



Alternatives to prison for drug offenders in Belgium during the past decade

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ABSTRACT

Objective: Imprisonment has a more pronounced criminogenic effect on drug offenders than on other types of offenders. Additionally, little research has been conducted on the practical application of drug-related alternatives to prison. Therefore, this study describes drug-related alternatives to prison in Belgium over a ten years' period since 2005.

Methods: The applied drug-related alternatives to prison ('probation', 'conditional release', 'mediation in criminal cases', 'community service' and 'electronic monitoring') were subject to a secondary data analysis of the database of the Houses of Justice.

Results: Men, the age group of 16–24 years old and Belgians are most sentenced to alternatives to prison. Nevertheless, 38% of women are guided towards 'probation' while 8% is 'mediated in criminal cases' compared to 30% and 5% of males respectively ($p < .001$). 26% of non-Belgians are involved in 'conditional release' and 'electronic monitoring' compared to 22% and 16% among Belgians ($p < .001$) respectively. With regards to age, 21% of the offenders older than 24 years are involved in 'electronic monitoring' compared to 6% among the offenders younger than 25 years ($p < .001$).

Conclusions: The results highlight differences in punishment judgments by age, gender and nationality that continues to be indicative for perceived threat, danger and culpability of the offenders.

1. Introduction

1.1. Imprisonment of drug offenders

Drug offenders in prison mainly represent the lower levels of the illicit drug chain with a high proportion of drug users, drug dealers and drug traffickers characterized by processes of social and economic marginalization (Csete et al., 2016; Shammas, Sandberg, & Pedersen, 2014). These individuals often take most of the risks in the actions on drug trading and purchases and therefore are more vulnerable to arrest. They may be considered as expendable and replaceable by the higher layers of the illicit drug chain (Desroches, 2007). Usually, low level drug offenders know little about the operational level of those individuals higher up the chain of the drug market. The latter most often operate autonomously and in isolation and so is heavily reliant on secrecy (Benson & Decker, 2010; Desroches, 2007). Within the drug structure, it is very difficult for people on the lower level to betray the upper level of the illicit drug chain (Desroches, 2007).

The effectiveness of imprisonment on lower-level drug offenders has been questioned. First, imprisonment of lower-level drug offenders will hardly hamper the activities of the illicit drug market as long as the

higher management is still intact (O'Callaghan, Sonderegger, & Klag, 2004). Second, punitive responses such as imprisonment have rarely shown to enable rehabilitation (Mitchell, Cochran, Mears, & Bales, 2017). Moreover, previous research showed that drug offenders who are sentenced to prison even have the highest recidivism rate and offend also more quickly than other type of offenders (Spohn & Holleran, 2002). Third, Offenders' reintegration into society is often affected by stigmatisation and this may reduce their chances for establishing personal relationships and for finding employment and housing. Fourth, due to this inadequacy of imprisonment, society is confronted with enormous financial costs (Taxman, 2010). Fifth, imprisonment also disregards the individual needs and motivations for engaging in drug offences (Bull, 2005; O'Callaghan et al., 2004). Sixth, individual attitudes towards sanctioning and the sanction experiences are not taken into account by the prison system (Augustyn & Ward, 2015). Imprisonment is hence considered to have unintended negative consequences for both offenders and society (Mitchell et al., 2017; O'Callaghan et al., 2004).

Criminologists such as Tonry, Hirschi and Gottfredson argue against punitive responses and its ability to deter criminal behaviour (Payne, Gainey, Triplett, & Danner, 2004). Longitudinal studies suggest that a

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change in living circumstances and conditions, such as recovering from traumas or difficult experiences, having a stable, intimate relationship and the engagement in pro-social activities including education and employment, are major general predictors of desisting from crime (Hammersley, 2011).

1.2. Alternatives to prison

Alternatives to prison (ATP) do not rely upon punishment or retaliation, but have a protective and rehabilitative objective (Gainey, Steen, & Engen, 2005). Rather than impose a process of isolation, ATP aim to reintegrate offenders by implementing penal sanctions within the community (United Nations Office on Drugs and Crime, 2006). This approach limits the time spent in prison and creates the opportunity to improve various life domains, such as housing, employment, social environment and leisure time through empowerment of offenders (De Wree, Pauwels, Colman, & De Ruyver, 2009; Gainey et al., 2005; Wenzel, Longshore, Turner, & Ridgely, 2001). Drug offenders are generally in need of a variety of health interventions because they have generally limited contacts with treatment and other health or social services (Wenzel, Turner, & Ridgely, 2004). These specific personal needs are much more difficult to target during imprisonment. Therefore, ATP theoretically reduce future offending rates compared to a one-size-fits-all approach such as imprisonment (Caudy et al., 2015). The supervision of offenders within the community is also expected to be much cheaper compared to imprisonment (Spencer, 1995; United Nations Office on Drugs and Crime, 2006).

1.3. The Belgian situation

In 1990, the Belgian criminal justice system introduced a variety of initiatives to divert offenders from prison for various type of offences through ATP (Maes, 2004). From 1998 onwards, Houses of Justice (cf. Belgian terminology for Probation Services) were introduced in all judicial districts in order to supervise the execution of the ATP (Snacken, 2007). The Houses of Justice investigate by a social inquiry whether ATP are appropriate and how they can be applied in a specific situation. After the social enquiry, the ATP - that has been applied for a specific case - is monitored during a certain period which varies case by case (De Ruyver et al., 2004; Jonckheere, 2012).

In accordance with the European Union (EU) strategic plan and action plan, the Belgian government has provided since the years 2000 the opportunity for drug using offenders to be diverted to treatment in the community rather than imprisonment (Colman et al., 2011). Several local pilot projects at prosecution and court level have been introduced to facilitate ATP. Such projects aim to reduce substance use in order to prevent future drug-related crime without removing the offenders from society (Sevigny, Fuleihan, & Ferdik, 2013; Wittouck, Dekkers, De Ruyver, Vanderplasschen, & Vander Laenen, 2013). Some of these projects focus only on drug offences while others include all type of offences when an underlying drug problem is identified. These pilot projects emphasise treatment possibilities but the involvement of the Houses of Justice is optional (Colman et al., 2011).

Despite the existence of ATP, sentences (mainly imprisonments and fines) related to drug offences have increased by an estimated 17% over the past decade, whereas the total number of sentences for all offences decreased by an estimated 38% (Service de la politique criminelle, 2017). Although studies on the usefulness of ATP are conducted in the past, little is known about how these alternatives are actively applied in relation to drug offences (European Monitoring Centre for Drugs and Drug Addiction, 2015). In this study, data about ATP for drug offences in Belgium are analysed over a period of ten years, 2005–2014. As different factors linked to perceived threat, danger and culpability of the offenders are important in the punishment judgement processes, the underlying motivation of this paper is to contextualize the practices related to ATP over time and in relation to different demographic

characteristics.

2. Methods

2.1. Case definition

ATP are defined as measures of the criminal justice system taking place outside prison (European Monitoring Centre for Drugs and Drug Addiction, 2015); and hence reduce or remove the time of offenders spent in prison (Gainey et al., 2005). This terminology is chosen because the Houses of Justice assume that a traditional judicial approach such as imprisonment should only be applied as a last resort (De Valck, 1999; Snacken, 2007; Willemsen, Declerq, & Dautzenberg, 2006). In the present study, ATP are considered to be the actions of judicial support and counselling (e.g. supervising someone's conditions to comply with) by the Belgian Houses of Justice. 'Probation', 'conditional release', 'mediation in criminal cases', 'community service' and 'electronic monitoring' were further analysed (see Box 1: overview of the ATP in Belgium). 'Detainees released on trial', 'provisional release' and 'parole after imprisonment' are not included in this study, because these actions are included within a broader category 'penitentiary'. Based on the available data, a further break-down of the latter was not possible. Additionally, the pilot projects at prosecution and court level for which the Houses of Justice were consulted were also included in this study. Nevertheless, it was not possible to identify these cases of the specific pilot projects in particular because these are classified under the broader definitions of the ATP described above.

Box 1

Overview of the alternatives to prison in Belgium.

Different ATP exist at prosecution level, sentencing level and at the level of the execution of sentences (De Ruyver et al., 2007):

- *Probation* was introduced in 1964 (Loi 29 juin 1964, MB 17-07-1964). A judge can choose to suspend the sentencing or delays the execution of the sentences under certain conditions.
- *Conditional release* was introduced in 1990 (Loi 20 juillet 1990, MB 14-08-1990). It is an alternative of pre-trial detention. In certain circumstances, the prosecutor can decide not to take a suspect into custody. The suspect has to comply with specific conditions for a certain period.
- *Mediation in criminal cases* was introduced in 1994 (Loi 10 février 1994, MB 27-04-1994). The prosecutor can decide in agreement with the suspect and the victim to recover the caused harms. Additional conditions such as compensation, treatment, formation, service, reprimand, amicable settlement can be imposed
- *Community service* as principal penalty was introduced in 2002 (Loi 17 avril 2002, MB 7-05-2002). This action consists of taking up unpaid work for the benefit of society for a determined period of 20 up to 300 h. The suspect has to give a formal agreement to the judge
- *Electronic monitoring* was introduced in 2000 after a pilot project, but got only a legal basis in 2006 (Loi 17 mai 2006, MB 15-07-2006). A part of the prison sentence is executed in the community but controlled by wearing an ankle tag. Elements of control and rehabilitation, such as restrictions to leave the house or the commitment to look actively for a professional occupation or to participate in a therapeutic programme, are combined in the sentence (Beyens & Roosen, 2013). Since the 1st of May 2016, electronic monitoring can be imposed as a principal penalty as well (Loi 7 février 2014, MB 28-02-2014).

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