***En plein publique*. Practice and Jurisprudence related to Violence Against Public Servants**

Summary

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1. Reason for the Study

This study was prompted by a motion tabled by MPs Helder, Van Oosten and Van Dam. It called for 'all acts of violence, including attempted violence, against police officers and other public servants to be brought within the scope of Section 22b, subsection 1 of the (Dutch) Penal Code so that violent offenders can no longer get away with merely community service or a fine'. In response, Sander Dekker, the Minister for Legal Protection, and Ferdinand Grapperhaus, the Minister of Justice and Security, promised a legislative proposal to extend the ban on community services to assaults (sections 300-303 of the Penal Code) on public servants. With regard to the crime of public violence referred to in Section 141 of the Penal Code, these government members thought community sentences should in no way be prohibited. An offender can be guilty of this crime without having used violence, in which case community service might be an appropriate sentence. This study was requested by the Scientific Research and Documentation Centre in order to determine whether public violence should be included. The study aimed to examine 'the jurisprudence and practice related to violence against public servants in order to determine whether societal developments and undesired or unforeseen amplifications of the sections of the law warrant a different assessment'.

2. Central Problem Definition and Research Questions

The following research questions were derived from this:

> Are there sufficient grounds, as with the crimes set out in sections 300-303 of the Penal Code, to bring the crime set out in Section 141, subsection 1 of the Penal Code within the scope of the ban on community sentences referred to in Section 22b, subsection 1, under b of the Penal Code if the crime is committed against a person carrying out public duties for the purposes of maintaining order or security?

The following research questions were derived from this:

> *Research Question 1.*
> How can violent incidents against public servants which were prosecuted and found proved pursuant to Section 141, subsection 1 of the Penal Code be characterised:
> a) how severe was the violence with which the suspect was charged;
> b) how many cases involved injuries;
> c) is it possible to determine the extent to which the violence was linked to individual offenders?
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> *Research Question 2.*
> How were cases where the sentence was based on public violence as referred to in Section 141, subsection 1 of the Penal Code against public servants settled:
> a) how often was the sentence restricted to community service;
> b) what was the average length of these community services?

Research Question 3.
How can cases where the sentence was based on an act of violence against a public servant and that did not involve any injuries be characterised in terms of:

a) the violence that was used;
b) the extent to which individual offenders participated in the violence;
c) the settlement?

Research Question 4.
How do the cases that involved injuries differ from those that did not involve any injuries?

Research Question 5.
Based on the research results, what arguments (for and against) can be formulated to bring cases where sentencing was based on violence (Section 141, subsection 1 of the Penal Code) against public servants and that did not involve any injuries (not inflicted by the individual offender) within the scope of the ban on community services?

3. Research Design and Method

To answer the research question, a (small) investigation into the legal framework was first carried out. An analysis of judgments of the court of first instance (the Police Court and three-judge criminal division) was selected to answer the empirical sub-questions. The original intention was to select about 200 relevant cases relating to the period 2015-2019 in four districts, namely Rotterdam, Central Netherlands, East Brabant and Overijssel, by means of a cluster sample. The districts were selected in such a way that two districts inside the Randstad and two districts outside the Randstad would be examined. While preparing for the study, it became apparent that there might not be enough detailed judgments. This problem then occurred. As a rule, 'minor' crimes, including a significant number of cases relevant for this study, are heard by the Police Court. In principle, the Police Court gives an oral judgment, of which, in principle, only notes are made: the so-called 'judgment not requiring a record of the hearing' (see sections 378-378a of the Penal Code). However, these notes do not contain enough information to answer all the questions. An analysis of merely the judgments of the three-judge criminal division would not have given a representative picture, since these only concern the more serious cases.

The courts would therefore have to be asked to provide the necessary judgments. When obtaining the necessary permission from the Council for the Judiciary to gain access to the relevant judgments, he gave this as a reason – in addition to the fact that he would advise against the intended extension – not to assist in the investigation. The alternative – interviewing judges about cases of violence against public servants – was also rejected.

The researchers therefore had to rely on (two) other sources, which were always used separately. The first, directly accessible, source was the 'rechtspraak.nl' database. The relevant judgments from all eleven districts that were published, relating to the period 2015-2019, were

selected from this database. The second source consisted of data from the Netherlands Public Prosecution Service, which was obtained in part through the Scientific Research and Documentation Centre. The *public prosecutor's offices* of Rotterdam, Central Netherlands, East Brabant, East Netherlands and Amsterdam were selected for this, for the same reason as mentioned above.

The above-mentioned problems resulted in a flawed investigation, since the available and selected alternatives had various shortcomings. The rechtspraak.nl cases do not give a representative picture, since there are no publication criteria. This data can provide a picture, but no more than that. The data from the Netherlands Public Prosecution Service included charges. This introduced a degree of uncertainty, since it was not certain what actually happened in each violent incident. The results should therefore be interpreted with some caution. It would nevertheless be possible to make an assessment of the expected value of the results of the empirical investigation if more cases had become available. Access to a larger of number cases is expected to have resulted in a data file containing less severe/more ordinary cases (since these were not published). The published cases were, after all, to some degree worth publishing (see also Section 1.3.3). The researchers believe that a larger number of standard cases is not very likely to have altered the picture, and the answer to the main conclusions could possibly have been worded more strongly.

4. Answering the Research Questions and the Central Problem

Research Question 1

The data from the Netherlands Public Prosecution Service was used to answer Research Question 1a (see also Section 3.3.1). Of the 85 cases that were examined, the violence was classified as ‘mild’ in 3 cases, as ‘moderate’ in 66 cases and as ‘severe’ in 16 cases (Research Question 1a). The data from rechtspraak.nl was used to answer research questions 1b and 1c (see also sections 3.4.2 and 3.4.1). It was possible to determine whether a particular victim sustained injuries in 17 of the 67 cases (Research Question 1b). It was possible to determine the extent to which the violence could be imputed to the individual offender in 66 of the 67 cases, in the sense that it was possible to determine which acts of violence the individual offender carried out. In 34 of these 66 cases, the individual offender could not be successfully prosecuted for the part he/she played under sections 300-303 of the Penal Code, since the violence that he/she committed did not constitute a (punishable) form of assault (Research Question 1c).

Research Question 2

The data from the Netherlands Public Prosecution Service was used to answer the second research question (see also Section 3.3.2). In 131 of the 179 cases that were examined, only a community sentence was imposed (Research Question 2a). The average length of the imposed community service was 125.7 hours, of which 10.4 hours conditional (Research Question 2b).

Research Question 3

The data from rechtspraak.nl was used to deal with this research question (see also Section 3.4.3). It appeared that the information in 50 (out of 67) of the available cases did not conclude any injuries (categorised as 'unknown or no injuries'). The following can be said about the 50 cases that did not involve any injuries. The violence was qualified as 'moderate' in 46 cases and 'mild' in 4 cases (Research Question 3a). In 23 cases, the extent to which an offender participated in the violence could not have been successfully prosecuted under sections 300-303 of the Penal Code (Research Question 3b). In 34 cases, the sentence was restricted to community service, the average length of which was 174.4 hours, 4.7 hours of which conditional. 13 cases concerned a combination of a prison and community sentence and in 3 cases only a prison sentence (Research Question 3c).

Research Question 4

This question was answered based on the data from rechtspraak.nl (see also Section 3.5). Compared with the cases that did not involve any injuries, on average, the cases where injuries could be proven were more serious in terms of the violence committed, the individual offender could not be sentenced for assault in a relatively larger number of cases and, on average, the sentence was longer (the average length of the prison sentence was much longer, the community service shorter).

Research Question 5

Based on the legal analysis (see Section 2.2-2.4) and the empirical findings (see Section 3.3-3.5), this research question was answered as follows (with reservations due to the limitations of the empirical research). If the ban on community services were to apply to Section 141, subsection 1 of the Penal Code, the (very) mild acts (of violence) that cannot by themselves result in an individual sentence for assault (namely: being pushy, following, verbal actions, throwing (light) objects in the direction of the public official, etc) would also fall under the ban on community services. This applied to slightly over half the cases obtained via rechtspraak.nl. In practice, a community sentence is usually imposed in these cases. In any case, as shown by the data, Section 141, subsection 1 of the Penal Code can be called a typical crime-related community sentence. The sentence for this crime is usually restricted to community service. This is appropriate for the relatively small part that an individual offender played in this crime in relation to the collective violence, particularly if the collective violence itself can be regarded as moderate or severe. Because acts of violence in a public place committed by two or more persons can, under certain circumstances, include purely non-violent acts, this opens a discussion regarding the advisability of including similar actions (verbal and non-verbal) in the extension of the ban on community services. For example, threats (Section 285 of the Penal Code) and provocations (Section 131 of the Penal Code) directed at public servants.

The nature of the crime of public violence referred to (exclusively) in Section 141, subsection 1 of the Penal Code also does not provide any grounds to add Section 141, subsection 1 of the

Penal Code to Section 22b of the Penal Code. The offence of this crime lies mainly in the disturbance of public order, not in the attack on (certain) persons. These are arguments against extending the scope of the ban on community services to include Section 141, subsection 1 of the Penal Code, which previously led the legislator not to include it in Section 22b of the Penal Code for similar offences.

In this respect, the basic offence of public violence (Section 141, subsection 1 of the Penal Code) is not serious enough to obviate the imposition of a community sentence alone.

On the other hand, it can be argued that, with regard to the seriousness of the acts of the individual offender, the disturbance (of public order) is (slightly) greater if the violence is directed against public servants. With regard to the nature of public violence in relation to an assault, the Supreme Court under the old law (before 2000) found that violence against persons (as referred to in Section 141, subsection 1 of the Penal Code) usually constitutes an assault and that, because of its public nature and (under the old law) its 'concerted' use, in as far as it can be called a qualified form of assault. However, under the current law, with the broader definition 'committed by two or more persons', this is less likely to be the case, since the part played by an individual offender under certain circumstances can also be (completely) of a non-violent nature. A sentence for an assault is only possible if the violence committed by an individual offender can be regarded as an assault. The ban on community services would then apply. It would then be logical from the viewpoint of a legal system to (also) exclude the imposition of a community sentence in these specific cases if an offender is to be prosecuted under Section 141, subsection 1 of the Penal Code (the part played by the individual offender constitutes an assault). Incidentally, such a further distinction would require further refinement of the legal definition of the scope of the ban on community services referred to in Section 141, subsection 1 of the Penal Code. Not only should the stipulation be included that the crime is directed against a public servant, but also that the part played by the suspect can be included among one of the crimes set out in sections 300-303.

It should also be pointed out that if, in accordance with the Helder c.s. motion, the (punishable) violence against police officers and other public officials should be brought within the scope of the ban on community services, adding (in any case) Section 141, subsection 1 of the Penal Code to (the first subsection of) Section 22b of the Penal Code is legally necessary. With regard to mild acts of violence, the option of merely community service for public violence is thus completely ruled out (this also applies to an offender's purely non-violent acts), while evidence of a slightly looser collaboration would be sufficient – if a sentence for participating in an assault is not possible. If the Netherlands Public Prosecution Service wants to prevent the imposition of merely a community sentence by applying the revised Section 22b of the Penal Code, this prevents the public prosecutor from having to prosecute a suspect in such cases for the less severe crime of (participating in) an assault in stead of for the more severe crime of public violence.

Answering the Central Problem

Despite the limitations of the data used in this investigation, the following can be said regarding the significance of these empirical results. Access to a larger number of cases is likely to have

resulted in a data file containing more less severe/more ordinary cases than the 67 rechtspraak.nl cases. In particular, the investigation showed that in about half of the examined cases, the part played by the individual offender could not have resulted in a sentence for (a form of) assault; he/she is usually punished with (light) community service. It would seem particularly disproportional to apply the ban on community services to these cases. The effect is expected to have been even greater if the non-examined, (even) less serious cases could have been taken into account. The individual offender probably played a smaller part in the violent incident. Accordingly, his/her sentence was less severe (in terms of type and severity).

According to the researchers, the investigation did not substantiate the need to extend the scope of the ban on community services to include Section 141 of the Penal Code. Therefore, all things considered, the answer to the problem definition is that there are insufficient grounds to, as with the crimes set out in sections 300-303 of the Penal Code, bring the crime set out in Section 141, subsection 1 of the Penal Code within the scope of the ban on community services referred to in Section 22b, subsection 1, under b of the Penal Code if the crime was committed against a person carrying out public duties for the purposes of maintaining order or security.