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THE NEW GENERATION OF COMMUNITY PENALTIES IN BELGIUM

More is less...

KristelBeyens1
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Focus

This chapter analyses the narratives and practices of community punishment in Belgium at different levels, that is, policy and legislation, application and operation. Having conducted sentencing research on the custody threshold (Beyens 2000a) and having been involved in research into the implementation of both the work penalty (Luypaert *et al.* 2007) and electronic monitoring (EM) (Devresse *et al.* 2006; Beyens and Roosen 2013, 2015), I will focus on these two penalties to tell the Belgian story of community punishment. They can be regarded as illustrations of what Bottoms *et al.* (2004) have identified as the 'new generation of community penalties', characterized by a focus on a punishing rhetoric, a growing reliance on technology to enforce the requirements, the introduction of new public management techniques, the contracting out of responsibilities to other bodies and inter-agency cooperation and partnership (Bottoms *et al.* 2004). I will reflect on how these features connect with the adaptation strategies that have been identified by Robinson *et al.* (2013) and discussed in the introduction to this volume. The emergence of the work penalty and EM will be situated in a broader political context and their acceptance will be compared with earlier community-oriented penal interventions, such as probation and suspended sentences. I will argue that the development of the new generation of community penalties is deeply rooted in the problem of the ever-increasing prison overcrowding and the search for a solution to the prison crisis. I will show how initial rehabilitative narratives and practices of the work penalty and EM have been reframed under the pressures of increasing numbers, managerial objectives and budgetary considerations.

Legal and sentencing developments

Until the 1990s interest in community sentences in Belgium was very limited. However, since the introduction of the so-called Act Lejeune in 1888, Belgium had been one of the first countries to introduce (non-supervisory) conditional sentences (fines and imprisonment) and conditional release. Individualization was the main objective of conditional sentences, which were embedded in a classic sentencing framework, guided by deterrence and retribution. Non-supervisory conditional sentences were widely used and still are today. Judges see them as a warrant or a 'second chance' for the offender, who is regarded as a rational actor who can be deterred by the mere threat of imprisonment (Snacken 1986; Beyens 2000a). However, as there are legal limits with regard to the criminal records of those whose sentences can be suspended, only a selection of first offenders are eligible for these conditional sanctions, hampering the discretionary power of the sentencing judge.

In 1964, almost a century later, probation was introduced as the Belgian expression of the 'era of resocialisation'. This 'probation measure', as judges call it, fitted with a general tendency towards the humanization of punishment and an inclusionary view of the offender. However, Snacken (2007) points out that Belgium never experienced a rise and fall of rehabilitation as was described by Garland (2001) for the UK and the USA. Despite the development of a strong welfare state, Belgian penal theory, legislation and practice remained fairly neoclassical, with an emphasis on individual responsibility, retribution and deterrence. According to the Act of 1964,[1] probation conditions have to be combined with a suspended sentence (previously conditional sentence) or a suspended conviction;[2] with a possible follow-up period of up to 5 years. Initially probation officers were, and since 1999 justice assistants (*infra*) have been, responsible for the supervision of the offender. The philosophy of rehabilitation did not catch on very well with the retributive, just-desert and proportionality oriented sentencing culture, which explains its lack of success with the judiciary (Beyens 2000a). Therefore probation had a very hesitant start and, despite a small recent increase, is still imposed only at a moderate rate (6,964 new cases in 2013, compared with 9,902 new mandates for the work penalty) (Directorate-General Houses of Justice 2014: 106). Although criminologists have denounced its limited use (Snacken 1986), research into the imposition of probation has been very scarce.

After the 1964 Act, it was some 30 years before significant new developments took place in the Belgian field of community punishment. The introduction of community service and training orders as new modalities of probation in 1994, and the broadening of the range of possibilities in which suspended sentences (*uitstel*) and suspension (*opschorting*) might be imposed, have been linked to crises of legitimacy of the political and judicial establishment since the 1980s. Insecurity became an important political topic and was linked with the success of the extremist right-wing party Vlaams Blok (later 'Vlaams Belang') in the national elections of November 1991 (so-called Black Sunday). Policy analyses pointed at the 'gap with the citizen', and citizens were described as feeling more vulnerable because of

radical social changes and inevitable contact with other cultures, due to migration, particularly of non-EU citizens. A new political 'Contract with the citizen' (1992) by the government emphasized the importance of tackling major social problems by providing more security, more fairness through better and swifter administration of justice and more attention to the needs of victims (Snacken 2007).

The introduction of community service at the prosecution and sentencing stages was one element of policy initiatives aimed at tackling this legitimacy crisis (Snacken and Beyens 2002; Snacken 2007). As political pressures to demonstrate immediate action were high, community service was hastily introduced in 1994 as a condition of probation at the sentencing stage and as a condition of penal mediation at the prosecution stage. Penal mediation was the first legal initiative that explicitly brought the victim to the fore. Contrary to what the name of mediation would suggest, however, it was an ambivalent penal option, combining offender-oriented measures, such as therapy, training orders and community service of between 20 and 120 hours, and victim–offender mediation. It was therefore merely a symbolic, victim-oriented umbrella concept, rather than a genuine restorative innovation (Beyens 2000b).

The year 1996 was very important for Belgian society and for penal policies. In June 1996, the then Minister of Justice, Stefaan De Clerck, presented his white paper on penal policy and imprisonment in Parliament (Minister of Justice 1996). It was the first time that a Minister of Justice had presented an integrated and balanced approach to the penal crisis and where the priority for alternative sanctions was explicitly promulgated. However, the timing of the publication of the white paper could hardly have been worse: from August 1996 onwards, the notorious and strongly mediatized Dutroux case (which involved the abduction and murder of four young girls), and the following public outcry, dominated the discussion of penal reform, resulting in a focus on the construction of more prison capacity and, as Marc Dutroux was a recidivist sexual offender who had committed his crimes when he was on parole, on the reform of conditional release with particular attention to sexual crimes (Daems *et al.* 2013). The 'White March' of 300,000 citizens with white balloons in the streets of Brussels ushered in an era of constant and greater awareness of the needs and pains of victims. The collective denunciation by citizens of the lack of empathy of the judicial system towards victims was an expression of social solidarity with victims and their families and became part of the Belgian collective memory. Therefore this White March can be interpreted as an answer to the fragmentation of postmodern society and the search for reference points to unite citizens in a morally fragmented world (Boutellier 1993).

This new attention to victims of crime has led to several legislative changes that enhance the rights of victims in the criminal and parole procedures. The Act of 22 June 2005 introduced 'restorative mediation', which is applicable to nearly all offences and at every stage of the criminal procedure, from police investigation to prosecution, judicial inquiry, sentencing and sentence implementation. This was part of a restorative adaptation strategy to enhance the legitimacy of the penal system towards victims. The practice of restorative mediation got a foot on the

ground in Belgium mainly due to strong academic support of restorative practices from colleagues of the Catholic University Leuven, with Tony Peters as forerunner and currently Ivo Aertsen as engaged and informed advocates of the restorative philosophy on a national and international level.[3] Other interesting illustrations of the restorative adaptation strategy in Belgium include the systematic addition of a separate article in all post-Dutroux legislation that introduced new community penalties, stating that the judge can take the interests of the victims into account when imposing a sentence. On the initiative of the Parliament, the right of the victim is even explicitly mentioned in the name of the Act on conditional release of 2006.[4]

Since the year 2000 the Belgian era of the 'new generation of community penalties' (Bottoms *et al.* 2004) has been ushered in, with the introduction of intermediate penalties that can be situated between those commonly perceived as 'too soft' (probation, training orders and community service) on the one hand and imprisonment on the other (Morris and Tonry 1990). Community penalties obtained an autonomous legal status and the rehabilitative aspect became reframed in a more punitive, desert-oriented framework.

In 2002 community service as a probation measure was replaced by an autonomous or stand-alone sentencing option, which was named the 'work penalty' (*werkstraf* in Dutch or *peine de travail* in French) (Act of 17 April 2002). The terminology that is used to refer to penal interventions and practice conveys a meaning about how they are conceived and used, and has also an effect on the perceptions of both those who impose and implement them and of the wider public (Herzog-Evans 2012). Using 'penalty' as the official label explicitly conveyed the punitive dimension of this sentence, which was recognized in the restriction of freedom, the requirement to comply with work schedules and being subject to external control. Together with imprisonment and the fine, the work penalty became the third main penalty in the Belgian penal code, which boosted its legal status.[5] To avoid net widening, it was explicitly mentioned in the preparatory work of the legislation that the work penalty should serve as a substitute for imprisonment. It was further officially promoted as a constructive sanction with a reintegrative character (Beyens 2010). Work penalties can substitute a prison sentence of up to 5 years, and to maximize their scope they can legally be imposed for all offences, excluding only a few very serious offences, such as kidnapping, rape, sexual offences with minors, murder and manslaughter. Unlike for suspended sentences, suspension and probation, the criminal record of the offender does not impede the imposition of a work penalty, which has been an important step forward to increase its use. Work penalties can range between 20 and 300 hours (600 hours for recidivists), and the defendant (or his/her lawyer) has to give his/her consent during the court hearing. Very importantly, to avoid social stigmatization, the work penalty does not appear on the certificate of good conduct, which offenders need in order to obtain a job.[6] This possibility to safeguard social and judicial rehabilitation[7] was and still is a strong impetus for defendants and lawyers to plead for the work penalty and a key success factor in its swift acceptance.

Upgrading the legal status of the work penalty from a condition of probation to an autonomous main penalty also initiated a noteworthy change in judges' sentencing behaviour. In 10 years of application, the number of offenders sentenced to a work penalty increased to 9,902 new mandates in 2013 (Directorate-General Houses of Justice 2014: 106). Compared with the very moderate use of community service as a condition of probation and of probation in general (*supra*), this quick increase is an unprecedented success. Small-scale research by Lefevre (2009) and Verbist (2013), repeating Beyens' (2000a) research by using the same four vignettes with a small sample of judges, showed the openness of the judiciary to this sentence. While Beyens found that the experiences of the judges with community service were rather limited and that they did not regard community service as a 'real sentence', reserving it for a small group of well-integrated offenders, 10 years later the judges accepted the work penalty as a punishing sentencing option that could meet different aims, such as retribution and deterrence, but also reintegration and even redress to society. They related the enhanced credibility of the work penalty to its autonomous status as a main penalty and the policy that the substitute prison sentence has effectively to be served in the event of breach.[8] Here the link with the non-execution policy of the short prison sentences comes to the fore (see the section on prison overcrowding, below; also *infra*). Work penalties are regarded by judges as more credible sentencing options than short prison sentences that are not implemented due to prison overcrowding. It shows how the application of the autonomous work penalty in Belgium is linked with the wider penal policy to counter (the public's perceptions of) impunity, due to the non-execution of short prison sentences.

From this success, policymakers obviously understood that creating autonomous sentences could increase the use of non-custodial sentences. So in 2014 two additional autonomous community penalties were introduced in the Belgian penal code, namely EM as an autonomous penalty (Act of 7 February 2014) and probation as an autonomous penalty (Act of 10 April 2014). Many provisions in the Act of the autonomous work penalty of 2002 have been replicated in these acts of 2014. While the Probation Act of 1964 mentions 'judicial accompaniment' or 'guidance' and 'treatment', the Act of 2014 on autonomous probation only speaks about 'judicial accompaniment' or 'guidance'[9] (*justitiële begeleiding*), which illustrates that probation as an autonomous penalty is no longer regarded as a purely rehabilitative intervention (Decaigny 2014). Also the use of probation 'penalty' and no longer 'condition of probation' also shows a punitive shift, which is confirmed by the policy that pre-sentence reports have become optional for the autonomous probation penalty. In fact this is a continuation of an existing situation, whereby work penalties are increasingly imposed without a social enquiry report (Directorate-General Houses of Justice 2014). An explanation given by the judges for this underuse of social reports is lack of staff at the houses of justice to prepare the reports, which would lead to a delay of the judicial procedure. Research by Beyens and Scheirs (2010) with judges indicates that the relatively marginal use of social reports at the sentencing stage is an illustration of the judges' pursuit of professional ownership

of 'their' decision: they prefer to rely on judicial documents or police reports, or on their own evaluation of the situation of the offender, which is based on short interactions during the court hearing, rather than relying on the social narratives of justice assistants. Lastly but not less importantly, as for the autonomous work penalty, also for probation and EM as autonomous penalties, there are no restrictions any more with regard to criminal record, which reflects the desire of the legislator to maximally encourage extensive use of these penalties.

Electronic monitoring as the panacea to solve the legitimacy crisis of an encumbered prison system

While autonomous EM has been introduced legally only recently, EM has a long history in the execution phase of imprisonment, since 1998 on a local basis and since 2000 on a national level. Initially, EM was introduced as a back-door measure for prisoners with a prison sentence of up to 18 months. It was promoted as a humane and rehabilitative alternative to imprisonment, a form of virtual detention that aimed to prevent the prisoner from suffering the negative consequences of imprisonment, by letting him remain within his normal social environment and providing the possibility to engage in useful activities, such as performing a job or participating in education. A balance was sought between social support and technical control, and technology served as a means to support rehabilitative goals; an approach referred to as the 'Belgian Model' (Beyens and Kaminski 2013). EM only acquired a legal basis with the Act of 17 May 2006 on the External Legal Position, 6 years after its national rollout. The Act defines EM as

> a modality of the execution of the custodial sentence where the convicted person undergoes his entire custodial sentence or a part of it outside of prison according to a plan of execution, whereby compliance is controlled, among others, by technological means.
>
> (*Art. 22*)

It is interesting to note that the legal definition of EM mentions technological means, among others, as a way of controlling compliance. Human supervision has become, however, less and less prominent nowadays, in particular for EM replacing prison sentences of up to 3 years.[10]

Since 2005, a two-track policy with regard to the application of EM has been adopted, resulting in diverging practices for prisoners with a sentence of up to 3 years, imprisonment on the one hand or more than 3 years on the other. For the group of offenders sentenced to 3 years of imprisonment or more, EM serves as a back-door intermediate phase between imprisonment and conditional release. Here the supervisory-oriented Belgian model is still applicable and justice assistants are still involved in the follow-up of individual conditions. However, for prison sentences of up to 3 years, in recent years EM has increasingly been applied as a purely controlling and retributive way of executing the prison sentence, without

any social guidance of the justice assistants or application of individual conditions. Prison sentences are almost automatically converted to an EM during the implementation phase, by the prison governor, or by the Detention Management Service (Directie Detentiebeheer) for 'difficult' cases, such as sexual offences.[11] Individual time regimes are replaced by standard schedules, and contact with the penal system no longer takes place via the justice assistants, but mostly via the technical monitoring and mobile staff of the Centre of Electronic Monitoring (CEM). Here EM serves currently as a front-door strategy, aiming to tackle prison overcrowding. Although, up to 2006, EM numbers rose only slowly, the policy aiming to convert more prison sentences has initiated an almost exponential growth of the numbers of people under EM, particularly since 2012. As of 2014, about 2,000 offenders are subjected to EM on a daily basis, the majority being convicted prisoners sentenced to imprisonment of up to 3 years (69 per cent of the total EM population on 30 May 2014, $N = 1{,}364$) and 27 per cent being persons serving a prison sentence of 3 years or more ($N = 530$ on 30 May 2014).[12] Also 3.7 per cent ($N = 73$) of the total EM population was serving remand custody under GPS, which is another recent novelty, introduced in 2014.

Prison overcrowding

The emergence and growth of EM has a particular link with the problem of prison overcrowding. Since the 1980s the Belgian prison population has been steadily increasing, leading to overcrowding of up to 124 per cent in 2013 (Prison Service 2014: 67). From the start, back-door policies (Rutherford 1984) have been used to relieve the over-burdened prison system at short notice. 'Provisional release in view of pardon', which was originally introduced in 1972 as an individual decision, has been more systematically and generally applied by the Prison Administration since 1983, releasing all prisoners sentenced to up to 1 year after having served a part of their sentence in prison. In 1994 the application of 'provisional release for reason of overcrowding' was broadened to sentences of up to 3 years and sentences of up to 6 months were not executed any more, due to a lack of prison capacity (Snacken *et al.* 2010).[13] This policy has led to an instrumentalization of provisional release and raised a lot of discontent and misunderstanding among the public, politicians and sentencing judges. Due to the complexities of the different forms of early release, confusion between the systems of *conditional* release (for prison sentences of more than 3 years) and *provisional* release (for prison sentences of up to 3 years) has arisen, despite their differences in nature and application. The increased use of provisional release for reasons of overcrowding, coupled with the expanding use of EM as a modality of the implementation of prison sentences for those sentenced to imprisonment of up to 3 years, nourished the idea of impunity in society. Research by Beyens *et al.* (2010) showed that judges anticipate possible release decisions in their sentencing decisions and are inclined to impose sentences of 3 years and longer, sometimes even the symbolic length of 36 months and 1 day, to be sure that the offender will be released through the individual and much stricter system

of conditional release.[14] This has led to a vicious circle of longer sentences being imposed by the sentencing judges, which increases prison overcrowding, which in turn increases the resort to provisional release and the use of EM. Provisional releases have made up more than 80 per cent of all releases in Belgium in recent years (Snacken *et al.* 2010); and the more this form of early release has been used as a form of routinized, quasi-automatic early release, the more vehemently it has been attacked.

There is an undeniable and important emotional dimension in this debate, which has been picked up by the media, who have spread the idea of impunity to the general public and the judiciary. It is therefore not surprising that policymakers too are worried about the widespread perception of impunity. Since 2008, white papers on penal policy have explicitly referred to the importance of a credible sentence implementation system (Vandeurzen 2009; De Clerck 2010; Turtelboom 2012). The 'impunity narrative' has thus become an official, authoritative account of the functioning of the Belgian criminal justice system and has insidiously gained legitimacy (Beyens *et al.* 2013). 'Regaining credibility' became the mantra of Minister of Justice Annemie Turtelboom and this was also explicitly formulated in the Ministerial Circular Letter of 7 July 2013 on EM, which insists on a 'resolute and swift execution of all sentences and in particular of short prison sentences, which is necessary for the credibility of the penal system'. The importance of 'the optimisation of the sentence implementation for prisoners convicted to a prison sentence of up to three years' was also emphasized. Furthermore, the Ministerial Circular Letter of 2012, which introduced the so-called system of home detention, being applied to persons serving a prison sentence of up to 8 months and who have to serve 2 months of their sentence under the regime of voice recognition, referred to the 'credible execution' policy. In addition to the introduction of the new technology of voice verification, even more important is that people who are subjected to the regime of home detention no longer have any recourse to support or accompaniment of a justice assistant, nor is a social enquiry report required to investigate the circumstances wherein the home detention will be executed.

In order to cut the costs of staff, accompaniment and supervision of individual conditions by a justice assistant during the execution of the EM measure has thus become less and less frequent. This allows simplifying and speeding up of the procedure, to facilitate the management of more offenders at a lower cost and to eliminate waiting lists of offenders to serve their sentence. Justice assistants are no longer involved in the implementation of EM for a growing group of convicted offenders, nor for the group of remand prisoners who are serving their pre-trial detention at home under GPS. In 2014, the scope of EM was extended once more when it was introduced at the pre-trial phase using the technology of GPS tracking. Reducing the population under pre-trial detention was the main driver, despite the dismissive stance of investigation judges having to apply this alternative to detention. Investigation judges consider GPS tracking to be unsuitable for tackling important risks that lie behind the rationale of imposing remand custody. Also research investigating the possible reductive effect on the prison population has come to very

cautious conclusions (Maes *et al.* 2012). Since 2014, defendants have been confined 24 hours a day, seven days a week (24-7) and are only allowed to leave their home with the explicit permission of the investigating judge, under exceptional circumstances that are described in the Ministerial Circular Letter.[15] Paradoxically, tracking technology is thus mainly used to control the defendant's presence inside the house on a 24-7 basis, without any access to support or accompaniment of a justice assistant. The speed and lack of thoughtfulness with which GPS has been implemented in the pre-trial phase illustrates again the eagerness of the government to prioritize technological innovations and its belief in their effectiveness (Beyens and Roosen 2015).

Reinventing the operation of community punishment

The expansion of the different forms of community punishments and their increasing use required a reorganization of the execution of these sentences. In the first phase, before the 1990s, this para-penal field was not only rather invisible, but also very fragmented, diffused and uncoordinated, and lacked internal coherence, transparency and management in its operation (De Valck 1999; Storme and Gyselinck 2012). Probation officers enjoyed considerable freedom in how they supervised their 'clients' and worked quite independently. Speaking about 'clients' also reflected their strong social approach, based upon individual guidance. Since the end of the 1990s, efforts have been directed towards internal centralization and identity building of the field of community punishment.

Today two key organizations are responsible for the operation of community punishment in Belgium, the Directorate-General of the Houses of Justice and the National Centre for Electronic Monitoring (NCEM). They both have a turbulent organizational history and both agencies had up to 2014 operated under the federal government. Recently, a new phase was ushered in as a result of the sixth Belgian State Reform, leading to a transfer of competences of the federal level to the regions (Flanders, Wallonia and Brussels) and the (language) communities.[16] These changes raise a lot of questions about the future operation of community penalties and generate a lot of unrest and uncertainties among staff. It also implies that energy that has to be invested in organizational matters will continue to be diverted from more substantive issues.

The establishment of the NCEM in 2000 was an answer to the deadlock that arose in the debate on who should be responsible for the social supervision and the electronic control of people subjected to EM. The then probation officers, who initially were in charge of the supervision and follow-up of those subject to EM during the pilot in 1998, refused to be involved in prompt enforcement when, for instance, the offender's time schedule was violated. As a consequence, a separate agency was created as part of the Prison Service and, from 2000 onwards, specially created officers, 'EM-social assistants', were made responsible for the social supervision of people under EM (Beyens and Kaminski 2013). As of 2007, the NCEM became part of the DGHJ and the supervisory work was taken over by

the justice assistants and it became an important and ever growing player in the field of executing community punishment in Belgium. The increasing and sole reliance on electronic devices for the execution of a sentence, and the removal of the involvement of justice assistants in the execution of EM for a growing group of persons subjected to EM implied that more and more tasks are taken over by personnel and management of the NCEM. Monitoring staff and technicians who install the equipment in homes, and who have no social work background, became the only contacts and thus representatives of the penal system for those under EM.

Since 1999, the Directorate-General of the Houses of Justice and the 27 local houses of justice (one in every judicial district) are, as 'para-penal' actors, responsible for *inter alia* the execution of probation, training orders, the work penalty and EM (for those who are also supervised by a justice assistant). Their establishment was directly linked to the Dutroux case, and was intended to literally and symbolically bring the penal system closer to the public, and thus enhance the credibility of the criminal justice system (Snacken and Beyens 2002). The name 'Houses of Justice' indicates the shift to making justice more accessible and transparent (Bauwens 2009). 'Probation officers' became 'justice assistants', explicitly referring to their role of assisting in judicial tasks, emphasizing the importance of compliance with rules and contracts. A management plan 2006–2012 and a mission statement with six objectives was set out.[17] Reducing re-offending and (re)integrating the offender are bound together as primary policy objectives. It took, however, until 2010 before an official vision statement on 'offender guidance' was available, mentioning that 'social work under judicial mandate' must give shape to the 'primary intended outcome of offender guidance', that is, *non-recidivism* (Bauwens 2011; Bauwens and Devos 2015). This guidance implies fostering a learning process for the offender to encourage him/her to adopt a certain type of behaviour. Building a relationship of mutual trust between the justice assistant and the offender or *justitiabele* (those who are subjected to a judicial intervention) is seen as being of pivotal importance.

A lot of energy, however, has been spent on internal reorganizations and streamlining the social work activities of the justice assistants, aiming to increase the efficiency of the operation of community penalties. The roll-out of the so-called Business Process Re-engineering programme took place between 2006 and 2007 and raised many reactions from the field workers. Jonckheere (2013), who investigated the introduction of the information platform SIPAR (Système Informatique PARajudiciaire), describes the uneasiness, unrest and resistance of justice assistants towards this tool, which directs their work and facilitates closer control of their own activities. Bauwens (2009, 2011), who studied the impact of the organizational changes on justice assistants, describes the ambivalence with which the imposed bureaucratization and managerialization of the organization was met in the field. She, however, observes that newly recruited or junior justice assistants seem to accept the new offender management approach more readily, and that they are more inclined to follow the manuals and prescribed work methods than senior assistants who previously enjoyed great discretion in performing their tasks.

In general few justice assistants disputed the need to standardize some very variable and inconsistent practices across the country, and meanwhile it has also become clear that the field is adapting slowly (but surely) to this change in the execution of guidance tasks. However, the fear of the hollowing out of the social and human dimension of social guidance and of the shift of time investment in individualized supervision towards more administrative burdens, which was expressed by Claus and Schoofs (2010) at the first big conference that was organized to celebrate 10 years of Houses of Justice, was not without reason.

Indeed, with regard to the work penalty for example, we see that the follow-up has become stripped of social guidance and that the amount of contact with persons under supervision has been strictly limited. Consequently the caseload of justice assistants is adjusted to this minimalistic interpretation of their task. The evolution of the social work approach towards a rather 'naked' follow-up is related to the pressure of the increasing numbers of offenders made subject to a work penalty. This does not, however, mean that the social approach has become completely abandoned. The research of Dantinne *et al.* (2009) into offenders' perceptions of their contact with the justice assistants, the dispatchers and the supervisors at the work placement (*infra*) shows that the majority (80 per cent) of the sample of offenders described the contact with the justice assistants as 'helping'. However, 55 per cent describe it as controlling and one-third (34 per cent) as 'punishing'. Helping and controlling thus do not seem to be contradictory. Interviews with justice assistants reveal that, in spite of the official policy, and especially in cases of social fragility of the offender (personal problems of all kinds), social support and guidance are offered as far as possible by the justice assistants. This illustrates the tension between the stated goals of the organization and the real goals of the justice assistants (Denkers 1976), or what McNeill *et al.* (2009) have described as a 'governmentality gap', referring to the contingent relationship between official discourse and practices, the role of penal workers and their capacity to, consciously or subconsciously, resist policy.

The increasing involvement of the 'community'

An important feature of current community penalties is that other, non-penal actors get a role in the execution of the sentence (for example, third-sector involvement for the work penalty). New actors and agencies became involved in the follow-up of the work penalty. The result is a penal field with blurred institutional and non-institutional boundaries, which requires an increased focus on inter-agency cooperation.

In Belgium the work penalty must be carried out in public services within 12 months of the conviction. Luypaert *et al.* (2007) describe the complex configuration of agents involved in the execution of the work penalty: (1) the houses of justice and the justice assistants, (2) the subsidized 'dispatching' and 'work floor projects' (*werkvloeren*) and (3) the voluntary 'work places' (*prestatieplaatsen*). Interestingly, the structure for subsidising the third-sector agencies was established in 1994

from an employment-driven rationale, rather than from a criminal justice approach, responding to the needs and diversity of the offenders who have to serve their work penalty. This brought about a disorganized and fragmented supply of services, entailing considerable differences between the judicial districts and also between the French- and Dutch-speaking parts of the country. Dispatching projects took over two important functions of the justice assistants: finding a work placement for the persons who have to serve their work penalty, and supervising the execution of the work penalty. As these projects are subsidized on a yearly basis, based on quantitative criteria, this led to a fragile existence, characterized by increased job uncertainty, dissatisfaction and pressure to receive enough cases on a yearly basis to survive.

Non-profit-making organizations and foundations with a social, scientific or cultural objective can provide unpaid work for offenders. These organizations all cooperate on a voluntary basis, without being paid for their services to the government (Luypaert *et al.* 2007; Beyens 2010), which is a cheap way for the government to contract out its punishing responsibilities to the civil society. By involving civil actors, who operate outside the strict limits of the criminal justice system, there is a blurring of the 'modern' penality into an undefined, fragmented, seemingly limitless system of penal control. Persons who are made subject to a work penalty become controlled by their fellow citizens, who receive discretionary power, without having been trained to execute this job of control or supervision (Beyens 2010).

Cohabitants become strongly involved in the daily execution of EM. Research by Vanhaelemeesch and Vander Beken (2014) reveals how EM impacts on the lives of cohabitants in order to make EM work. They fulfil a number of roles, ranging from social assistant to controller. Also this group of citizens provides free services to the government that is more and more reliant on self-management of the punished offender.

Conclusion: More is less

In this chapter I have focused on developments with regard to the work penalty and EM, because, from a quantitative point of view, they have dominated the landscape of community punishment for the last decade. Both penalties have evolved from a rehabilitation-oriented 'measure' to an empty, almost meaningless controlling punishment option, being stripped of its social work potential. This adaptation from a rehabilitative approach towards a more retributive, purely controlling approach is intimately linked to the enduring prison overcrowding and the encompassing search of the government for quick and cheap solutions. The growing population serving community sentences has not, however, curbed the rising prison population, which indicates the expressive and even symbolic dimension of this policy. However, the questioning of the credibility of the criminal justice system through the non- or part-execution of prison sentences initiated and stimulated the recourse to work penalties and EM, at the different levels of the criminal justice system.

To restore its political credibility, the field of community punishment has become transformed into a people-processing system focussing on quantity, rather than quality, initiated by a strong managerial dominance in the operation of community punishment.

The increasing group of offenders that has to be processed through the system has brought new organizational challenges. The houses of justice and the NCEM have been confronted with waiting lists, lack of staff and increasing caseloads, problems that are very similar to the penitentiary problems caused by overcrowding. Legitimacy has been sought through a professionalization of the organization by introducing new public management techniques (Bauwens 2011): supervisory tasks have become streamlined and standardized, which has led to more equal treatment, but also reduced or even abolished an individualized approach for certain groups of offenders. The amount of contact between supervisor and supervisee has been formally reduced and house visits replaced by telephone contact. The work of the justice assistants is evolving towards that of mere administrators of sentences, who tick boxes instead of being supervisors or social workers for offenders. This development is reinforced by the outsourcing of social work activities to less skilled staff and workers in the community, hereby creating new kinds of staff, mainly working in temporary and uncertain positions without social work training.

With regard to EM we see an even more extreme evolution, moving away from a rehabilitative approach. Guidance by a justice assistant has been completely removed for the biggest group of offenders under EM, and most of the people who are subjected to EM or GPS are only monitored from a distance through electronic control and contact by phone with anonymous workers at the monitoring centre, who have no social work training.

All this has initiated fundamental changes in the nature of community punishment in Belgium. The rehabilitative dimension has been reduced to working in the community or being locked up in the offender's own house, without giving further substance to the sentence. The mission of 'fostering a learning process for the offender to encourage him/her to adopt a certain type of behaviour' hereby gets a new interpretation of pure control of compliance with time schedules and contracts. Together with the strong technology-driven approach, this has led to erosion, not to say transformation, of the rehabilitative nature of community punishments. From a quantitative point of view, this has initiated more punishment in Belgium, but punishment without (social) content. Thus, more is less...

However, managerial adaptations to increase the opportunities to execute penalties are not unambiguously linked to more punitiveness from a qualitative point of view. Less supervision also means less (human) control and thus perhaps less punitiveness. But more or purely electronic control gives less leeway to the controlled, which can increase the risk of failure, and thus the risk of being subjected to the substitute (prison) sentence, thereby increasing punitiveness. The question about the punitive adaptation is, however, a complex one, which has also to be investigated through the experiences of those who are subjected to the punishments.

Notes

1 Act of 29 June 1964 with regard to suspension, suspended sentence and probation, *BS* 17 June 1964.
2 In the case of *suspension*, the judicial response is a declaration of guilt, and the sentencing judge does not impose a sentence. If the offender does not commit a crime over a certain period (between 1 and 5 years), there will be no sentence. In the case of a *suspended sentence*, the sentencing judge imposes a sentence of up to 5 years, which can be suspended for between 1 and 5 years. In the case of a new crime during this period, this sentence will be activated and added to the sentence that will be imposed for the new offence. Probation supervision can be combined with a suspended sentence or with a suspension.
3 For an overview of current national and international activities, see the website of the European Forum of Restorative Justice (www.euforumrj.org/home, consulted on 26 November 2014).
4 In full, the Act of 17 May 2006 on the External Legal Position of sentenced prisoners and *the right of the victims* in the legal framework of modalities of implementation of sentences (my emphasis).
5 Community service as a condition of probation was previously inscribed in a separate law and not in the Penal Code, which weakened its legal position.
6 Nevertheless, the work penalty appears on the central sentence register, where all criminal records are maintained.
7 For an interesting international comparative view, see the special issue on judicial rehabilitation of the *European Journal of Probation* of 2011, vol. 3, no. 1.
8 Ministerial Circular Letter no. 1771 of 17 January 2005 with regard to the early release and the non-execution of certain sentences.
9 The terms 'guidance' and 'accompaniment' are used interchangeably as a translation of the Dutch word '*begeleiding*'.
10 Today the Act of 2006 is still only applicable for those who are serving a sentence of 3 years imprisonment or more, where EM is used as a back-end measure, who have become a minority of the total EM population today.
11 Ministerial Circular letter of 28 August 2012 on home detention with voice verification for persons convicted to one or more prison sentences of which the executable part is *no longer than 3 years and who are 2 months or less from their early release date*. Ministerial Circular Letter ET/SE-2 of 17 July 2013 concerning the regulation of electronic monitoring as a modality for prison punishment where the executable part *does not exceed 3 years.*
12 Data provided by the NCEM.
13 Prison sentences of less than 6 months are actually executed when they are a substitute for a work penalty that has not or has only partly been executed. This was explicitly stated in the Ministerial Circular letter of 2005, to enhance the credibility of the work penalty.
14 For more details about the different systems of early release in Belgium, see Snacken *et al.* (2010).
15 Ministerial Circular Letter ET/SE-3 concerning arrest warrant executed under EM.
16 This means that the federal government is no longer to be in charge of the DGHJ, nor of the NCEM, and that as of 1 January 2015 the Dutch-speaking Houses of Justice and the Dutch speaking part of the NCEM are embedded in the Department of Welfare, Public Health and Family of the Flemish Government and that the French-speaking Houses of

Justice and NCEM become 'une Administration Générale' (somewhat comparable with the structure of the current Directorate General of the Houses of Justice). The House of Justice of Eupen forms a separate division or 'ein Fachbereich' at the Ministry of the German-speaking Community (Bauwens and Devos 2015). From 1 January 2015 on, the National Centre for Electronic Monitoring is replaced by a 'Flemish Centre for EM' (*Vlaams Centrum voor Elektronisch Toezicht*) for the Dutch-speaking part of Belgium and a 'Centre for EM' (*Centre de Surveillance Electronique*) for the French-speaking part of Belgium. In this chapter we will use the acronym 'NCEM', as we discuss policies and practices up to 2014.

17 For more details, see Bauwens (2011) and Bauwens and Devos (2015).

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