

COMMUNITY SERVICE AND JUVENILE JUSTICE IN BELGIUM

1. Belgian Sanctioning system

Since 1980, power has been divided in Belgium between the State (The Federal State), three regions (Flanders, Brussels and Wallonia), and three cultural Communities (French-speaking, Flemish-speaking and German-speaking). On the normative level, the federal State remains competent for the judicial protection of young offenders and thus remains entitled to enact rules and to determine measures for dealing with the same category of juveniles.

The Communities have an exclusive competence for subsidising and registering the services responsible for carrying out the measures taken and applying to juvenile delinquents. This means that each Community has its own regulation regarding the execution of measures ordered by the youth court.

Despite some adjustments made by the Acts of 1994 and 2002, the current juvenile justice system in Belgium is still based upon a so-called Youth Protection Act passed on April 8, 1965. This Act is based on a rehabilitative philosophy. One of the principles underlying the law is that of the United Nations' Declaration stressing the child's best interest and right to a harmonious development. As a consequence, the young offender (the current legal age is 18) commits acts "referred to as offences" and theoretically cannot be punished.

At the Public Prosecutor' request, these minors appear before the Juvenile Judge (or Court), who may only deal with them through care-taking, educational and custodial measures, with a few exceptions. The judge may also decide not to do anything.

The juvenile judge is the central figure of the system.

1.1. Interventions of the **public prosecutor**:

Every judicial district has a specialised Youth Division, competent for all cases involving minors. When confronted with an offence committed by a minor, the Public Prosecutor has only three legal options at his disposal:

1. He can dismiss the case;
2. He can consider the offence as a symptom of underlying personal, social or familial problems and consequently send the minor and/or his family to Special Youth Services;
3. If the Public Prosecutor considers a judicial measure necessary, he can refer the case to the juvenile judge.

In practice however, in most judicial districts, Public Prosecutors also employ alternative options. One of these alternatives is Community Service (generally a small number of hours (20 hours) imposed as an alternative to dismissal, to first offenders who must agree to the "proposal"). The practice is very fragmented and diverse.

1.2. Interventions of the **judge**:

The **procedure** followed by the Juvenile Court is made of two stages. The first stage (preliminary phase) is, in principle, devoted to preliminary investigations in order to complete the file and understand the youth and his or her family; the second is the trial. At the first stage of the procedure, however, the Judge has the provisional power to use all available measures. Many decisions are made at this stage, which allows a quick reaction but is not favourable to the defendant's right.

The juvenile judge can decide the following **provisional measures**:

- a. A supervision order
- b. A conditional supervision order:
 - Specific conditions (e.g. attend school / a guidance centre)
 - Community service / educational training
 - Mediation
- c. Confinement
 - In a private institution or confinement to a private individual
 - In a youth institution of the Community: (Half-) open or closed
 - In the Federal Centre (closed).

The preliminary phase can last 6 months; after this delay, the prosecutor has two months to summon the minor. But, in practice, the procedure can stop after the first phase. All provisional measures are open to appeal.

The juvenile judge can pronounce the following **judgements**:

- a. A reprimand
- b. A supervision order
- c. A conditional supervision order
 - Specific conditions (e.g. attend school / a guidance centre)
 - Community service / educational training
 - Mediation
- d. Confinement
 - a. In a private institution or confinement to a private individual
 - b. In a youth institution of the Community (Half-) open or closed
- e. Transfer to adult court (exceptional)

The judgement can reduce to nothing or re-enforce the provisional measure taken at the earlier stage. He can also take another “more” appropriate measure. He takes into consideration the evolution of the youngster and, possibly of his family.

2. When Was Community Service introduced?

Community Service was introduced into legislation by the law mentioned above in 1965. But practice began later. Experimental practices began in some judicial areas in the early 1980s and systematic practice started, in the French speaking Community of Belgium, in the late 1980s and in Flanders in the 1990s. In the French Community one can say that Public authorities were trying to find a “financial” alternative to the very expensive boarding in residential settings (“put seats in place of beds”). But other questions also arose at that time: what measure would be less stigmatising than confinement? What kind of measures, fitting with an educational goal, but with some punitive power, could be developed?

3. Definition of Community Service

Legally, Community Service can not be defined as a criminal penalty or even as a punishment. Legally, it is an obligation attached to a supervision made by a public social service. But practically, it is almost always a principal measure which can be combined with a proposal of mediation or (in the Flemish Community mainly) with an educational training.

Community Service is not only the execution of a task or a work on behalf of the community. It is also the intervention of a specialised psychosocial worker who guides the youngster during the execution

of the task and helps him to achieve it. This supervisor of course controls if the minor accomplishes effectively the number of hours imposed on him but also tries to help the youngster considering the consequences and the reasons of his offending. Philosophy of the implementation depends partially on the agencies subsidised: it is conceptualised as rehabilitative, reintegrative and/or restorative, but not repressive.

4. Imposition

The law does not suggest a hierarchy between the measures the juvenile judge can order. From a criminological point of view, one can say that sometimes community service is an alternative to nothing (but a reprimand) and sometimes it is an alternative to a confinement in a youth institution. In some cases, the judge decides to impose community service after having boarded the youngster in a locked up environment during a short period of time. He offers the youngster the opportunity to restore his self image or to show his ability to repair symbolically the harm done.

The judge's decision does not theoretically depend on the kind of offences. He has to take into account the global situation of the youngster. The variety of acts "referred to as offences" which is at the source of Community Service is therefore very large. Shortly, it can be said that it is not used for petty offences (when decided by the judge) but mainly for middle range offences.

The juvenile judge is legally the only magistrate who can impose Community Service. But, in some judicial areas, the prosecutor proposes community service as a diversion for petty offences (see above point 1).

The law does not limit the number of hours which can be imposed but practice has limited the number to 150 hours in the French Community (200 in the Flemish Community). Generally, there is no time limit. The Judge does not impose a place or a type of community service. There is no medical procedure to assess the suitability of the convicted person. Sometimes, depending on judicial areas or the special nature of the situation, there is a preliminary evaluation report.

5. Enforcement etc

Community service is organised by private agencies (NGOs) recognised and fully subsidised by the public authorities, ie. the Communities. In the French Community, the agencies generally employ five full time people (one director, one secretary, one criminologist and two welfare workers). They have to implement 85 community services a year. The enforcement body is monitored by the Direction of youth' assistance of the French Community (or Department of Special Youth Assistance of the Flemish Community).

These agencies are in charge of guiding the youngsters in the execution of the community service. The judicial decision is sent to the agency and is enforced by the social workers. They have a direct relation with the judge to whom they send reports on the evolution of the community service.

They determine the nature of the task and the place where the youngsters will enforce the judicial decision. There are no official guidelines criteria. The task is very often related to the offender's skills or interests or is intended to reinforce the offender's sense of self-esteem by providing a meaningful and worthwhile service to others. Social workers have to know very well the placement's network and, with the help of the youngster's choice, they have to find the "right place for the right person". The minors carry out their community service in a wide range of public utilities (technical services of a municipality, fire brigade, etcetera ...) or non-profit organisations (hospitals, welfare services, Red Cross, cultural centres, etcetera...).

The minor who wants to complain about the way he is treated by the agency is able to write to "his" juvenile judge, in order to get an appointment with him. He can also write to the "Children's Rights Commissary".

Legally, the judge can revise his decision at any given time.

6. Termination

From a pragmatic point of view, one can say that the community service is finished when the number of hours imposed by the judge is completed. The agency which has organised the measure writes a report and sends it to the judge. The report's content is not regulated by a legal framework. Some agencies make circumstantial reports, other short ones.

If the report mentions a special problem which has to be taken into account by the judge or if, by another source of information, the judge thinks that he has to continue an "educational" work with the youngster, he can decide to take another measure. But usually, the intervention of Justice stops at that moment, at least if the measure was pronounced by judgment. If the decision was a provisional one, the judge passes on the file to the public prosecutor who can decide to dismiss the case or to ask the judge to pronounce a judgement. He uses this last opportunity in particular if civil interests are at stake.

If community service is chosen as a provisional measure and if it is not followed by a judgement, there are no consequences upon the criminal history certificate. If the judge has pronounced a judgement, there is a mention of the decision in the criminal history certificate but this information is not available to persons outside the judicial system.

7. Future perspective

The legislation is due to change in the next months but the same spirit should be maintained. A larger diversity of measures should be at the judge's disposal. Community service should remain a privilege of the judge and the "experimental" practice of community service decided by the prosecutor should disappear.

8. Relevant statistics

It is impossible to obtain an accurate quantitative picture of the actual practice with regard to youth sanctions in Belgium. The lack of reliable figures concerning the different aspects of juvenile justice is a major problem in our country. But things should improve in the near future (Vanneste, 2004). We could refer only to a research study that analysed all decisions of the prosecutor and the juvenile judges regarding juvenile delinquents in eight Belgian judicial districts¹ during three months (Vanneste, 2001). Unfortunately, the data was gathered more than three years ago!

Some figures can nevertheless be given:

Number of decisions of Community Service (Judge)			
	Flemish Community	French Community	Total
2002	658	1040	1708
2003	743	1139	1882
2004		1175	

¹ Belgium consists of 27 judicial districts.

Having compared recidivism figures after a community service on the one hand and after traditional measures on the other hand, a study revealed that juveniles who had carried out a community service, re-offended significantly less than the offenders of the matched control group of traditional measures (Geudens, 1999).

Very short bibliography

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Jan. 2005