

ADRES/ADRESSE Hallepoortlaan 5-8 avenue de la Porte de Hal
1060 Brussel - Bruxelles
TEL./TÉL. 02 542 74 23
FAX 02 542 74 44
E-MAIL dsb@just.fgov.be

CONTACT Karel BERTELOOT, attaché
TEL./TÉL. +32(0)2 542 74 15
E-MAIL Karel.Berteloot@just.fgov.be

RECENT EVOLUTIONS OF QUASI-COERCED TREATMENT IN THE BELGIAN CRIMINAL JUSTICE SYSTEM

Presentation at the thematic meeting of 27 may 2010 on monitoring and evaluating national experience with quasi coerced treatment, Criminal Justice Platform (Pompidou Group, Council of Europe).

A basic philosophy of the Belgian drug policy is that a criminal procedure should be an *ultimum remedium*, and that within this criminal system, imprisonment should be used as a last resort. Drug use and abuse is mainly a public health issue. Prevention is preferred to cure/recovery, which is preferred to punishment. But this philosophy isn't or can't always be put into practice.

Over the last five years, the judicial reaction to drug users and drug related offenders changed somehow. To illustrate this, three projects - followed and partly financed by the Minister of Justice - can be presented. Two of them are quite similar and fit within the prosecutorial powers in Belgium and make use of the case management technique. The third one concerns the introduction of a drug treatment court. There are other possibilities in diverting drug users to treatment, but those are not within the scope of this presentation.

1. QCT at the prosecutorial level

A public prosecutor has a few options in ending a file: he can dismiss a case; for small offences, he can propose a settlement (i.e. a payment of a sum of money); for small and medium offences, he can propose mediation; he can set up a judicial inquiry; or he can bring the case to trial. One of the reasons for dismissal might be the "lack of interest" by society in prosecuting a certain crime: the so-

called opportunity principle. If certain conditions are proposed to the offender before dismissing a case according to the opportunity principle, one speaks of *praetorian probation* (conditional dismissal).

Two projects were set up since 2005, making use of this possibility of conditional dismissal: the so-called 'Test Care' system (*Proefzorg* in Dutch) in Ghent and the 'Narcotic Adviser' programme in Liège (*Conseiller stratégique drogue* in French). Basically, on the condition of attending a specific treatment, the charge can be dropped (QCT). After successful QCT, which can take no more than six months, the case will be dropped. If unsuccessful, the case is brought to court. Success is mainly defined by collaboration of the offender and attending sessions.

This Ghent project was subject of an elaborate evaluation, done by the Department of Criminal Policy and the Ghent University. This evaluation demonstrated a clear added value of the judicial alternative. Participants incurred afterwards on average fewer criminal charges and reduced their problematic drug use.

Main conclusions of the evaluation are:

- Test Care fills in a gap in the Belgian criminal justice system. At other steps in the procedural chain, there are possibilities in referring drug users to treatment.
- Test Care results in a better cooperation between justice and treatment by means of bridging functions. A separate case manager is appointed. Due to this, referral from justice to treatment is quick and efficient.
- It results also in a better cooperation by means of clear reporting. Clear arrangements are made between the prosecutor's office and the treatment facilities. Formal, written report is necessary, but without information concerning the content of the treatment.
- Also better cooperation by means of clear barriers between judicial authorities and care or aid institutions. Responsibility is given towards the client: he or she has a contract with the public prosecutor (and only he, not the treatment facility).
- And finally better cooperation is made possible through partnership as in networks and consultation.

Also the programme at the Liège prosecution office is subject of an evaluation. This evaluation is now in its final stages and similar positive results as with the Ghent project become noticeable. Here are some early conclusions:

- Essential to collaboration between the criminal justice system and health care are preceding arrangements and definitions.
- If a policy choice towards such a QCT-system is made, sufficient funding should be made available.
- There is an actual risk of net widening.

- The programme in Liège was not merely focused on treatment of the drug abuse. A broader guidance or support for other problems (social status, unemployment, homeless) is provided, which leads to good results.
- The need for a subsequent drug court became apparent.

Due to those positive results and the added value, the Belgian Minister of Justice requested the Department of Criminal Policy to examine the possibilities for national implementation of the Ghent system. During 2010, the Ministry of Justice will furthermore pay attention to this study.

Besides the opportunity principle, the *praetorian probation* is not legally regulated. This lack of legal framework might be countered with a separate regulation for drug users, an adaptation of current mediation regulations, or with a general provision on dissolution of charges at prosecutorial level. A comparative study of European criminal justice systems was made to define advantages of each possibility. A few points of interest occurred:

- One should clearly define which criminal offences are qualified for each form of diversion or QCT.
- Every system should take notice of the due process of law.
- Avoid net widening.
- There is a need for a clear, general policy arranging the collaboration between a criminal justice system and public health care.

2. QCT within a court setting

A specific drug treatment court is set up as a project in 2008 in the Ghent region. The system is open to failed test care participants, failed mediation participants, and offenders of slightly more severe drug related crimes. The court postpones its verdict while the offender is under QCT.

This project is also subject to an evaluative assessment, prepared by the Department of Criminal Policy and the Ghent University. This provisional evaluation states that the drug treatment court is an added value towards the conditional dismissal system. The close follow-up done by the court is a clear advantage, e.g. to the probation system.

A few recommendations could be made:

- Attention is needed for general guidance and sufficient support, more than merely the drug abuse.
- The drug treatment court should be connected to the local network of aid projects.
- The system depends on sufficient capacity of the social services.
- Maximise judicial pressure.
- Focus on rehabilitation.
- Appoint a coordinator for the drug treatment court.
- There is a need for concrete results of local cases.

3. Conclusions

Beside the specific conclusions of the three evaluations mentioned, some general conclusions can be drawn. First of all, the criminal justice system, the social services and the health care have each their own purpose and working method. Each one should stick to its own task in society and trust upon the others in fulfilling their tasks. Within projects of QCT those different worlds intervene. One should focus on cooperation and exchange of information, but respect the limits of this exchange.

Funding is not a result but a provision, which is based upon clear policy choices. Should we focus on early intervention or in restoration or harm reduction at the end of the penal chain? If capacity or funding seems insufficient, those projects of QCT will probably fail.

Respect for a due process of law is essential. Elements as the presumption of innocence and the equality principle are to be respected. The Belgian projects unquestionably respect those principles, but the lack of a clear legal framework might cause assumptions otherwise.