



BELGIAN SCIENCE POLICY



Effects of alternative measures for drug users

I. INTRODUCTION

This research is a part of the Research programme in support of the federal drugs policy document and was funded by the Federal Science Policy. The research started in 2004 (1 November 2004 -30 September 2005). After the first year the decision was taken to prolong the research in order to allow for a better foundation of the results. The second part of the research started 1 December 2005 and the project was concluded on 30 November 2006

From the beginning it was clear that the aim of the research was to measure the effects of judicial alternatives for drug users. The social, academic and policy context increasingly stimulates the application of alternative sanctions and measures for drug users. For this reason it is important that effect studies are conducted – also here in Western-European context where effect studies are rather rare. This research thus is an *effect study*, in which we examine the effects of alternative measures and sanctions and the nature of these effects. On the other hand, this research is also *more than* an effect study since it is not restricted to it: the measured effects are placed within the context in which alternative measures and sanctions for drug users are applied, executed and experienced, based on interviews with persons who come into touch with alternative measures and sanctions, either because of their professional activities or in their personal experience.

The current study is aimed at the different alternative sanctions and measures that exist on the three levels of the criminal justice system. Using quantitative and qualitative methods, the researchers studied effects of alternative measures and sanctions on the one hand and attitudes concerning alternatives on the other hand. Two questions can be answered:

- What are the effects of alternative measures and sanctions regarding recidivism and improvement in several life spheres?
- How do relevant actors and drug users look upon alternative measures and sanctions and which factors play a role in their attitudes?

II. RESULTS

The results of the two empirical parts (effects regarding recidivism and life spheres on the one hand and attitudes of actors and drug users on the other hand) are summarised below.

A. WHAT ARE THE EFFECTS OF JUDICIAL ALTERNATIVES?

In the context of this research we performed analyses on a sample of 565 individuals who were sentenced to a modality of alternative measures. The objective was to find out to what extent these persons reoffend and whether progress occurs in the various spheres of life examined.

I. Alternative sanctions: a term with mixed messages

Nine modalities of alternative measures were included in the research. Probation orders were most frequently applied, as well as conditional discharge. Generally speaking there was a relatively uniform spread of the various levels in the criminal justice system (detection and prosecution, sentencing, execution of sentences).

Since we wanted to study the effects of alternative sanctions in a general sense in this research, many of the analyses were performed on the complete sample. The full sample involved 565 individuals and nine modalities of alternative measures.

The average age of *the sample* was 28 years, and the large majority of the research subjects were men. Various types of narcotics were used by the research subjects, with cannabis and heroin heading the list in the court files. Moreover, a sizeable majority of the research subjects used more than one product. The majority of the research subjects received exclusively alternative sanctions because of possessing or selling narcotics. Just over one third committed property offences or violent crime. In the first place, the research subjects were given the condition that they had to keep in touch with the judicial assistant. Other frequent conditions included being treated for the drug problem, getting or keeping a job, abstaining from drug use and a ban on contact with the drug scene.

However, we cannot pass over the fact that the composition of the research sample is very heterogeneous, since the research subjects are subjected to different modalities of alternative measures.

The profile of the research subjects differs according to the modality they get into.

The main alternatives on a *public prosecutor level* – transaction and mediation in criminal cases – are mainly imposed on young men who come into contact with the police because of drug possession. Transaction mainly concerns possession of cannabis, as well as other products in the case of conciliation. Alternatives at the level of *sentencing* are not only imposed because of the possession of narcotics, but also because of selling them. The detected use is no longer limited to (mainly) cannabis, but was extended with e.g. XTC, cocaine and heroin. Moreover, we found that treatment remains an important condition, but that other conditions are imposed more frequently as well. Therefore so far we can conclude that conditions remain limited to treatment if only possession is involved (alternatives on a public prosecutor level), but that work related conditions were been added in case of the sale of narcotics (alternatives as regards sentencing). Alternatives as for *execution of sentences* are imposed to somewhat older drug users in comparison with the above measures. These research subjects more often consumed heroin and cocaine. They generally committed drug-related property offences. Treatment as well as work related conditions are often an intrinsic part of their conditions.

Because the profile of the research subjects differs according to the modality of alternative sanction they were given, these differences should not be neglected in measuring recidivism (characteristics) and progress in the spheres of life. Where necessary a distinction should be made in the effect quantification between the various measures

2. Alternative sanctions have a recidivism-limiting effect

Various analyses were performed as regards *recidivism*. The prevalence of recidivism (= having a new contact with the police resulting in a criminal charge) amounts to 71.7%. This percentage of the research subjects had a new charge after alternative measures or sanctions were imposed on them. Recidivism appears to occur mainly in the first two years of the sanction. Approximately 70% of those who recidivate do so in the first two years of the measure/sanction. However, the further judicial proceedings are also important. Only 37.2% were sentenced again. This percentage of new convictions is therefore far lower than the frequency of new police contacts. If we only consider the number of police contacts with a valid sanction (the charge is followed by a policy dismissal, sanction on a public prosecutor level or conviction), it appears that 62.3% of the research subjects have a new police contact that is followed by valid sanction.

Although the percentage of research subjects that comes into contact with the police again is relatively high, it should be remembered that this represents a lower limit. **Almost 30% of the research subjects do not come into contact with the police again after alternative measures were imposed.**¹ More than 60% do not incur a (new) sentence.² This (dichotomous) measurement passes over the slighter improvements in criminal activity that may occur after the alternative measures were given. It is a rough measurement that shows how many people succeeded in achieving the ideal situation – no new charge. However, in view of the fact that 43% of the complete sample may be characterised as ‘repeat offenders’³ (more than ten charges prior to sanctioning)⁴, it should not be taken for granted that total stopping of criminal behaviour can be achieved for the full sample. We refined the recidivism measurement in order to be able to check slighter positive effects as regards recidivism as well.

Slighter improvements that can be deduced from the recidivism measurement may, for example, be based on the number of charges drawn up afterwards with regard to the research subjects (recidivism frequency). On the basis of the number of new charges we see that approximately 14% of the research subjects came into contact with the police again only once. This means that almost **43% of the research subjects did not come into contact with the police or only once after they were given alternative sanctions.** This puts the high prevalence of recidivism into perspective. The number of individuals that incur more than five charges after alternative sanctioning remains limited to 30% of the research subjects. This number varies

¹ This lower limit differs depending on the measures: 42% of those with an alternative as regards detection and prosecution, 30% of those on probation and 18% of those with an alternative as regards serving the sentence do not have a new contact with the police anymore.

² Here too there are differences according to the sanctions involved: detection and prosecution 78%; meting out punishment 64% and serving the sentence 54%.

³ In (police) investigations, having a record of more than 10 offences is used as the operational basis for the term ‘habitual offender’. Bouke Wartna (*Bekenden van justitie: een verkennend onderzoek naar de ‘veelplegers’ in de populatie van vervolgd daders [Known to the law: an exploratory research into ‘repeat offenders’ in the population of prosecuted perpetrators]*, The Hague, WODC, 2004) opts for another meaning of ‘judicial repeat offender’, viz. having had three contacts with the judiciary in a period of five years. However, in view of the fact that the first definition connects better with the type of details we have at our disposal in the context of this effect measurement, we employ the definition ‘more than 10 previous offences’.

⁴ As could be expected, habitual offenders are mainly found in the group of research subjects with an alternative to serving the sentence. In this group, almost 70% are habitual offenders, almost 40% in meting out of punishment, and 12% in detection and prosecution.

SUMMARY OF THE MAIN RESULTS

according to the measure modality. Offenders with an alternative on the level of the execution of sentences have the highest percentage of research subjects incurring more than five charges after sanctioning. It is not a coincidence that this is the category with the highest number of habitual offenders.

The improvement becomes even clearer when we look at the degrees of recidivism. On the basis of comparison of the rates of criminal charges before and after sanctioning we see that **for all measures there is a reduction in the average rate of offences (charges) per year** that were committed by the research subjects. This improvement does not only occur at an aggregate (the full sample) but also at an individual level. More than 60% of the research subjects commit fewer offences per year after sanctioning than prior to it. There is also a decrease in the number of convictions: the conviction rate is lower after the alternative was imposed than prior to it. This means that – even if the research subjects reoffended – the number of offences per year for which they come into contact with the police decreases, as does the number of convictions per year.

Considerable progress could also be observed as regards the nature of the offences. **Only 45% of the sample (or 61% of the recidivists) come into contact with the police again after alternative sanctioning because of infringements of drug legislation – although all research subjects are drug users.** Even if account is only taken of the recidivists, it appears that **a lower percentage of the research subjects commit infringements of drug legislation, property offences and violent crime after sanctioning than prior to it.** Finally it appears that a reduction in specific recidivism could also be achieved. The specific recidivism is lower than the general recidivism. So, even if individuals recidivate, they do not always commit the same crime as the one for which the alternative measures were given. These categories of crime were not selected by chance. It concerns those crime categories that have been described in the literature as offences that are probably drug-related (cf. consensual, property offences and expressive criminality). The fact that fewer research subjects commit these three types of violence after prosecution than prior to it is therefore important. A proportion of the research subjects who committed infringements of the drug legislation, property offences or violent crime no longer does so after sanctioning (in a follow-up period of five years).

In summary we can state that on the basis of the quantitative part sufficient arguments can be found to conclude that recidivism limitation is involved: (i) More than 60% do not incur a new conviction; (ii) 43% of the full sample do not come into contact with the police again or only once; (iii) The frequency of recidivism is not high: 70% of the respondents had less than 5 police contacts after alternative sanctioning was imposed; (iv) If the average number of police contacts and the average number of convictions of the individuals with alternative measures is compared with both these numbers after the alternative measures, we see that there is a striking decrease. So alternatives involving any measures effectively succeed in bringing about a reduction in charges and convictions; (v) There is a reduction of infringements of the drug legislation, property offences and violent crime.

We may conclude that the recidivism-limiting objective of alternative measures has been achieved. Even if there is no certainty that these successes can be ascribed to alternative sanctions (because of the absence of a control group), it is still a fact that the alternative sanctions allowed for these developments in a way that is far less interventionist than a prison sentence.

3. Doing well in the life spheres means doing better regarding recidivism

A number of factors undoubtedly affect whether an individual reoffends or not. When a number of relevant individual and background characteristics are checked to find out whether they cause a difference in recidivism, we mainly found that **those who have to contend with problems in various fields do worse than those who do not experience these problems.**

Heroin users and problematic users recidivate more often (new charges) than people who do not use heroin or use drugs in a non-problematic way. Those who had a steady job at the moment when alternative sanctions were imposed, recidivate significantly less than those in whom this was not the case. *Mutatis mutandis* the same holds true for housing. However, previous offences appear to cause the most significant differences. The number of previous police contacts caused a very significant difference in recidivism. The more police contacts the research subjects had, the greater the chance of recidivism (= new charge). Moreover, it appears that those who committed property offences or violent crime prior to the sanctioning recidivate more often than those who did not. Therefore a number of factors appear to cause a significant difference in recidivism. This concerns: **use of heroin, problematic use of drugs, level of alternative measures, reporting to assistance, financial situation, housing and previous offences.** A person who uses heroin, uses drugs problematically, has an alternative on the level of execution of sentences, does not have a steady job, does not have a steady place to live and has had more than five police contacts before sanctioning recidivates more often.

The *most important predictors* of recidivism are: being a man, using heroin, using it problematically and having more than five previous offences. In the multivariate analysis it appeared that there are important net effects from these variables. On the other hand, other variables demonstrate interactive effects. This means that the effect changes in accordance with other variables being added to the model. For example, major differences were found according to the level of measures of the sanction in question. The further the alternative is imposed in the chain of criminal law enforcement, the greater the chance of recidivism. However, in the logistic regression it appeared that this effect disappeared when the previous offences of the individual involved were also taken into account. It therefore appeared that there was an interactive effect between the independent variables.

4. Alternative sanctioning creates the conditions for recidivism reduction

As regards the spheres of life, there is an improvement in virtually every sphere in the total group of research subjects. The percentage of people using drugs in a non-problematic way and who have a steady job and permanent housing increases. More people appear to succeed in surrounding themselves with people who support them (in a drug-free life) and to look for activities for their leisure time. **Improvements regarding drug use, social and family relationships and leisure-time activities are the most pronounced.** In the area of work and housing, the improvements are more modest. It is obvious that in the context of alternative sanctions there can be less radical intervening in these spheres of life. The person involved may be stimulated to find a job, but whether he/she also finds steady employment in the follow-up period depends on many factors. From the analysis of individual improvements it appeared that many research subjects remained *status quo* as regards their financial and housing situation.

In addition, we also see major **differences between the modalities.** From the beginning, in mediation and probation order without conviction, the situation in various spheres of life appears to be better than in case of probation order with delay of the execution of the punishment,

provisional and conditional early release. The improvements that can be realised are therefore less pronounced here than with the alternatives in which the starting situation is worse. As regards drug use, in mediation and probation order without conviction there is, for example, only an increase in the percentage of non-problematic users with 26 and 21 percentage points respectively. In probation order with delay of the execution of the punishment, provisional and conditional early release the percentage of non-problematic users increases by 40, 56 and 54 percentage points respectively.

Moreover, we observe pronounced **congruence between the spheres of life and recidivism** of those involved. The persons who do well as regards with drugs, work and housing at the end of their alternative and reach the 'desired' situation⁵ recidivated less often.

Therefore we may conclude that major improvements in the spheres of life are achieved in the context of alternative sanctions. Various steps are taken that benefit re-integration of the person involved.

B. WHAT ARE THE ATTITUDES OF INTERVIEWED STAKEHOLDERS AND DRUG USERS TOWARDS JUDICIAL ALTERNATIVES?

In the interviews, alternative measures were approached from three perspectives: the perspective of decision-makers (mainly magistrates), that of social workers and judicial assistants and that of experience experts (drug users). They were all allowed to throw their light on what alternative measures mean for them and how they deal with them – either in their professional activities or as experience expert. In these 'major findings' we will keep to the most important elements in these attitudes. Many aspects of the three questioned visions concur; a number of aspects are different. The main differences are the meanings and emphases that are used.

I. There is a great level of support for judicial alternatives

a. Alternatives offer drug users a chance – for change

Decision-makers, judicial assistants and social workers, and drug users generally have a positive attitude towards alternative sanctions and measures, which are considered as chance. The term 'chance' is given a very diverse content.

The judiciary actors strongly emphasise the recidivism-limiting nature of alternative measures and sanctions. When drug users are concerned, in their opinion a form of treatment is necessary to prevent the persons involved from starting to commit crime. Alternative measures are often used to acquire a form of control over what a person's life is like. The conditions are directed at involving a socially desired structure (work, housing, etc.) and following (obligatory) treatment. It is thought important that the necessary follow-up and framework is provided, so that it can be checked whether the assumed changes are also realised. Therefore, in the eyes of the decision-makers the aim of alternative sanctioning is to bring about real changes in the life of the person involved. So in that sense it is also *more than* punishment for them as well. In their opinion,

⁵ The desired situation is always the situation in which there is no need for treatment or guidance: having a steady job, a permanent place to live, and of sufficient supportive social and familial relationships and meaningful leisure-time activities.

alternative measures are a real punishment, and therefore they should include sufficient punitive elements. So the drug users have to become aware that they have violated a norm.

Carers see this 'chance' as a period allowing for creating the conditions for stopping use. During the alternative improvements in his/her life can be achieved together with the client. Alternative sanctions differ from other sanctions because they also have an added value for the drug user. In alternative measures problem areas in the life of the individual client can be targeted.

The meaning that the judicial actors and carers attach to this opportunity contains a component of change.

The drug users interviewed have a very positive attitude towards alternative measures or sanctions. In the group of drug users, opportunity provided by the alternative sanction is not automatically associated with change however. Some drug users do consider alternative measures as a way to build a new life; others just as a way to avoid (further) imprisonment. In comparison with prison, however, they do not consider an alternative measure or sanction as punishment. They do agree that it takes great effort and creates psychological pressure. So during an alternative measure or sanction people still experience a sense of lack of freedom, and even of uncertainty/vulnerability.

b. Drug users as the pre-eminent target group for judicial alternatives

As regards drug users, who have committed a form of drug related crime, decision-makers tend to consider alternative measures relatively quickly. This is not the population one wants to see in prison, considering that prison does not offer a real chance for the treatment of addiction. The decision-makers are therefore convinced that they benefit more from referring them to carers. They are usually not considered as the category of delinquents presenting the greatest social risks.

Even in case of relapse (into drug use), the protection of society generally is not endangered. Moreover, the interviewees feel that drug use is either a passing phase or a real addiction. In the first case, no drastic measures are necessary. In the second case, treatment is considered to be an absolute necessity. In either case, a judicial alternative is considered an appropriate response. Judiciary actors see alternative prosecution as a well-structured system, whereby it is possible on the various levels of the criminal justice system to refer a person to care or taking another suitable measure. In the opinion of decision-makers, alternative sanctioning is very structured: they know which type of drug user they prefer to have in which modality and why.

Against this penal law structure there is the perception of drug users who scarcely know the difference between the modalities. Their attitudes towards judicial alternatives hardly differ according to the type of modality. What counts, is the fact that they are not in prison, and comply with conditions in order to avoid that they do end up in prison (again).

Carers are found somewhere in between. The modality of alternative measures is of secondary importance to them. They place the facts within the wider course of life of the person involved and they primarily focus on their core task – the treatment – and not on the judicial context. For carers, the judicial context takes only second place. In the first place there is attention for the stage of life in which the client is at that moment. Yet the client's judicial situation is important for them: they frequently plead for clarity so that there are no unexpected surprises during the care process.

c. Quasi-compulsory treatment is not impossible

Alternative sanctions create a framework in which changes are stimulated in a context of 'pressure'. Judiciary actors explain that they have few problems with the framework; it is not alien to the operation of the judiciary.

In contrast, carers take the client's perspective into account at all times. They therefore work within the limits the client indicates. So working under pressure is alien to the nature of assistance. Yet working under pressure is not considered to be impossible, since referral by the judiciary is only the start of the treatment process and does not stand in the way of an increase in honest willingness to change.

Drug users explain that they experience a certain pressure during alternative measures and sanctions. The trial period is a period of lack of freedom. Care under pressure is therefore not obvious to them; for many interviewees it appeared to be difficult to be open to carers. Motivation is especially lacking when there are really major problems. Commitment towards care only increases when their situation actually improves noticeably. So in all cases the start of the alternative measure or sanction appears to be the most difficult, but the fact that they notice progress in the life situation motivates them to carry on.

In each group, there are also interviewees who experience a lack of control within alternative sanctioning. In that respect, the judiciary and carers are making a plea for forensic settings or for adding an electronic surveillance component to other alternatives. Drug users sometimes propose to perform more urine controls or to have more house visits.

2. Still reservations are expressed

Still it appears that the three groups have reservations with regard to alternative measures. Generally speaking the attitudes towards alternative measures and sanctions are positive, but this does not mean that the potential of judicial alternatives should be overestimated or that there is no room for improvement.

a. Alternatives do not work miracles

Alternative measures are considered as positive, but people are not euphoric about them. Judiciary actors emphasise that they often see the same faces. Therefore they are not always convinced that alternative measures work as recidivism limitation. Since often the same people are seen, there is frequently a rather pessimistic attitude about the effects of alternative measures.

Carers talk about 'an effort association' and 'precision work', because they do not have the feeling that alternative sanctioning leads to a positive result anyway.

Drug users do not expect miracles either during the follow-up period. They look forward, but step by step. Change is a slow process, in which made-to-measure care is more than welcome. The way in which care helps is not the same for everyone. Some benefit more from practical assistance, others from medical or psychological care. A number of conditions frequently cause problems, such as avoiding contact with users or with ex-prisoners. Stopping use or breaking with the drug scene does not work from one day to the next. In many cases, keeping a steady job is also easier said than done. However, they think they hold the key to success, and it depends on their commitment and willpower.

b. *One drug user is not the same as another*

Alternative sanctions should not necessarily be given to every drug user. The judiciary considers a number of facts too severe in any case. With a view to young people and pure users, decision-makers are readily prepared to opt for alternative sanctioning. In the case of drug-related crime (such as property offences) or the sale of narcotics, alternative sanctioning as such is often thought to be insufficient. One looks for compromises by giving only partial suspension for example. In addition, there is the conviction that a person should not get too many chances. Those who already received many chances should not count on being allowed to try and try again. A certain basic motivation and commitment are expected.

Just like the decision-makers, carers are not convinced that alternative measures are the best solution for everybody. They do not relate this to the offences committed or to the type of product a person uses, but to the client's willingness to work on his/her problems. So also carers acknowledge that not everyone benefits from alternative sanctions, but their point of view is based on the willingness of the client to change. Quite often, judiciary clients experience a lack of motivation. However, this is not necessarily in the way of further treatment, since the person's actual motivation increases as the process continues. The importance given to the initial intrinsic motivation depends on the type of care: in residential care the importance weighs heavier than in ambulant care.

Drug users as well say that at a certain moment in their life they were just not open to alternative sanctions, and that they needed imprisonment to 'make the click'. The attitudes of drug users towards alternative sanctioning, and the contacts with the judicial assistant, differ. The figure of the judicial assistant evokes ambiguous feelings. On the one hand it appears that the justice assistant is a person one can fall back on. On the other hand, it is a person who controls them. Therefore the justice assistant often cannot expect complete honesty from them. On the contrary, many respondents indicate that they thwart the control function of the justice assistant. How open they are is often associated with the personal bonds that can be constructed with the justice assistant.

c. *Need for knowledge and information*

Decision-makers tend to have a controlling attitude. In imposing the measure or sanctions they envisage that they would limit recidivism by opting for enforced assistance. Therefore, during execution, they want sufficient information from carers to ensure that things do not go wrong. In that sense, the request for information is actually aimed at a form of feedback. If they get the feeling that they do not have enough guarantees, conflicts sometimes occur when carers do not want to give information. Furthermore, there is the opinion that professional confidentiality should not hinder proper orientation of the file: when a treatment is stopped they want to know whether this endangers the re-integration of the person involved. Taking into account the aim of alternative sanctioning (re-integration and recidivism limitation), they plead for a certain consistency in the case of obvious infringement of the conditions.

In the group of carers, there is no uniform interpretation of professional confidentiality: not all carers deal with professional confidentiality in the same way. There are carers who interpret it restrictively. Restrictive interpretations emanate from the fact that one does not want the law to poach on the carers' territory and from uncertainty of what is happening with the information provided. However, many look for a way of providing information that allows the justice assistant to follow up the evolution of the client in outline.

From the interviews, it appears that the discussion on professional confidentiality is still going on: there are many differences of opinion about how professional confidentiality should be treated in the context of alternative measures. Yet this point of discussion does not seem to have primordial

importance. The various players seem to have found their position: they know which information is passed on and which is not, and to a large extent they find it acceptable. Professional confidentiality is still considered as an obstacle when treatment goes wrong. On the other hand, mutual lack of knowledge and insight preoccupies most interviewees. The judiciary and carers are no longer the great unknown to each other, but they often have insufficient knowledge concerning the fine details in their respective functioning. Moreover, it is often not known who works where and which centre does what. If there is no contact point, building proper bridges between the judiciary and carers does not seem an easy task.

III. CONCLUSION

Not only did this research find positive effects of judicial alternatives regarding recidivism and life spheres. Based on interviews with stakeholders we find that there is a great level of support for judicial alternatives in the group of decision-makers, social workers and judicial assistants, and drug users themselves.