since 1950 as an administrative penalty, too. In the Soviet Union rehabilitative labour has a long tradition: Instead of imprisonment up to three months, offenders are sentenced to serve

blue-collar work[7]. In the Polish Administrative Penal Law this penalty replaced in 1951 arrest which has been perceived to be inefficient as far as education and rehabilitation were concerned. But the idea of rehabilitative work was modified insofar as the sentenced offender had not to serve additional work but he had to stay at his work place and had to do the same work as before with wages cut down 10 % to 25 %[8]. The combination of a limited restriction in the choice of the place of work with shortening of wages developped into an essential characteristic of the penalty of limited freedom. The development of the penalty of limited freedom is rooted partially also in the draft penal codes concerning the execution of short-term imprisonment which provided the possibility that an offender should short-term prison sentences through working in State owned companies[9]. Herewith the high costs of short-term imprisonment should be diminished and the offender should be given the opportunity to do rehabilitative work. Although these suggestions were not fully developed and were not put into effect, they did contribute to the development of the penalty of limited freedom.

All those ideas did culminate in the consideration that imprisonment should be replaced by a penalty, the essential characteristic of which is not deprivation of freedom but **supervised labour**. This coincides with socialist thinking, observable frequently in socialist penal codes: the primary aim of any penalty is the education and rehabilitation of the offender, furthermore, the best way to educate an offender to a valuable member of society is to put him to constant work.

2. THE LEGAL FRAMEWORK OF LIMITED FREEDOM

The legal basis of the penalty of limited freedom can be found in **art. 33-35 Polish Penal Code**. Its length may range from **three months** up to **two years**, making this penalty applicable for a great number of offences of various degrees of seriousness. The legislator has formulated **three different models** of the limited freedom. A **common characteristic** of these three models can be seen in the unpaid work the offender has to serve. In order to outline the different models of limited freedom, further common conditions and characteristics shall be presented.

First of all, the offender, sentenced to limited freedom may **not move away from his permanent place of residence** without permission of the court (art. 33 § 2 no. 1 Polish Penal Code). This restriction has two aims: on the one hand it is part of punishment because this restriction takes away an important part of individual freedom, on the other hand the interdiction to move away from the place of residence is thought to facilitate organization and supervision of the unpaid work[10]. In practice, courts are deciding very restrictively upon the allowance to move away. Moving away is granted only if the offender has to change the place of work. Other more private motives are perceived to be not compatible with the punitive aspects of the limited freedom[11]. Furthermore, the offender who is sentenced to limited freedom is not allowed to keep positions within so-called social organizations (art. 33 § 2 no. 3 Polish Penal Code). This provision aims at lowering social positions of the offender during the time the penalty is in effect[12]. Besides these restrictions, the sentenced person is legally obliged to report on the course of the execution of the penalty to the court (art. 33 § 2 no. 4 Polish Penal Code). The offender has to see either the court which passed the sentence or the court which is supervising the execution of the penalty within certain time limits personally and has to report about the way the punishment is executed. The purpose of these reports is to enable the court to discover problems which may arise out of the work environment. Furthermore, the obligation to report aims at reminding the convicted person that although he is not deprived of his freedom he nevertheless is involved in a process of correction, something he otherwise would feel only at the regular pay-day. Another important effect of these reports may follow out of the hearing itself if the judge offers enough time to discuss problems of the offender contributing this way to successful reintegration into society by taking over the role and function of a probation worker.

Besides these legal consequences of limited freedom upon which the offender has to be informed, the court has the discretionary power to order restitution or to oblige the offender to apologize (art. 35 Polish Penal Code). As mentioned above, the Penal Code differentiates three models of limited freedom (art. 34 Polish Penal Code):

a) service of **supervised unpaid work in the public interest** between 20 and 50 hours per month;
b) **shortening of wages** between 10 % and 25 % and stopping further advances in the professional career;
c) **ordering full-time work** in a State owned company.

Service of supervised and unpaid additional work in the public interest has to be seen first of all as a way to punish the offender. Besides his regular work, the offender has to serve up to 50 hours of unpaid blue-collar work which means that the offender suffers from losing most of his leisure time. Additionally, the permanent supervision may be felt as punitive. The law requires that unpaid work should be in the public interest. But interpretation of public interest is quite excessive. According to current practice any work which is of interest for public institutions, companies or factories should fall within the definitional framework of public interest[13]. In practice, unpaid work is mainly served in State owned companies which have to supervise the offender and receive the benefit. But through unpaid work a contract between company and the offender does not come off[14]. Finally, it should be noticed that in Poland few departments at universities do not think that the provisions about unpaid work constitute a violation of the Convention of the International Labour Organization of 1957 concerning the interdiction of **slave labour**[15]. Nevertheless, a serious controversial discussion about the use of labour as a kind of punishment could be observed when the new Penal Code has been put into effect. The argument has been put forward that the Constitution of the People's Republic of Poland guarantees the right to work as well as the obligation to work for every citizen[16], and this right and obligation would contradict the use of labour as punishment[17]. Although it has been argued that not labour itself but the circumstances and conditions under which labour has to be served (supervision, unpaid work) did represent the punitive aspects[18], it cannot be overlooked that despite this more or less theoretical differentiation the **use of labour as punishment** represents an **anomaly** in a socialist country.

Out of art. 34 Polish Penal Code follows that unpaid (additional) work should be given priority among the different models of the limited freedom. But from the very beginning, courts did make use predominantly of shortening of wages (art. 34 § 2 Polish Penal Code)[19]. The reason for the preference of shortening of wages should be seen in the perceived harshness of a sentence requiring unpaid additional work from a socially integrated offender. That is why courts rarely sentence offenders holding a regular job to unpaid work but make use of shortening wages. The penalty consists 1. of a shortening of wages between 10 % and 25 %, 2. of the interdiction to change the place of work without permission of the court as well as 3. of an interruption of the professional career.

Soon after the implementation of the second model of limited freedom, critics argued in Poland that this kind of limited freedom did represent kind of a fine. In fact, shortening of wages means in the case of the average worker having not in mind to change the place of work nor pursuing any realistic professional career that financial losses are the only negative consequences of limitation of freedom[20].

Furthermore, research on the effects of limited freedom could show that educative and rehabilitative influences on the offender through colleagues do not take place. The offender who is sentenced to shortening of wages is not treated differently after the sentence[21]. Furthermore, there is a very restricted flow of information and a very low rate of contacts between companies where offenders are subject to limited freedom and the courts. Therefore, the preventive potential of the penalty of limited freedom is not fully exploited.

In practice, the second model of limited freedom in fact can be seen as a fine paid by way of instalments - the freedom which should be limited means therefore a restriction in the freedom to spend the total income.

The third model of limited freedom - as mentioned above the order to work in a State owned company (art. 34 § 3 Polish Penal

Code) - represents also some kind of shortening of wages and should be used in the case of those offenders not involved to a sufficient degree in regular work at the time of the sentence. The third model of limited freedom therefore is restricted to those convicted offenders, who, in Poland, are labelled "voluntarily unemployed persons"[22].

3. FIELDS OF APPLICATIONS

The efficacy of any kind of punishment can be evaluated only if it is known to whom and in which way punishment should be applied according to the legislative aims. In the context of the punishment of limited freedom two characteristics suggest that its use was expected to be of an experimental nature and that any strong tie to certain targets should be avoided. In fact, in the Penal Code limited freedom always is provided as punishment besides imprisonment and fine, furthermore a wide range of offences may be punished by limited freedom.

In a majority of provisions, limited freedom can be used as an alternative to imprisonment up to two years or any fine leaving to the criminal court enormous discretionary power in individualizing punishment. Sentencing discretion with respect to limited freedom is not restricted by law. The judge always may choose within a range of three months to two years. Finally, the use of limited freedom was not restricted to certain kinds of offences. More than 40 different offences are punishable by limited freedom. Although the majority of those offences are offences of neglect, limited freedom may be used also in cases of assault, breach of domestic peace, unlawful compulsion, distribution of pornographic material etc..

Besides those offences where limited freedom is provided by law explicitly, this penalty can be meted out as a substitute punishment instead of a prison sentence of up to six months (art. 54 Polish Penal Code) or as a consequence of an extraordinary mitigation in the case of offences where the minimum penalty is less than one year (art. 57 § 3 no. 3 Polish Penal Code). The range of potential application of limitation of liberty is extended extremely by these sentencing guidelines.

4. THE PRACTICE OF COMMUNITY SERVICE FROM 1970 TO 1983 IN POLAND

The data about the practice of the different kinds of Community Service presented below, stem from the Official Court Statistics. Prior research concerning the application of the penalty of limited freedom undertaken by a group of scientists of the Institute of State and Law in the Polish Academy of Sciences[23] covers only the period from 1975 to 1980 and was not replicated in recent years[24]. That is why the following tables can be based only on court information systems. The tables were compiled to demonstrate the practice of the penalty of limited freedom[25].

Table 1 shows the figures concerning decisions (made by the public prosecutor or the criminal court) from 1970 to 1983 about those offenders who were considered to be guilty of having committed criminal offences.

In table 1 those figures concerning conditional dismissal seem to be most interesting because conditional dismissal may be combined with the obligation to serve up to 20 hours of Community Service (art. 28 § 2 and § 4 Polish Penal Code). Adding up figures of conditional dismissal made by the public prosecutor and those made by criminal courts, 15,3 % to 22,2 % of all final decisions between 1970 and 1980 concen conditionally dismissed cases. A peak (24,3 %) was reached in the year 1981. The decrease of absolute figures of conditional dismissals after 1981 may be explained by the "getting tough" policy in Poland after the introducing martial law on 18th December 1981. Most conditional dismissals of cases are made by the public prosecutor in Poland (78,1 : 90,8 %). The dominant role of the public prosecutor in this field is still continuing to exist although it is criticized by various members of Law Departments in Polish universities. A thorough analysis of the figures concerning conditional dismissal is not necessary here because conditions may comprise not only Community Service but also other obligations (art. 28 § 2 no. 1 and 2 Polish Penal Code), which cannot be separated on the basis of official statistics[26].

Table 1: Sentences 1970-1983

year	sentences		main sanctions*		conditional dismissal by prosecutor		conditional dismissal by court		measures of rehabilitation and education (art. 2 § 3 P.C.C.)		conviction without sentence (art. 56 P.C.C.	
	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%
1970	205.491	100	172.611	83,9	25.493	12,4	7.126	3,5	142	0,1	119	0,1
1971	246.454	100	204.131	82,8	35.107	14,2	6.871	2,8	187	0,1	158	0,1
1972	225.836	100	177.275	78,5	42.816	19,0	5.486	2,4	103	0,0	156	0,1
1973	204.779	100	159.072	77,7	41.789	20,4	3.693	1,8	53	0,0	172	0,1
1974	183.186	100	152.298	83,2	27.883	15,2	2.830	1,5	56	0,0	119	0,1
1975	197.496	100	167.023	84,5	26.941	13,6	3.303	1,7	111	0,1	118	0,1
1976	196.639	100	164.105	83,4	28.494	14,5	3.823	1,9	107	0,1	130	0,1
1977	167.768	100	140.586	83,7	24.075	14,4	2.913	1,7	106	0,1	88	0,1
1978	196.488	100	160.610	81,7	31.377	16,0	4.186	2,1	193	0,1	122	0,1
1979	194.890	100	155.876	80,0	34.180	17,5	4.490	2,3	223	0,1	121	0,1
1980	201.548	100	154.808	76,8	41.262	20,5	5.124	2,5	210	0,1	190	0,1
1981	170.779	100	128.953	75,5	35.368	20,7	6.115	3,6	225	0,1	118	0,1
1982	189.080	100	151.730	80,2	30.382	16,1	6.627	3,5	205	0,1	136	0,1
1983	183.543	100	145.623	79,4	31.073	16,9	6.576	3,6	81	0,0	190	0,1

* Main sanctions comprise essentially death penalty, imprisonment, suspended sentence (probation), limited freedom, fines.

Proportions of the penalty of limited freedom are displayed in table 2, covering the period 1970-1983.

The distribution of different penalties demonstrates quite clearly that imprisonment and suspended sentences play a major role in the Polish Criminal Justice system (imprisonment and suspended sentences make up 46,0 % of all sentences in 1983). The proportion of the penalty of limited freedom drops from 18,1 % in 1979 to 9,5 % in 1983. The enormous decrease in the use of limited freedom may be explained by the growing tendency to make use of immediate imprisonment in Poland. The increase in the use of immediate imprisonment reflects positions in the Polish criminal policy stressing the importance of deterrent and incapacitating effects of penal sanctions.

The use of limited freedom in cases where this penalty is not provided explicitly by law became more and more important during the period 1970/1975. Whereas in 1970 77 % of all sentences requiring limited freedom followed out of offences for which the law provided explicitly limitation of freedom, this proportion decreased to 65 % in 1975.

Until today, limited freedom is predominantly used in the case of petty thefts, small fraud as well as cases of inflicting bodily harm without intent.

Polish criminal procedural law differentiates between offences subject to public prosecution on the one hand or to private prosecution on the other hand. In the case of those offences subject to private prosecution we may observe that the penalty of limited freedom plays a much more important role than in the case of offenders subjected to public prosecution. Although the respective group of offender represents a very small proportion (1.252 offenders were prosecuted privately in 1980), the proportion of limited freedom increased dramatically from 11 % in 1972 to 46,3 % in 1979. But recent changes in the Polish criminal policy did affect the use of limited freedom in this group of offenders, too. The proportion of limited freedom dropped down to 17,8 % in 1983.

Table 2: Main sentences 1970-1983

year	sentenced offenders		death penalty		imprisonment		suspended sentence (probation)		limited freedom		fine		other sanctions	
	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%
1970	172.611	100	10	0,0	51.109	29,6	75.282	43,6	11.294	6,6	34.870	20,2	46	0,0
1971	204.131	100	9	0,0	60.604	29,7	88.837	43,5	19.814	9,7	34.816	17,1	51	0,0
1972	177.275	100	15	0,0	63.648	35,9	87.657	49,4	10.603	6,0	15.338	8,7	14	0,0
1973	159.072	100	18	0,0	60.007	37,7	68.221	42,9	14.112	8,9	16.708	10,5	6	0,0
1974	152.298	100	8	0,0	62.011	40,7	56.736	37,3	15.815	10,4	17.702	11,6	26	0,0
1975	167.023	100	18	0,0	59.048	35,4	60.689	36,3	22.736	13,6	24.485	14,7	46	0,0
1976	164.105	100	23	0,0	48.601	29,6	61.136	37,3	25.742	15,7	28.530	17,4	73	0,0
1977	140.586	100	10	0,0	49.389	35,2	49.794	35,4	19.789	14,1	21.535	15,3	69	0,0
1978	160.610	100	15	0,0	52.319	32,6	56.755	35,3	26.904	16,8	24.454	15,2	163	0,1
1979	155.876	100	5	0,0	48.500	31,1	55.078	35,4	28.182	18,1	23.899	15,3	212	0,1
1980	154.808	100	8	0,0	44.570	28,8	58.261	37,6	28.632	18,5	22.920	14,8	417	0,3
1981	128.953	100	4	0,0	32.123	24,9	56.808	44,1	20.540	15,9	19.220	14,9	258	0,2
1982	151.730	100	3	0,0	38.931	25,6	69.254	45,7	17.653	11,6	25.583	16,9	306	0,2
1983	145.623	100	9	0,0	40.431	27,8	67.028	46,0	13.887	9,5	23.865	16,4	412	0,3

As far as the length of the penalty of limited freedom is concerned, periods between six months up to one year were mostly used. But every third offender had to serve in 1980 periods ranging from one to two years. It can be pointed out that Polish criminal policy in the eighties is not only characterized by an increasing use of immediate imprisonment but also by stressing the maximum duration of limited freedom.

The problems discussed above in the context of conditional dismissals are responsible also for restrictions in the analysis of suspended sentences, impeding the breakdown of legally permitted conditions in the case of suspension by legal categories involving Community Service.

Table 3 shows the proportions of the three different models of limited freedom.

Limited freedom with the requirement of additional work in the public interest represents proportions between 33,1 % to 46,3 % among all those offenders sentenced to limited freedom in general. The second model of limited freedom (shortening of wages) which can be considered to be a quasi-fine, should be regarded to be preferred by criminal courts with proportions of 41,8 % to 60,2 %. The decrease in the figures of sentences involving limitation of freedom in the eighties affected mostly the third model of limitation of freedom, this is: ordering fulltime work in a state owned company.

Despite the official goal of the Polish legislator when introducing limitation of freedom in 1969 has been to give priority to the community service-model of limitation of freedom, Polish criminal courts favour in the past and the presence the most feasible model of limitation of freedom, that is shortening of wages. But the basic feature of limited freedom represented by the requirement of additional, non-paid and supervised work in the public interest gets more or less lost in the practically dominating shortening of wages. It is obvious that the data on proportions of the different models of limitation of freedom in the case of privately prosecuted

Table 3: Proportion of different kinds of limited freedom broken down by public and private prosecution 1970–1983

year	public prosecution								private prosecution							
	offenders sentenced to limited freedom		additional work in the public interest (art. 34 § 1 P.P.C.)		shortening of wages (art. 34 § 2 P.P.C.)		ordering full-time work in a State owned company (art. 34 § 3 P.P.C.)		offenders sentenced to limited freedom		additional work in the public interest (art. 34 § 3 P.P.C.)		shortening of wages (art. 34 § 2 P.P.C.)		ordering full-time work in a State owned company (art. 34 § 3 P.P.C.)	
	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%	abs.	%
1970	10.325	–	–	–	–	–	–	–	969	100	–	–	–	–		–
1971	18.349	100	7.682	41,9	9.934	54,1	733	4,0	1.465	100	–	–	–	–	–	–
1972	9.718	100	3.702	38,1	5.713	58,8	303	3,1	885	100	498	56,3	379	42,8	8	0,9
1973	13.221	100	4.560	34,5	7.964	60,2	697	5,3	891	100	458	51,4	427	47,9	6	0,7
1974	15.204	100	5.037	33,1	9.150	60,2	1.017	6,7	611	100	302	49,4	301	49,3	8	1,3
1975	21.963	100	9.010	41,0	11.300	51,5	1.653	7,5	773	100	424	54,9	332	42,9	17	2,2
1976	24.935	100	11.470	46,0	10.790	43,3	2.675	10,7	807	100	483	59,8	313	38,8	11	1,4
1977	19.160	100	8.875	46,3	8.016	41,8	2.269	11,9	629	100	333	52,9	285	45,3	11	1,8
1978	25.691	100	11.098	43,2	11.497	44,8	3.096	12,0	1.213	100	656	54,1	542	44,7	15	1,2
1979	26.862	100	11.389	42,4	12.488	46,5	2.985	11,1	1.320	100	760	57,6	531	40,2	29	2,2
1980	27.380	100	11.345	41,4	12.703	46,4	3.332	12,2	1.252	100	661	52,8	564	45,0	27	2,2
1981	19.701	100	7.795	39,6	9.784	49,6	2.122	10,8								
1982	16.895	100	6.475	38,3	8.986	53,2	1.934	8,5				no data available				
1983	13.200	100	4.584	34,7	7.627	57,8	989	7,5								

offences are of minor relevance. The small number of offenders prosecuted privately and sentenced to limitation of freedom cannot affect the overall distribution along the three models of limitation of freedom.

It is doubtful whether essential alterations in Polish criminal law will pull Community Service beyond the current status in the next future.

When analyzing variables such as social status of offenders sentenced to limited freedom, it can be observed that those sentenced to additional work in the public interest and those ordered to do full-time work in a State company stem from social groups characterized by a low socio-economic status and poor education. On the other hand, those offenders sentenced to shortening of wages belong to a higher socio-economic group. We may conclude on the basis of these distributions that the use of the different models of limited freedom is dependent on the social and professional status of the offender. Those offenders belonging to a higher socio-economic group are punished predominantly by shortening of wages. Those offenders characterized by a low socio-economic status especially those who are unemployed are predominantly sentenced to additional work in the public interest. Contrary to the aims of the legislator the additional, unpaid work in the public interest did not become the mainly used type of limited freedom but did develop into a penalty predominantly used in the case of a socially and professionally deprived group of offenders.

5. CONCLUSIONS

Shortening of wages has become the kind of limited freedom which is preferred by courts. That is why we have to put forward the question if the attempts of the Polish legislator to introduce Community Service not connected with deprivation of liberty were successful or if those attempts led to some new kind of fine, a fine, which is to be replaced by Community Service only in the case of offenders whose employment career is unstable. Considering the data, we are able to conclude that the second alternative must be

accepted. After all, two quite different kinds of punishment hide behind "limited freedom". The first has to be characterized as fine, the second as Community Service. But in practice, the pecuniary punishment dominates, whereas the punishment of Community Service which was thought of as the basic model of limited freedom is used as a subsidiary punishment, especially in those cases, where the offender has not any regular income.

NOTES

1) Sliwowski, J.: Kara ograniczenia wolności, 1973, p. 8.

2) Sliwowski, J.: op.cit., p. 9.

3) Cieślak, M., Weigend, E.: Die Geldstrafe in der Polnischen Volksrepublik. In: Jescheck, H.-H., Grebing, G. (Eds.): Die Geldstrafe im deutschen und ausländischen Recht, 1978, p. 749.

4) Cieślak, M., Weigend, E.: op.cit., pp. 750.

5) Bafia, J., Mioduski, K., Siewierski, M.: Kodeks danry. Komentarz. 2. ed., 1977, p. 119.

6) Sliwowski, J.: op.cit., p. 13.

7) Busujew: Ispravitelnye raboty, 1968, pp. 3.

8) Law of 15th December 1951 (Dz.U. Nr. 66, Poz. 454).

9) Sliwowski, J.: Wykonanie kary w warunkach ograniczonej wolności, 1964, pp. 91.

10) Sliwowski, J.: op.cit, p. 67.

11) Sliwowski, J.: op.cit., p. 68.

12) Bafia, J., Mioduski, K., Siewirski, M.: op.cit., p. 134.

13) Sliwowski, J.: op.cit, p. 90.

14) Swiatkowski, A.: Kara ograniczenia wolności a przepisy prawa pracy. Palestria 1971, pp. 40.

15) See Święcicki, K.: Prawo pracy, 1968, pp. 133; Sliwowski, J.: op.cit., pp. 70.

16) See art. 19 no. 1 Polish Constitution of 1952.

17) Gubiński, A.: Socjalistiyczna dyscyplina prawcy w prawie karnym, 1954, pp. 134; Kubicki, L., Skupiński, J., Wojciechowska, J.: Kara ograniczenia wolności w praktyce saidowej. Wnioski z badań aktowych. Państwo i Prawo 1972, pp. 74, 81.

18) Andrejew, I.: Polskie prawo karne w zarysie. 4. ed. 1976, p.256.

19) Swiatkowski, A.: op.cit., p. 40; Sliwowski, J.: op.cit., pp. 84, 92; Kubec, Z.: O sędziowskim wymiarze kary na tle projektu kodeksu karnego. Państwo i Prawo 1968, pp. 19.

20) Rudnik, M.: Penitencjarne aspekty kary ograniczenia wolności. Krakowskie Studia Prawnicze 1972, pp. 119; Przeradzki, A.: Kara ograniczenia wolności. Zalozenia kodeksowe a praktyka. Palestra 1971, pp. 48.

21) Rudnik, M.: op.cit.; Przeradzki, A.: op.cit., p. 50.

22) Bafia, J., Mioduski, K., Siewierski, M.: op.cit., p. 137.

23) Skupiński, J.: Kara ograniczenia wolności w orzecnictwie sadowym 1970-1972. Studia Prawnicze, 1974; Skupiński, J.: Kara ograniczenia wolności w orzecznictwie sadowym 1973-1975 w porównianiu z okresem pierwszego trzylecia obowiazywania kodeksu karnego. Studia Prawnicze 1977, pp. 71-108.

24) Jasiński, J.: Przemiary polityki karnej sądow powszechnych na tle przepisów nowej kodyfikacji karnej (1970-1980), Architrum Kryminologii, vol. VIII-IX, 1982, pp. 25-150 and Polityka karna sądów powszechniych w latach 1979-1983. Państwo i Prawo 1984, no. 11, pp. 25-44.

25) For details see Kunicka-Michalska, B.: Warunkowe umorzenie postępowania karnego w latach 1970-1977, 1982, pp. 226-236. The author concludes that between 1970 and 1977 criminal courts preferred to impose Community Service as a condition of dismissal (81,1 % of all cases involving Community Service). The relative proportion of Community Service in cases of conditional dismissals ordered by the public prosecutor is according to criminological research very low and does not exceed approximately 4 % of all the cases, see Zoll, A.: Materialnoprawna problemtyka warunkowego kumorzenia postępowania karnego, 1972, pp. 183-189.

26) In the case of those offences which can be prosecuted privately limited freedom is a statutory punishment besides imprisonment and the fine.

COMMUNITY SERVICE IN PORTUGAL: HOW DID COMMUNITY SERVICE PERFORM SINCE ITS IMPLEMENTATION IN THE 1982 AMENDMENT OF THE PENAL CODE?

Luis Manuel Oliveira de Miranda Pereira

1. INTRODUCTION

At the moment Portugal is going through the first years after the publication of the new Penal Code. This code outlines a punitive system derived above all from the basic thought that penalties should always be carried out with **pedagogical** and **rehabilitative goals.** This approach, although difficult to argue with at the level of principles, has to live with the ancestoral reaction to the menace of crime, that shows almost always a more emotional than rational form.

The process of implementation of the new Portuguese Penal Code is conditioned by the financial and economical crisis which we are passing through.

There is however a decisive point to remember following the publication of the 1982 Penal Code and in the near future the publication of the Procedure Penal Code.

Inevitably, the new legislation will end by putting, slowly but surely a profound alteration in the sense of the day to day Penal Justice and its application in Portugal. The development of the individual, in search of human dignity, depends on the decisive legislation, introduced there at the moment.

2. SOME PREFERENCES OF THE IDEAL OF COMMUNITY SERVICE IN THE PORTUGUESE LEGISLATION UNTIL THE PENAL CODE OF 1982

In Portugal, work is one of the strong ideas, pointing to a legal solution for the execution of penal sanctions since the 19th century.

Work in this way passes from an **instrument of punishment** and becomes the tool by which a delinquent is **reintegrated into society**. It is believed to be an efficient way of doing this.

The idea of work being used to recuperate a delinquent gains also pragmatically the dimension of **benefits to the community** as a whole. Proof of this is reflected in the Decree no. 34674-18/06/45, where we define amongst other things the functioning of outside labour force of prisoners, together with the reduction of the sentences and fines as a result of work well executed for public institutions.

With the use of this legal mechanism it was possible between 1951 and 1974 to construct over thirty buildings in Portugal (courts, prisons and other public buildings).

Through the labour of prisoners a clear saving of public money was obtained together with a fare wage paid to the delinquent, similar to that earned by any similar free labourer. This would have been impossible if prisoners worked only in prison workshops and farms.

The law also recognizes and visualizes the possibility of **reducing the final detention period** by one day for every three days of work completed with satisfaction. It also includes the possibility of providing help for the prisoner's family, payment to the victim and payment of fines via the earnings of the prisoner for this work. When fines are unobtainable from the prisoner, the alternative has been prison. The prisoner through the execution of work on public or State projects could provide payment in this way avoiding imprisonment. However, this alternative would only be permitted following proof that the prisoner was financially unable to pay such a fine. The work of the sentenced in the form of prison labour or fines used for the benefit of the community has in fact been with us for decades.

It is obvious that the final point of this system on the one hand is to maximise work's reintegrational properties, plus its economical value. On the other hand it aims at finding a satisfactory solution

for the **problem of non-payment of fine** (due to the financial situation of the prisoner), thus avoiding the detention of the delinquent in prison.

It is understandable that this outcome was secondary and not the main objective of the law.

If we refer to the Penal Code of 1982, article 47, we notice the possibility of substitutive payment of fines by labour. In this case, a big difference is noticed from the previous one, both in level of principal and procedures, here the payment of a fine can be substituted by work, the non-payment of fines does not transform the fine penalty into imprisonment nowadays.

The articles 46/47 of the Penal Code provide a number of ways for payment of fines. Only after all efforts in these directions have failed, the alternative of prison can be applied. This alternative being stated during the court sentence and imprisonment being reduced by two thirds for days of the fine.

In the case that the offender is able to prove that payment of the fine is impossible through no fault of his own, payment can be reduced or suspended completely.

Therefore, other possible solutions must be considered: The alternative of substituting the payment of the fine by labour, being carried out in State workshops, public institutions or other public entities.

In the previous legislation the substitution of a fine by days of work being rarely applied, did not have many practical results. The difficult accomplishment of this measure still remains nowadays and is connected amongst other reasons to the fact that the law does not provide the courts with a satisfactory support, regarding the organization of work sources.

3. COMMUNITY SERVICE IN THE CODE OF 1982 PLUS THE PROCEDURAL LEGISLATION

As the penalties should be applied with a pedagogical and reintegrative purpose, the Code of 1982 puts forward that prison sentences should only be applied in "ultima ratio" as a last resort. From this, a group of non-institutional measures and criteria have been set down. These criteria must be used as **guidelines** by the courts in their choice of penalties avoiding whenever possible, detention in prison.

In fact, **article 71** quotes:
"If for a certain crime both imprisonment or non-prison penalties be applicable, the court should give justified preference to the latter, whenever this shows to be sufficient to ensure social recovery of the delinquent and satisfy the needs to reprimand and prevent crime".

Community Service may be considered to belong to non-prison penalties. This penalty can be applied alone to a wide range of infringements, on the condition that these call for a **prison sentence of not more than three months.**

The application of this measure can be suggested by the defense lawyer, the public prosecutor or by the initiative of the judge.

The final decision of these measures however lies wholly with the judge. This penalty is foreseen in article 60 of the Penal Code, paragraph 1:
"If the offender is considered guilty of the crime and punishment for this crime is a penalty of imprisonment with or without a fine of less than three months, or a fine with the corresponding limit of three months, the court can sentence the delinquent to Community Service".

Therefore, it must be proved that the offender is guilty and that the appropriate prison or fine penalty do not exceed three months.

The following paragraphs of the above mentioned article 60 specify that:

- The work is **unpaid** (paragraph no. 2);
- the work is rendered to the **State**, to **public institutions** or **private entities** considered by the court to be of interest to the community (no. 2);
- the application of the penalty cannot **coincide with normal working hours** (no. 2);
- the application of the penalty has the **maximum duration of 180 hours** and the **minimum of nine hours.** It cannot exceed more than **two hours per day overtime** (no. 3) (note that the number of hours is determined by article 60 and in no way is related or proportional to other measures eventually applicable to the offender, mainly that of a prison sentence);
- it is compulsory to have the **agreement** of the delinquent (no. 4).

Finally, the **control** of this type of penalty is carried out by the **probation service** (paragraph no. 5). If the offender intentionally refuses to complete the work without a good reason, Community Service can be substituted by imprisonment. The substituting sentence can comprise imprisonment of up to **two years** or a **fine** up to one hundred day-rates, if the offender is accused of the crime of **disobedience** (article 388 no. 3 of the Penal Code); in the case of non-fulfilment of the penalty beyond the control of the offender there remains the possibility of substitution by fine or dropping the penalty (paragraphs 6 and 7).

With the implementation of the Community Service Order as a legal penalty in the Penal Code it was necessary to provide new rules for penal procedures.

Due to the fact that the new Procedure Penal Code is still incomplete - **special procedural legislation** was published. Decree no. 402/82 from September 23rd introduces alterations in the present Procedure Penal Code renewing all articles referring to the execution of penalties.

The articles 38/39 of the Decree previously mentioned are the ones applicable.

These articles establish that it is up to the offender or to the public prosecutor to nominate the entities to whom the labour is supplied; that the sentence can be postponed for up to one month to permit the indication of the supply of work; that the sentence will stipulate the timetable and labour duration as well as the entity which provides the working place.

This Code also states that the **probation service** (I.R.S.) is responsible for the control of the delinquent while performing the work and has to report about any abnormalities in the service and/or the correct execution of the said work penalty to the court.

It also adds that the Community Service Order should be registered in the **criminal register** in the terms laid down in the Decree Law no. 39/83 - January 25th. In the case of **first offenders** only the official investigator or the courts, are informed on this. However, the court has also the possibility to order the non-entering in the criminal register.

4. COMMUNITY SERVICE AS AN ALTERNATIVE TO IMPRISONMENT

It is usual to defend the Community Service Order since it is well known that short prison sentences are useless or even detrimental to the condemned. Apart from this, imprisonment proves to be an expensive penalty and sometimes also leads to overpopulation in prisons. For these reasons, alternatives have to be found.

Let us see therefore if the above mentioned points are also applicable to Portugal.

A Community Service Order is obviously intented to substitute short detention only. It is applicable for crimes of which the corresponding penalties do not go beyond three months of imprisonment with or without a fine. But Community Service is not the only alternative to prison. Besides Community Service there exist the **fine** applicable in those cases, **suspension of sentence** and **probation**. Although we can say that probation rarely invades the field where Community Service Order should be applied, we cannot say the same about fines or suspension of the penalty. The latter has a long tradition

in our courts and is, even if technically less correct for short sentences, widely used.

An obvious competitor against the Community Service Order is the fine.

Article no. 43 of the Penal Code states the principle that imprisonment of less than six months should be substituted by a corresponding number of days of a fine, unless a prison sentence is considered to be necessary in order to prevent further crimes of the same nature.

This will automatically mean the application of article no. 43 to crimes punished by imprisonment from three to six months. On the other hand, in the case of sentences up to three months there exist two alternatives with the fine being compulsory when a Community Service Order is not used.

In this way, except in cases where the court decides that imprisonment is necessary to prevent future infractions of the law (cases in which the choice of Community Service Order becomes a real alternative to imprisonment, putting aside the use of the fine), it is noted that the Community Service Order is in the majority of cases not applied as an alternative to imprisonment but as an alternative to fines.

Cases clearly taken into consideration by article 60 for the application of the Community Service Order concern infractions punishable by fines up to three months.

As a **second alternative**, the alternative of the alternative, it will hardly get credit of directly reaching the points listed before. Community Service Order characterizes itself as a non-detentional measure but not as a direct alternative to imprisonment. In the case of Portugal, we cannot point (except in a few rare cases) at a way of applicating Community Service Orders which seeks to avoid imprisonment with its desocialising effect, high costs and prison overcrowding. These objectives are quickly reached by way of the compulsory conversion of imprisonment into fines as previously mentioned.

In the meantime, Community Service Orders continue to be welcomed in two other fields. From the beginning Community Service fulfills an important role in the programme of **support for the victim** of penal infractions first and secondly it enhances mechanisms of **social solidarity**.

Taking into account the experience in countries where the system has been experimented, acceptance by the public of the idea of benefits received through Community Service Order can lead to a better understanding of delinquency phenomena and destroy old prejudices while society is taking an active part in the **social reintegration** of the offender.

Finally the **feeling of self-satisfaction** and **well being** that the delinquent feels when faced with the visual results of his work may represent a further advantage of Community Service. Justice in this way gains a **new dimension** in the day to day execution of criminal laws through Community Service Order.

5. THE PRACTICAL APPLICATION SINCE 1983

Up to October 31st, 1985, only **six Community Service Orders** have been applied in Portugal. Although systematic research is needed, not research has been carried through in order to explain the reason for this small number. I believe that it is possible to go ahead with the following assumptions.

1. **Political reasons** - the enforcement of the Penal Code with all its consequences pre-supposes a firm engagement for the definition and accomplishment of criminal policy which permits for development of practical application of principles and solutions of the Penal Code. Especially the lack of funds has caused **poor cooperation** between the political system and criminal justice agencies which should implement Community Service.

2. **Structural reasons** - the application of the new measures in the Penal Code pre-supposed the **existence of an organization** to support the courts. This examination, although founded, has not been able to grow fast enough to ensure general demand.

3. **Inertial reasons** - the previously mentioned reasons create an atmosphere which causes persistence in the courts to keep the procedure and routines resulting in the preference for the traditional decisions without feeling the need to face new measures.

4. **Reasons linked to the law itself** - the reglementation to perform the Community Service Order contains in itself items which make practical application a difficult undertaking and press the courts towards avoidance of its use as will later be shown.

5. **Social reasons** - without strong investments in its formation, public opinion reacts unfavourably to novelties that show any aspect of protecting the delinquent.

In a general way, the previously mentioned hypothesis can justify the poor application of Community Service Order, the same being applicable to the rest of the new mechanism stipulated in the Penal Code which seeks to fight imprisonment.

Let us now analyse the legal aspects referred to in point 4., which we understand as making the application of the law difficult.

These are basically:

- the fact that it belongs to the offender or the public prosecutor the indication of the organization to whom the work should be offered. Generally, the offenders **know little** about this penalty and about the entities where it can be performed. Again the public prosecutor is involved in other tasks;
- the fact that the probation service is only **responsible** for the control of the **application** of the measure and not for its **preparation**;
- the compulsory conversion into fines for a prison sentence of less than six months previously mentioned, ends in practice in many cases the possibility of the court to resort to a Community Service Order.

6. POSSIBLE FUTURE DEVELOPMENTS

The **new draft** for the Penal Procedure Code handles Community Service Orders in a different way. This project provides the court with the option of applying the Community Service Order with the support of the probation service.

This project states:

1. If the accused ought to be condemned to Community Service Order, the court enquires in detail both education and professional competence of the offender and receives information from the probation service concerning community service places and timetables for allocation.
2. To accomplish what was established previously in 1., the sentence can be **postponed** up to one month.
3. After adjudication, the probation service proceeds with the allocation of the work to the delinquent within **three months**.
4. The probation service must report to the court about completion of Community Service as well as any irregularities which occur during Community Service.

   Also in the case of **replacement of a fine** by labour, the project of the Procedural Penal Code changes in a positive way the present legislation, making it easier in the future to substitute the payment of a fine by labour. In both situations it is supposed that the probation service supports the court in decision-making and implementation of Community Service.

7. CONCLUSION

Firstly reference was made to forms of benefits in favour of the community before the Penal Code of 1982, which established the measure of Community Service Order. The difficulties of its application were also described.

Finally, expectations towards the future Penal Procedure Code already at the stage to be presented as a law proposal for debate by Parliament should be discussed.

As a matter of fact, if the publication of the new Penal Procedure Code goes hand in hand with investments in the probation service this would permit (even if only in a progressive way) effective support to the needs of the courts. We are sure that the use of Community Service Order will grow quickly in Portugal and that this measure will become recognized and favoured by the courts.

- **1886** Penal Code (article 123rd; § 2nd, 3rd and 4th according to the Law Decree no. 371/77 of December 5th;
- **1929** Penal Process Code (article 641);
- **Ministry of Justice - Conselho Superior dos Serviços Criminais** Reports of **1952** and **1953** Activities (groups of work);
- **1963** Penal Code Draft by Prof. Eduardo Correia (article 59th);
- Proceedings of Penal Code's Revisory Commission (Act of the 21st Session);
- Revision Proposal no. 117/I of Penal Code (article 48th);
- Revision Proposal no. 100/II of Penal Code (article 47th);
- Law Proposal no. 221/I of Penal Code;
- Statement no. 54/X from Chamber of Corporation (Base VII);
- **1982** Penal Code (articles 47th and 48th);
- Law Decree no. 402/82 or 23rd September (articles 26th; 27th; 38th and 39th);
- FERREIRA, Manuel Cavaleiro de - Lições de Direito Penal Português, II vol., pag. 494-498.

COMMUNITY SERVICE IN ITALY
- LEGISLATION AND PRACTICE -

Carlo Enrico Paliero

1. THE HISTORY OF THE COMMUNITY SERVICE ORDER

1.1 The Italian version of the so-called "Community Service" which recently has been introduced by Law no. 689 of 1981 (art. 102 ff.) is **not entirely new** in the Italian legal system. Even in the liberal Penal Code of 1889 (that had been valid until 1930), Community Service was provided in two forms: it was applied a) **instead of imprisonment** in the case of insolvency (art. 19 s. 5 and art. 24 s. 2 Penal Code) and b) as a sole sanction which could be meted out for **minor offences** such as begging or severe drunkenness (Art. 22, 455 and 488 Penal Code). In article 19 the nature of the work to be served by the offender was defined: the sanction had to consist of a "certain service rendered for public, rural or urban institutions". Herewith it was emphasized that the work had to lie in the **public interest**. The Penal Code additionally stressed the **voluntary nature** of Community Service: the offender could have only been sentenced to Community Service if he had applied for it. Finally, the ratio was fixed, "two days of Community Service are the equivalent of one day of imprisonment". Regulations of the Penal Code provided payment for the Community Service done, it also entrusted the **public prosecutor** with the implementation of this sanction. It was just this procedural feature that revealed the **nature** of this sanction as being attributed rather to the sphere of the execution of the penalty imposed than to the sentencing process. The same rules referred to a "special provision that had to be passed later on and which should give more details as to the contents and implementation of Community Service".

1.2 Inspite of this sanction which should be regarded to be well defined when considering its historical location, in practice, it has

hardly been imposed at all. At the turn of the century - ten years after the introduction of this sanction - a statistical research had been carried through revealing the figure of 65 Community Service Orders in Italy within a period of 5 years. Compared with the number of penalties of imprisonment which at the same time exceeded 80.000 per year, the above figure of 65 is in fact ridiculously low.

The **failure** of the practical application of Community Service in its first version in the Italian legislation might be due to three reasons:

a) The "preventive neutralization" of Community Service Orders is already realized in the Penal Code "in abstracto" by providing Community Service as a mere "substitute" (compared with the "alternative penalty of imprisonment", Community Service is given an inferior position, that means it is pushed to marginal crimes such as begging or drunkenness);

b) it might be due to the absence of an ordinance appropriate to define the nature and the implementation of Community Service as well as to provide for the indispensable control of the work done by the offender;

c) it might be due to the fact that the judiciary more or less explicitly tended to repel the Community Service Order; this is likely to be the result of the absence of legal guidelines and sometimes even to judges not knowing about the existence of Community Service in the Italian penal system.

Finally, Community Service was very scarcely imposed. Keeping in mind that precise guidelines were lacking, it is thanks only to individual commitment and initiative of few judges keen on experimenting that this sanction was imposed at all. Their personal capabilities enabled them to define more closely the kind of work which should be served when resorting to Community Service: in about 50 % of all cases, Community Service consisted of roadwork (excavating, cleaning, building of terraces, removal of debris); approximately 20 % of copying and recording works. The rest concerned blue-collar "occasional work", but a more precise description does not exist.

1.3 We will be able to recognize the usefulness of this historical excursion to our study later on, since it has revealed the development of important structural constants in the experience with Community Service in Italy.
Negative experiences with Community Service had led to its exclusion from the Penal Code of 1930 which is still in force. It was not until the **70ies** that **Community Service** was **rediscovered** by the Italian legislator. Firstly, it was introduced into the "Draft of the Penal Code's General Part" and finally accepted by the Senate in 1973 but given up thereafter. Secondly, Community Service was mentioned in the "Decree of the Executive Law (1975)" as a potential tool to replace a fine. This decree is, however, no longer in force. Art. 62 of the Draft of 1973 restricted itself providing Community Service as a sanction to be imposed instead of imprisonment or a fine and copying art. 19 Penal Code of 1889. Only the ratio imprisonment : alternative work was altered to a ratio of 1 : 1. Yet, this Draft was never passed. Art. 19 of the Executive Law was rather a "hypothesis" than the provision of a measure which in reality did not exist at all, yet. Whatever reasons may be held responsible, statutes containing Community Service in this legislative period never turned out to be "law in action".

2. TYPOLOGY AND MODEL OF COMMUNITY SERVICE IN ITALY

2.0 Despite its historical failure, the Italian legislator could not neglect Community Service Orders during the reform of the penal system in the early 80ies. This was particularly due to the fact that the law reform resulting in the Law no. 689 (1981) has been mainly inspired by the postulates of the "International Movement of Penal Law Reform" and was characterized by an international comparative approach. The decision to introduce Community Service into Italian legislation must be analyzed and evaluated within this cultural framework.

2.1 Leaving aside a priori any kind of work during imprisonment, it is generally known from international experience that punitive functions can be assigned to various models of Community Service Orders. The varying functions manifest itself by two different profiles: the first is rather related to the content of Community Service and the second to structure and system.

2.1.1 According to the contents of the sanction, three main forms exist:

a) "Free labour" in a narrow sense, conceived as an alternative sanction instead of the payment of a fine. Hence, the offender's insolvency is not necessarily required. In Switzerland and in some Latin-American States, the service has to be rendered in favour of the State or public institutions. The offender can carry out community service work over week-ends as well as during the week, thus an emphasis is put only on the time available for the offender. The precise purpose of Community Service is to enable the offender to procure the necessary pecuniary means in order to be able to pay the fine imposed on him, thus the work is naturally paid.

b) **A second model** which does exist in England in its most characteristical form represents "work in the public interest" (Community Service in a narrow sense). Contrary to the above mentioned model, this is - also in teleological terms - an absolute independent sanction. Due to the high social value placed on the work imposed on the offender, the punitive character (deprivation of leisure time) is compensated by a pedagogic one. Therefore, the offender receives no payment at all. Community Service must not be performed at the offender's regular working place and has to be served mainly during week-ends; exceptions may be possible in the case of unemployed offenders, only.

c) **The third model** of Community Service is dominated by the "educative nature" of work, in general implemented by socialist legal systems. Since Community Service has to be carried out at the offender's regular place of work, this sanction is only relevant for employed persons; finally, his wages are confiscated.

2.1.2 Regarding the structure and the systematic position of Community Service within the system of penalties, it can have three functions:

a) Being an **entirely autonomous penalty** its application may be allowed by the special part of the Penal Code for single offences (practiced in Czechoslovakia), or it appears in the

typological catalogue of penal sanctions within the general part of the Penal Code (currently in France).

b) As a mode of execution or, in other words, as an order ranging among the scope of non-custodial sanctions, it may be traced back to probation (the Federal Republic of Germany, France and the German Democratic Republic).

c) At last, as an alternative penalty of imprisonment in the case of fine defaulters due to insolvency (this option exists in numerous countries, among others in the Federal Republic of Germany and, as we will see later on, in Italy as well).

2.1.2.1 Returning to point c) (Community Service as an alternative penalty of imprisonment), we may undertake an additional subdivision: Community Service can be applied as an alternative mode of execution with respect to a fine or as a particular mode of execution of the fine itself. As we have already seen, Community Service on a voluntary basis is a typical example of the second way of collecting fines; whereas this sanction when replacing imprisonment by "forced labour" belongs to the mode stated first. Giving closer scrutiny to the latter, we recognize that this measure is used as an alternative to imprisonment (to which the offender would otherwise be sentenced). From its introduction in the Penal Code of 1889 which provided Community Service as an alternative for substitute imprisonment onwards, Community Service has been implemented in the Italian legislation within the logical framework mentioned above.

2.1.2.2 Of course, these three possibilities (or structural-systematic variants) stated under the previous point do not exclude each other, but, on the contrary may exist within the very same legal system. The international comparison shows up with following examples: The German Democratic Republic is doing so as well as, quite recently, France (combination of a) and b)); Czechoslovakia (a) and c)) and finally the Federal Republic of Germany (b) and c)).

2.2 In the early 80ies, the sanction of Community Service was given renewed attention resulting in Law no. 689 (1981); it still is

subjected to discussion and change. At least, when it was but a project, it constituted a mixture of the above mentioned various contents and structures although the reform realized in practice up to now has experienced a stand-still restricted to "minimum solutions".

A significant feature of the experiences with Community Service in Italy stem from the two sources from which the reformers derived their ideas: the **judicial culture** characterized by a philosophy of criminal policy typical for the "International Movement of Penal Law Reform" on the one hand and the authority of the Constitutional Court itself giving birth to a famous decree, on the other hand.

2.2.1 The Constitutional Court declared in decree no. 131 of 1979 that the conversion of fines into imprisonment following out of art. 136 Penal Code of 1930, is unconstitutional. This decree - its considerable impact on legal development cannot be denied - deprived fines of any efficiency and thus in turn compelled the legislator to look for a new model of conversion. The Constitutional Court in turn acknowledged the legislators' direct concern and - through an initiative almost unique in view of constitutional control in the Italian history - has shown a solution to this problem. A look at foreign legal systems has inspired the Constitutional Court to introduce other measures (the possibility to work for public institutions during one or more holidays) which do not affect the personal liberty of the offender but aim at creating resp. increasing his solvency. This suggestion was passed on to the legislator who thereupon added Art. 102 and 105 to the Law no. 689 of 1981 quoted above providing for a mode of Community Service instead of uncollectable fines (see 2.1.1 c)).

2.2.2 During the process of elaboration of this law which virtually intended to replace imprisonment by non-custodial sanctions, it has been suggested to introduce forced labour outside the prison system into Italian legislation, as part of **semi-detention** (semidetenzione) as well as **supervised liberty** ("libertà controllata"). Consequently, a person sentenced to one of these two sanctions would have been obliged to carry out Community Service. So, the offender who

already is regularly employed, would have been compelled to work at least during **one day a week**, the unemployed (incl. people attending school) **five days a week.** The payment for Community Service would have been effected according to the tariff valid for work during imprisonment; any exemptions from the obligation to work could have been made in the case of the offender's incapability only. This solution reflecting - from a structural point of view - the model stated under 2.1.2 a) was already abandoned during the legislative period because it was considered incompatible with § 2 Art. 4 of the "European Convention on the Protection of the Human Rights and Basic Liberties" as well as with art. 2 Convention no. 29 (1930) of the International Labour Office ("Bureau International du Travail") about forced labour. These Conventions were ratified Conventions in Italy, they in fact prohibit any form of forced labour.

2.2.3 The complex nature of the problems arising after the enactment of Law no. 689 of 1981 from such a profound reform of the system of penalties has caused the need for a "reform of the reform". The former government has reacted particularly quickly by preparing a ministerial draft within one year that was presented on March 1985 and is now being examined by Parliament. Within the framework of this project, **unpaid Community Service** with a maximum of 20 days was provided as one of the orders that - on the precondition of the offender's consent - may be added to a suspended sentence on probation, a measure supposed to - according to the philosophy embodied in the draft - modify the currently valid pardonning model of simple suspension ("sursis simple") into supervised "probation". Subject to further modifications, the majority of the Members of Parliament is now up to insert the Community Service Order into the most classical institute of suspended sentence. The structure of this model corresponds to that stated under 2.1.1 b). It is nowadays implemented in France as well as in the Federal Republic of Germany and the German Democratic Republic.

3. NORMATIVE FEATURES OF THE COMMUNITY SERVICE ORDER IN THE CURRENT ITALIAN SANCTIONAL SYSTEM

3.0 Community Service ("lavoro sostitutivo") is presently restricted to **replace fines** only. A short outline of the substantial, procedural and operational features of Community Service will be given.

3.1 One has to recapitulate that the only purpose of Community Service is to replace fines ("multe e ammende") which because of the offender's insolvency cannot be enforced.

The combination of a Community Service Order with other penal sanctions, especially with probation, is at present only fixed in the ministerial draft already mentioned; the latter will, however, obviously not be passed in the near future. The content of the Community Service Order reflects the scheme of the sanction provided by the Penal Code of 1889 and does rather represent an alternative to substitute imprisonment and a mode of execution of fines as is practiced for example in Switzerland.

3.1.1 Hence, the Italian model of Community Service does not depend on the seriousness of the crime but can be provided for any offence, for major crimes ("delitti") as well as for minor offences ("contravvenzioni") without excluding a priori any crime at all. The "lavoro sostitutivo", however, being an alternative penalty depends on the sanction, that is, the legal type of penalty (only persons sentenced to a fine can serve "lavoro sostitutivo") as well as the **concrete quantity** of the penalty (it must not replace fines exceeding a certain amount). As we have already seen above, the legislator has subjected the application of "lavoro sostitutivo" to a strong restriction by making it dependent on a maximum amount of the fine that can be replaced by work: **one million Lire** in the case of the conversion of one single fine (art. 102 s. 2) and **three million Lire** in the case of several, simultaneously pronounced fines (art. 103 s. 2). Fines exceeding those limits may be only replaced by **supervised liberty** ("libertà controllata") which does not provide deprivation of the offender's liberty but, on the whole, corresponds to safeguarding and improvement measures under supervision (§ 68 f. StGB).

3.1.3.1 One has to bear in mind that the legislator of 1981 has explicitly defined the ratio of replaced fine : alternative work. A fine amounting to 50.000 Lire may be replaced by one day of work or a fraction respectively. However, the law has not assigned the work to a fixed period of time by only stating that the offender must not work **less than one day per week** thus granting him the opportunity to shorten the sanction through working more frequently. This means that the work will be carried out preferably, but not necessarily, on week-ends.

3.1.2.2 According to any regular employment, the number of community service hours to be served per day by the offender amounts to **eight.** Thus, the **maximum number of community service hours** to which the offender may be sentenced, is, in the case of conversion of one single fine, **60 hours** and if Community Service is replacing several, simultaneously pronounced fines, **480 hours.** The minimum term (one day per week) taken into account, this penal sanction may cover five months or one year and two months respectively; this is a rather long period, perhaps too long.

3.1.2.3 The ratio of fines to Community Service does roughly correspond to the trade-union tariffs providing **minimum wages for unskilled workers** (excl. social security) of 50.000 Lire (approximately 75 DM). This ratio is not valid for conversions of fines under 50.000 Lire, as Community Service must not be done for less than eight hours a day. Therefore, it would have been wiser to stipulate comparative criteria rather based on hours than on days.

3.2 Constituting an alternative to imprisonment, Community Service is **unpaid** and has to be carried out in the **public interest** (art. 105 s. 2 Penal Code). As we will see later on, the law names the place and the kind of work.

3.3 The sentence to do Community Service has to be preceded by the **personal application** of the offender (not by his solicitor). This avoids the risk to violate the International Conventions on forced labour. If the judge decides not to impose Community Service, he has to sentence the offender to supervised liberty ("libertà

controllata"). The discretionary power of the judge is justified if we take into account the precarious situation on the labour market; the judge may thus avoid to impose measures that are predestinated to fail because of a lack of suitable work places.

3.4 The procedural particularities of the Italian model of Community Service mainly stem from the mode of conversion which is, up to now, as far as execution of the fine and assessment of the offender's insolvency are concerned provided by Royal Decrete no. 2701 of December 30th 1985. This law does not meet the actual needs and leads to an artificial extension of conversions of fines.

3.4.1 Actually, two procedural phases have to precede the final sentence which orders Community Service. **The first phase** is connected with the conversion of the fine. As soon as the offender's insolvency is stated, the public prosecutor's council or the judge of the inferiour court (who in this case has the function of a public prosecutor) has to pronounce the conversion of the fine and suggest an alternative measure to the executive judge ("magistrato di sorveglianza") who in turn will choose and define more closely the alternative penal sanction. He is, as in France ("juge d'application"), responsible for the **final execution** of every penal sanction.

3.4.1.1 In the **second phase** the executive judge has to decide - the objective (the fine to be conversed into a Community Service Order must not exceed one million Lire respectively three million Lire in the case of several fines pronounced simultaneously) and the subjective conditions (the prior application of the convicted person) given - whether the latter should be admitted to Community Service or sentenced to supervised liberty ("libertà controllata, art. 107 s. 2 Penal Code). The criteria appropriate to help the judge in making his decision are not yet stipulated ad hoc; but it is plausible that their nature will be objective as well as subjective. First, the executive judge will have to verify both, the possible work places near the offender's residence and his capability to carry out the work. The reasons underlying non-execution (insolvency or the intention to avoid fines) taken into account, the admission to perform Community Service, a sanction

doubtlessly less serious than supervised liberty ("libertà controllata"), is in this respect not likely to be taken into consideration by the judge. The topical criteria is more likely to be seen in the principle of the "least desocializing effect" of the sanction which is stipulated in art. 58 of Law no. 689 of 1981 as general principle for the decision to pronounce non-custodial penalties.

3.4.1.2 It is at the discretion of the executive judge to define the mode of execution of the alternative penalty. If he decides upon Community Service, he has to consider the guidelines which are to shape this decision: they concern the "offender's obligation towards his regular employment or studies, his family and his health" (art. 107 s. 3). The executive judge has to fix

a) the beginning of Community Service (art. 107 s. 3);
b) the kind of work,
c) the place of work,
d) the day of the week on which Community Service has to be carried out and finally
e) the length of the sentence.

If the offender wishes to shorten the length of the sanction by working more frequently than once a week, the judge may comply with this request and determine additional days.

It is obvious that the execution of the sentence is adjusted to the individual characteristics of the offenders involved: employed offenders on the one hand subdivided further into persons with fixed working hours and with changing working hours (students, housewives etc.), and non-employed offenders on the other hand. In order to achieve a better adjustment which is the best and perhaps the only guarantee for satisfying performance of Community Service, the law provides the involvment of the **probation service** in this phase exclusively.

3.4.1.3 As to the procedure itself, it has to be noted, that the precise kind of an alternative penalty has to be chosen after the "convicted person has been heard" (art. 107 s. 2). During a meeting especially held for this purpose, the offender's willingness to perform Community Service which cannot always be explicitly

derived from his written application has to be stated. He may, however, not opt for a certain kind of work: "the nature of the measure is not provided, the judge is not bound to justify his decision, the convicted person cannot complain against the judge's decision". According to the wording of the law, the actual execution of the sanction would not start until the nature of Community Service was specified and would thus take on the features of the executive procedure which in turn entails two separate legal decisions. As this would be rather confusing, modern law scholars have suggested an evolutionary interpretation of the law by saying that there should be a single and mutual decision on the sentence of Community Service itself and on its contents which should be made in the presence of the offender and be subjected in toto to the rules of the executive procedure.

3.5 The control of the final performance of Community Service is directly connected with the problem of "**revocation**" and with the further conversion of a prison sentence based on a ratio of 1 : 1 (i.e. one day of imprisonment makes up for one day of unsatisfactorily performance of Community Service (art. 108 s. 1 Penal Code). In order to **increase the deterrent effect**, the Italian legislator has excluded from the conversion any non-custodial mode of execution for the penalty resulting from revocation (art. 108 s. 1 last part Penal Code).

3.5.1 The law is incomplete in regard of the substantial conditions of revocation as well as to their assessment.

3.5.1.1 The law does neither say, not even allusively, **when** non-fulfillment of the Community Service Order resulting in revocation is given, nor does it define the **grade of seriousness** of any failures occurring during the performance of Community Service which should be defined as non-fulfillment. It is not even stipulated whether revocation may be caused only by intentional non-fulfillment or by non-fulfillment for which the offender cannot be held responsible, too. But a guideline exists providing revocation for those offenders only who are not to blame for the non-fulfillment of their sentences. That interpretation corresponds to

an instruction given by the Constitutional Court the members of which consider the old mode of conversion to be inappropriate as it may lead automatically to imprisonment, even if the offender is not at fault.

3.5.1.2 The law implicitly refers to necessary statutes which should define both the person responsible for the control of the offender at work and the means of control. According to the law of 1981 police is obliged to inform the executive judge (art. 108 s. 2) who in turn has to transmit the information to the authorities responsible for revocation orders. It is however rather evident that the police is able to control the execution of the sanction of supervised liberty ("libertà controllata") but not at all to supervise the proper performance of Community Service.

3.5.2 Lower and superior courts are competent for revocation orders (art. 108 s. 3) and conversions of Community Service into prison sentence (art. 71 f. Law of Execution).

4. OPERATIONAL ASPECTS

4.1 In contrast to the Penal Code of 1889, the Penal Code of 1981 does not restrict the places where Community Service may be performed exclusively to public organizations in regional, urban or rural districts. The work can also be effected in favour of **private organizations or associations** (assistance, civil defence, environmental protection, forestry (art. 105 s. 1)). We may conclude that a) public as well as private organizations are involved which b) provide work of a high social standard; consequently c) there exists a great number of organizations meeting these requirements.

4.1.1 The rules about the kind of work to be done are not derived from the Penal Code of 1981 but do very clearly reflect the wording of a statute of 1972 which allowed conscientious objectors to do work in the public interest instead of performing military service (art. 5 s. 3 Law no. 772 of 15th December 1972). The positive outcomes of these alternative orders incited the legislators to provide just the same kind of work for Community Service Orders. It

was recognized that "the implementation of statute 772 of 1972 had shown that assistance work and environmental protection were absolutely superior to any other kind of work". Among the organizations that have up to now employed conscientious objectors range numerous organizations of social welfare as e.g. the Italian association to help spastics, the Italian association for blind people, several homes for the elderly, hospitals, the Italian Red Cross, various homes for minors, educational establishments, the National Park Gran Paradiso and the Italian section of the World Wildlife Fund, organizations for civil protection (e.g. fire-brigades), establishments providing vocational training and schooling, recently followed up by therapeutic groups for drug addicts.

4.2 The cooperation between the judiciary and the organizations employing community service workers is specified by the statute giving "special conventions by the Ministry of Justice responsible for the delegation of the executive judge" (art. 105 s. 1). The term "special conventions" implies the preparation of special employment contracts which should differ according to the employing organization. Furthermore, the conditions of the contract and of labour should be stipulated.

4.2.1 On March 23rd 1985 - nearly four months after the passing of the draft about Community Service - the Ministry of Justice has elaborated and issued a circular containing the scheme of the conventions mentioned above.

4.2.1.1 This circular was sent to all judiciary authorities. Above all, it provides a specific modus operandi which should be followed by all executive judges.
The latter are obliged to contact the local employing organizations in order to fix a convention regulating some terms of labour. The precise wording, however, may differ according to the individual conviction of the offender. The scheme provided by the circular gives some guidelines only.
The circular favours the direct stipulation of the conventions by the judge. However, art. 105 s. 1 says that the judge has to apply

beforehand for a specific ministerial authorization in that he names the involved organization as well as the introduction of any stipulations that are not contained in the circular.

4.2.1.2 Two stipulations of the ministerial circular dealing with working conditions are worthwhile to be stated because they are non-alterable:

a) The organization respectively the firm has to provide the same insurance at the lowest rate as is compulsory for regular staff, too, covering cases of injury or disability occurring from work.
b) The community service worker has the same right as the other employees to be transported to the working place, to get meals, medical service, prophylactic measures and first aid.

The stipulation obliging the employing organization to "keep to the legal norms and to safeguard and protect the physical and moral integrity of the offender" is just as much important. The stipulation prohibiting "any kind of work that violates the Human Rights or Human Dignity" is of a more programmatic and stylistic character since the Italian legal system itself ensures sufficient protection of those rights.

4.2.1.3 The convention meets the requirements of both the employing organization in that it obliges the sentencing judge to take into account the "objectives of the organization and its infrastructure" and the offender by saying that the "kind of work should correspond as far as possible to his qualification and capability".

4.2.1.4 Especially countries suffering from high unemployment rates tend to have reservations against Community Service Orders. They fear negative effects in terms of stress on labour opportunities for the general population. The Italian legislation has thus taken these considerations into account and has issued the following stipulations: regular employees must not be replaced by community service workers; positions which are required by law must not be staffed by employing community service workers.

4.2.1.5 Although in the convention the problem of control is mentioned, no satisfying solutions are provided. In fact, it is up to the employing organization to pass "immediate notification to the judge" in the event of "failure to comply with the proper fulfillment of the Community Service Order". What is meant by "failure" is not said explicitly. In this respect, specifications are however given for work in replacement of military service which, as we have already seen above, forms the archetype of the Community Service Order at least as far as operational aspects are concerned. Art. 6 law 772 of 1972 defines the term of "failure" as follows:

a) unjustified failure of the sentenced offender to present himself to the employing agency he is assigned to within two weeks;
b) serious disciplinary lapses or behaviour incompatible with the purpose of the employing agency.

5. PRACTICAL EXPERIENCES WITH COMMUNITY SERVICE

5.1 Data concerning the implementation of Community Service in Italy outline a somewhat peculiar and totally unsatisfying picture. The peculiarity lies in the restriction to a very small area where Community Service is ordered relatively often; anywhere else in Italy, Community Service Orders up to now could not be observed.

5.1.1 Data available from the Ministry of Justice reveal that executive judges have not yet applied for the indispensable ministerial authorization, that should precede the pronouncement of Community Service Orders (s. 4.2.1.1). Taking into account the delay of the Ministry of Justice in preparing the scheme of the convention, this fact is not really suprising. Statistics obtained by executive authorities (by the General Direction on a national scale) show that between 1982 and 1984 in 25 of 26 districts (into which executive jurisdiction is divided) **no** order to perform Community Service was pronounced with the exception of Milan where 1983 two and 1984 twelve Community Service Orders were pronounced. Data covering the first half of 1985 confirm this fact. Within the district of Milan, seven Community Service Orders were pronounced whereas the rest of Italy shows up with no orders at all.

5.1.1.1 A closer look at the statistics shows that the restriction to an area is still more rigorous than presumed on the first sight. Community Service is virtually implemented only in the Veltlin, a rather large Alpine valley, the size of which approximately corresponds to the province of Sondrio. Its close vicinity to Switzerland doubtlessly causes ethnic and cultural particularities as e.g. a certain striving for autonomy and spirit of social solidarity encouraging good relations between citizens, local authorities as well as among local authorities themselves. Sondrio and the Veltlin fall under the Milan district of jurisdiction, this is why Milan appears in the statistical material at all.

5.1.1.2 Since the introduction of Community Service in the Italian legal system, within the district of Sondrio/Veltlin 22 Community Service Orders have been pronounced: in 1983 two, in 1984 thirteen and seven in the first half of 1985; during the second half of 1985 another 23 applications to serve Community Service were submitted to the executive judge who in turn has not yet adjudicated on. In absolute terms, those figures are of course negligible, but in relative terms they are significant because they represent the total of all Community Service Orders in the district of Veltlin. Primarily, this means that the number of non-executed fines is relatively small, they amount in fact to a maximum of 500.000 Lire; furthermore, the judges of that area have given Community Service absolute priority since they never have used supervised liberty ("libertà controllata") as an alternative penalty for non-executed fines.

5.2 Most Community Service Orders are imposed in the case of **petty offences.** With the exception of one single case of violent robbery, the remaining orders concern offences which do not seem to justify an expensive penal procedure at all: most cases concerned severe drunkenness connected with molestation (7 cases = 31 %) followed by the issue of bad cheques (6 cases = 27 %). The remaining cases show up with strongly decreasing percentages: disobedience to authorities (2 cases), prohibited suspension of posters (2 cases), acting against the "sorveglianza speciale", prohibited carrying of a weapon-like object and dangerous driving (1 case each).

5.3 The Veltlin sentencing practice unveils surprising deviations from the Penal Code. Firstly, one single case excepted, in all cases the decision on Community Service was directly made by the public prosecutor's council (in one case by the Inferior Court on behalf of the public prosecutor's council) and not, as provided by art. 107 s. 2 by the executive judge. A far more serious deviation is that no single sentence was preceded by the offender's application; this failure means in fact a breach of international conventions subjecting the Community Service Order to prior application. This practice may be due to little information of the offenders about their rights on the one hand, and on the other to the offenders' awareness about the undeniable advantage to be sentenced to Community Service - though without having applied for it - instead of being sentenced to supervised liberty ("libertà controllata"), a measure that is doubtlessly more restrictive.

5.3.1 Subsequently, the executive judge (in this case the judicial authority of Veltlin) nearly always decided only on the mode of execution, whereas the underlying sanction was chosen by another judge at his own discretion. It occurred only once, that in accordance to the Penal Code, the decision to replace a penalty by any alternative was up to the Milan public prosecutor; the final option for Community Service was left to the executive judge and the offender attended the trial in order to lay down the kind of work he would like to perform; his application was lacking, but his consent was given.

5.3.1.1 The responsible executive judge at the court of Varese did refrain from stipulating conventions about the working conditions. He simply referred the offender to the local authority.

5.4 The communities involved are characterized by a considerable willingness to cooperate. The service itself consisted nearly always of **blue-collar work**, only once office work was involved (re-arranging documents by alphabetical order in local archives); cleaning and maintenance of roads prevailed as well as repairing local sports facilities, a female offender had to clean the town-hall.

5.4.1 Community service workers are instantenously insured by the communities subject to the same conditions provided for regular local blue-collar workers at the INAIL (Italian Insurance Company for Industrial Accidents) during the period of employment.

5.4.2 With the exception of one offender who was already regularly employed and has asked for the permit to serve his sentence on Saturdays only, the judges usually have complied with the requests of the local authorities to have community service work performed on Mondays. Once, the sanction even lead to regularly paid employment. As soon as the offender had fulfilled the community service work, he was offered by the employing community the opportunity to keep his job.

5.5 The outcomes of the Veltlin experiences with Community Service are not unsatisfying. 50 % (11 cases) of all orders were properly fulfilled, 23 % (5 cases) were avoided because the offender finally paid the originally imposed fine, only 27 % (6 cases) of all Community Service Orders were not fulfilled and led thus to imprisonment. Taking into account the somewhat compulsory way in which the judges' sentences to Community Service were passed (lacking the prior application or consent of the convicted person), the final results of this measure are not disappointing in itinere, particularly since no revocations because of disciplinary failures occurred: the sentenced persons either served their orders regularly and properly or did not work at all.

6. CONCLUSIONS

6.0 The period of time from the introduction of Community Service in the Italian Penal Code up to now is too short to permit reliable conclusions. Although these first results reflect experiences with Community Service on a small scale only, they should be granted some consideration. Just the same faults that were responsible for the failure of this sanction provided by the former Penal Code of 1889, namely the rigorous restriction to certain offences and the delay in issuing the required executive conventions, can easily be found in the new Penal Code.
The judges are also to blame because of their subjective rejection of the Community Service Order.

Despite of all these faults, the Veltlin experience has proved that the Community Service Order is able to function properly requiring small expenses only, if there exists some good will.

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GEMEINNÜTZIGE ARBEIT: CURRENT TRENDS IN IMPLEMENTING COMMUNITY SERVICE AS AN ADDITIONAL OPTION FOR FINE DEFAULTERS IN THE FEDERAL REPUBLIC OF GERMANY

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1. INTRODUCTION

Summarizing the legal status of **Community Service** within the system of penal sanctions in the Federal Republic of Germany[1)] we can conclude that:

In the adult penal system, Community Service may be used

1. as a (voluntary) substitute for imprisonment faced by fine defaulters.
2. Community Service may be ordered by courts as an additional condition in the case of suspension of a prison sentence with the consequence that the suspension of a prison sentence may be revoked if Community Service is not at all or not properly served by the offender (§ 56 Penal Code).
3. Community Service may be ordered in a similar way as an additional condition in the case of court based cautioning of the offender which means that the offender is cautioned, a fine is suspended and suspension of the fine may be revoked if the work is not or not properly served (§ 59 Penal Code).
4. Community Service may be combined with the public prosecutor's decision to dismiss a case if the offender and the court consent (§ 153a Criminal Procedure Code).

In the area of **juvenile criminal law**, Community Service has a long tradition. Juvenile criminal law measures include Community Service as part of so-called **educational measures** representing the lowest and least serious level of intervention according to theory and

politics of juvenile criminal law which defines three levels of intervention seriousness along educational needs of the juvenile offender ranging from the above named educational measures to disciplinary measures such as short-term deprivation of liberty (arrest up to 4 weeks), cautioning, reparation and fines up to juvenile imprisonment (minimum term 6 months). Since the end of the 70ies, Community Service Orders in the area of juvenile criminal law received much attention when various experimental projects were organized by non-profit and non-state dependent groups (pre-dominantly staffed with social workers) aiming at an increase of opportunities regarding places where Community Service can be done and providing thus better opportunities for juvenile courts to order Community Service as a response to juvenile crime instead of placing juveniles in closed institutions[2]. These experiments were quite successful, successful in terms of providing places where Community Service can be done by juvenile offenders and in terms of its acceptance by juvenile courts[3]. Currently, it is planned to revise the existing juvenile criminal law by including Community Service Orders within the disciplinary measures in order to provide an (legally permitted) alternative to short-term deprivation of liberty[4].

2. HISTORICAL DEVELOPMENT OF COMMUNITY SERVICE AS AN ALTERNATIVE TO SUBSTITUTE IMPRISONMENT IN THE CASE OF NON-PAYMENT OF A FINE

After the city-states of Hamburg (1968) and Berlin (1978) had attempted to implement the idea of Community Service - with little success[5] - the State of Hessen was the first large State to undertake a further attempt in 1981. The city-state of Bremen followed suit shortly thereafter.

Four years have since passed. Beginning in 1987, the concept of Community Service will be in force in all of the States of the Federal Republic of Germany (see table 1).

This fact alone allows the conclusion to be drawn, that the experience of Hessen and Bremen, which dates back to 1982, has

encouraged other States to follow their example. It may furthermore be concluded, that the concept of Community Service has been successful in Hessen.

For a better understanding of the situation, it is necessary to explain the legal standards which serve as the basis for the implementation of Community Service.

3. STATUTORY BASIS AND SYSTEMATIC SURVEY

a) Article 293 EGStGB (Introductory Law to the Penal Code)

Concealed with the Penal Code, or more precisely, in Article 293 of the Introductory Law to the Penal Code, there is a provision authorizing the States of the FRG to make such rules in accordance with an ordinance, whereby the law enforcement agencies, which in Germany are represented by the offices of public prosecution, may permit a person who has been convicted to repay an uncollectable fine by performing a service to the community.

b) Concept and purpose of Community Service in the Federal Republic of Germany using the State of Hessen as an example

The regional court districts of Hessen have introduced the project entitled "Community Service" step by step since mid-September 1981; it has been in use throughout Hessen since October 1st, 1983[6)].

By virtue of this project, those persons on whom a fine as been imposed and who are unable to pay this fine by reason of debts, unemployment, maintenance obligations etc., may redeem the fine by performing some sort of Community Service. Previously, those who were unable to pay had to undergo imprisonment instead. The Code of Criminal Procedure provides this sanction in the evant a fine imposed on an offender has not been paid and cannot be collected by execution (§ 459 e StPO). This meant that any offender sentenced to pay a fine of, for example 30 per diem rates of DM 40.000, originally had to undergo imprisonment for 30 days if the fine was not paid. Now, under the concept of Community Service, such a person can be given the opportunity to redeem each day of the

otherwise incurred sentence of imprisonment by six hours of work. In our example, this means that the offender can redeem his whole fine by working for 180 hours.

c) Procedural aspects

After the law enforcement authorities, that is the offices of public prosecution, have failed to collect the fine from the offender, the latter is summoned to commence serving his term of imprisonment in lieu of the fine. At this time, the possibility of working off the fine by some sort of Community Service is mentioned to him. He is informed that he may communicate with the social worker at the office of public prosecution (court aide) to obtain assistance in finding such a job.

The offender then communicates with the social worker in writing, by phone or in person. The social worker will then attempt to find a job on his list that is as close as possible to the offender's residence and that simultaneously matches his interests bests. The social worker will then immediately inquire of the agency offering employment as to whether any work is available. If not, the social worker must try another job.

The next step is for the offender to present himself to the agency and to resume his duties at once, if possible. Should difficulties arise during the course of his employment, then the social worker shall make every effort to solve the problem. If the offender is unwilling to work, then the social worker shall inform the office of public prosecution and suggest that the permission to work off the fine be revoked. In that case, the offender would either have to pay the fine immediately or commence his term of imprisonment in lieu of the fine.

If the offender completes the designated term of employment, then his fine is considered to have been paid in full. He may also work off a part of the fine and then pay the rest - by instalments, if necessary - in the event that he, for example, had previously been unemployed and now been able to find work. In this respect, priority is given to his regular job.

However, the social worker is not obliged to find a community service position for someone seeking his advice. He may also encourage him to make commensurate instalment payments or even a full payment of the fine, if in his discussion with the offender he should ascertain that the latter still has financial means at his disposal and was not aware of his rights. This is the case for numerous offenders.

To date the following results have been obtained in Hessen with this system of redeeming fines:

d) Results

Currently, there are more than **1.250 community service agencies** in Hessen, who are able to provide about **4.000 jobs** in all[7)].

Due to the generous cooperation of charitable organizations, an increase in the number of persons serving sentences of imprisonment in lieu of their fines, as has been observed in all of the other States, has been able to be prevented in Hessen since the beginning of this project. From the time the project was introduced until August 31st 1985, a total of 2.635 offenders in Hessen have either partly or wholly worked off their fines and have thus saved themselves 54.493 days of imprisonment.

Through the mediation of the social worker moreover, 1.625 offenders - as previously described - have made arrangements to pay their fines and have thus avoided a total of 69.834 days of imprisonment in lieu of their fines. Taken together, that is, Community Service and payment arrangements made, a **total** of about 125.000 days of imprisonment did not have to be enforced. This can be assumed having saved DM 8,7 million in enforcement costs, if costs of DM 70,00 per prisoner and per day are assessed and if a corresponding reduction of substitute imprisonment actually took place, a reduction which can causally be linked with implementation of the community service scheme. Further evaluation research into the complex relationship between relevant criminal justice variables is needed in order to fit the policy assumptions underlying Community Service.

Within one year alone (cut-off date was August 31st, 1985), 1.099 offenders have partly or completely redeemed their fines through Community Service and a total of around 25.000 days of imprisonment in lieu of the fines were worked off. In addition, a further 850 offenders have temporarily warded off 31.762 days of imprisonment by having made payments or payment agreements, so that the total number of 56.426 days of imprisonment not served means that annually up to about 150 prison places (155 places exactly) could be the effect of resorting to Community Service.

4. OTHER LEGAL POSSIBILITIES FOR COMMUNITY SERVICE IN THE FEDERAL REPUBLIC OF GERMANY

a) Rules of Law

Among the rules of law contained in the Code of Criminal Procedure and the Penal Code, there are still other statutory bases for the application of Community Service that are not linked to a fine or to the avoidance of imprisonment in lieu of a fine:

- In accordance with § 153a paragraph 1 no. 3 of the Code of Criminal Procedure, the public prosecutor, with the court's and the accused's consent, may impose the performance of Community Service. In this case, the public prosecutor can refrain from further prosecution of the crime, that is, even from an indictment.
- In accordance with § 56b paragraph 2 no. 3 of the Penal Code, the judge may suspend the sentence on probation and enjoin the offender to perform some sort of charitable work or Community Service.
- In accordance with §§ 59, 59a in connection with § 56b paragraph 2 no. 3 of the Penal Code, the judge can warn the defendant, enjoin him to perform Community Service and reserve a fine in the event that the offender does not accomplish this work or commits a new crime.

It must be emphasized that no provision has been made for a limit to the amount, that is, to the duration of Community Service imposed under these three possibilities in the law, nor for the redemption of fines by Community Service. In individual cases this

means that occasionally more than 1.000 hours of Community Service would have to be performed. This could occur for example, if the offender had to pay more than one fine.

b) Results

The fact that an efficient infrastructure for the performance of work has been created by this project of "Community Service" in connection with the redemption of a fine, has induced the judges and public prosecutors in Hessen to make increased use of the other possible sanctions as mentioned above.

Just during the last year of the survey, the judges have suspended sentences on probation in 405 cases, on condition that the offenders do some sort of charitable work.

In accordance with § 153a StPO (Code of Criminal Procedure), the public prosecutors have suspended investigatory proceedings in 387 cases, on condition that the offenders perform some sort of Community Service; in both cases the tendency to do this is increasing.

Basically, there are two aspects which characterize the current status of Community Service in the German criminal justice system:

1. With the exception of Community Service as an alternative for fine defaulters, Community Service can be ordered **without the consent** of the offender.
2. The law does not set up an **upper limit** of community service hours which legally may be ordered. The number of community service hours therefore is only restricted by **relatively open concepts** such as the general principle of **proportionality** of punishment.

There is no doubt that both aspects do result in serious problems, the first of which concerns the **problem of constitutionality** of **non-voluntary Community Service Orders.**

The problem of constitutionality of non-voluntary Community Service Orders (both in adult and in juvenile criminal law) results out of the German constitution which declares that enforced labour can only be implemented within the prison system on the basis of a prison sentence meted out by a court. If we do not take into account attempts to make differences between Community Service on the one hand and "real" labour on the other hand by stressing that Community Service ordinarily does not represent an activity which aims at longlasting efforts to provide a regular income and usually is restricted to **charitable and honourary activities** of a more or less short-term nature, attempts which are not very convincing (because they do not provide criteria which could enable us to make clear and reasonable distinctions), we have to face the dilemma that non-voluntary Community Service must be considered to violate constitutional rights[8].

Furthermore, Community Service has to be evaluated along restrictions set up by the constitution with respect to **humiliating punishment.** Community Service must not be applicated as a modern kind of pillory, exposing the offender to the public when serving work in the community, a problem which has to be taken into account especially on the countryside and in small towns where anonymity is difficult to implement within community service schemes.

6. COMMUNITY SERVICE AND SENTENCING THEORY

Further problems of Community Service which are not yet solved to a sufficient degree can be observed with respect to its integration into **punishment theory** and **sentencing theory.**

In juvenile criminal law where any sentencing decision must be based on educational needs of the offender and where the choice among different kinds of reactions and measures must be justified by corresponding educational deficits which are to be reduced by the measure in question, it does not seem to be difficult to legitimize the use and application of Community Service Orders. Everyday-theories about the relationship between labour and work

performance on the one hand and deviance and conformity on the other hand suggest that labour in general is backing up social order, social stability and therefore community service easily is understood as a viable means to strengthen feelings of solidarity with the community as well as feelings of selfrespect of young criminals, in general not very familiar with positive and rewarding effects of labour. Evaluation research about experiments with Community Service among groups of young offenders carried through in the Federal Republic of Germany seems to back up this hypothesis demonstrating that juveniles serving some time of Community Service respond positively in the average[9]. Although the methodological approach underlying these studies in the FRG is weak, research carried out in Canada comparing Community Service offenders with fined offenders and groups put on probation on an experimental basis has produced also some evidence that Community Service may be a more acceptable experience for offenders[10].

But in the adult criminal justice system, we are facing first of all *the problem which sentencing aim should be pursued by Community Service. If we leave aside arguments derived from cost-benefit-analysis and the prison overload problem, arguments which are of* questionable value when discussing sentencing theory, we are confronted with the question if Community Service should be seen as a way to **punish** an offender either by putting him to some kind of work (whereby labour would be regarded as an unpleasant experience) or by reducing his spare or leisure time and shortening pleasant leisure activities. Or should Community Service pursue the aim of **rehabilitation** of an offender through offers of rewarding experiences and learning similar to ideas connected with Community Service in juvenile criminal law. Another way to incorporate Community Service into sentencing theory could be the definition of an entirely new sentencing aim, **reparation**, analogous to reparation in the case of an individual victim, by giving back to society something positive through work in exchange for the harm caused by the crime he committed.

On different reasons, rehabilitation cannot play a relevant role any more in the context of the adult criminal justice system. Firstly:

There is no evidence that measures taken as a consequence of criminal behaviour will result in rehabilitative effects and that in a very general sense we could observe differences in the rehabilitative power of different sanctions. Secondly: The **status of labour** and **employment** currently is undergoing **rapid** and **significant changes**, changes which in the long run probably will affect the nowadays still **powerful** belief systems attributing integrating effects to labour and employment.

Although there are good reasons to think about the introduction of the idea of reparation as a primary aim of sentencing, sentencing theory in the Federal Republic of Germany will stay within the concept of punishment as a fair and just reaction to crime.

Then the problem arises how different kinds of punishment such as fines, imprisonment, suspension of prison sentences and Community Service can be weighed against each other in the attempt to find the fair and just response to crime. The difficulties which sentencing theory will face in this respect can be shown in the German system of criminal sanctions when taking a look at the system of substituting substitute imprisonment by Community Service in the case of fine defaulters. Although there exists an upper limit of the fine with 360 day fines representing the maximum fine, the problem is to find a mechanism and theories of equivalence translating the amount of day fines into the number of community service hours. Currently, there exists some variance in the legal statutes of the German States which define the relationship between days of imprisonment and hours of Community Service, variations probably resulting in the near future in a consensus of six hours of Community Service as an equivalent to one day of imprisonment. But even in this case, the maximum amount of Community Service legally available would be 2.160 hours of Community Service, probably a very rare phenomenon because fines are rarely exceeding 90 day fines, but nonetheless a potential outcome of the process of the transformation of fines into Community Service.

If we construct proportionality of punishment this way, then Community Service will be restricted more or less to **minor offences**

and could be conceived of as an alternative to dismissals by the public prosecutor's office and fines and it is obvious that the current European statutes defining the range of potential application of Community Service are reflecting the difficulty of defining proportionality with respect to the fine on the one hand and imprisonment or probation on the other hand. A quite promising way to deal with this problem which basically is a problem of defining justice in terms of a just and fair punishment seems to be the following. If justice can be explained by being the product of a free discussion and exchange of arguments among relevant participants in the sentencing decision, then a formal way to back up such a decisionmaking process could be seen in the obligation to give reasons for the sentencing decision as far as the choice among different kinds of punishment and the amount of punishment are concerned, reasons, which should be subject to the possibility of an appeal.

Implementation of Community Service must be observed carefully in order to avoid that Community Service is used to **increase** levels of punishment. Although in the German adult criminal justice system an increase in punishment can only be thought of by **hardening suspension of prison sentences** or **dismissal of cases** by additional community service hours, certain experiences within the juvenile criminal justice system demonstrate that judges and courts are easily ready to use Community Service not as an alternative to short-term deprivation of liberty, but as an additional measure to reach groups of young offenders until then just cautioned[11].

7. ORGANIZATIONAL ASPECTS OF FAILURE AND SUCCESS

Another topic of relevance is concerned with procedural aspects of implementation of Community Service. As far as we know from German experiences, the success and failure are partially dependent on the way Community Service is offered, organized and monitored. Mere offering of Community Service, e.g. as an information that a fine defaulter may escape substitute imprisonment by serving community work which leaves the offender with a problem to find a community service place in general is not an efficient way to put

fine defaulters to work. The search for community service places, the choice among community service places counselling of fine defaulters, establishing contacts between institutions providing community service places and offenders, monitoring the institutions and work performance should not be left to the conventional, bureaucratic, administrative professions within the criminal justice system, but should be organized either by social services within the criminal justice system or by private social organizations. In this respect, the system adopted by the State of Bremen seems to be adequate, a system where offenders are transferred to a private organization which counsels, organizes places and monitors the service[12].

But obliging the offender to do Community Service in institutions outside the criminal justice system creates responsibilities regarding avoidance and control of maltreatment of offenders when working in private or public institutions. Although empirical evidence on the quantity and quality of these problems is lacking, we know from research on Community Service with juvenile offenders that maltreatment can be observed. It follows that Community Service must be monitored carefully by the responsible criminal justice agencies and that legal safeguards should be implemented allowing complaints etc.. Another problem with respect to risks of Community Service for the offender concerns insurance for work place accidents. In the Federal Republic of Germany this problem is resolved now as far as the Federal Insurance Agency will pay if a work place accident leads to partial or complete inability[13].

8. DEVELOPMENTS AND PERSPECTIVES

The current and future developments in Community Service in the ten different States of the Federal Republic of Germany and in Berlin are indicated in the following table:

Table 1:

State	statutory basis	rate of redemption	valid throughout the State as of
Bayern	clemency ruling	6-8 hours	summer 1986
Baden-Württemberg	ordinance	6 hours	Jan. 1st 1987
Berlin	ordinance	6 hours	May 1978
Bremen	ordinance	6 hours	January 1983
Hamburg	ordinance	6 hours	December 1968
Hessen	ordinance	6 hours	October 1983
Niedersachsen*	clemency ruling	6 hours	April 1985
Nordrhein-Westfalen	decree	6 hours	July 1984
Rheinland-Pfalz*	clemency ruling	6-8 hours	summer 1986
Saarland	clemency ruling	6 hours	April 1983
Schleswig-Holstein	ordinance	6 hours	end of 1986

* Clemency rulings will be substituted by regular ordinances during 1986.

This serves to show that by the **beginning of 1987**, the concept of Community Service will be **in force throughout the Federal Republic of Germany**. However, this table also makes clear that the statutory bases vary from State to State: Four States still make use of a clemency ruling and have not introduced an ordinance regulating this. The consequence of this for the offenders is the following: He has no right of appeal to the judge in those States invoking a clemency ruling, if the public prosecutor's office, for example, has rejected his petition for community work. It is necessary, therefore, to create legal uniformity on this issue throughout the Federal Republic of Germany as soon as possible.

This also applies to another difference among the individual States: the number of hours with which one day of imprisonment can be redeemed. While most of the States assume that **six hours of**

Community Service make up for **one day of imprisonment**, Saarland and Berlin still consider eight hours of work to be requisite. In the interests of a uniform treatment of all offenders in the Federal Republic of Germany, this difference, too, should be eliminated in the near future.

At the same time, one of the most important problems involving Community Service in the Federal Republic of Germany becomes visible in connection with these varying redemption rates: The legal system does not provide for any maximum limit of hours of work. We know that in other European countries not more than 240 hours of work may be performed, yet there are some examples of offenders having served more than 1.000 hours of charitable work, due to the redemption of **more than one** fine or for other reasons.

The judges frequently order a considerable number of hours in connection with suspended sentences on probation together with the condition that Community Service is to be performed, as well. Currently, the possibility is being considered of allowing the social worker to take stock of the situation after a certain amount of charitable work has been performed (for example, 300 hours worth). If the offender has worked reliably up to this time, then he should be given a further incentive, and thus more motivation, by reducing the per diem rate for the remaining hours of work by about one-half. This possibility would mean that the offender would not be confronted with an insurmountable "mountain" of charitable work, which could result in his failing at a relatively early stage. It is also necessary though, to evaluate the experiences of other countries by comparing the laws of the various countries, particularly in this area.

Reasons and arguments traditionally put forward to justify the implementation of community service schemes in the Federal Republic of Germany primarily reflect perceived needs to **reduce the prison load**, to enhance more **humane treatment** by replacing prison sentences through less severe interventions and to reach better preventive results by **avoiding negative side-effects** of imprisonment. If we look at the European or American scene, it is obvious, that

criminological research addressing these questions is quite rare. But Community Service is not in need to be justified by one of the just named arguments. Reasons to implement community service schemes in the Federal Republic of Germany can be derived primarily from the obligation to reduce and to eliminate those deficits within the criminal justice system which affect **equal treatment of offenders** and the struggle for justice. That is why Community Service as an alternative to substitute imprisonment in the case of fine defaulters must not be justified by better preventive outcomes or a better cost-benefit-ratio, but is justified by the attempt to implement the very same chances for every offender, the rich and the poor, in order to avoid substitute imprisonment. As an internal, additional mechanism to reduce injustice, which is more or less produced by differences in the income levels and social backgrounds of offenders and more and more affected by increasing problems of poverty, unemployment and dependence on social security throughout Europe, Community Service as an additional offer has the potential to contribute to advances in responding on crime in a fair and just way.

Therefore, other areas of the criminal law must be controlled in order to look for conditions which are similar to those in the crime collection process and ask for alternative ways of reaction. Currently the following areas can be made out where Community Service could be implemented to a far greater degree in the Federal Republic of Germany:

1. As research shows, suspension of a prison sentence is combined quite often with a fine which results in problems similar to those known from the fine collection process resulting in substitute imprisonment[14]. A quite important proportion of suspended prison sentences is revoked because of failures to comply with the condition to pay the additional fine[15]. Therefore, community service schemes should be implemented to decrease the **risk of revocation** of suspension attributable to economic problems.
2. In the last decades, a process of opening the closed prison system was initiated by introducing furlough programmes, prison leaves and different prisonary schemes, offering e.g. the

possibility that offenders who have to serve up to 9 or 12 months imprisonment can serve the sentence as "part-time prisoners" that means that from the very first day of imprisonment the offender is allowed to keep his work place and is obliged only to spend nights and weekends in the prison. But an important condition allowing participation at these kinds of programmes is the employment of the offender at the time of sentencing. As a consequence, unemployed and employed offenders are partially treated differently. To avoid these side-effects leading to an unfair differentiation, it would be worthwhile to implement community service schemes within the prison system. In this way Community Service might contribute to reduce the potential of injustice and offer unemployed prisoners possibilities to participate at work furloughs whose positive outcomes (e.g. no attempts to escape, no relapse into crime during furloughs) in turn are quite often used in assessing risks when deciding upon parole.

9. SUMMARY AND CONCLUSIONS

1. Community Service has to play an important role within the German criminal justice system.
2. It is obvious that Community Service is an important alternative for fine defaulters both in quantitative and in qualitative terms.
3. Community Service plays a very important role in the juvenile criminal justice system where Community Service makes up a big proportion of measures taken against juvenile offenders.
4. Community Service must not be justified along preventive or cast benefit criteria, but is a indispensable mean in reducing those deficits in justice caused by differences in the financial and social backgrounds of fined offenders.
5. Community Service should only be served on a voluntary basis.
6. Community Service should only be implemented in settings where problems of stigmatization through exposure to the public are reduced or non-existent.
7. Our knowledge about practical organization and outcomes of Community Service is scarce. Therefore, research efforts are needed to resolve still existing problems both in terms of legal and empirical aspects.

1) For a description of the history and development of Community Service in Germany see Pfohl, M.: Gemeinnützige Arbeit als strafrechtliche Sanktion. Berlin 1983; Fuchs, C.: Die Community Service als Alternative zur Freiheitsstrafe. Pfaffenweiler 1985; Baumann, J.: Die Chance des Art. 293 EGStGB. Freie Gemeinnützige Arbeit statt Ersatzfreiheitsstrafe! In: Monatsschrift für Kriminologie 1979, pp. 290-296; Blau, G.: Die gemeinnützige Arbeit als Beispiel für einen grundlegenden Wandel des Sanktionenwesens. In: Festschrift für Hilde Kaufmann (forthcoming).

2) See Pfeiffer, Ch.: Kriminalprävention im Jugendgerichtsverfahren. Köln 1983.

3) Marks, E.: Das Modell Brücke - Ein Versuch, mehr pädagogische Hilfen im Rahmen des Jugendgerichtsgesetzes zu realisieren. In: Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen e.V. (Ed.): Die jugendrichterlichen Entscheidungen - Anspruch und Wirklichkeit. München 1981, pp. 269-286; Marks, E.: Vom Nutzen eines Ausbaus ambulanter Maßnahmen nach dem Jugendgerichtsgesetz und eine Kriminalpolitik von unten. In: Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen e.V. (Ed.): Jugendgerichtsverfahren und Kriminalprävention. München 1984, pp. 320-340; Hassemer-Kreckl, E.: Betreuung durch die Brücke e.V. München. In: Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen e.V. (Ed.): Die jugendrichterlichen Entscheidungen - Anspruch und Wirklichkeit. München 1981, pp. 220-235.

4) See the draft bill concerning the alteration of the juvenile criminal law of November 1982.

5) See Schädler, W.: Das Projekt "Gemeinnützige Arbeit" - Die nicht nur theoretische Chance des Art. 293 EGStGB. Zeitschrift für Rechtspolitik 16 (1983), pp. 5-10.

6) For a thorough description of the implementation of the community service schemes in Hessen see Schädler, W.: Der "weiße Fleck" im Sanktionensystem. Zeitschrift für Rechtspolitik 18 (1985), pp. 186-192.

7) Schädler, W.: op. cit. 1985.

8) Article 12 of the German Constitution says very clearly that forced labour is not allowed with the exception that offenders sentenced to imprisonment may be obliged to work in the prison.

9) Pfeiffer, Ch.: op.cit. 1983.

10) Thorvaldson, S.A.: The effects of community service on the attitudes of offenders. Clare Hall 1978; see also Rolinski, K.: Ersatzfreiheitsstrafe oder gemeinnützige Arbeit? Monatsschrift für Kriminologie 63 (1981), pp. 52-62.

11) Pfeiffer, Ch.: op.cit. 1983.

12) See Krieg, H. et al.: Weil Du arm bist, mußt Du sitzen. Monatsschrift für Kriminologie 67 (1984), pp. 25-38.

13) Schädler, W.: op.cit. 1985.

14) Albrecht, H.-J.: Legalbewährung bei zu Geldstrafe und zu Freiheitsstrafe Verurteilten. Freiburg 1982.

15) About 15 % of suspended prison sentences are revoked because of partial or total non-payment of the additional fine, see Albrecht, H.-J.: op.cit. 1982.

COMMUNITY SERVICE IN EUROPE: CONCLUDING REMARKS

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The results of this conference are presented here in thesis form. They have been restricted to the most important findings based on the discussions with all of the participants.

1. COMMUNITY SERVICE AS AN ALTERNATIVE SANCTION

With the exception of Great Britain, the idea of Community Service is solely guided by other sanctions in Western-European countries today. This means that Community Service still does not possess an independent character. Community Service is still not in a position to justify its value as a sanction in its own right: A judge in the Netherlands, for example, can impose 240 hours of Community Service **in place of** 6 months of imprisonment, or a person convicted of a crime in Hessen (Federal Republic of Germany) can be sentenced to 180 hours of Community Service **instead of** a fine of 30 per-diem rates.

If one assumes, however, that Community Service has gained a **growing practical importance** in European countries (particularly in Denmark, the Federal Republic of Germany, France and the Netherlands) as data covering the last three years have shown, then it will increasingly acquire a place of its own in the various legal systems through constant use and its value as an original sanction will become clearer. It is therefore to be expected that Community Service will have acquired a new profile of its own within the spectrum of sanctions open to the judge and public prosecutor in the near future.

2. INTRODUCING THE SANCTION OF COMMUNITY SERVICE INTO JUDICIAL PRACTICE

The varying intensity with which this development is proceeding in European countries may partly be due to the fact that carefully devised legal provisions do not alone determine the significance of Community Service. It should be considered to be indispensable that **prior to** the enactment of a law on Community Service, a **corresponding infrastructure**, that is, a network of community service facilities with plenty of job openings must have been established; and again prior to the enactment of such a law, there must have been an intensive and thorough exchange of ideas and discussions among all of the judicial authorities of that respective country, if the introduction of the idea of Community Service is to be successful.

The situation in Portugal and in Italy clearly illustrates the fact that well-formulated regulations are still in danger of being ignored by judges and public prosecutors and that "law in the book" and "law in action" may fall apart.

3. COMMUNITY SERVICE AND UNEMPLOYMENT

Problems of unemployment will clearly play an essential role in the development of Community Service in Europe. Should the unemployment figures not decline but increase or at least stabilize on the current level in the Common Market countries, thus leading to growing concern for the value of employment and labour, then the offender's sensitivity to the idea of Community Service being a punishment will be reduced on the one hand, yet on the other, he or she will value the significance of the work performed for the benefit of society more.

From this it may be concluded that - provided the situation on the labour market does not undergo a basic change - the (re-)socializing effects of Community Service will become increasingly important in the future and that its role as punishment (e.g. by taking away a part of the offender's leisure time) will disappear.

It became clear in the course of the discussions that in countries such as France, Italy and Portugal - proceeding from the generally accepted idea of resocialization in the context of criminal law - the focus is placed on the rehabilitative power of Community Service whereas in Denmark, the Federal Republic of Germany and Great Britain, aspects of punishment through putting the offender to do Community Service are emphasized.

However, as a sanction, Community Service should give concern to the idea of convincing the offender that society appreciates the contribution made to it by his or her work. Therefore, when the system of Community Service is developed in the future attempts should be made to find and/or to strengthen those agencies that are capable of providing community service places which give the offender a feeling of performing **meaningful work.**

On the other hand, it must be kept in mind, that in view of the high rate of unemployment, it cannot be the task of Community Service to provide permanent jobs for offenders. Should this prove to be possible in exceptional cases, then integration of offenders in the labour force should be welcomed, but tasks of traditional employment agencies should be considered to be not a purpose of community service schemes.

4. COMMUNITY SERVICE SHOULD NOT BE COMPULSORY

When assuming that Community Service runs the risk to become less and less plausible as a punishment, then the corollary conclusion must be drawn, namely, that there is just as little justification for the compulsory imposition of Community Service.

In addition to this incompatibility between the meaningful performance of Community Service on the one hand and its being compulsorily imposed on someone on the other hand, there is another important consideration to be taken into account. The Human Rights Convention but also most European constitutions formally impede compulsory work.

5. COMMUNITY SERVICE AND THE PROTECTION OF VICTIMS

The present development of criminal policy in Europe is characterized also by a growing concern for the **victims of crimes.** The future form of Community Service will, therefore, have to take the victim of a crime into consideration, too.

With the exception of a few experiments in some countries, the victims themselves do not benefit from Community Service, or at least do not benefit directly. Therefore, attempts should be made in future, to test Community Service ideas that are more victim-oriented, by having the equivalent value of the work performed deposited in a fund, from which victims can then receive reparations. Such a model is currently being tested in Braunschweig, Federal Republic of Germany.

In this connection, the question of whether or not it would be meaningful to allow the victim to benefit directly from community service projects (be it through the reconstruction, renovation or repair of property damaged in the course of the crime) should be explored.

The performance of Community Service at the crime site or at the victim's residence or business, will depend on both the victim's willingness to accept this work and on the delinquent's volunteering to do such work. Moreover, the possibility of community service projects to the advantage of the victim **directly** will only exist for certain types of offences.

6. MAXIMUM TERM OF COMMUNITY SERVICE

All of the European countries represented at the conference provide for a maximum of 250 hours of Community Service being imposed, and of about 120 hours in the case of youths and young adults. In contrast to this, however, a person convicted in the Federal Republic of Germany may have to perform community work totalling more than 800 hours in some cases, if he or she has to work off more than one fine, for example. The participants of the conference did agree that it is unreasonable to expect that such long terms of

Community Service could be served by offenders, especially because offenders are not adequately motivated to perform work for such a long time and such a massive restriction of personal freedom cannot be justified by the character of Community Service. An upper limit of community service hours of 240/250 in the case of adult offenders and 120/130 in the case of juvenile offenders should be regarded to be appropriate.

7. SUSPENSION OF COMMUNITY SERVICE

In the future, we shall have to consider whether and to what extent community service sentences like imprisonment and in some countries fines should be opened for suspension in suitable cases. On the one hand, this would serve to emphasize the aspect of Community Service being a punishment, but on the other hand, this would not considerably broaden the spectrum of non-custodial sanctions.

APPENDIX:

LEGISLATIVE MATERIALS

ENGLAND/WALES

POWERS OF CRIMINAL COURTS ACT 1973
Sections 14-17 (Community Service Orders)
as amended by the Criminal Law Act 1977
and the Criminal Justice Act 1982

Community service order in respect of convicted persons

(1) Where a person of or over sixteen years of age is convicted of an offence punishable with imprisonment, the court by or before which he is convicted may, instead of dealing with him in any other way (but subject to subsection (2) below) make an order (in this Act referred to as "a community service order") requiring him to perform unpaid work in accordance with the subsequent provisions of this Act.

The reference in this subsection to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of young offenders.

(1A) The number of hours which a person may be required to work under a community service order shall be specified in the order and shall be in the aggregate -
(a) not less than 40; and
(b) not more -
(i) in the case of an offender aged sixteen, than 120; and
(ii) in other cases, than 240.

(2) A court shall not make a community service order in respect of any offender unless the offender consents and after considering a report by a probation officer or by a social worker of a local authority social services department about the offender and his circumstances and, if the court thinks it necessary, hearing a probation officer or a social worker of a local authority social services department, the court is satisfied that the offender is a suitable person to perform work under such an order.

(2A) Subject to sections 17A and 17B below, -
(a) a court shall not make a community service order in respect of any offender who is of or over seventeen years of age unless the court is satisfied that provision for him to perform work under such an order can be made under the arrangements for persons to perform work under such orders which exist in the petty sessions area in which he resides or will reside; and
(b) a court shall not make a community service order in respect of an offender who is under seventeen years of age unless -
(i) it has been notified by the Secretary of State that arrangements exist for persons of the offender's age who reside in the petty sessions area in which the offender resides or will reside to perform work under such orders; and
(ii) it is satisfied that provision can be made under the arrangements for him to do so.

(3) Where a court makes community service orders in respect of two or more offences of which the offender has been convicted by or before the court, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders, but so that the total number of hours which are not concurrent shall not exceed the maximum specified in paragraph (b) (i) or (ii) of subsection (1A) above.

(4) A community service order shall specify the petty sessions area in which the offender resides or will reside; and the functions conferred by the subsequent provisions of this Act on the relevant officer shall be discharged by a probation officer appointed for or assigned to the area for the time being specified in the order (whether under this subsection or by virtue of section 17(5) of this Act), or by a person appointed for the purposes of those provisions by the probation and after-care committee for that area.

(5) Before making a community service order the court shall explain to the offender in ordinary language -
(a) the purpose and effect of the order (and in particular the requirements of the order as specified in section 15 of this Act);
(b) the consequences which may follow under section 16 if he fails to comply with any of those requirements; and
(c) that the court has under section 17 the power to review the order on the application either of the offender or of a probation officer.

(6) The court by which a community service order is made shall forthwith give copies of the order to a probation officer assigned to the court and he shall give a copy to the offender and to the relevant officer; and the court shall, except where it is itself a magistrates' court acting for the petty sessions area specified in the order, send to the clerk to the justices for the petty sessions area specified in the order a copy of the order, together with such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in exercising its functions in relation to that order.

(7) The Secretary or State may by order direct that subsection (1A) above shall be amended by substituting for the maximum number of hours for the time being specified in paragraph (b) (i) or (ii) of that subsection.

(8) Nothing in subsection (1) above shall be construed as preventing a court which makes a community service order in respect of any offence from making an order for costs against, or imposing any disqualification on, the offender or from making in respect of the offence an order under section 35, 39, 43 or 44 of this Act, or under section 28 of the Theft Act 1968.

Obligations of person subject to community service order

15 (1) An offender in respect of whom a community service order is in force shall -
(a) report to the relevant officer and subsequently from time to time notify him of any change of address; and

(b) perform for the number of hours specified in the order such work at such times as he may be instructed by the relevant officer.

(2) Subject to section 17(1) of this Act, the work required to be performed under a community service order shall be performed during the period of twelve months beginning with the date of the order but, unless revoked, the order shall remain in force until the offender has worked under it for the numbers of hours specified in it.

(3) The instructions given by the relevant officer under this section shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he normally works or attends a school or other educational establishment.

Breach of requirements of community service order

16 (1) If at any time while a community service order is in force in respect of an offender it appears on information to a justice of the peace acting for the petty sessions area for the time being specified in the order that the offender has failed to comply with any of the requirements of section 15 of this Act (including any failure satisfactorily to perform the work which he has been instructed to do), the justice may issue a summons requiring the offender to appear at the place and time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest.

(2) Any summons or warrant issued under this section shall direct the offender to appear or be brought before a magistrates' court acting for the petty sessions area for the time being specified in the community service order.

(3) If it is proved to the satisfaction of the magistrates' court before which an offender appears or is brought under this section that he has failed without reasonable excuse to comply with any of the requirements of section 15 the court may, without prejudice to the continuance of the order, impose on him a fine not exceeding £ 200 or may -

(a) if the community service order was made by a magistrates' court, revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made;

(b) if the order was made by the Crown Court, commit him to custody or release him on bail until he can be brought or appear before the Crown Court.

(4) A magistrates' court which deals with an offender's case under subsection (3) (b) above shall send to the Crown Court a certificate signed by a justice of the peace certifying that the offender has failed to comply with the requirements of section 15 in the respect specified in the certificate, together with such other particulars of the case as may be desirable; and a certificate purposing to be so signed shall be admissible as evidence of the failure before the Crown Court.

(5) Where by virtue of subsection (3) (b) above the offender is brought or appears before the Crown Court and it is proved to the satisfaction of the court that he has failed to comply with any of the requirements of section 15, that court may either -

(a) without prejudice to the continuance of the order, impose on him a fine not exceeding £ 200; or

(b) revoke the order and deal with him, for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

(6) A person sentenced unde subsection (3) (a) above for an offence may appeal to the Crown Court against the sentence.

(7) In proceedings before the Crown Court under this section any question whether the offender has failed to comply with the requirements of section 15 shall be determined by the court and not by the verdict of a jury.

(8) A fine imposed under this section shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by a conviction.

Amendment and revocation of community service orders and substitution of other sentences

17 (1) Where a community service order is in force in respect of any offender and, on the application of the offender or the relevant officer, it appears to a magistrates' court acting for the petty sessions area for the time being specified in the order that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, the court may extend, in relation to the order the period of twelve months specified in section 15 (2) of this Act.

(2) Where such an order is in force and on any such application it appears to be a magistrates' court acting for the petty sessions area so specified that, having regard to such circumstances, it would be in the interests of justice that the order should be revoked or that the offender should be dealt with in some other manner for the offence in respect of which the order was made, the court may -

(a) if the order was made by a magistrates' court, revoke the order or revoke it and deal with the offender for that offence in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

(b) If the order was made by the Crown Court commit him to custody or release him on bail until he can be brought or appear before the Crown Court

and where the court deals with his case under paragraph (b) above it shall send to the Crown Court such particulars of the case as may be desirable.

(3) Where an offender in respect of whom such an order is in force -

(a) is convicted of an offence before the Crown Court; or

(b) is committed by a magistrates' court to the Crown Court for sentence and is brought or appears before the Crown Court; or

(c) by virtue of subsection (2) (b) above is brought or appears before the Crown Court.

and it appears to the Crown Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the Crown Court may revoke the order or revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which he could have been dealth with for that offence by the court which made the order if the order had not been made.

(4) A person sentenced under subsection (2) (a) above for an offence may appeal to the Crown Court against the sentence.

(4A) Where -

(a) an offender in respect of whom a community service order is in force is convicted of an offence before a magistrates' court other than a magistrates' court acting for the petty sessions area for the time being specified in the order; and

(b) the court imposes a custodial sentence on him; and

(c) it appears to the court, on the application of the offender or the relevant officer, that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made,

the court may -

(i) if the order was made by a magistrates' court, revoke it; and

(ii) if the order was made by the Crown Court, commit him in custody or release him on bail until he can be brought or appear before the Crown Court;

and where the court deals with his case under subparagraph (ii) above, it shall send to the Crown Court such particulars of the case as may be desirable.

(4B) Where by virtue of subsection (4A) (c) (ii) above the offender is brought or appears before the Crown Court, and it appears to the Crown Court to be in the interest of justice to do so, having regard to circumstances which have arisen since the order was made, the Crown Court may revoke the order.

(5) If -

(a) a magistrates' court acting for the petty sessions area for the time being specified in a community service order is satisfied that the offender proposes to change, or has changed, his residence from that petty sessions area to another petty sessions area; and

(b) the conditions specified in subsection (5A) below are satisfied,

the court may, and on the application of the relevant officer shall, amend the order by substituting the other petty session area for the area specified in the order.

(5A) The conditions referred to in subsection (5) above are -

(a) if the offender is of or over 17 years of age, that it appears to the court that provision can be made for him to perform work under the community service order under the arrangements which exist for persons who reside in the other petty sessions area to perform work under such orders; and

(b) if the offender is under 17 years of age -

(i) that the court has been notified by the Secretary of State that arrangements exist for persons of his age who reside in the

other petty sessions are to perform work under such order; and

(ii) it appears to the court that provision can be made under the arrangements for him to do so.

(6) Where a community service order is amended by a court under subsection (5) above the court shall send to the clerk to the justices for the new area specified in the order a copy of the order, together with such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in exercising its functions in relation to the order.

(7) Where a magistrates' court proposes to exercise its powers under subsection (1) or (2) above otherwise that on the application of the offender it shall summon him to appear before the court and, if he does not appear in answer to the summons, may issue a warrant for his arrest.

CODE PÉNAL: PEINES CORRECTIONNELLES

Art. 43-3-1. (L. n° 83-466 du 10 juin 1983) Lorsqu'un délit est puni de l'emprisonnement et que le prévenu n'a pas été condamné, au cours des cinq années précédant les faits, pour crime ou délit de droit commun soit à une peine criminelle, soit à une peine d'emprisonnement sans sursis supérieure à quatre mois, le tribunal peut également prescrire, à titre de peine principale, que le condamné accomplira, au profit d'une collectivité publique ou d'un établissement public ou d'une association un travail d'intérêt général non rémunéré et d'une durée qui ne pourra être inférieure à quarante heures ni supérieure à deux cent quarante heures.
Il ne peut être fait application du présent article que lorsque le prévenu est présent. Le président du tribunal, avant le prononcé du jugement, informe le prévenu du droit de refuser l'accomplissement d'un travail d'intérêt général et reçoit sa réponse.
Le tribunal fixe, dans la limite de dix-huit mois, le délai pendant lequel le travail doit être accompli. Le délai prend find dès l'accomplissement de la totalité du travail d'intérêt général; il peut être suspendu provisoirement pour motif grave d'ordre médical, familial, professionnel ou social.
Les modalités d'exécution de l'obligation d'accomplir un travail d'intérêt général et la suspension du délai prévu par l'alinéa précédent sont décidées par le juge de l'application des peines dans le ressort duquel le condamné a sa résidence habituelle ou, s'il n'a pas en France sa résidence habituelle, par le juge de l'application des peines du ressort de la juridiction qui a prononcé la condamnation.
Au cours du délai fixé en application du troisième alinéa ci-dessus, le prévenu doit satisfaire aux mesures de contrôle déterminées par un décret en Conseil d'État. - Pr.pén. 471, 747-1 s.

Les dispositions de la loi n° 83-466 du 10 juin 1983 relative au travail d'intérêt général entrent en vigueur à une date qui sera fixée par décret en Conseil d'État et ne pourra être postérieure au 1er janv. 1984 (art. 43).

Art. 43-3-2. (L. n° 83-466 du 10 juin 1983) Les prescriptions du Code du travail relatives au travail de nuit, à l'hygiène, à la sécurité, ainsi qu'au travail des femmes et des jeunes travailleurs sont applicables au travail d'intérêt général. - V. note ss. art. 43-3-1, supra.

Art. 43-3-3. (L. n° 83-466 du 10 juin 1983) L'État répond du dommage ou de la part du dommage causé à autrui par un condamné et qui résulte directement de l'application d'une décision comportant l'obligation d'accomplir un travail d'intérêt général.
L'État est subrogé de plein droit dans les droits de la victime. L'action en responsabilité et l'action récursoire sont portées devant les tribunaux de l'ordre judiciaire. - V. note ss. art. 43-3-1, supra.

Art. 43-3-4. (L. n° 83-466 du 10 juin 1983) Les dispositions des articles 43-3-1 à 43-3-3 ci-dessus sont applicables aux mineurs de seize à dix-huit ans. Toutefois, la durée du travail d'intérêt général ne pourra être inférieure à vingt heures ni supérieure à cent vingt heures, et le délai pendant lequel le travail doit être accompli ne pourra excéder un an.
Les attributions du juge de l'application des peines prévues par les articles 43-3-1 et 43-3-5 sont dévolues au juge des enfants. Pour l'application de l'article 43-3-1, alinéa premier, les travaux d'intérêt général doivent être adaptés aux mineurs et présenter un caractère formateur ou de nature à favoriser l'insertion sociale des jeunes condamnés. - V. note ss. art. 43-3-1, supra.

Art. 43-3-5. (L. n° 83-466 du 10 juin 1983) Un décret en Conseil d'État détermine les modalités d'application des articles 43-3-1 à 43-3-4. Il établit les conditions dans lesquelles s'exécutera l'actitivité des condamnés ainsi que la nature des travaux proposés.
En outre, le décret détermine les conditions dans lesquelles:
1. Le juge de l'application des peines établit, après avis du ministère public et consultation de tout organisme public compétent en matière de prévention de la délinquance, la liste des travaux d'intérêt général susceptibles d'être accomplis dans son ressort;
2. Le travail d'intérêt général peut, pour les condamnés salariés, se cumuler avec la durée légale du travail;
3. Sont habilitées les associations mentionnées au premier alinéa de l'article 43-3-1. - V. note ss. art. 43-3-1, supra.

Art. 43-4. (L. n° 75-624 du 11 juill. 1975) Lorsqu'un délit est puni de l'emprisonnement, la confiscation spéciale telle qu'elle est définie par l'article 11 peut être prononcée à titre de peine principale alors même qu'elle ne serait pas prévue par la loi particulière dont il est fait application.
Les dispositions de l'alinéa précédent ne sont pas applicables en matière de délits de presse. - Pr. pén. 471.

Art. 43-5. (L. n° 75-624 du 11 juill. 1975; L. n° 83-466 du 10 juin 1983) Lorsqu'il est fait application des articles 43-1 à 43-4, l'emprisonnement ne peut être prononcé. - Pr. pén. 471.

Art. 43-6. (L. n° 75-624 du 11 juill. 1975) Toute violation de l'une des obligations ou interdictions résultant des sanctions pénales prononcées en application des articles 43-1 à 43-4 est punie d'un emprisonnement de deux mois à deux ans et en cas de récidive de un an à cinq ans.
Est passible des mêmes peines toute personne qui, recevant la notification d'une décision prononçant à son égard, en application des articles 43-1 et 43-3, la suspension du permis de conduire ou le retrait du permis de chasser, refuse de remettre le permis suspendu, ou retiré, à l'agent de l'autorité chargé de l'exécution de cette décision.
Est également passible des mêmes peines toute personne qui a détruit, détourné ou tenté de détruire ou de détourner des objets confisqués en application des articles 43-1, 43-3 ou 43-4.

Art. 43-7. **Ajouté par L. n° 81-82 du 2 févr. 1981; abrogé par L. n° 83-466 du 10 juin 1983, art. ler, à compter du 27 juin 1983 (art. 43).**

Art. 43-8. (L. n° 83-466 du 10 juin 1983) Lorsqu'un délit es puni de l'emprisonnement, le tribunal peut également prononcer, à titre de peine principale, une amende sous la forme de jours-amende dans les conditions fixées aux articles 43-9 et 43-10. Ni l'emprisonnement, ni l'amende en la forme ordinaire ne peuvent alors être prononcés.
Les dispositions du présent article ne sont pas applicables aux prévenus mineurs.

Les dispositions de la loi n° 83-466 du 10 juin 1983 relatives au jour-amende entrent en vigueur à une date qui sera fixée par décret en Conseil d'État et ne pourra être postérieure au 1er janv. 1984 (art. 43).

Art. 43-9. (L. n° 83-466 du 10 juin 1983) Le nombre de jours-amende, qui ne peut excéder trois cent soixante, est déterminé en tenant compte des circonstances de l'infraction.
Le montant de chaque jour-amende, qui ne peut excéder 2 000 F, est déterminé en tenant compte des ressources et des charges du prévenu.
Le montant global de l'amende est exigible à l'expiration du délai correspondant au nombre de jours-amende prononcés, à moins que en application de l'article 41, deuxième alinéa, le tribunal en ait décidé autrement. - V. note ss. art. 43-8, supra.

Art. 43-10. (L. n° 83-466 du 10 juin 1983) Le défaut total ou partiel de paiement du montant global de l'amende prononcée entraîne l'incarcération du condamné pour une durée correspondant à la moitié du nombre de jours-amende impayés; il est procédé comme en matière de contrainte par corps. - Pr. pén. 749 s. - V. note ss. art. 43-8, supra.

Art. 43-11. (L. n° 83-466 du 10 juin 1983) Un décret en Conseil d'État détermine les modalités d'application des articles 43-8 à 43-10 ci-dessus. - V. note ss. art. 43-8, supra.

Du sursis assorti de l'obligation d'accomplir un travail d'intérêt général (L. n° 83-466 du 10 juin 1983)

Art. 747-1. Le tribunal peut, dans les conditions prévues par l'article 738, alinéa premier, prévoir que le condamné accomplira, au profit d'une collectivité publique ou d'un établissement public ou d'une association, un travail d'intérêt général non rémunéré et d'une durée qui ne pourra être inférieure à quarante heures ni supérieure à deux cent quarante heures.
Il ne peut être fait application du présent article que lorsque le prévenu est présent. Le président du tribunal, avant le prononcé du jugement, informe le prévenu du droit de refuser l'accomplissement d'un travail d'intérêt général et reçoit sa réponse.
Le tribunal fixe, dans la limite de dix-huit mois, le délai pendant lequel le travail doit être accompli. Ce délai prend find dès l'accomplissement de la totalité du travail d'intérêt général, la condamnation étant alors considérée comme non avenue; il peut être suspendu provisoirement pour motif grave d'ordre médical, familial, professionnel ou social.

Les modalités d'exécution de l'obligation d'accomplir un travail d'intérêt général et la suspension du délai prévu par l'alinéa précédent sont décidées par le juge de l'application des peines. - Pén. 43-3-1 s.

Art. 747-2. Au cours du délai fixé en application de l'article 747-1, troisième alinéa, outre l'obligation d'accomplir un travail d'intérêt général, le condamné doit satisfaire à l'ensemble des mesures de contrôle et d'assistance prévues par un décret en Conseil d'Etat ainsi que, le cas échéant, à celles des obligations particulières également prévues par un décret en Conseil d'Etat que le tribunal lui a spécialement imposées.

Art. 747-3. A l'exception des articles 738, deuxième et troisième alinéas, 743 et 745, deuxième alinéa, les dispositions du chapitre II ci-dessus sont applicables, l'obligation définie par l'article 747-7 et le délai fixé en application du même article étant respectivement assimilés à une obligation particulière et au délai d'épreuve; toutefois, le délai prévu par l'article 742-1 est ramené à dix-huit mois.

Art. 747-4. Les prescriptions du Code du travail relative au travail de nuit, à l'hygiène, à la sécurité, ainsi qu'au travail des femmes et des jeunes travailleurs sont applicables au travail d'intérêt général.

Art. 745-5. L'État répond du dommage ou de la part du dommage causé à autrui par un condamné et qui résulte directement de l'application d'une décision emportant l'obligation d'accomplir un travail d'intérêt général.
L'État est subrogé de plein droit dans les droits de la victime.
L'action en responsabilité et l'action récursoire sont portées devant les tribunaux de l'ordre judiciaire.

Art. 747-6. Les dispositions des articles 747-5 ci-dessus sont applicables aux mineurs de seize à dix-huit ans. Toutefois, la durée du travail d'intérêt général ne pourra être inférieure à vingt heures ni supérieure à cent vingt heures, et le délai pendant lequel le travail doit être accompli ne pourra excéder un an.
Les attributions du juge de l'application des peines prévues par les articles 747-7 sont dévolues au juge des enfants. Pour l'application de l'article 747-1, alinéa premier, les travaux d'intérêt général doivent être adaptés aux mineurs et présenter un caractère formateur ou de nature á favoriser l'insertion sociale des jeunes condamnés.

Art. 747-7. Un décret en Conseil d'État détermine les modalités d'application du présent chapitre. Il établit les conditions dans lesquelles s'exécutera l'activité des condamnés, ainsi que la nature des travaux proposés.
En outre, le décret détermine les conditions dans lesquelles:
1° Le juge de l'application des peines établit, après avis du ministère public et consultation de tout organisme public compétent en matière de prévention de la délinquance, la liste des travaux d'intérêt général susceptibles d'être accomplis dans son ressort;
2° Le travail d'intérêt général peut, pour les condamnés salariés, se cumuler avec la durée légale du travail;

3° Sont habilitées les associations mentionnées au premier alinéa de l'article 747-1.

Les dispositions de la loi n° 83-466 du 10 juin 1983 relatives au travail d'intérêt général entreront en vigueur à une date qui sera fixée par décret en Conseil d'Etat et ne pourra être postérieure au 1er janv. 1984 (art. 43).

MODIFICHE AL SISTEMA PENALE
L. 24 novembre 1981, n. 689

105. Lavoro sostitutivo. - Il lavoro sostitutivo consiste nella prestazione di un'attività non retribuita, a favore della collettività, da svolgere presso lo Stato, le regioni, le province, i comuni, o presso enti, organizzazioni o corpi di assistenza, di istruzione, di protezione civile e di tutela dell'ambiente naturale o di incremento del patrimonio forestale, previa stipulazione, ove occorra, di speciali convenzioni da parte del Ministero di grazia e giustizia, che può delegare il magistrato di sorveglianza.
Tale attività si svolge nell'ambito della provincia in cui il condannato ha la residenza, per una giornata lavorativa per settimana, salvo che il condannato chieda di essere ammesso ad una maggiore frequenza settimanale.

106. Esecuzione di pene pecuniarie. - L'articolo 586 del codice di procedura penale è sostituito dal seguente:
Omissis.

107. Determinazione delle modalità di esecuzione delle pene conseguenti alla conversione della multa o dell'ammenda. - Il pubblico ministero o il pretore competente per l'esecuzione trasmette copia del provvedimento di conversione della pena pecuniaria al magistrato di sorveglianza del luogo di residenza del condannato.
Il magistrato di sorveglianza, sentito il condannato stesso, dispone l'applicazione della libertà controllata o lo ammette al lavoro sostitutivo; determina altresì le modalità di esecuzione della libertà controllata a norma dell'articolo 62.
Il magistrato di sorveglianza determina le modalità di esecuzione del lavoro sostitutivo e ne fissa il termine iniziale, sentito ove occorra il servizio sociale, tenuto conto delle esigenze di lavoro, di studio, di famiglia e di salute del condannato ed osservando le disposizioni del capo II-bis del titolo II della legge 26 luglio 1975, n. 354.
L'ordinanza con cui sono stabilite le modalità di esecuzione del lavoro sostitutivo è immediatamente trasmessa all'ufficio di pubblica sicurezza del comune in cui il condannato risiede o, in mancanza di questo, al comando dell'Arma dei carabinieri territorialmente competente.
Si applicano al lavoro sostitutivo le disposizioni degli articoli 64, 65, 68 e 69.

108. Inosservanza delle prescrizioni inerenti alle pene conseguenti alla conversione della multa o della ammenda. - Quando è violata anche solo una delle prescrizioni inerenti alla libertà controllata, ivi comprese quelle inerenti al lavoro sostitutivo, conseguenti alla conversione di pene pecuniarie, la parte di libertà controllata o di lavoro sostitutivo non ancora eseguita si converte in un uguale periodo di reclusione o di arresto, a seconda della specie della pena pecuniaria originariamente inflitta. In tal caso non si applica il disposto dell'articolo 67.

Gli ufficiali e gli agenti della polizia giudiziaria devono informare, senza indugio, il magistrato di sorveglianza che ha emesso la ordinanze prevista dall'articolo 107 di ogni violazione da parte del condannato delle prescrizioni impostegli.
Il magistrato di sorveglianza trasmette gli atti alla sezione di sorveglianza, la quale, compiuti ove occorra sommari accertamenti, provvede con ordinanza alla conversione prevista dal primo comma, osservate le disposizioni del capo II-bis del titolo II della legge 26 luglio 1975, n. 354. L'ordinanza di conversione è trasmessa al pubblico ministero competente, il quale provvede mediante ordine di carcerazione.

NETHERLANDS

AANVULLING VAN HET WETBOEK VAN STRAFRECHT
MET DE STRAF VAN ONBETAALDE ARBEID INGEVOLGE
RECHTERLIJKE VEROORDELING
September 1985

Voorstel van Wet

Wij Beatrix, bij de gratie Gods, Koningin der Nederlanden, Prinses van Oranje-Nassau, enz. enz. enz.
Allen, die deze zullen zien of horen lezen, saluut! doen te weten:
Alzo Wij in overweging genomen hebben dat he wenselijk is het Wetboek van Strafrecht aan te vullen met voorschriften omtrent de mogelijkheid dat in plaats van het ondergaan van een korte onvoorwaardelijke vrijheidsstraf onbetaalde arbeid ten algemene nutte wordt verricht;
Zo is het, dat Wij, de Raad van State gehoord, en met gemeen overleg der Staten-Generaal, hebben goedgevonden en verstaan gelijk Wij goedvinden en verstaan bij deze:

Artikel 1

Het Wetboek van Strafrecht wordt als volgt gewijzigt:

A. In artikel 9, eerste lid, sub a, wordt 3° vernummerd tot 4° en wordt ingevoegd: 3°. het verrichten van onbetaalde arbeid ten algemene nutte ingevolge rechterlijke veroordeling.

B. Indien het bij koninklijke boodschap van 28 november 1984 aangeboden voorstel van wet tot herziening van de regeling betreffende de voorwaardelijke veroordeling en voorwaardelijke invrijheidstelling (18 764) tot wet wordt verheven, wordt in artikel 14g van deze wet het tweede, derde en vierde lid, vernummerd tot het derde onderscheidenlijk vierde en vijfde lid. Een nieuw tweede lid wordt ingevoegd dat luidt:
2. In geval de rechter overweegt een last tot tenuitvoerlegging te geven en de voorwaardelijke straf een vrijheidsstraf van niet meer dan zes maanden bedraagt, dan wel het gedeelte van de ten uitvoer te leggen straf niet meer dan zes maanden bedraagt, kan hij in de plaats daarvan het verrichten van onbetaalde arbeit, bedoeld in artikel 9, eerste lid, sub a, onder 3°, gelasten. De artikelen 22c tot en met 22j zijn van overeenkomstige toepassing.

C. Indien het onder B genoemde wetsvoorstel op het moment van inwerkingtreding van deze wet niet tot wet is verheven, worden in artikel 14h het tweede en derde lid vernummerd tot het derde onderscheidenlijk vierde lid. Een nieuw tweede lid wordt ingevoegd, dat luidt:
2. In geval de rechter overweegt een last tot tenuitvoerlegging te geven en de voorwardelijk straf een vrijheidsstraf van niet meer dan zes maanden bedraagt, kan hij in de plaats daarvan het verrichten van onbetaalde arbeid, bedoeld in artikel 9, eerste lid, sub a, onder 3°, gelasten. De artikelen 22c tot en met 22j zijn van overeenkomstige toepassing.

D. Na artikel 22a worden de volgende artikelen ingevoegd.

Artikel 22b. In geval de rechter een onvoorwaardelijke vrijheidsstraf van niet meer dan zes maanden dan wel een gedeeltelijk onvoorwaardelijke vrijheidsstraf, waarvan het onvoorwaaardelijk gedeelte niet meer dan zes maanden bedraagt, overweegt op te leggen, kan hij in de plaats daarvan het verrichten van onbetaalde arbeid ten algemene nutte opleggen.

Artikel 22c. 1. De straf van het verrichten van onbetaalde arbeid ten algemene nutte kan de rechter slechts obleggen na een daartoe strekkend aanbod van de verdachte.
2. Het aanbod dient in ieder geval te vermelden de soort instelling en de aard van de te verrichten werkzaamheden.

Artikel 22d. 1. Het vonnis vermeldt de onvoorwaardelijke vrijheidsstraf die de rechter overwoog op te leggen, en de straf van het verrichten van onbetaalde arbeit die hiervoor in de plaats komt.
2. Het vermeldt daarbij in ieder geval
a. het aantal te verrichten arbeid;
b. de termijn binnen welke de arbeid dient te worden verricht;
c. de instelling of de persoon ten behoeve waarvan de arbeid zal worden verricht;
d. de aard van de te verrichten werkzaamheden.
3. Het aantal uren te verrichten arbeid bedraagt ten hoogste tweehonderdenveertig uren. De termijn binnen welke de arbeid moet worden verricht bedraagt ten hoogste zes maanden.
4. De straf wordt niet opgelegd dan met instemming van de verdachte.
5. Wijst de rechter een aanbod tot het verrichten van onbetaalde arbeid af, dan wordt zijn beslissing met redenen omkleed.

Artikel 22e. Over de wijze waarop de arbeid wordt of is verricht, kan het openbaar ministerie, naar regelen te stellen bij algemene maatregel van bestuur, inlichtingen inwinnen bij lichamen en personen die werkzaam zijn op het gebied van de reclassering.

Artikel 22f. 1. Het openbaar ministerie kan, indien het van oordeel is dat de veroordeelde de arbeid niet geheel overeenkomstig het aanvaarde aanbod kan of heeft kunnen verrichten, de opgelegde straf wijzigen wat betreft de onderdelen bedoeld in artikel 22d, tweede lid, onder b tot en met d. Het benadert daarbij zo veel mogelijk de oorspronkelijk opgelegde straf.
2. Tegen een beslissing bedoeld in het eerste lid kan de veroordeelde beroep instellen bij de rechter die de straf oblegde. De rechter kan dan de beslissing van het openbaar ministerie wijzigen. Het eerste lid is van overeenkomstige toepassing.

Artikel 22g. De rechter die de straf oplegde kan op vordering van het openbaar ministerie, indien hij van ordeel is dat de veroordeelde de te verrichten arbeid niet naar behoren verricht of heeft verricht en indien hij daartoe termen vindt, alsnog de onvoorwaardelijke vrijheidsstraf waarvoor de opgelegde straf blijkens het vonnis in de plaats kwam, geheel of gedeeltelijk opleggen. Hij houdt daarbij rekening met het deel van de te verrichten arbeid dat wel naar behoren is verricht.

Artikel 22h. Op de behandeling van het beroep van de veroordeelde ingevolge artikel 22f, tweede lid, of op de vordering ingevolge artikel 22g zijn de artikelen 14i, 14j, tweede tot en met vijfde lid, en 14k, eerste en derde lid, van overeenkomstige toepassing.

Artikel 22i. Het openbaar ministerie kan een beslissing bedoeld in artikel 22f, eerste lid, slechts nemen, of een vordering bedoeld in artikel 22g, slechts instellen binnen drie maanden na afloop van de termijn bedoeld in artikel 22d, tweede lid, onder b.

Artikel 22j. 1. Indien naar het oordeel van het openbaar ministerie de opgelegde arbeid naar behoren is verricht stelt het zo spoedig mogelijk de veroordeelde hiervan in kennis.
2. Het openbaar ministerie kan daarna geen gebruik meer maken van zijn bevoegdheid genoemd in de artikelen 22f, eerste lid, en 22g.

E. Indien het bij koninklijke boodschap van 28 november 1984 aangeboden voorstel van wet tot herziening van de regeling betreffende de voorwaardelijke veroordeling en voorwaardelijke invrijheidsstelling (18 764) tot wet wordt verheven, luidt artikel 22h als volgt:
Op de behandeling van het beroep van de veroordeelde ingevolge artikel 22f, tweede lid, of op de vordering ingevolge artikel 22g, zijn de artikelen 14h-j van overeenkomstige toepassing.

F. In artikel 27 wordt in het derde lid na "van geldboete" ingevoegd: of bij het opleggen van het verrichten van onbetaalde arbeid.

G. Na artikel 63 wordt ingevoegd een nieuw artikel 63a, dat luidt:
Artikel 63a. Voor de toepassing van de bepalingen van deze titel wordt met de straf van het verrichten van onbetaalde arbeid ten algemene nutte ingevolge rechterlijke veroordeling rekening gehouden als ware het de vrijheidsstraf in de plaats waarvan die straf is obgelegd.

H. In artikel 77b, eerste lid, wordt "57-63" vervangen door: 57-63a.

Artikel II

In artikel 4, eerste lid, sub a, onder 2, van de Wet op de justitiele documentatie en op de verklaringen omtrent het gedrag wordt na "- anders dan verfangende -" ingevoegd: het verrichten van onbetaalde arbeid.

Artikel III

Deze wet treedt in werking op een bij koninklijk besluit te bepalen tijdstip.

Artikel IV

1. Deze wet, met uitzondering van Artikel I, de onderdelen B en C is niet van toepassing in strafzaken waarin de vervolging reeds is ingesteld op het moment van inwerkingtreding.
2. Artikel I, de onderdelen B en C, zijn van toepassing op strafzaken waarin het openbaar ministerie de vordering tot

tenuitvoerlegging van de voorwaardelijk opgelegde straf heeft gedaan na het moment van inwerkingtreding.

Lasten en bevelen dat deze in het Staatsblad zal worden geplaatst en dat alle ministeries, autoriteiten, colleges en ambtenaren, wie zulks aangaat, aan de nauwkeurige uitvoering de hand zullen houden.

NORWAY

ACT NO. 10 OF 22 MAY 1902, THE GENERAL CIVIL CODE. EXCERPTS

§ 52

1. The court may provide in its judgment that the sentence or the execution of punishment shall be suspended for a probation period. Suspended execution may only be granted if the punishment is imprisonment or a fine.

2. If the sentence is imprisonment, suspended execution may be limited to part of the punishment. The unsuspended part of the punishment must then be set at not less than 21 days and not more than 120 days. The last limitation does not apply if the unsuspended part of the punishment is regarded as having been served by being deprived of liberty in connection with the case, cf. § 60.

3. The court may in conjunction with a suspended sentence impose fines, the payment of which is not suspended. This applies even if the sentence for the offence does not include fines.

4. In the case of a writ of optional fine, the provisions relating to suspended sentences apply correspondingly where relevant.

§ 53

1. Suspension pursuant to § 52 is subject to the condition that the convicted person does not commit any new punishable offence during the probation period, and that he complies with the conditions stipulated in subsections 2-5 below. The convicted person must be given the opportunity to express his opinion on the conditions beforehand.
The probation period is determined by the court and shall normally be two years. In special cases a longer probation period may be stipulated, but not more than five years. The probation period runs from the date of the pronouncement of the final judgment.

2. The court may stipulate as a condition for suspension that the convicted person shall be under supervision during all or part of the probation period. The supervision period is one year unless the court decides otherwise. If the sentence relates to a punishable offence to which the conficted person has confessed, the judgment may stipulate that supervision is to begin at once even if the judgment is not final.

The superviser is to advise and guide the convicted person and try to help him to an ordered way of life. The superviser may order the convicted person to report to him at appointed times and keep him informed of his place of abode. If conditions have been imposed pursuant to subsections 3 to 5, the superviser may order the convicted person to provide the necessary information for ensuring that the conditions are being complied with.

3. The court may also stipulate other conditions for suspension, including:

a) that the convicted person complies with orders concerning place of abode, work, education and training, or relations with certain persons;
b) that the convicted person complies with orders limiting the right to dispose of his income or capital and concerning fulfilment of his financial obligations;
c) that the convicted person refrains from using alcohol or other intoxicants or narcotics;
d) that the convicted person undergoes a cure to counteract abuse of alcohol or other intoxicants or narcotics, if necessary in an institution;
e) that the convicted person undergoes psychiatric treatment, if necessary in an institution;
f) that the convicted person stays in a home or institution for up to one year.

The court may leave it to the supervising authority to issue orders under litra a and b.

4. As a condition for suspension, the court may order the convicted person to pay such damages as the injured party has a right to and claims and as the court considers the convicted person to be able to pay.

5. As a condition for suspension, the court may stipulate that the convicted person must pay maintenance which has fallen due or falls due during the probation period.

6. The King may issue specific regulations on the implementation of the supervisory arrangement and other conditions.
In special cases the court may decide that supervision shall be carried out by a certain person, by a public board, or by an organization.

§ 54

1. When the circumstances of the convicted person give reason to do so, the Court of Examining and Summary Jurisdiction may in the course of the probation period rule by court order that the stipulated conditions shall cease to apply, and stipulate new conditions. If the court finds it necessary, it may also extend the probation period, but to no more than a total of five years.

2. If the convicted person commits serious or repeated breaches of the stipulated conditions, the Court of Examining and Summary Jurisdiction may pronounce judgment that the punishment shall be served in whole or in part. The judgment must be pronounced within three months after the end of the probation period. If the convicted person has been under supervision, the supervising authority must express its opinion before judgment is pronounced. The provisions relating to arrest and imprisonment in Chapter 19 of the Act relating to Judicial Procedure in Penal Cases applies correspondingly.
Instead of ordering that the punishment is to be served, the court may in its judgment stipulate a new period of probation and new conditions if it deems this more appropriate.

3. If the convicted person commits a punishable offence during the probation period and proceedings are instituted or judgment by the Court of Examining and Summary Jurisdiction is requested rendered within six months of the end of the probation period, the court may pronounce a combined judgment for both offences or pronounce a separate judgment for the new offence.
If a separate judgment for the new offence is pronounced the court may also amend the previous suspended sentence pursuant to subsection 1.

§ 54 a.

If a suspended sentence is read to or served on the convicted person, he shall be acquainted with the meaning of a suspended sentence, what the conditions are, and the consequences of not complying with them. The judge may also warn and admonish the convicted person when his age and other circumstances give grounds for doing so. To receive such warning and admonition, the convicted person may be summoned to a special session of the court. If supervision is ordered, and the supervising authority was not present when judgment was pronounced, it shall be informed of the judgment immediately.

CODIGO PENAL
DECRETO-LEI N.° 400/82
de 23 de setembro
Foram tidas em conta as rectificações
publicadas en "Declaraçao" do
Diário da República, I série, n.° 279,
de 3 de Dezembro de 1982

Art. 47.° Não pagamento de multa.

1. Se a multa não for paga terá lugar a execução dos bens do condenado.
2. Se, porêm, a multa não for paga voluntária ou coercivamente, mas o condenado estiver em condições de trabalhar, será total ou parcialmente substituída pelo número correspondente de dias de trabalho em obras ou oficinas do Estado ou de outras pessoas colectivas de direito público.
3. Quando a multa não for paga ou substituída por dias de trabalho, nos termos do números anteriores, será cumprida a pena de prisão aplicada em alternativa na sentença.
4. Se, todavia, o condenado provar que a razão de não pagamento da multa lhe não é imputável, pode a prisão fixada em alternativa ser reduzida até 6 dias ou decretar-se a isençao da pena.
5. Caso o agente se tenha colocado intencionalmente em condiçoes de não pagar, total ou parcialmente, a multa, ou de nao poder ser ela substituída por dias de trabalho, será punido com a pena prevista no n.° 3 do artigo 388.°.

Art. 60.° Prestação de trabalho a favor da comunidade.

1. Se o agente for considerado culpado pela prática de crime a que, concretamente, corresponda a pena de prisão, com ou sem multa, não superior a 3 meses, ou só pena de multa até ao mesmo limite, pode o tribunal condená-lo à prestação de trabalho a favor da comunidade.
2. A prestação de trabalho a favor da comunidade consiste na prestação de serviços gratuitos, durante período não compreendidos nas horas normais de trabalho, ao Estado, a outras pessoas colectivas de direito público ou entidades privadas que o tribunal considere de interesse para a comunidade.
3. A prestação do trabalho pode ter a duração de 9 a 180 horas, que não podem exceder, por dia, o permitido segundo o regime de horas extraordinárias aplicável.
4. Esta sanção deve ser aplicada com a aceitação do réu considerado culpado.
5. A prestação de trabalho a favor da comunidade é controlada por órgãos de serviço social.
6. Caso o agente, após a condenação, se coloquee intencionalmente em condições de não poder trabalha ou se recuse, sem justa causa, a prestar o trabalho, será punido com a pena prevista no n.° 3 do artigo 388.°
7. Se o agente não puder prestar o trabalho por causa superveniente que lhe nao seja imputável, o tribunal, conforme os casos, poderá aplicar-lhe uma pena de multa, ou mesmo isentá-lo da pena.

DECRETO-LEI N.° 402/82
de 23 de setembro
(Execução das penas e das medidas de segurança)

CAPITULO IV
Da execução da prestação de trabalho a favor da comunidade

Art. 38.°

1. A decisão que condenar o réu à prestação de trabalho a favor da comunidade será tomada com aceitação do réu considerado culpado e com indicação, por parte deste ou do Ministério Público poderao indicar a entidade a que o serviço é prestado.
2. A sentença pode ser adiada, pelo prazo máximo de 1 mês, se o juiz tiver razões para crer que, nesse prazo, o réu ou o Ministério Público poderão indicar a entidade a que o serviço é prestado.
3. A decisão especificará a entidade a que o serviço é prestado, o horário dos períodos e a duração do trabalho.

Art. 39.°

1. Será enviada ao Instituto de Reinserção Social cópia da decisão condenatória, a fim de ser controlada a prestação de trabalho pelo condenado.
2. Finda a prestação de trabalho, ou durante esta no caso de se verificar alguma anomalia, o Instituto de Reinserção Social enviará ao tribunal relatório que o habilite a julgar extinta a pena ou a tomar as medidas adequadas.

VERORDNUNG DES JUSTIZMINISTERIUMS ÜBER DIE TILGUNG UNEINBRINGLICHER GELDSTRAFEN DURCH FREIE ARBEIT VOM 29. MÄRZ 1983

Auf Grund von Artikel 293 des Einführungsgesetzes zum Strafgesetzbuch vom 2. März 1974 (BGBl.I S. 469) in Verbindung mit § 1 der Verordnung der Landesregierung vom 7. September 1982 (GBl. S. 398) wird verordnet:

§ 1

Allgemeines

(1) Die Vollstreckungsbehörde kann dem Verurteilten auf Antrag gestatten, eine uneinbringliche Geldstrafe durch freie Arbeit zu tilgen.

(2) Freie Arbeit im Sinne dieser Verordnung ist gemeinnützige und unentgeltliche Tätigkeit. Die Unentgeltlichkeit wird durch freiwillige geringfügige Zuwendungen an den Verurteilten zum Ausgleich von Auslagen im Zusammenhang mit der Arbeitsleistung nicht berührt.

(3) Ein privatrechtliches Arbeitsverhältnis wird durch die Leistung freier Arbeit nicht begründet.

§ 2

Antragsverfahren

(1) Ist die Vollstreckung der Ersatzfreiheitsstrafe angeordnet, weist die Vollstreckungsbehörde den Verurteilten darauf hin, daß er innerhalb einer bestimmten Frist einen Antrag nach § 1 Abs. 1 stellen kann. Zugleich gibt sie ihm auf, innerhalb dieser Frist eine Beschäftigungsstelle, bei der freie Arbeit abgeleistet werden kann, zu benennen und eine Einverständniserklärung des von ihm in Aussicht genommenen Beschäftigungsgebers vorzulegen. Die Frist muß angemessen sein und kann verlängert werden. Die Sätze 1 bis 3 gelten nicht, wenn der Verurteilte sich nicht auf freiem Fuß befindet oder unbekannten Aufenthalts ist.

(2) Die Vollstreckungsbehörde kann dem Verurteilten bei der Vermittlung eines Beschäftigungsverhältnisses behilflich sein und mit der Beschäftigungsstelle die näheren Umstände der zu leistenden Tätigkeit abklären. Sie kann sich hierbei insbesondere des Gerichtshelfers bedienen.

§ 3

Entscheidung der Vollstreckungsbehörde

(1) Gestattet die Vollstreckungsbehörde die Tilgung der Geldstrafe durch freie Arbeit, bestimmt sie zugleich die Beschäftigungsstelle, den Inhalt der Tätigkeit, die voraussichtliche tägliche Arbeitszeit und den Anrechnungsmaßstab (§ 7 Abs. 1).

(2) Die Vollstreckungsbehörde lehnt den Antrag ab, wenn
1. der Verurteilte innerhalb der Frist des § 2 Abs. 1 keine Beschäftigungsstelle benennt oder die Einverständniserklärung des Beschäftigungsgebers nicht vorlegt,
2. Anhaltspunkte dafür vorhanden sind, daß der Verurteilte freie Arbeit nicht leisten will oder dazu in absehbarer Zeit nicht in der Lage sein wird,
3. die vom Verurteilten vorgeschlagene Beschäftigungsstelle unter Berücksichtigung der allgemeinen Strafzwecke zur Ableistung gemeinnütziger Arbeit ungeeignet erscheint.

§ 4

Vollstreckung der Ersatzfreiheitsstrafe

Die Vollstreckung der Ersatzfreiheitsstrafe unterbleibt, solange
1. über einen entsprechenden Antrag des Verurteilten nicht entschieden ist oder
2. dem Verurteilten die Tilgung der Geldstrafe durch freie Arbeit gestattet ist.

§ 5

Weisungen

Der Verurteilte hat den Weisungen der Vollstreckungsbehörde und im Rahmen des Beschäftigungsverhältnisses den Anordnungen des Beschäftigungsgebers nachzukommen.

§ 6

Widerruf und Beendigung der Gestattung

(1) Die Vollstreckungsbehörde widerruft die Gestattung, wenn der Verurteilte
1. ohne genügende Entschuldigung nicht zur Arbeit erscheint oder die Arbeit abbricht,
2. trotz Abmahnung des Beschäftigungsgebers mit seiner Arbeitsleistung hinter den Anforderungen zurückbleibt, die billigerweise an ihn gestellt werden können,
3. in erheblichem gegen ihm erteilte Weisungen oder Anordnungen verstößt,
4. durch sonstiges schuldhaftes Verhalten seine Weiterbeschäftigung für den Beschäftigungsgeber unzumutbar macht.

Der Verurteilte ist vor einem Widerruf zu hören. Der Widerruf und dessen Grund sind ihm schriftlich mitzuteilten.

(2) Die Gestattung endet, wenn der Verurteilte bei dem bisherigen Beschäftigungsgeber nicht mehr weiter tätig sein kann und ein neues Beschäftigungsverhältnis in angemessener Zeit nicht zustande gekommen ist.

§ 7

Tilgung der Geldstrafe

(1) Zur Tilgung eines Tagessatzes der Geldstrafe sind sechs Stunden freie Arbeit zu leisten. In Ausnahmefällen kann die Vollstreckungsbehörde den Anrechnungsmaßstab insbesondere mit Rücksicht auf Inhalt und Umstände der Tätigkeit oder auf die persönlichen Verhältnisse des Verurteilten bis auf drei Stunden herabsetzen.

(2) Bleibt der Verurteilte der Arbeit fern, wird die versäumte Arbeitszeit auch dann nicht auf die Gesamtarbeitszeit angerechnet, wenn das Fernbleiben entschuldigt ist.

(3) Wird der Vollstreckungsbehörde nachgewiesen, daß der Verurteilte die erforderliche Stundenzahl freie Arbeit geleistet hat, ist damit die Geldstrafe getilgt. Die Vollstreckungsbehörde teilt dem Verurteilten schriftlich mit, daß die Zahlung der Geldstrafe erledigt ist.

(4) Der Verurteilte kann jederzeit die noch nicht getilgte Geldstrafe zahlen.

§ 8

Geltungsbereich

Diese Verordnung gilt für den Zuständigkeitsbereich der Staatsanwaltschaften Mannheim und Ravensburg mit Ausnahme der Amtsgerichtsbezirke Saulgau und Tettnang.

§ 9

Inkrafttreten

Diese Verordnung tritt am 1. Mai 1983 in Kraft.

BAYERN

TILGUNG UNEINBRINGLICHER GELDSTRAFEN DURCH GEMEINNÜTZIGE ARBEIT

I.

1. Die Leitenden Oberstaatsanwälte bei den Landgerichten Amberg, Ansbach, Aschaffenburg, Augsburg, Coburg, Deggendorf, Hof, Landshut, Nürnberg-Fürth, Passau, Regensburg, Schweinfurt, Traunstein und Weiden werden ermächtigt, im Gnadenwege die Leistung von gemeinnütziger Arbeit auf uneinbringliche Geldstrafen anzurechnen.

2. Die Anrechnung ist davon abhängig, daß der Verurteilte je Tagessatz der uneinbringlichen Geldstrafe eine Arbeitsleistung von mindestens sechs, höchstens acht Stunden an einer ihm von der Vollstreckungsbehörde zugewiesenen gemeinnützigen Beschäftigungsstelle unentgeltlich erbringt. Die je Tagessatz festgesetzten Arbeitsstunden können nach Bestimmung der Vollstreckungsbehörde auch an mehreren Tagen geleistet werden.

3. Ein privatrechtliches Arbeitsverhältnis wird durch die Leistung der gemeinnützigen Arbeit nicht begründet.

II.

1. Die Vollstreckungsbehörde belehrt den Verurteilten, wenn gemäß § 459e StPO die Vollstreckung der Ersatzfreiheitsstrafe angeordnet ist, über die Möglichkeit, sich innerhalb einer Woche bei ihr zur Leistung unentgeltlicher gemeinnütziger Arbeit zu melden. Die Belehrung unterbleibt, wenn der Verurteilte zur Arbeitsleistung offensichtlich ungeeignet ist.

2. Die Belehrung wird dem Verurteilten zusammen mit der Ladung zum Strafantritt (Vordruck StP 776) zugestellt. Die in Satz 3 des Ladungsvordrucks genannte Frist ist auf drei Wochen zu verlängern.

3. Die Vollstreckungsbehörde, bei der sich der Verurteilte innerhalb einer Woche nach Zugang der Belehrung meldet, stellt die weitere Vollstreckung der Ersatzfreiheitsstrafe vorläufig zurück, wenn innerhalb eines Zeitraumes von etwa vier Wochen eine Möglichkeit zur Leistung gemeinnütziger Arbeit durch den Verurteilten besteht, dieser hierzu bereit ist und von seiner Persönlichkeit her zur Leistung solcher Arbeit geeignet erscheint. Die Vollstreckungsbehörde kann die weitere Strafvollstreckung auch zurückstellen, wenn der Verurteilte sich später bei ihr meldet.

4. Die Vollstreckungsbehörde weist dem Verurteilten eine geeignete Beschäftigungsstelle zu und gibt ihm auf, eine Bestätigung des Beschäftigungsgebers über die ordnungsgemäße Arbeitsleistung innerhalb einer Woche nach Beendigung der Beschäftigung

vorzulegen. Ein entsprechendes Formblatt händigt sie dem Verurteilten aus. Dabei belehrt sie ihn, daß die Vollstreckung der Ersatzfreiheitsstrafe fortgesetzt werden kann (Nr. 5). Einen Abdruck der Zuweisung übersendet die Vollstreckungsbehörde dem Beschäftigungsgeber.

5. Die Vollstreckungsbehörde setzt die Vollstreckung der Ersatzfreiheitsstrafe fort, wenn
   a) Gründe vorliegen, die zur Rücknahme eines Gnadenerweises berechtigen würden (§ 32 BayGnO); eine Verurteilung im Sinne des § 32 Abs. 1 Nr. 2 BayGnO ist nicht erforderlich,
   b) der Verurteilte erneut eine Straftat begeht,
   c) der Verurteilte die zugewiesene Arbeit ohne hinreichende Entschuldigung nicht aufnimmt oder nicht fortsetzt,
   d) der Verurteilte die zugewiesene Arbeit nicht ordnungsgemäß leistet oder sonst durch sein Verhalten die Weiterbeschäftigung unzumutbar macht,
   e) der Verurteilte die Bestätigung der Beschäftigungsstelle über die geleistete Arbeit nicht fristgemäß vorlegt und eine solche Bestätigung auch nicht in anderer Weise beschafft werden kann.

Die bis zur Fortsetzung der Vollstreckung der Ersatzfreiheitsstrafe erbrachte Arbeitsleistung kann auf die Geldstrafe angerechnet werden.

III.

1. Diese Verwaltungsvorschrift tritt am 1. Januar 1986 in Kraft. Sie tritt am 31. Dezember 1988 außer Kraft, sofern sie nicht aus anderen Gründen bereits früher ihre Gültigkeit verliert.

2. Die Verwaltungsvorschrift vom 22. Dezember 1982, Gz. 4321 - II - 6316/82 läuft am 31. Dezember 1985 aus. Die Verwaltungsvorschriften vom 20. September 1983 und 27. Juni 1984, Gz. 4321 - II - 6316/82 werden mit Wirkung vom 1. Januar 1986 aufgehoben.

BERLIN

VERORDNUNG ÜBER DIE ABWENDUNG DER VOLLSTRECKUNG VON ERSATZFREIHEITSSTRAFEN DURCH FREIE TÄTIGKEIT VOM 6. DEZEMBER 1985

Auf Grund des Artikels 293 des Einführungsgesetzes zum Strafgesetzbuch vom 2. März 1974 (BGBl.I S. 469/GVBl. S. 874), zuletzt geändert durch Gesetz vom 20. Dezember 1984 (BGBl.I S. 1654/GVBl. S. 1816), wird verordnet:

§ 1

Allgemeines

(1) Die Vollstreckungsbehörde kann einem Verurteilten auf Antrag gestatten, die Vollstreckung einer Ersatzfreiheitsstrafe durch freie Tätigkeit abzuwenden.

(2) Freie Tätigkeit im Sinne dieser Verordnung ist gemeinnützige Tätigkeit, die unentgeltlich und namentlich im Rahmen der Stadtpflege, in Krankenhäusern, Alten- und Pflegeheimen erbracht wird. Der Unentgeltlichkeit steht nicht entgegen, daß der Verurteilte zum Ausgleich seiner Kosten einen Aufwendungsersatz, insbesondere für Fahrgeld, erhält.

§ 2

Verfahren

(1) Ist eine Ersatzfreiheitsstrafe zu vollstrecken, so ist der Verurteilte von der Vollstreckungsbehörde über sein Antragsrecht zu belehren. Er ist darauf hinzuweisen, daß die Gestattung von dem innerhalb von zwei Wochen zu erbringenden Nachweis seiner derzeitigen Einkommensverhältnisse und der Vorlage einer Einverständniserklärung des von ihm in Aussicht genommenen Beschäftigungsgebers über seinen Einsatz im Bereich gemeinnütziger Tätigkeiten abhängig gemacht wird.

(2) Die Vollstreckungsbehörde kann dem Verurteilten bei der Vermittlung eines Tätigkeitsverhältnisses behilflich sein und sich hierbei der Gerichtshilfe oder einer gemeinnützigen Organisation bedienen. Sie kann auf Antrag des Verurteilten die Frist in Absatz 1 Satz 2 verlängern. Bei Anträgen von Verurteilten mit Wohnsitz außerhalb Berlins setzt die Vollstreckungsbehörde dem Einzelfall angemessene Fristen.

(3) Besteht die berufliche Tätigkeit des Verurteilten in gemeinnütziger Arbeit, so gilt § 1 Absatz 1 dieser Verordnung nur dann, wenn eine hiervon unabhängige Tätigkeit erbracht wird.

§ 3

Pflichten des Verurteilten

(1) Gestattet die Vollstreckungsbehörde dem Verurteilten, die Vollstreckung der Ersatzfreiheitsstrafe durch freie Tätigkeit abzu-

wenden, so bestimmt sie den Beschäftigungsgeber und mit dessen Zustimmung Einsatzplatz, Beginn und nach Tagen bemessene Dauer der freien Tätigkeit und die tägliche Einsatzzeit. Sie unterrichtet hiervon den Verurteilten und weist ihn zugleich auf seine sich aus den Absätzen 2 und 3 ergebenden Pflichten und auf die Rechtsfolgen nach § 6 hin.

(2) Der Verurteilte hat den Weisungen der Vollstreckungsbehörde nachzukommen, die ihm auch auferlegt, den Anordnungen des Beschäftigungsgebers im Rahmen des Tätigkeitsverhältnisses zu entsprechen.

(3) Der Verurteilte hat
a) eine zur Erbringung seiner Tätigkeit etwa erforderliche Arbeitskleidung zu stellen, soweit dies bei der ausgewählten Arbeit auch sonst üblich ist,
b) eine notwendige ärztliche Untersuchung auf seine Kosten vornehmen zu lassen, sofern diese nicht von dem Beschäftigungsgeber getragen werden.

§ 4

Abwendung der Ersatzvollstreckung

(1) Durch sechs Stunden freier Tätigkeit wird die Vollstreckung eines Tages der Ersatzfreiheitsstrafe abgewendet. Namentlich bei Wochenend- oder Nachteinsätzen kann die Vollstreckungsbehörde jeweils geringere Bemessungsmaßstäbe festsetzen.

(2) Bleibt der Verurteilte dem Einsatz fern, so wird die versäumte Zeit auch dann nicht auf die Gesamtleistung angerechnet, wenn das Fernbleiben entschuldigt ist.

(3) Der Verurteilte kann seinen Einsatz jederzeit durch Zahlung des noch nicht abgegoltenen Betrages seiner Geldstrafe beenden.

§ 5

Vollstreckung der Ersatzfreiheitsstrafe

Die Vollstreckung der Ersatzfreiheitsstrafe wird in der Regel angeordnet, wenn der Verurteilte die Gestattungsvoraussetzungen nicht erfüllt oder die Gestattung gemäß § 6 widerrufen wird.

§ 6

Widerruf der Gestattung

(1) Die Vollstreckungsbehörde widerruft die Gestattung nach § 1 Absatz 1 nach Anhörung des Verurteilten, wenn er
a) ohne genügende Entschuldigung wiederholt nicht zum Tätigkeitseinsatz erscheint oder seine Tätigkeit abbricht,
b) trotz Abmahnung des Beschäftigungsgebers mit seiner Leistung hinter den Anforderungen zurückbleibt, die billigerweise an ihn gestellt werden können,
c) gröblich oder beharrlich gegen ihm erteilte Anweisungen verstößt,
d) dem Beschäftigungsgeber durch sein Verhalten Anlaß gibt, die Weiterbeschäftigung als unzumutbar abzulehnen.

(2) Lehnt der Beschäftigungsgeber die Weiterbeschäftigung des Verurteilten ab, ohne daß ein Widerruf nach Abs. 1 gegeben ist, kann der Verurteilte der Vollstreckungsbehörde einen anderen Einsatzplatz vorschlagen. Ist dies nicht möglich, so ordnet diese die Vollstreckung der noch zu verbüßenden Ersatzfreiheitsstrafe an.

§ 7

Mitteilungen an die Vollstreckungsbehörde

Hat der Verurteilte die ihm aufgetragene freie Tätigkeit geleistet, so weist er dies der Vollstreckungsbehörde unverzüglich unter Vorlage einer Erklärung seines Beschäftigungsgebers nach. Vollstreckungsnachteile, die sich aus schuldhaft unterlassenem Nachweis ergeben können, gehen zu Lasten des Verurteilten.

§ 8

Inkrafttreten

Diese Verordnung tritt am Tage nach der Verkündung im Gesetz- und Verordnungsblatt für Berlin in Kraft. Gleichzeitig tritt die Verordnung über die Tilgung uneinbringlicher Geldstrafen durch freie Arbeit vom 25. April 1978 (GVBl. S. 1030) außer Kraft.

BREMEN

VERORDNUNG ÜBER DIE TILGUNG UNEINBRINGLICHER GELDSTRAFEN DURCH FREIE ARBEIT VOM 11. JANUAR 1982

Aufgrund des Artikels 293 des Einführungsgesetzes zum Strafgesetzbuch vom 2. März 1974 (BGBl.I S. 469), zuletzt geändert durch Gesetz vom 22. Dezember 1977 (BGBl.I S. 3104), verordnet der Senat:

§ 1

Allgemeines

(1) Uneinbringliche Geldstrafen können durch freie Arbeit getilgt werden.

(2) Freie Arbeit im Sinne dieser Verordnung ist gemeinnützige Tätigkeit. Der Senator für Rechtspflege und Strafvollzug kann zulassen, daß auch andere Tätigkeiten als freie Arbeit anerkannt werden.

§ 2

Verfahren

(1) Ist eine Geldstrafe uneinbringlich und wird die Vollstreckung der Ersatzfreiheitsstrafe angeordnet, so weist die Vollstreckungsbehörde den Verurteilten zugleich darauf hin, daß er die Vollstreckung der Ersatzfreiheitsstrafe durch freie Arbeit abwenden und die Geldstrafe dadurch tilgen kann. Des Hinweises bedarf es nicht, wenn aufgrund bestimmter Tatsachen feststeht, daß der Verurteilte zur Ableistung freier Arbeit nicht willens oder nicht fähig ist. Dies gilt namentlich dann, wenn der Verurteilte unbekannten Aufenthalts ist oder wegen weiterer noch zu vollstreckender Freiheitsstrafe zu erwarten ist, daß er sich der Vollstreckung entziehen wird.

(2) Zugleich mit dem Hinweis auf Absatz 1 Satz 1 bestimmt die Vollstreckungsbehörde eine Frist, binnen derer der Verurteilte

1. der Vollstreckungsbehörde anzeigen kann, er habe selbst eine Gelegenheit zur Ableistung einer Tätigkeit nach § 1 Abs. 2 gefunden oder
2. bei einer von der Vollstreckungsbehörde benannten Stelle die Vermittlung einer Tätigkeit nach § 1 Abs. 2 beantragen kann.

(3) Endet die Frist nach Absatz 2, ohne daß der Verurteilte von einer der in dieser Vorschrift genannten Möglichkeiten Gebrauch gemacht hat, so vollstreckt die Vollstreckungsbehörde die Ersatzfreiheitsstrafe.

(4) Macht der Verurteilte von einer der in Absatz 2 genannten Möglichkeiten innerhalb der gesetzten Frist Gebrauch, so unterbleibt die Vollstreckung der Ersatzfreiheitsstrafe vorläufig.

§ 3

Weisungen

Der Verurteilte hat den Weisungen der Strafvollstreckungsbehörde und hinsichtlich der ihm obliegenden Pflichten im Rahmen des Beschäftigungsverhältnisses den Anordnungen des Beschäftigungsgebers nachzukommen.

§ 4

Anrechnungsmaßstab

Zur Tilgung eines Tagessatzes der Geldstrafe sind 6 Stunden freie Arbeit zu leisten. Die Vollstreckungsbehörde kann insbesondere mit Rücksicht auf die Art und die Umstände der zu leistenden Tätigkeit oder auf besondere persönliche Verhältnisse des Verurteilten den Anrechnungsmaßstab abweichend von Satz 1 auf bis zu 3 Stunden herabsetzen.

§ 5

Rechtsfolgen

(1) Weist der Verurteilte der Vollstreckungsbehörde nach, daß er entsprechend dem in § 4 festgelegten Anrechnungsmaßstab freie Arbeit geleistet hat, so ist damit die Geldstrafe getilgt; dies ist dem Verurteilten schriftlich mitzuteilen. Dem Nachweis nach Satz 1 steht es gleich, wenn der Beschäftigungsgeber oder ein Beauftragter des Beschäftigungsgebers die Ableistung der freien Arbeit der Vollstreckungsbehörde anzeigt.

(2) Die Vollstreckungsbehörde vollstreckt die Ersatzfreiheitsstrafe, sobald ihr bekannt wird, daß der Verurteilte
1. ohne hinreichende Entschuldigung nicht zur Arbeit erscheint oder die Arbeit vorzeitig abbricht,
2. trotz Abmahnung des Beschäftigungsgebers mit seiner Arbeitsleistung wesentlich hinter den Anforderungen zurückbleibt, die billigerweise an ihn gestellt werden können,
3. gröblich oder beharrlich gegen ihm erteilte Weisungen (§ 3) verstößt,
4. durch sonstiges schuldhaftes Verhalten seine Weiterbeschäftigung für den Beschäftigungsgeber unzumutbar macht.

Dies teilt sie dem Verurteilten schriftlich mit.

(3) Bleibt der Verurteilte der Arbeit fern, so wird die versäumte Arbeitszeit auch dann nicht auf die insgesamt abzuleistende Arbeitszeit (§ 4) angerechnet, wenn das Fernbleiben entschuldigt ist.

(4) Der Verurteilte kann jederzeit die noch nicht beglichene Geldstrafe oder den anteiligen Rest (§ 4) bezahlen.

§ 6

Übertragung

(1) Der Senator für Rechtspflege und Strafvollzug kann durch Vertrag geeigneten Stellen außerhalb der öffentlichen Verwaltung die anderenfalls von der Vollstreckungsbehörde wahrzunehmenden Aufga-

ben der Bereitstellung oder Vermittlung von Arbeitsstellen sowie der Beratung, Betreuung und Beaufsichtigung des Verurteilten übertragen.

(2) Im Falle des Absatzes 1 kann der Nachweis über die geleistete Arbeit (§ 5 Abs. 1 Satz 1 und 2) auch gegenüber der Stelle geführt werden, auf die die Wahrnehmung der Aufgaben übertragen ist.

(3) Im Falle des Absatzes 1 kann auch die Stelle, auf die die Wahrnehmung der Aufgaben übertragen ist, dem Verurteilten Weisungen erteilen, die sich auf seine Beschäftigung beziehen und die dieser zu befolgen hat.

§ 7

Inkrafttreten

Diese Verordnung tritt am 1. Februar 1982 in Kraft.

HESSEN

VERORDNUNG ÜBER DIE TILGUNG UNEINBRINGLICHER GELDSTRAFEN DURCH FREIE ARBEIT

Gesetzes- und Verordnungsblatt für das Land Hessen
Teil II, 24/24, S. 41

Auf Grund des Art. 293 Des Einführungsgesetzes zum Strafgesetzbuch vom 2. März 1974 (BGBl.I S. 469; 1975 I S. 1916; 1976 I S. 507), zuletzt geändert durch Gesetz vom 22. Dezember 1977 (BGBl.I S. 3104), in Verbindung mit § 1 der Verordnung zur Übertragung der Ermächtigung zum Erlaß von Regelungen über die Tilgung uneinbringlicher Geldstrafen durch freie Arbeit nach Art. 293 Satz 1 des Einführungsgesetzes zum Strafgesetzbuch vom 8. Mai 1981 (GVBl.I S. 148) wird verordnet:

§ 1

Allgemeines

(1) Die Strafvollstreckungsbehörde kann einem Verurteilten auf Antrag gestatten, eine uneinbringliche Geldstrafe durch freie Arbeit zu tilgen.

(2) Freie Arbeit im Sinne dieser Verordnung ist gemeinnützige, unentgeltliche Tätigkeit. Geringfügige freiwillige Zuwendungen an den Verurteilten berühren die Unentgeltlichkeit nicht.

§ 2

Verfahren

(1) Ist eine Geldstrafe uneinbringlich und die Vollstreckung der Ersatzfreiheitsstrafe angeordnet, so weist die Strafvollstreckungsbehörde den Verurteilten darauf hin, daß er einen Antrag nach § 1 Abs. 1 stellen kann, und setzt ihm hierzu eine Frist; zugleich gibt sie dem Verurteilten Gelegenheit, eine ihm mögliche Tätigkeit im Sinne des § 1 Abs. 2 sowie eine geeignete Beschäftigungsstelle vorzuschlagen. Dies gilt nicht, wenn der Verurteilte sich nicht auf freiem Fuß befindet oder unbekannten Aufenthaltes ist.

(2) Die Strafvollstreckungsbehörde kann dem Verurteilten bei der Vermittlung eines Beschäftigungsverhältnisses behilflich sein. Sie stimmt mit der Beschäftigungsstelle Inhalt und Umstände der zu leistenden Tätigkeit ab.

(3) Gestattet die Strafvollstreckungsbehörde die Tilgung der Geldstrafe durch freie Arbeit, so gibt sie zugleich die Beschäftigungsstelle, die voraussichtliche Arbeitszeit, die Art der Tätigkeit und die Anrechnung auf die Geldstrafe an.

(4) Zur Tilgung eines Tagessatzes der Geldstrafe sind sechs Stunden freie Arbeit zu leisten. Die Strafvollstreckungsbehörde kann in Ausnahmefällen, insbesondere mit Rücksicht auf Art und Umstände der zu leistenden Tätigkeit oder auf besondere persönliche Verhältnisse des Verurteilten, den Anrechnungsmaßstab abweichend von Satz 1 auf bis zu drei Stunden herabsetzen.

§ 3

Ablehnung

Die Strafvollstreckungsbehörde lehnt den Antrag ab, wenn

1. Anhaltspunkte dafür vorhanden sind, daß der Verurteilte freie Arbeit nicht leisten will oder dazu in absehbarer Zeit nicht in der Lage sein wird,
2. ein Beschäftigungsverhältnis in angemessener Zeit nicht zustande kommt,
3. an der vom Verurteilten vorgeschlagenen Beschäftigungsstelle die allgemeinen Strafzwecke nicht erreicht werden könnten und die Vermittlung eines anderen Beschäftigungsverhältnisses scheitert.

§ 4

Weisungen

Der Verurteilte hat den Weisungen der Strafvollstreckungsbehörde und hinsichtlich der ihm obliegenden Pflichten im Rahmen des Beschäftigungsverhältnisses den Anordnungen des Beschäftigungsgebers nachzukommen.

§ 5

Tilgung der Geldstrafe

(1) Die Geldstrafe wird entsprechend dem nach § 2 Abs. 3 festgesetzten Anrechnungsmaßstab durch die Leistung der freien Arbeit getilgt.

(2) Bleibt der Verurteilte der Arbeit fern, so wird die versäumte Arbeitszeit auch dann nicht auf die Gesamtarbeitszeit angerechnet, wenn das Fernbleiben entschuldigt ist.

(3) Der Verurteilte kann jederzeit die noch nicht getilgte Geldstrafe bezahlen.

§ 6

Widerruf, Beendigung

(1) Die Strafvollstreckungsbehörde kann die Gestattung nach Anhörung des Verurteilten widerrufen, wenn er

1. ohne genügende Entschuldigung nicht zur Arbeit erscheint oder die Arbeit abbricht,
2. trotz Abmahnung des Beschäftigungsgebers mit seiner Arbeitsleistung hinter den Anforderungen zurückbleibt, die billigerweise an ihn gestellt werden können,
3. gröblich oder beharrlich gegen ihm erteilte Weisungen oder Anordnungen verstößt,
4. durch sonstiges schuldhaftes Verhalten seine Weiterbeschäftigung für den Beschäftigungsgeber unzumutbar macht.

(2) Die Gestattung endet, wenn der Verurteilte bei dem bisherigen Beschäftigungsgeber nicht mehr weiter tätig sein kann und ein neues Beschäftigungsverhältnis in angemessener Zeit nicht zustande gekommen ist.

§ 7

Vollstreckung der Ersatzfreiheitsstrafe

Die Ersatzfreiheitsstrafe wird nicht vollstreckt, solange
1. die nach § 2 Abs. 1 Satz 1 gesetzte Frist nicht abgelaufen ist,
2. über den Antrag nach § 1 Abs. 1 nicht entschieden ist,
3. dem Verurteilten die Tilgung der Geldstrafe durch freie Arbeit gestattet ist.

§ 8

Nachweis der Arbeitsleistung

Hat der Verurteilte die ihm aufgetragene freie Arbeit geleistet, so weist er dies der Strafvollstreckungsbehörde nach.

§ 9

Beteiligung von Sozialarbeitern

Die Strafvollstreckungsbehörde soll sich insbesondere bei der Vermittlung eines Beschäftigungsverhältnisses der Unterstützung eines Gerichts- oder Bewährungshelfers bedienen.

§ 10

Inkrafttreten

Diese Verordnung tritt am 15. September 1981 in Kraft.

VERORDNUNG ÜBER DIE TILGUNG UNEINBRINGLICHER GELDSTRAFEN DURCH FREIE ARBEIT VOM 18. DEZEMBER 1984

Auf Grund des Artikels 293 des Einführungsgesetzes zum Strafgesetzbuch vom 2. März 1974 (Bundesgesetzblatt I Seite 469) wird verordnet:

§ 1

Antrag und Gestattung

(1) Die Strafvollstreckungsbehörde kann einem Verurteilten auf Antrag gestatten, eine uneinbringliche Geldstrafe durch freie Arbeit bei einer Behörde oder einer gemeinnützigen Einrichtung (Beschäftigungsstelle) zu tilgen.

(2) Ein Verurteilter nach Absatz 1 ist von der Strafvollstreckungsbehörde über sein Antragsrecht zu belehren.

§ 2

Tilgung der Geldstrafe

(1) Eine Vergütung wird für die geleistete Arbeit nicht gezahlt. Durch Ableistung von 6 Stunden - in Härtefällen von 3 Stunden - freier Arbeit wird die Geldstrafe in der Höhe eines Tagessatzes getilgt. Ein Härtefall liegt in der Regel vor, wenn der Verurteilte als Schwerbeschädigter anerkannt ist oder die Arbeitsleistung zur Nachtzeit erfolgt.

(2) Bleibt der Verurteilte der Arbeit fern, so wird die versäumte Arbeitszeit auch dann nicht auf die Gesamtarbeitszeit (§ 3 Absatz 1 Satz 2) angerechnet, wenn das Fernbleiben entschuldigt ist.

(3) Der Verurteilte kann jederzeit die noch nicht getilgte Geldstrafe bezahlen.

§ 3

Arbeitsleistung

(1) Die Strafvollstreckungsbehörde bestimmt im Einvernehmen mit der Beschäftigungsstelle den Arbeitsplatz, den Zeitpunkt des Arbeitsbeginns, die Tage der Arbeitsleistung und die tägliche Arbeitszeit. Ferner setzt sie die zur Tilgung der Geldstrafe erforderliche Gesamtarbeitszeit fest.

(2) Die Strafvollstreckungsbehörde teilt dem Verurteilten vor der Aufnahme der Arbeit die Arbeitsbedingungen nach Absatz 1 mit. Zugleich weist sie ihn auf seine sich aus den Absätzen 3 bis 5 ergebenden Pflichten und auf die Rechtsfolgen nach § 4 Absatz 1 und Absatz 2 Satz 1 hin.

(3) Der Verurteilte soll bei der Arbeit von der Beschäftigungsstelle beaufsichtigt werden. Er hat den Weisungen des Aufsichtspersonals nachzukommen. Die Beschäftigungsstelle zeigt der Vollstreckungsbehörde die Ableistung der Arbeit sowie Gründe an, die zu einem Widerruf der Gestattung führen können.

(4) Die erforderliche Arbeitskleidung hat der Verurteilte selbst zu stellen, soweit dies bei der ausgewählten Arbeit üblich ist.

(5) Erfordert die ausgewählte Arbeit eine ärztliche Untersuchung des Verurteilten, so ist er verpflichtet, sie zu dulden.

(6) Die Strafvollstreckungsbehörde kann sich bei der Erfüllung ihrer Aufgaben nach Absatz 1 Satz 1 und Absatz 2 der Gerichtshilfe bedienen.

§ 4

Widerruf der Gestattung

(1) Die Strafvollstreckungsbehörde widerruft die Gestattung nach § 1 Absatz 1 und ordnet die Vollstreckung der noch zu verbüßenden Ersatzfreiheitsstrafe an, wenn der Verurteilte

1. ohne genügende Entschuldigung nicht zur Arbeit erscheint oder die Arbeit abbricht,
2. trotz Abmahnung der Beschäftigungsstelle schlechte Arbeit leistet oder mit seiner Arbeitsleistung hinter den Anforderungen zurückbleibt, die billigerweise an ihn gestellt werden können,
3. gröblich gegen ihm erteilte Weisungen verstößt,
4. beharrlich die Erfüllung der Pflichten nach § 3 Absätze 4 und 5 verweigert oder
5. durch sonstiges schuldhaftes Verhalten seine Weiterbeschäftigung für die Beschäftigungsstelle unzumutbar macht.

(2) Unbeschadet des Absatzes 1 kann die Beschäftigungsstelle die Weiterbeschäftigung des Verurteilten ablehnen, wenn dafür ein sonstiger wichtiger Grund vorliegt. In diesem Falle ist dem Verurteilten, sofern nicht die Voraussetzungen für einen Widerruf nach Absatz 1 vorliegen, nach Möglichkeit ein anderer Arbeitsplatz zuzuweisen.

§ 5

Aufhebung

Die Verordnung über die Tilgung uneinbringlicher Geldstrafen durch freie Arbeit vom 3. Dezember 1968 (Hamburgisches Gesetz- und Verordnungsblatt Seite 267), zuletzt geändert am 8. Dezember 1981 (Hamburgisches Gesetz- und Verordnungsblatt Seite 356), wird aufgehoben.

§ 6

Inkrafttreten

Diese Verordnung tritt am 1. Januar 1985 in Kraft.

NIEDERSACHSEN

TILGUNG UNEINBRINGLICHER GELDSTRAFEN DURCH ARBEIT
- Erlaß des MJ vom 11. März 1983 - 4251 - 303. 143 -

I.

1. Die Leitenden Oberstaatsanwälte bei den Landgerichten Braunschweig, Hannover und Oldenburg werden ermächtigt, gnadenhalber die Tilgung uneinbringlicher Geldstrafen durch Leistung von gemeinnütziger, unentgeltlicher Arbeit zu gestatten.

2. Der Gnadenerweis setzt voraus, daß gemäß § 459e StPO die Vollstreckung der Ersatzfreiheitsstrafe angeordnet worden ist. Er ist abzulehnen, wenn er aus besonderen Gründen unvertretbar ist.

3. Für jeden Tag zu vollstreckender Ersatzfreiheitsstrafe hat der Verurteilte acht Stunden an einer ihm von der Vollstreckungsbehörde zugewiesenen Stelle zu arbeiten. In Ausnahmefällen kann der Leitende Oberstaatsanwalt mit Rücksicht auf Art und Umstände der zu leistenden Tätigkeit oder auf besondere persönliche Verhältnisse des Verurteilten die Arbeitszeit auf bis zu vier Stunden herabsetzen.

4. Der Leitende Oberstaatsanwalt kann die Vollstreckung der Ersatzfreiheitsstrafe - ggf. nach teilweiser Anrechnung erbrachter Arbeitsleistungen - anordnen, wenn der Verurteilte
   a) die zugewiesene Arbeit ohne hinreichende Entschuldigung nicht aufnimmt oder nicht fortsetzt,
   b) die zugewiesene Arbeit nicht ordnungsgemäß leistet,
   c) eine neue Straftat begeht und deshalb nicht mehr gnadenwürdig erscheint.

   Dasselbe gilt, wenn die Bestätigung des Beschäftigungsgebers nicht beschafft werden kann.

II.

1. Die Vollstreckungsbehörde belehrt den Verurteilten mit Formblatt (Anlage 1) über die Möglichkeit, sich innerhalb einer Woche bei dem Leitenden Oberstaatsanwalt zur Leistung unentgeltlicher gemeinnütziger Arbeit zum Zwecke der Tilgung der Geldstrafe im Gnadenwege zu melden. Die Belehrung unterbleibt, wenn ein Gnadenerweis offensichtlich nicht in Betracht kommt.

2. Das Formblatt (Anlage 1) wird mit der Ladung zum Strafantritt (Vordruck StV 13) zugestellt. Die Ladungsfrist beträgt zwei Wochen.

3. Liegen die Voraussetzungen des Abschnitts I Nr. 2 für einen Gnadenerweis vor und hat der Verurteilte fristgemäß den Antrag gemäß Abschnitt II Nr. 1 gestellt, stellt der Leitende Oberstaatsanwalt die Vollstreckung der Ersatzfreiheitsstrafe zurück, wenn innerhalb eines Zeitraumes von etwa vier Wochen eine Möglichkeit zur Aufnahme der Arbeit besteht. Der Leitende

Oberstaatsanwalt kann die Vollstreckung auch noch dann zurückstellen, wenn der Verurteilte sich erst nach Ablauf der Wochenfrist, aber vor Strafantritt meldet.

4. Die Vollstreckungsbehörde weist dem Verurteilten eine geeignete Arbeitsstelle zu und gibt ihm auf, eine Bestätigung des Beschäftigungsgebers über die ordnungsgemäße Arbeitsleistung vorzulegen. Ein entsprechendes Formblatt händigt sie dem Verurteilten aus (Anlage 3). Dabei belehrt sie ihn darüber, daß die Zurückstellung der Vollstreckung widerrufen werden kann (Anlage 2a). Einen Abdruck der Zuweisung übersendet die Vollstreckungsbehörde dem Beschäftigungsgeber (Anlage 2b). Verurteilte und Beschäftigungsgeber erhalten ferner die Hinweise für Beschäftigungsgeber und Antragsteller (Anlage 4).

5. Die abschließende Entscheidung über den Erlaß der Geldstrafe trifft der Leitende Oberstaatsanwalt.

III.

Die Vollstreckungsbehörde bedient sich der Unterstützung eines Gerichtshelfers.

VERORDNUNG ÜBER DIE TILGUNG UNEINBRINGLICHER GELDSTRAFEN DURCH FREIE ARBEIT VOM 6. JULI 1984

Aufgrund des Artikels 293 des Einführungsgesetzes zum Strafgesetzbuch vom 2. März 1974 (BGBl. I S. 469), zuletzt geändert durch Gesetz vom 23. Dezember 1977 (BGBl. I S. 3104), in Verbindung mit § 1 der Verordnung über die Ermächtigung des Justizministers zum Erlaß von Rechtsverordnungen nach Artikel 293 des Einführungsgesetzes zum Strafgesetzbuch vom 8. Mai 1984 (GV.NW. S. 301) wird verordnet:

§ 1

Allgemeines

(1)
Die Strafvollstreckungsbehörde kann einem Verurteilten auf Antrag gestatten, eine uneinbringliche Geldstrafe durch freie Arbeit zu tilgen.

(2)
Freie Arbeit im Sinne dieser Verordnung ist gemeinnützige, unentgeltliche Tätigkeit. Geringfügige finanzielle Zuwendungen an den Verurteilten zum Ausgleich von Auslagen im Zusammenhang mit der Arbeitsleistung berühren die Unentgeltlichkeit nicht.

(3)
Ein Arbeitsverhältnis wird durch die Leistung der freien Arbeit nicht begründet.

§ 2

Antragsverfahren

(1)
Ist eine Geldstrafe uneinbringlich, so weist die Strafvollstreckungsbehörde den Verurteilten in der Regel zugleich mit der Mitteilung über die Anordnung der Vollstreckung der Ersatzfreiheitsstrafe darauf hin, daß er innerhalb einer bestimmten Frist einen Antrag nach § 1 Abs. 1 stellen kann. Sie gibt ihm Gelegenheit, eine Tätigkeit im Sinne des § 1 Abs. 2 sowie eine geeignete Beschäftigungsstelle vorzuschlagen. Die Sätze 1 und 2 gelten nicht, wenn der Verurteilte sich nicht auf freiem Fuß befindet oder unbekannten Aufenthalts ist.

(2)
Die Strafvollstreckungsbehörde soll dem Verurteilten bei der Vermittlung eines Beschäftigungsverhältnisses behilflich sein. Sie stimmt mit der Beschäftigungsstelle die näheren Umstände der zu leistenden Tätigkeit ab.

§ 3

Entscheidung der Strafvollstreckungsbehörde

(1)
Gestattet die Strafvollstreckungsbehörde die Tilgung der Geldstrafe durch freie Arbeit, so bestimmt sie zugleich die Beschäftigungsstelle, den Inhalt der Tätigkeit, die voraussichtliche tägliche Arbeitszeit und den Anrechnungsmaßstab (§ 7 Abs. 1).

(2)
Die Strafvollstreckungsbehörde lehnt den Antrag ab, wenn

a)
Anhaltspunkte dafür vorhanden sind, daß der Verurteilte freie Arbeit nicht leisten will oder dazu in absehbarer Zeit nicht in der Lage sein wird,

b)
ein Beschäftigungsverhältnis in angemessener Zeit nicht zustandekommt oder

c)
die von dem Verurteilten vorgeschlagene Beschäftigungsstelle ungeeignet ist und ein anderes Beschäftigungsverhältnis nicht vermittelt werden kann.

§ 4

Vollstreckung der Ersatzfreiheitsstrafe

Die Ersatzfreiheitsstrafe wird nicht vollstreckt, solange dem Verurteilten die Tilgung der Geldstrafe durch freie Arbeit gestattet ist oder über den Antrag des Verurteilten nicht entschieden ist, es sei denn, daß der Antrag offensichtlich keinen Aussicht auf Erfolg hat.

§ 5

Weisungen

Der Verurteilte hat den Weisungen der Strafvollstreckungsbehörde und hinsichtlich der ihm obliegenden Pflichten im Rahmen des Beschäftigungsverhältnisses den Anordnungen des Beschäftigungsgebers nachzukommen.

§ 6

Widerruf, Beendigung

(1)
Die Strafvollstreckungsbehörde kann die Gestattung nach Anhörung des Verurteilten widerrufen, wenn er

a)
ohne genügende Entschuldigung nicht zur Arbeit erscheint oder die Arbeit abbricht,

b)
trotz Abmahnung des Beschäftigungsgebers mit seiner Arbeitsleistung hinter den Anforderungen zurückbleibt, die billigerweise an ihn gestellt werden können,

c)
gröblich oder beharrlich gegen ihm erteilte Weisungen oder Anordnungen verstößt oder

d)
durch sonstiges schuldhaftes Verhalten eine Weiterbeschäftigung für den Beschäftigungsgeber unzumutbar macht.

(2)
Die Gestattung endet, wenn der Verurteilte bei dem bisherigen Beschäftigungsgeber nicht mehr weiter tätig sein kann und ein neues Beschäftigungsverhältnis in angemessener Zeit nicht zustandegekommen ist. Die Strafvollstreckungsbehörde teilt dem Verurteilten den Wegfall der Gestattung mit.

§ 7

Tilgung der Geldstrafe

(1)
Zur Tilgung eines Tagessatzes der Geldstrafe sind sechs Stunden freie Arbeit zu leisten. In Ausnahmefällen kann die Vollstreckungsbehörde den Anrechnungsmaßstab insbesondere mit Rücksicht auf Inhalt und Umstände der Tätigkeit oder auf die persönlichen Verhältnisse des Verurteilten bis auf drei Stunden herabsetzen.

(2)
Bleibt der Verurteilte der Arbeit fern, wird die versäumte Arbeitszeit auch dann nicht auf die Gesamtarbeitszeit angerechnet, wenn das Fernbleiben entschuldigt ist.

(3)
Hat der Verurteilte die erforderliche Stundenzahl freier Arbeit geleistet, ist die Geldstrafe getilgt. Die Strafvollstreckungsbehörde teilt dem Verurteilten schriftlich mit, daß die Zahlung der Geldstrafe erledigt ist.

(4)
Der Verurteilte kann jederzeit die noch nicht getilgte Geldstrafe zahlen.

§ 8

Beteiligung von Sozialarbeitern

Die Strafvollstreckungsbehörde soll sich insbesondere bei der Vermittlung eines Beschäftigungsverhältnisses der Unterstützung des Gerichtshelfers oder, sofern für den Verurteilten ein Bewährungshelfer bestellt ist, des Bewährungshelfers bedienen.

§ 9

Inkrafttreten

Diese Verordnung tritt am 1. Oktober 1984 in Kraft.

RHEINLAND-PFALZ

TILGUNG UNEINBRINGLICHER GELDSTRAFEN DURCH FREIE ARBEIT VERWALTUNGSVORSCHRIFT DES MINISTERIUMS DER JUSTIZ VOM 16. MAI 1983 (4321 - 1 - 34/83)

1. Allgemeines

1.1 Artikel 293 EGStGB sieht die Möglichkeit vor, Regelungen zur Tilgung uneinbringlicher Geldstrafen durch freie Arbeit zu treffen. Die Anrechnung von Arbeitsleistungen auf uneinbringliche Geldstrafen soll zunächst im Gnadenwege bei zwei Staatsanwaltschaften erprobt werden. Dabei soll eine ins Gewicht fallende Verzögerung der Strafvollstreckung möglichst ebenso vermieden werden wie ein Rückgang des Geldstrafenaufkommens. Die Regelung über die Anrechnung von Arbeitsleistungen greift nur ein, wenn alle vorausgehenden Versuche zur Beitreibung der Geldstrafe ausgeschopft sind.

1.2 Die Leitenden Oberstaatsanwälte in Frankenthal (Pfalz) und Trier werden ermächtigt, im Gnadenwege die Leistung von unentgeltlicher gemeinnütziger Arbeit auf uneinbringliche Geldstrafen anzurechnen.

1.3 Die Anrechnung ist davon abhängig, daß der Verurteilte je Tagessatz der uneinbringlichen Geldstrafe eine Arbeitsleistung von mindestens sechs, höchstens acht Stunden an einer ihm von der Vollstreckungsbehörde zugewiesenen Arbeitsstelle erbringt. Die je Tagessatz festgesetzten Arbeitsstunden sind grundsätzlich an einem Tag zu leisten.

1.4 Die Vollstreckung der Ersatzfreiheitsstrafe wird, gegebenenfalls nach teilweiser Anrechnung erbrachter Arbeitsleistungen in der Regel weiterbetrieben, wenn der Verurteilte

1.4.1 die zugewiesene Arbeit ohne hinreichende Entschuldigung nicht aufnimmt oder nicht fortsetzt,

1.4.2 die zugewiesene Arbeit nicht ordnungsgemäß leistet und keine andere nach seinen persönlichen Verhältnissen besser geeignete Arbeitsstelle zur Verfügung steht,

1.4.3 die Bestätigung des Arbeitgebers über die geleistete Arbeit nicht fristgemäß vorlegt und eine Bestätigung nicht in anderer Weise beschafft werden kann,

1.4.4 eine weitere Straftat begangen hat, die erst nachträglich bekannt wird, und der Verurteilte deshalb nicht mehr gnadenwürdig erscheint.

2. Verfahren

2.1 Ist gemäß § 459e StPO die Vollstreckung der Ersatzfreiheitsstrafe angeordnet, belehrt die Vollstreckungsbehörde den Verurteilten mit Formblatt (Anlage 1) über die Möglichkeit, innerhalb einer

Woche der Vollstreckungsbehörde gegenüber zu erklären, daß er zur Leistung unentgeltlicher gemeinnütziger Arbeit zum Zwecke der Tilgung der Geldstrafe im Gnadenwege bereit ist. Die Belehrung unterbleibt, wenn der Verurteilte zur Arbeitsleistung offensichtlich nicht in der Lage ist.

2.2 Die Belehrung wird zusammen mit der Ladung zum Strafantritt zugestellt. Die Frist zum Strafantritt ist auf drei Wochen zu bemessen.

2.3 Gibt der Verurteilte innerhalb einer Woche nach Zugang der schriftlichen Belehrung die Erklärung nach Nummer 2.1 ab, stellt die Vollstreckungsbehörde die Vollstreckung der Ersatzfreiheitsstrafe zurück, wenn innerhalb eines Zeitraums von etwa vier Wochen eine Möglichkeit zur Aufnahme der Arbeit besteht. Die Vollstreckung kann auch noch dann zurückgestellt werden, wenn der Verurteilte sich erst nach Ablauf der Wochenfrist aber vor Strafantritt bei der Vollstreckungsbehörde meldet.

2.4 Die Vollstreckungsbehörde weist dem Verurteilten mit Formblatt (Anlage 2a) eine geeignete Arbeitsstelle zu und gibt ihm auf, eine Bestätigung des Arbeitgebers über die ordnungsgemäße Arbeitsleistung innerhalb einer Woche nach Beendigung der Arbeitsleistung vorzulegen. Ein entsprechendes Formblatt (Anlage 3) händigt sie dem Verurteilten aus. Gleichzeitig belehrt sie ihn über die Voraussetzungen, unter denen die Vollstreckung der Ersatzfreiheitsstrafe weiterbetrieben werden kann. Die Vollstreckungsbehörde unterrichtet den Arbeitgeber mit Formblatt (Anlage 2b).

2.5 In geeigneten Fällen (z.B. bei überpfändeten, berufstätigen Verurteilten) sollen auch Erfahrungen mit gemeinnütziger Arbeit am Wochenende oder am Abend gesammelt werden. Die für einen Tagessatz festgesetzten Arbeitsstunden können in solchen Fällen auch an mehreren Tagen erbracht werden.

2.6 Die Vollstreckungsbehörde kann sich der Unterstützung eines Gerichtshelfers bedienen.

2.7 Die abschließende Entscheidung über den Erlaß der Geldstrafe trifft der Leitende Oberstaatsanwalt.

3. Geschäftliche Behandlung

Die Verfahren, in denen der Verurteilte nach Nummer 2.1 belehrt worden ist, werden in einer Liste nach Aktenzeichen, rechtlicher Bezeichnung der Tat sowie Zahl und Höhe der Tagessätze erfaßt. In der Liste sind ferner Angaben zu folgenden Fragen aufzunehmen (vgl. Nummer 4):

3.1 Wieviele Verurteilte sich bei der Vollstreckungsbehörde gemeldet haben,

3.2 wievielen Verurteilten eine gemeinnützige Arbeit zugewiesen wurde,

3.3 wievielen Verurteilten im Gnadenwege die Leistung von Arbeit auf uneinbringliche Geldstrafen angerechnet wurde,

3.4 wieviele Tage Ersatzfreiheitsstrafe dadurch nicht verbüßt werden mußten und welche Geldstrafensummen darauf entfallen,

3.5 wieviele Verurteilte noch auf Veranlassung des Gerichtshelfers Zahlungen geleistet haben und

3.6 wieviele Tage Ersatzfreiheitsstrafe dadurch nicht mehr vollstreckt werden mußten und welche Geldstrafensummen darauf entfallen.

4. Erfahrungsberichte

Jeweils zum 1. Februar und zum 1. August sind dem Ministerium der Justiz für das zurückliegende Kalenderhalbjahr die nach den Nummern 3.1 bis 3.6 zu erfassenden Angaben mitzuteilen.

5. Inkrafttreten

Diese Verwaltungsvorschrift tritt mit Wirkung vom 1. Juni 1983 in Kraft.

SAARLAND

TILGUNG UNEINBRINGLICHER GELDSTRAFEN DURCH ARBEIT
AV des MfR Nr. 9/1983 vom 27. April 1983
(Gz.: 4321 - 4/11)

I.

1. Ist gemäß § 459e StPO die Vollstreckung der Ersatzfreiheitsstrafe angeordnet, so weist der Leitende Oberstaatsanwalt den Verurteilten zusammen mit der Ladung zum Strafantritt darauf hin, daß er die Vollstreckung der Ersatzfreiheitsstrafe durch freie, unentgeltliche Arbeit abwenden kann.

2. Für jeden Tag zu vollstreckender Ersatzfreiheitsstrafe hat der Verurteilte acht Stunden an einer ihm zugewiesenen Stelle zu arbeiten. In Ausnahmefällen kann der Leitende Oberstaatsanwalt mit Rücksicht auf Art und Umstände der zu leistenden Tätigkeit oder auf besondere persönliche Verhältnisse des Verurteilten die Arbeitszeit auf bis zu vier Stunden herabsetzen. Er entscheidet auch im Zweifelsfalle darüber, welche Arbeit dem Verurteilten zumutbar ist.

3. Der Leitende Oberstaatsanwalt kann die Vollstreckung der Ersatzfreiheitsstrafe - gegebenenfalls nach teilweiser Anrechnung erbrachter Arbeitsleistungen - anordnen, wenn der Verurteilte
   a) sich nicht innerhalb der gesetzlichen Frist bei dem Verein zur Förderung der Bewährungs- und Jugendgerichtshilfe im Saarland e.V. zur Besprechung des Arbeitseinsatzes meldet,
   b) die zugewiesene Arbeit ohne hinreichende Entschuldigung nicht aufnimmt oder nicht fortsetzt,
   c) die zugewiesene Arbeit nicht ordnungsgemäß leistet,
   d) eine neue Straftat begeht und deshalb nicht gnadenwürdig erscheint.

Dasselbe gilt, wenn die Bestätigung des Vereins zur Förderung der Bewährungs- und Jugendgerichtshilfe im Saarland e.V. über die geleistete Arbeit nicht erteilt wird.

II.

1. Der Leitende Oberstaatsanwalt belehrt den Verurteilten mit Formblatt (Anlage 1a) über die Möglichkeit, innerhalb einer Woche bei ihm den Antrag zu stellen, unentgeltliche, freie Arbeit zum Zwecke der Tilgung der Geldstrafe zu leisten. Hierfür kann der Verurteilte ein Formblatt (Anlage 1b) benutzen.

2. Die Formblätter (Anlage 1a und b) werden mit der Ladung zum Strafantritt (Vordruck StPNr. 31b) zugestellt. Die Ladungsfrist beträgt zwei Wochen.

3. Hat der Verurteilte fristgemäß den Antrag gemäß Abschnitt II Nr. 1 gestellt, so stellt der Leitende Oberstaatsanwalt die Vollstreckung der Ersatzfreiheitsstrafe zurück. Er kann die

Vollstreckung auch noch dann zurückstellen, wenn der Verurteilte sich erst nach Ablauf der Wochenfrist, aber vor Strafantritt meldet.

4. Der Leitende Oberstaatsanwalt weist den Verurteilten gemäß Formblatt (Anlage 2) dem Verein zur Förderung der Bewährungs- und Jugendgerichtshilfe im Saarland e.V. zu. Er teilt dem genannten Verein mit, daß der Verurteilte erklärt hat, die Geldstrafe durch Leistung unentgeltlicher, freier Arbeit tilgen zu wollen, und daß dem Verurteilten eine entsprechende Arbeit zugewiesen werden kann. Außerdem belehrt der Leitende Oberstaatsanwalt den Verurteilten darüber, daß die Zurückstellung der Vollstreckung widerrufen werden kann (Anlage 3) und daß er von dem genannten Verein über Art, Ort und Zeit der Arbeit unterrichtet wird und von diesem eine Bestätigung über die geleistete Arbeit (Anlage 4) erteilt wird.
Der Verurteilte erhält ferner die Hinweise für Antragsteller (Formblatt Anlage 5).

5. Hat der Verurteilte die ihm zugewiesene Arbeit ganz oder teilweise abgeleistet, so erläßt der Leitende Oberstaatsanwalt im Gnadenwege die Geldstrafe oder rechnet die Arbeitsleistung auf die zu vollstreckende Ersatzfreiheitsstrafe an.
Zu diesem Zweck wird dem Leitenden Oberstaatsanwalt für Geldstrafen bis zu 6.000,- DM das Recht zur Bewilligung entsprechender Gnadenmaßnahmen gemäß § 4 Abs. 1 Nr. 1 der Verordnung über die Ausübung des Gnadenrechts vom 2. März 1948 (Amtsbl. S. 447) in der Fassung des Gesetzes Nr. 1059 vom 28. März 1977 (Amtsbl. S. 378) übertragen. In den Fällen, in denen die Geldstrafe den Betrag von 6.000,- DM übersteigt, ist zunächst gemäß Abschnitt I und II Nr. 1-4 zu verfahren und dem Minister für Rechtspflege die Sache dann zur Entscheidung über den Erlaß der Geldstrafe vorzulegen.

III.

Erscheint aus besonderen Gründen die gnadenweise Tilgung der Geldstrafe durch Leistung freier, unentgeltlicher Arbeit unvertretbar, ist die Sache dem Minister für Rechtspflege zur Entscheidung vorzulegen.

IV.

Der Leitende Oberstaatsanwalt bedient sich der Unterstützung des Vereins zur Förderung der Bewährungs- und Jugendgerichtshilfe im Sarland e.V..

V.

Diese AV tritt am 1. Mai 1983 in Kraft.

SCHLESWIG-HOLSTEIN

LANDESVERORDNUNG ÜBER DIE ABWENDUNG DER VOLLSTRECKUNG VON ERSATZFREIHEITSSTRAFEN DURCH FREIE ARBEIT vom 20. März 1986

Aufgrund des Artikels 293 des Einführungsgesetzes zum Strafgesetzbuch vom 2. März 1974 (BGBl. I S. 469; 1975 I S. 1916; 1976 I S. 507), zuletzt geändert durch Gesetz vom 20. Dezember 1984 (BGBl. I S. 1654), in Verbindung mit § 1 der Landesverordnung zur Übertragung der Ermächtigung zum Erlaß einer Verordnung nach Artikel 293 des Einführungsgesetzes zum Strafgesetzbuch vom 7. Oktober 1985 (GVOBl. Schl.-H. S. 356) wird verordnet:

§ 1

Allgemeines

(1) Die Vollstreckungsbehörde gestattet dem Verurteilten nach Maßgabe dieser Verordnung auf Antrag, die Vollstreckung einer Ersatzfreiheitsstrafe durch freie Arbeit abzuwenden.

(2) Freie Arbeit im Sinne dieser Verordnung ist gemeinnützige, unentgeltliche Tätigkeit. Die Unentgeltlichkeit wird durch freiwillige geringfügige Zuwendungen an den Verurteilten zum Ausgleich von Auslagen im Zusammenhang mit der Arbeitsleistung nicht berührt.

§ 2

Antragsverfahren

(1) Ist die Vollstreckung der Ersatzfreiheitsstrafe angeordnet, so weist die Vollstreckungsbehörde den Verurteilten zugleich mit der Ladung zum Strafantritt darauf hin, daß er innerhalb einer Woche nach Zustellung der Ladung zum Strafantritt einen Antrag nach § 1 Abs. 1 stellen kann. Sie kann ihm zugleich Gelegenheit geben, eine ihm mögliche Tätigkeit im Sinne des § 1 Abs. 2 sowie eine geeignete Beschäftigungsstelle vorzuschlagen.

(2) Der Hinweis nach Abs. 1 unterbleibt, wenn der Verurteilte sich nicht auf freiem Fuß befindet, unbekannten Aufenthalts ist, die Voraussetzungen des § 3 Abs. 2 Nr. 2 vorliegen oder die Vermittlung in ein geeignetes Beschäftigungsverhältnis in angemessener Zeit nicht möglich wäre.

(3) Die Vollstreckungsbehörde ist dem Verurteilten bei der Vermittlung eines Beschäftigungsverhältnisses im Rahmen ihrer Möglichkeiten behilflich. Sie klärt mit der Beschäftigungsstelle die näheren Umstände der zu leistenden Tätigkeit ab. Sie bedient sich hierbei insbesondere des Gerichtshelfers.

§ 3

Entscheidudng der Vollstreckungsbehörde

(1) Gestattet die Vollstreckungsbehörde die Abwendung der Vollstreckung der Ersatzfreiheitsstrafe durch freie Arbeit, so bestimmt

sie zugleich die Beschäftigungsstelle und den Anrechnungsmaßstab (§ 7 Abs. 1). Sie belehrt den Verurteilten zudem über die Möglichkeiten des Widerrufs nach § 6.

(2) Die Vollstreckungsbehörde lehnt den Antrag ab, wenn
1. der Verurteilte sich dem Kontakt mit dem Gerichtshelfer entzieht,
2. bestimmte Tatsachen darauf schließen lassen, daß der Verurteilte freie Arbeit nicht leisten will oder dazu in absehbarer Zeit nicht in der Lage sein wird,
3. der Verurteilte sich im Zeitpunkt der Entscheidung nicht auf freiem Fuß befindet oder
4. ein Beschäftigungsverhältnis in angemessener Zeit nicht zustande kommt.

(3) Die Vollstreckungsbehörde kann den Antrag ablehnen, wenn der Verurteilte die Frist nach § 2 Abs. 1 Satz 1 versäumt hat.

§ 4

Hemmung der Vollstreckung der Ersatzfreiheitsstrafe

(1) Die Vollstreckung der Ersatzfreiheitsstrafe unterbleibt, solange
1. über einen nach erteiltem Hinweis fristgemäß gestellten Antrag des Verurteilten nicht entschieden ist oder
2. dem Verurteilten die Abwendung der Vollstreckung der Ersatzfreiheitsstrafe durch freie Arbeit gestattet ist.

(2) In anderen Fällen kann die Vollstreckungsbehörde die Vollstreckung der Ersatzfreiheitsstrafe bis zur Entscheidung über den Antrag aussetzen.

§ 5

Weisungen

Der Verurteilte hat den Weisungen der Vollstreckungsbehörde sowie im Rahmen des Beschäftigungsverhältnisses den Anordnungen der Beschäftigungsstelle nachzukommen und Kontakt mit dem Gerichtshelfer zu halten.

§ 6

Widerruf der Gestattung

(1) Die Vollstreckungsbehörde widerruft die Gestattung nach § 3 Abs. 1, wenn der Verurteilte
1. ohne genügende Entschuldigung die Arbeit nicht aufnimmt, wiederholt nicht zur Arbeit erscheint oder die Arbeit abbricht,
2. gröblich oder beharrlich gegen ihm erteilte Weisungen oder Anordnungen verstößt oder sich dem Kontakt mit dem Gerichtshelfer entzieht oder
3. durch anderes schuldhaftes Verhalten seine Weiterbeschäftigung für die Beschäftigungsstelle unzumutbar macht.

(2) Die Vollstreckungsbehörde widerruft die Gestattung ferner, wenn der Verurteilte bei der bisherigen Beschäftigungsstelle nicht mehr weiter tätig sein kann und ein neues Beschäftigungsverhältnis in angemessener Zeit nicht zustande kommt.

(3) Der Verurteilte ist vor einem Widerruf zu hören. Der Widerruf und dessen Grund sind ihm schriftlich mitzuteilen. Die Anhörung

und die Mitteilung unterbleiben, solange der Verurteilte flüchtig oder unbekannten Aufenthalts ist.

§ 7

Erledigung der Ersatzfreiheitsstrafe

(1) Die Vollstreckung eines Tages Ersatzfreiheitsstrafe wird durch sechs Stunden freie Arbeit abgewendet. Das gilt auch dann, wenn freie Arbeit in einem anderen Bundesland abgeleistet wird. In Ausnahmefällen kann die Vollstreckungsbehörde den Anrechnungsmaßstab insbesondere mit Rücksicht auf Inhalt und Umstände der Tätigkeit oder auf die persönlichen Verhältnisse des Verurteilten bis auf drei Stunden herabsetzen. Ein Ausnahmefall liegt in der Regel vor, wenn der Verurteilte als Schwerbeschädigter anerkannt ist oder die Arbeitsleistung zur Nachtzeit erfolgt.

(2) Bleibt der Verurteilte der Arbeit fern, wird die versäumte Arbeitszeit auch dann nicht auf die Gesamtarbeitszeit angerechnet, wenn das Fernbleiben entschuldigt ist.

(3) Wird der Vollstreckungsbehörde nachgewiesen, daß der Verurteilte die erforderliche Stundenzahl freie Arbeit geleistet hat, ist damit die Ersatzfreiheitsstrafe erledigt. Die Vollstreckungsbehörde teilt dem Verurteilten dies schriftlich mit.

(4) Hat der Verurteilte nur einen Teil der zu leistenden Arbeit erbracht, so wird dies auf die zu vollstreckende Ersatzfreiheitsstrafe angerechnet. Wird wegen des verbleibenden Restes Ersatzfreiheitsstrafe vollstreckt, so gilt § 459 e Abs. 3 der Strafprozeßordnung.

§ 8

Inkrafttreten

Diese Verordnung tritt am 1. Juli 1986 in Kraft.

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KRIMINOLOGISCHE FORSCHUNGSBERICHTE

AUS DEM MAX-PLANCK-INSTITUT
FÜR AUSLÄNDISCHES UND INTERNATIONALES STRAFRECHT / FREIBURG I. BR.
Herausgegeben von Professor Dr. Günther KAISER

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