

‘IT COULD BE US’: RECENT TRANSFORMATIONS IN THE USE OF COMMUNITY SERVICE AS A PUNISHMENT IN SPAIN¹

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Abstract

Community service orders, or work for the benefit of the community orders, were introduced in Spanish legislation with the 1995 Criminal Code. Its practical use was until recently scant, and has since 2008 exploded in numerical terms. After describing the legal framework and aims of this sanction, this paper focuses on recent developments in the use of this penalty and in implementation and supervision practices. It draws from analysis of Parliamentary debates, sentences passed by judges, official statistics and other official documents, and interviews with judges, public prosecutors, supervisors and senior civil servants responsible for implementation.

Keywords: Work for the benefit of the community - Community Service Orders - Alternatives to custody

Introduction

Community service orders, or work for the benefit of the community orders (WBCOs), were introduced in Spanish legislation with the 1995 Criminal Code. They initially had a limited role as responses to fine default and substitutes for weekend detention and were scarcely used by judges. However, various legal reforms (in 2003 2004 and 2007) have expanded the application scope for these orders, which may currently be used as substitutes for prison sentences, as a response to fine default and as autonomous penalties, that is, as direct sentences for some crimes.

These reforms have led to a very steep increase in the number of orders being passed by judges. This increase has been accompanied by a change in the profile of offenders

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being given WBCOs, who tend to be employed and educated to a greater extent than previously. Particular attention is paid here to the changes produced by these two elements in implementation practices and supervising styles.

After a brief survey of the history of WBCOs in Spain, the paper focuses on current regulation, with particular attention to length of orders and breach, and current uses of WBCOs. Afterwards, the paper explains how orders are being implemented and supervised by the Penitentiary Social Services, bearing in mind the differences, both in tradition and resources, between the autonomous region of Catalonia and the rest of Spain. Aims of WBCOs are not literally spelled out in legislation, but various sources are used to state the aims of providing an alternative to prison for non serious offences, reparation and rehabilitation; particular attention is paid in this paper to the changing role of rehabilitation in implementation and supervision practices.

After providing some statistical data about the implementation of WBCOs, the paper goes on to discuss certain issues of particular concern: soaring numbers of orders being imposed, the place of WBCOs in the penal system (in particular net widening), changing implementation practices, contestability and visibility of offenders while working.

The (short) history of Work for the Benefit of the Community in Spain

There was talk of the introduction of a sanction involving the work of offenders in tasks of general interest since the early years of democracy in Spain. Scholars and criminal justice practitioners argued for the introduction of such a sanction as a means of avoiding imprisonment for non serious offences, and pointed at English Community Service Orders as evidence that such a sanction could be successfully implemented (Asúa 1984; De la Cuesta 1985; Doñate 1985).

‘Services for the benefit of the community’ were introduced as a measure for juveniles in 1992 (Ley Orgánica 4/1992), so relatively late compared to other European jurisdictions. This measure was welcomed by youth justice specialists and has been positively valued by judges and practitioners in this youth justice context until today (Fernández 2008).

The climate created by academic and judicial debates and later by the introduction of the measure for juveniles was reflected in various unfruitful attempts in Parliament (1980, 1982, 1992, 1994) to introduce a similar sanction for adults (see Brandariz 2002:109-139 for a legislative history).

With widespread support from parliamentary political groups, *trabajo en beneficio de la comunidad* (TBC), that is, WBCOs were finally introduced for adults (18 and over) in the 1995 CC, the so called “Criminal Code of democracy”.

Parliamentary debates around 1995 did not focus in any depth on the aims of the order, but they underlined both its potentially educational content and its restorative nature; and although WBCOs are described as punishments, their punitive nature or the actual work to be undertaken by the offender is not given much weight.

This widespread albeit perfunctory parliamentary consensus about the desirability of a community service type of order has only recently been questioned. In the context of the 2007 debates about WBCO as a penalty for driving offences, objections were voiced, not relating to the nature of the sanction but to the feasibility of its application given the insufficient resources granted to the relevant administrations².

² See interventions by MP Lagabaster in *Diario de Sesiones del Congreso de los Diputados [DSCD]*, Pleno y Diputación Permanente, VIII Legislatura, núm. 226, 26/06/2007; MP Bofill Abelló in *Diario*

Regulation of WBCOs in the Criminal Code was initially very cautious, with a reduced scope for application: orders could only be imposed as substitutes for weekend arrests (themselves seldom established as punishments) and as a consequence of fine default (as an alternative to a deprivation of liberty).

This narrow scope for application, together with scepticism amongst judges as to the feasibility of the actual implementation of the penalty due to lack of resources, meant that for the first years judges made very little use of WBCOs (DGIP 2004). Published opinions by judges held that this penalty did not work, was not complied with and there were insufficient placements for it to be a credible punishment. Although when contrasted with evidence, these statements did not hold, they reflect a judicial culture that for years hindered a more extensive use of this penalty (Blay 2007a).

This initial situation (1996 to 2003) changed with various legal reforms which expanded the scope for WBCOs and started shaping the current legal framework for these orders. It might be stated that a second, transitional, period in the short history of WBCOs in Spain took place between 2003 and 2007. Within the context of the wide reform of the CC in 2003 a brave step was taken by the legislature in favour of WBCOs, in spite of scant previous use by judges (Ley Orgánica 11/2003 and 15/2003). Thus, from 2003 onwards WBCOs could be imposed as direct penalties for the lesser forms of domestic violence (and from 2004 to gender violence offences³), as substitutes for short prison sentences and, as before, as a method of satisfying responsibility for fine defaulters.

The 2007 Criminal Code reform finished shaping the current legal framework, by providing the possibility of imposing WBCOs directly (ie, not as prison substitutes) for some road safety offences⁴ (Ley Orgánica 15/2007). In practice, the introduction of WBCO as a direct penalty for these offences has meant a very steep increase of the number of orders being imposed by judges, which has led to changes in implementation practices. It might be thus stated that 2008, when these effects started to be felt, marks the start of a third period in the short history of WBCOs in the Spanish legal system.

Regulation of Work for the Benefit of the Community Orders

As with every sanction for adults in the Spanish penal system, the legal framework, basic regulation and offences for which it might be applied are established in the Criminal Code (CC). Basic regulation is contained in article 49 CC, but other references may be found in various parts of the Code (33, 40, 53, 88 and Book III). Rules for implementation of WBCOs are established in Real Decreto 515/2005, but new regulation is currently being drafted to respond to needs created by the soaring number of orders being imposed.

This sanction is legally defined as a penalty that “*requires the offender to cooperate without payment in activities of interest to the public, which may consist, in relation to offences of the same nature as the one committed by the offender, in tasks of reparation of damages or support or assistance to victims*” (art. 49 CC). The essential content of the sanction is then unpaid work in public interest activities; the

de Sesiones del Senado, VIII Legislatura, Pleno, núm. 137, p. 8632 (7/11/2007); and MP Uría Etxebarria in *DSCD*, VIII Legislatura, Pleno y Diputación permanente, núm. 290 4/10/2007, p. 14280.

³ CSOs for domestic violence were introduced by Ley Orgánica 11/2003, and for gender violence by Ley Orgánica 1/2004; see Larrauri 2007 for a comment on legislative evolution. See footnote 7 for examples of offences covered by the term ‘gender violence’.

⁴ This possibility was actually introduced in the Criminal Code for drunk driving in 2003, albeit with an ambiguous wording that resulted in scant use by judges.

undertaking of reparative work is generally considered as only a possibility judges may use, but not as part of the core content of the sanction.

Particular attention is paid to ensuring that the requirements of the order do not interfere negatively with job, education or family responsibilities of the offender (RD 515/2005). The aim here is to make compliance with the requirements of the order compatible with these responsibilities, in as much as it is possible⁵. In practice, this means that when drafting the implementation plan for each offender care is taken to ensure this is so, with the resulting difficulties of finding the much required evening and weekend placements (Arnau Mateu, personal communication). The order is thus intended to be completed within the offender's leisure time, and deprivation of leisure time is understood to be part of the punitive 'bite' of the order (Cid 1997:107).

Consent of the offender. The CC establishes that a WBCO cannot be imposed without the consent of the offender. In practice, this consent is given twice: once before sentencing, when the judge asks the offender if he or she would accept a WBCO being imposed if declared guilty, and again, when the offender consents to an individual implementation plan, ie. a particular placement in a given organisation with a fixed time schedule⁶.

Authors have linked the requirement of the offender's consent to the prohibition of forced labour and inhuman and degrading treatment of offenders in the 1978 Constitution, to the difficulty of implementing this penalty against the will of the offender and to the limited rehabilitative effects of an order so imposed (Cid 1997:106; Boldova 2000:127; Brandariz 2002:132). On the other hand, some voices have regarded consent as both a form of undermining the punitive credibility of the sanction and a procedural nuisance (Choclán 1997:163-164; Manzanares/Ordóñez 1996:493). However, there seems to be no political debate about changing legislation on this point.

Length of orders. The length of orders is established in legislation and in sentencing in terms of working days, and not hours. In principle, the CC establishes that orders should comprise a maximum of 180 days of work (art. 33 CC). When used as substitutes for a prison sentence, each day of imprisonment has to be transformed into one day of WBCO (art. 88 CC). Given that prison sentences of up to two years may be substituted by WBCO, orders of up to 720 working days (or 5,760 hours) may be imposed. There is no agreement amongst judges or scholars about the 180 days limit applying to all WBCOs (Torres 2006:367; Blay 2004) or only those passed as direct penalties but not prison substitutes (Boldova 2006:161, np. 96; Roca 2007:250). So in practice, although rare, one may find sentences imposing up to 400, 500 or even 700 days of work.

The CC also states that an order should be completed within one year of starting work (art. 40 CC). In practice it is not always possible to comply with this requirement, particularly for offenders with full time employment and long orders.

Each day of work comprises a maximum of 8 hours (art. 49 CC). In practice, judges do not tend to establish in their sentences the amount of hours to be worked each day. It is then usually left to the administration to determine these hours, which vary according to the labour and family responsibilities of the offender (RD 515/2005).

⁵ A "principle of flexibility" should guide the implementation of the penalty (art. 6, RD 515/2005).

⁶ Although in the project for reforming RD 515/2005, currently being elaborated by government, this 'second consent' is eliminated because it is not regarded as necessary from a constitutional law point of view and it has proved itself not functional and leading to delays, ie, it slows down implementation at a time where celerity is badly needed (CGPJ 2009:12). If the offender refuses a particular placement and working schedule, then it would be possible to contemplate breach.

This poses a problem from the point of view of both proportionality and equality, because given a similar offence, an employed offender with family responsibilities may end up working the same number of days but far less hours than an unemployed offender with no family. In practice, most working days consist of four hours, at least in Catalonia.

Length of orders is clearly a problem in regulation, both because it is excessive, thus posing serious difficulties of implementation and compliance, and because there remain doubts as to what exactly is the maximum length to be imposed (Brandariz 2009:269).

Breach. Regulation of breach in the CC is flexible and a certain amount of discretion is given to the judge. Legislation establishes the obligation of the Penitentiary Social Services responsible for the supervision of orders to investigate and communicate to the Judge of Penitentiary Surveillance the occurrence of “relevant circumstances” in the execution of the penalty (art. 49.6 CC). This judge, responsible for supervising prison sentences, suspended sentences and other community measures, has to examine the evidence and determine if, in that particular instance, those circumstances could constitute breach. These “relevant circumstances” are the following (art. 49.6 CC):

- unjustified absence from work during at least two days, when these absences reflect a voluntary refusal to continue complying with the order;
- work by the offender failing to reach minimum standards, in spite of being summoned by the person directly supervising the work; there has to be actual disobedience to orders given whilst in the work placement in order to constitute breach here;
- the offender repeatedly and evidently opposing and failing to comply with the directions given by the person responsible for his or her supervision; and
- when for *any other reason* the behaviour of the offender is such that the person directly supervising work in the particular placement refuses to keep him or her in that placement.

The judge shall examine the evidence and determine in each particular case if the circumstances constitute breach: if they do not constitute breach, the judge may simply let the offender continue working in the same placement or order a change of placement until the order is completed. Finally the judge may rule that an actual breach has taken place.

The consequences of breach vary according to how the order was imposed:

If the order was imposed as a substitute for a prison sentence, substitution is revoked and the offender shall be imprisoned for the remaining period of the original prison sentence: the WBCO has to be (re)turned into a prison sentence, by transforming each remaining day of work into one day of imprisonment (art. 88 CC).

If the order was a response to fine default, the offender shall be deprived of liberty for as long as the fine requires. Most frequently it shall be a day fine, and the CC establishes the equivalence between two days of fine and one day of prison or one day of work (art. 53 CC). This deprivation of liberty might be suspended, if it is a first time offender and other requirements are met.

Finally, if the WBCO was imposed as a direct penalty (ie, for the commission of a crime for which the CC establishes WBCO as a punishment) breach itself may

constitute a new offence⁷, and the established sanction for this new offence is a fine; the initial offence would, then, remain unpunished (Torres 2006:439).

Regulation of breach has proved to be problematic, because it is incomplete and open to interpretation (eg, it is not clear if there is breach when the offender does not attend an interview), it is sometimes too harsh (eg, when in the case of substitution or fine default breach results directly in imprisonment) and sometimes too lenient (as when the breach of a 'direct' WBCO results merely in a fine) (Cid 2004:223-224).

Imposition and uses of orders

WBCOs are imposed by criminal law judges, most of the time by so called *Jueces de lo Penal*, that is, judges responsible for sentencing offences of up to mid-level seriousness, punishable with any penalty less severe than a five year prison sentence. Orders may be imposed in any on the three following ways:

a) Orders may be imposed as substitutes for prison sentences of up to one year and exceptionally, and together with a fine, of prison sentences of up to two years. Judges follow a two step decision-making process, whereby a prison sentence is initially imposed. Then, either the same judge or the judge charged with the implementation of sentences decides, on the basis of arguments based on rehabilitation, proportionality and reparation, that in that given case it is better to substitute prison for either a fine or a WBCO, or both (art. 88 CC) (see Cachón/Cid 2003a, 2003b for a procedural analysis).

In practice, substitution is not frequently used. When a short prison sentence is imposed upon a first time offender, it tends to be suspended (Cid/Larrauri 2002:106-107; Cid 2008:10-11); if imposed upon recidivists, it cannot be legally suspended and although it could be substituted, it is not often the case. Explanations given for this trend are often linked to the Spanish legal tradition of saving alternatives for first time offenders but not for recidivists (Cid/Larrauri 2002).

b) Judges may also impose WBCOs upon fine defaulters; a fine defaulter is held responsible either through a deprivation of liberty or through a WBCO (art. 53 CC). No recent data is available about the percentage of WBCOs responding to fine default, but according to practitioners it is used in this way very little (Juanjo Subero, personal communication).

c) Finally, judges may impose a WBCO as a 'direct' penalty when it is the established penalty for a given offence in the CC. Since the offender's consent is required for a WBCO to be imposed, these orders are always established in the CC as alternatives to another penalty, thus granting the judge the possibility of choosing between a WBCO and this other punishment (sometimes prison, sometimes a fine). If the judge favours a WBCO but the particular offender does not consent, then the judge shall impose the other established penalty. Most of the offences for WBCOs are imposed in this way and are related to less serious forms of family and gender violence and to road safety⁸.

⁷ The offence consists in breaching a sentence imposed by a judge; if it is a prison sentence, the offender shall be punished for up to a year of prison, if it is a community sentence, a fine shall be imposed (art. 468 CC).

⁸ These offences are: art. 153 CC: bodily harm and physical or psychological ill treatment of female partner, former partner or family member (gender violence, domestic violence); 171.4 CC: threats to female partner or former partner (gender violence); 171.5 CC: minor threats using weapon to a family member (domestic violence); 172.2 cc: coercion to female partner or former partner (gender violence); for all the previous felonies, the judge may choose between imposing a prison sentence or a WBCO order; 244.1 CC: car theft, when the car is returned (the judge may choose between a fine or a WBCO order); road safety offences: 379.1 CC: drunk driving, 379.2 CC: speeding, 384 CC: driving without a licence; 385 CC: endangering road safety (for each of these offences, the judge has the choice between prison and a fine plus a WBCO) . Misdemeanours: art. 618 cc minor non payment of family pensions (choice between fine or WBC; previously not in the CC); 620 cc minor threats, slanderous allegations

From the research undertaken on the topic, we know that WBCOs are imposed upon 40% of the offenders sentenced for minor gender violence, whereas 60% of them are sentenced to prison (Antón/Larrauri 2009:13). It seems that when given the choice to impose a prison sentence or a WBCO as direct penalties, much of what judges do depends upon the stance of the public prosecutor (Antón/Larrauri ongoing research). When interviewed themselves, public prosecutors acknowledge following a criterion whereby both in cases of family violence and road safety they shall favour a WBCO over prison if the offence is not very serious and the offender is not a recidivist (Blay 2008b).

Implementation of WBCOs

Responsibility for implementing WBCOs lies with the Penitentiary Social Services, a part of the penitentiary administration which has traditionally dealt with the social needs of the families of inmates and the aftercare of prisoners. These services are also currently responsible for the supervision of suspended sentences, treatment programmes in a community setting and other community measures.

Due to the territorial distribution of power in Spain⁹, and the existence of autonomous regions, there are, in practice, two administrative jurisdictions responsible for implementing orders. Both operate under the same legislation and both contain Penitentiary Social Services (CC and RD 515/2005) but beyond that each is independent with respect to setting its own protocols for implementation and supervision styles.

In all Spanish territory except for Catalonia, the General Secretariat of Correctional Institutions - part of the Ministry of Interior (ie, Home Office) - is the body of the administration charged with this responsibility.

In Catalonia, responsibility for implementation lies in the Secretariat of Penitentiary Services, Rehabilitation and Youth Justice, within the Justice Department. Implementation is managed by this administration but materially undertaken in the province of Barcelona by a non profit organisation (IRes); from January 2010 onwards all direct implementation of WBCOs in Catalonia is directly undertaken by external organizations, after a process of contestability.

Neither in Catalonia nor in the rest of Spain is there a body that could be called a Probation Service. In Catalonia, however, there has been a long standing commitment from the Justice Department to support the implementation of community sanctions and measures. Perhaps as a result of this greater commitment, practices and professional identities have developed that are closer to those of probation agents. Professionals in charge of implementation in Catalonia come from a social work, social education, psychology or sociology background and they have a strong social work ethic (Arnau Mateu, personal communication).

Once judges have passed their sentences, these are sent to the Penitentiary Social Services. After interviewing the offender, these services draft an implementation plan,

or humiliations to family member (domestic violence) (choice between curfew/home arrest order or WBC); 626 cc mistreatment of buildings (choice between fine or WBC order); 632 harm to endangered flora and ill treatment of animals (choice between fine or WBC order).

⁹ There are 17 autonomous communities in Spain, ie, the country is divided into 17 autonomous communities with varied degrees of political autonomy and responsibilities over various government matters. Of these communities only Catalonia has assumed responsibility for correctional services, which besides the ruling of the prison system, includes the implementation of community sanctions and measures. For the rest of the 16 communities, it is the central General Secretariat of Correctional Institutions that retains responsibilities.

with a working schedule in a particular placement to fit the sentence and the labour and family responsibilities of the offender. This plan has then to be revised and approved by the Judge of Penitentiary Surveillance, charged with the supervision of the execution of prison and community measures and sentences, among them WBCOs.

In Spain, besides NGOs and local councils, Penitentiary Social Services themselves provide a large number of placements; in Catalonia there has been increasing commitment of various regional government departments, so placements are provided by various regional as well as local administration and NGOs. Placements have traditionally been individual, in NGOs or local authorities, such as city councils; however, the pressure of numbers has led to the recent development of group placements.

In individual placements a person in the local authority or NGOs is charged with the direct supervision of the work undertaken by the offender; this person shall contact the Penitentiary Social Services when a problem occurs. In group placements, direct supervision is undertaken by a coach, usually with a social work or psychology background.

Beyond these two forms of supervision, directly in the work placement and by a Penitentiary Social Services supervisor, a third level of control is provided by the Judge of Penitentiary Surveillance.

Types of work involved

The Criminal Code states that work undertaken by the offenders should be of public utility, and that the implementation of WBCOs should not pursue an economic interest (art. 49 CC). As stated above, work placements are found in local and regional administrations and in NGOs.

Tasks undertaken by offenders involve direct assistance to elderly, handicapped or otherwise in need persons, maintenance and support tasks in various social services, such as homes for the elderly or mentally handicapped, assistance to local police, public gardening services, or drug treatment programmes (General Secretariat of Penitentiary Institutions).

Penitentiary Social Services have had to be imaginative at finding placements to respond to the increasing number of orders. Examples of the new placements thus developed include groups of offenders working in public transport (underground, in Barcelona) directly assisting the public in whichever tasks may arise, from giving directions to helping passengers with reduced mobility in and out of the public transport system. In the same vein, a new project for road safety offenders is being developed in Spain, whereby offenders shall undertake both educational courses and tasks involving cooperation in road safety activities (not yet defined), as part of a WBCO. It is expected that a large number of offenders will undertake this form of activity from 2010 onwards.

Aims of WBCOs

Although there has been ample opportunity for Parliamentary debate about the aims of WBCOs, very little has actually taken place, beyond very general statements. Aims are not literally spelled out in the Criminal Code, so in order to describe these aims, we have taken into account transcriptions of Parliamentary debates, statements by senior government officials and civil servants, official documents and legislation itself. Considering these sources, it might be stated that the aims pursued with WBCOs are the following:

a) WBCOs are intended to provide judges with an alternative to prison for some non serious offences related to both family violence and road safety.

There has recently been an increase in the punitive reaction to both family violence (2003 and 2004 reforms) and road safety offences (2007 reform). In the case of family violence, not very serious forms of physical or psychological family and gender violence, without bodily harm, are to be punished either with prison or with a WBCO. These forms of violence were, before the 2003 reform, non imprisonable misdemeanours. The legislator has seen fit to regard these offences as crimes and to increase the established penalty; but it is also clear that a less severe option than prison had to be given to judges so they could better respond to the less serious cases. Fines were ruled out because they may impact negatively upon the wellbeing of the offender's family, and treatment in the community has not traditionally been viewed as a viable alternative in itself. WBCOs were the only remaining option (Blay 2007c; Torres 2008:238).

In the case of road safety offences, speed driving, drunk driving, driving without due licence or endangering road safety are now punishable with either imprisonment or a WBCO plus a fine (arts. 379, 384, 385 CC). Speeding and driving without a licence were before the 2007 reform administrative and not criminal offences; in drunk driving WBCOs could or could not be imposed, and endangering road safety was punished with either imprisonment or a fine, to which a WBCO was added in 2007. Although it was thought appropriate to punish these crimes with prison, it was also felt necessary to provide judges with an alternative (a WBCO plus a fine) for the less serious cases.

b) Reparation is a clear aim of WBCOs. Through unpaid work that may potentially benefit the whole of the community, the offender may repair, albeit in a symbolic way, the harm done through his or her offence (Brandariz 2002:103-104). This aim has been underlined by the 15/2003 reform. This reform spelled out the possibility of work involving reparation or aid to victims of an offence of a similar nature as that committed by the offender (art. 49 CC). In senior civil servant and political discourses defending WBCOs, the element of reparation is frequently stressed.

However, in actual implementation practices the reparative element is at best tenuous and indirect¹⁰. In Catalonia reparative work with both victims of family violence or road accidents is not considered appropriate from the perspective of victims. Placements involving direct work with victims are therefore not currently sought after (Juanjo Subero, personal communication). In the rest of Spain, to our knowledge, reparation takes place when possible and the problem is that of not enough adequate placements being available (Carmen Archanco, personal communication).

c) A third aim of WBCOs is rehabilitation. Rehabilitation is established as the main aim of punishments constituting deprivation of liberty in the Constitution itself (art. 25.2 CE). This does not necessarily apply to WBCOs, because these orders do not imply a deprivation of liberty, but it has a clear influence in public discourses relating to WBCOs.

The rehabilitative content of WBCOs is stressed twofold. In the first place, it is stated that merely through avoiding the negative effects of imprisonment a WBCO has already some rehabilitative effects: it is not a 'desocialising' sanction because it preserves the family, labour and other social ties of the offender (eg. Generalitat 2007:5). In the second place, one may often find discourses linking rehabilitative or educational effects to work that implies offenders being confronted with the consequences of similar offences to those they have committed. Thus for example,

¹⁰ For example, work in the Underground system in Barcelona undertaken by road safety offenders may constitute some form of indirect reparation because it consists in tasks facilitating the mobility of citizens (Juanjo Subero, personal communication).

WBCOs were defended in Parliament for road safety offences because work with victims of road accidents may 'benefit' the offender by helping him or her realise the consequences of his or her conduct.

At a more practical level, the fact that orders are implemented by Penitentiary *Social Services*, and therefore by individuals with a strong social work, interventionist commitment, has led to the rehabilitative content or potential of orders being stressed. The pressure of numbers and the change in the profile of offenders given WBCOs are presenting challenges to this emphasis, and the balance between the various aims of the sanction and how they influence implementation practices are being reworked.

In particular, the changing role of rehabilitation. The relationship of WBCOs to rehabilitation is undergoing change. Change has been spurred on by the 2007 reform establishing WBCOs (together with a fine) as alternative punishments to prison for road safety offences. This reform has led both to an exponential increase in the number of orders and to a change in the profile of these offenders, towards a more middle class, employed, educated clientele and away from the more 'traditional' profiles related to property crime. Curiously, these two factors (numbers and profiles) have impacted in a different way in the very different realities in Catalonia and the rest of Spain, but the resulting model seems to be converging in terms of the essential elements.

This more numerous and 'normalised' population, essentially punished for minor road safety and family violence offences, is not thought of as *in need of* intervention and close supervision during compliance with the penalty. At the same time, is not thought of as *deserving* intervention. This is expressed by senior civil servants in terms of intervention not being *legitimate* in cases of very minor offences committed by 'ordinary people'. Meaningfully, the expression 'it could be us' [being currently punished with a WBCO] has come up in all interviews with senior civil servants and other agents responsible for implementation of orders, both in Catalonia and in Spain. The small percentage of WBCOs imposed in response to property offences (3.81%) is the reverse of what it was initially, and so, the argument follows, this would be the percentage in *need of and deserving* some sort of rehabilitative intervention, not the one of road safety (76.25%) and family violence (16%), more middle class clientele.

When there is need for rehabilitation, treatment as a condition of a suspended sentence, ie, the Spanish form of *probation* (Cid 2009) is deemed the appropriate response (Juanjo Subero, comunicación personal). And this is currently the focus of rehabilitative efforts, with WBCOs losing weight as a (rehabilitative) intervention and being transformed into a mere punishment, albeit a fairer one than prison. This trend is also reflected in the fact that only in the cases of *probation* is there a risk/need assessment and official research on recidivism. Similar research on WBCOs has started privately, though with public funding and support.

Additionally, it is argued that the sheer pressure of numbers, and the need to manage these numbers, does not allow for the more time consuming interventionist styles of supervision, undertaken until recently. This is reflected, for example, in larger caseloads for supervisors (from 50 to 75 offenders) and the elimination of a closure interview with the offender when the working hours have been completed.

It seems to be the case that a shift is taking place from a rehabilitative model of WBCOs to a 'fine on time' model with no rehabilitative content. This shift is related both to rising numbers, that do not allow for more time consuming interventionist supervising practices, and to the changing profile of offenders; and it has implications for the style of supervision and for the professional identities of supervisors.

Statistical data on the use and implementation of orders

a) Number of orders being imposed; offences sentenced with WBCOs

WBCOs have gone from being imposed sparingly from 1996 to 2003 (eg. they were only imposed upon 0.008 % of all offenders in 2002) to being imposed upon 45.7% of all individuals being sentenced in 2008 (excluding misdemeanours). In 2008 they constituted 25.88% of all (principal) criminal sanctions imposed in Spain.

SANCTIONS IMPOSED (2006-2008)			
	2006	2007	2008
Prison*	80,965	121,217	117,468
Fines	41,184	96,717	139,568
WBCOs	4,841	13,803	89,774
Total penalties	126,990	213,737	346,790
Offenders sentenced	142,746	160,938	196,143

Source: Instituto Nacional de Estadística.

* Some of these prison sentences are suspended; the data reflect prison sentences before the judge decides about suspension.

Of all orders imposed in 2009, around 76% respond to road safety offences, 16% to family and gender violence and 8% to other offences (data obtained from the Catalan Justice Department and the SGIP), a similar percentage as that of 2008. So WBCOs are clearly being reserved for these two types of offence, for which they are established in the CC as direct penalties.

This distribution helps explain why WBCOs constitute 25% of orders imposed upon 45% of offenders: when imposed for road safety offences, WBCOs are imposed together with a fine; so 76% of offenders sentenced with WBCOs are also sentenced with fines.

b) Length of orders

LENGTH OF ORDERS (2008)	
>20 DAYS	21%
21-30 DAYS	48%
31-60 DAYS	25%
61+ DAYS	6%

Source: Secretaría General Instituciones Penitenciarias (SGIP), Ministerio del Interior

Almost 70 % of orders comprise 30 days or less of work. These days could legally consist of 8 working hours (so 240 hours) but in practice they consist in less than four (up to 120 hours), due to the need to adapt implementation plans to job and family responsibilities of the offenders.

Given implementation problems created by the sharp increase in the number of orders, shorter orders pose a problem of implementation in an unforeseen way. Orders shorter than 30 days of work expire within one year of being imposed by the judges, if work has not started. As we shall see, the relevant administrations are pressed in order to avoid vast numbers of orders expiring.

c) Characteristics of offenders

OFFENDERS BY SEX (2008)		
Males	83,805	93.35%
Females	5,969	6.64%
Total	89,774	100%

Source: Instituto Nacional de Estadística

Distribution of offenders by sex is roughly the same as in 2007 (with 93.26% males and 6.73% females). When compared to prison statistics, a larger percentage of women is sentenced to prison than to WBCOs: 9.17% of those sentenced to prison were females in 2008, as compared to the 6.64% of those sentenced to WBCOs. This difference deserves further attention from researchers.

NATIONALITY OF THE OFFENDER (2008)		
Spanish	64,796	72.17%
Rest EU	6,145	6.86%
Rest Europe	764	0.85%
America	13,689	15.24%
Africa	3,589	3.99%
Asia	635	0.70%
Oceania	89	0.10%
Unknown	67	0.0 %
Total	89,774	100%

Source: Instituto Nacional de Estadística

There is an overrepresentation of non Spanish individuals amongst offenders sentenced to WBCOs. This overrepresentation is recurring in other criminal justice statistics (eg. 42.6% of prison inmates being non Spanish, BIEB 2009:9), and has been accounted for elsewhere (Escobar 2009). The percentage of American offenders is striking; when asked, Justice Department civil servants relate this percentage to offenders of Latin American origin being sentenced for drunk driving, and explain it with reference to leisure related drinking habits.

Age of offenders (2008):

18-20	6,997	7.79%
21-30	31,903	35.53%
31-40	26,945	30.01%
41-50	16,273	18.12%
51-60	6,110	6.8%
61-70	1,361	1.51%
70+	277	0.3%
Unknown	108	0.12%

Source: Instituto Nacional de Estadística

WBCOs continues to be a sanction for younger offenders, with 43% of offenders being under 30 years old, and 73% being under 40 in 2008. This data, together with the small percentage of women being punished with WBCOs, could point at these orders as ‘punishment for young men’; further research ought to be undertaken in this direction.

Other data relating to the profile of offenders has been provided by a study undertaken by the SGIP, with a small sample of offenders sentenced to WBC in the first months of 2008. According to this study, around 24% of offenders hold a higher education or university degree, and almost 50% have some form of professional qualification; around 71% of offenders were employed full time (these data roughly fit with data given by the Catalan administration, albeit with slightly higher level of employment). Although more information is needed, this data seems support the ‘change in the profile of offenders’ discourse reported by both Catalan and Spanish administrations.

d) Completion rates

This has been the most difficult information to obtain and is perhaps the hardest to interpret, both because the data provided is patchy and because it is incomplete and apparently inaccurate.

SENTENCES BEING MANAGED- COMPLETION RATES (SGIP, 2009)		
Being managed	42,146	30.71%
Being implemented	13,826	10.07%
Complied with/filed off	36,824	26.84%
Pending	44,405	32.36%
Total	137,201	100%

Fuente: Secretaría General de Instituciones Penitenciarias

Of all WBCOs currently under the responsibility of the Penitentiary Social Services in all Spain except for Catalonia (137,201 in September 30 2009), 32,321 came from 2008 (orders received in 2008 but not implemented) and 104,880 came to the administration from January to 30 September 2009. 32% of these orders are waiting to be dealt with; this means no step has been taken towards implementation, including contacting the offender to interview him or her and draft an implementation plan. 30.71% of orders are being managed; this means at least that a supervisor has been assigned and that contact with the offender has been attempted, but the offender has not started working yet. 10.07% of orders are being implemented, ie, the offender is actually working. The percentage of compliance is unhelpfully recorded together with the percentage of filed orders (ie, orders which have been breached, expired, or postponed for various unknown reasons), so one cannot ascertain what proportion of that 26.84% responds to completed orders and what proportion responds to expired, breached or otherwise filed orders.

However it may be, implementation is not being undertaken at the same rate as orders are being received by the Penitentiary Social Services, so an obvious delay is taking place.

COMPLETION RATES CATALONIA 2009*	
Number of sentences received	7,740
Number of sentences started implementation	4,620 (59.68%)

*From 01/01/2009 to 31/10/2009

Data from the Catalan Justice Department is perhaps clearer. The number of orders received by this administration to implement from January 01 2009 to October 31 2009 was 7,740; the number of orders which started being implemented in the same period of time was 4,620. If we add these orders to the ones pending implementation from 2008, then the percentage of orders pending implementation is larger than the number of orders currently being implemented (60.6% pending implementation; 39.4% orders being executed in the first semester 2009, BIEB 2009:45).

Delays in both administrations represent a problem because the legal possibility of expiry of orders. It is being addressed in Catalonia through prioritising the implementation of orders in risk of expiring and contracting supervisors charged with implementing them in the shortest time possible.

Towards a measure for effectiveness

There is a widespread acknowledgment amongst senior civil servants both in the Spanish Ministry of Interior and the Catalan Justice Department that effectiveness should be measured in terms of the comparative ability of WBCOs to reduce recidivism. A wish for reconviction studies is expressed in both administrations, but no official data is recorded. In the current situation, marked by soaring numbers of orders and pressure to deliver the penalty, these studies are viewed as longer term desiderata.

In Catalonia, some studies have been undertaken by academics, albeit with Justice Department funding. Thus, Villacampa/Torres/Luque (2006:95) found a reconviction rate of 16.1% after a follow up of 4.5 and 5.5 years for offenders having served a WBCO, and a reconviction rate of 17% for those whose sentence was suspended and some obligation was imposed¹¹. No comparable control group of prison inmates or fined offenders was used, but other studies quoted by these authors point to a reconviction rate of 37.9% for offenders who have served prison sentences (Luque/Ferrer/Capdevila 2005). The most complete and reliable reconviction study unfortunately contains negligible data on WBCOs because the sample dated from 1998, when use of orders by judges was very scant (Cid 2006). A further research project is currently being undertaken which tries to evaluate in a more qualitative manner the effects of the penalty upon the offender (Contreras, in preparation).

From a more immediate perspective, a very real pressure is being put upon the relevant administrations to deliver punishments, ie, to implement the orders being passed by judges. Public documents by the governing body of the judiciary (Consejo General del Poder Judicial, CGPJ 2009:11, 14-15) and the public prosecution office (Fiscalía General del Estado, FGE 2009:887, 1047) state that a large number of orders are not implemented because they expire. Both the Catalan and the Spanish administration acknowledge a discourse amongst criminal law practitioners, including defence lawyers, about a considerable percentage of orders expiring. However, both administrations assure us that in spite of there being delays, these assertions are not accurate.

The Catalan administration detects orders in danger of reaching the time limit and channels them through a fast track so they may be enforced faster; through contracting more supervisors and through increasing caseloads. Senior civil servants ensure that orders are being enforced effectively. However, more research is needed to clarify these opposing statements.

Key developments and concerns

Soaring numbers. The most outstanding development is the sheer number of orders being passed from 2007 onwards. This increase started with the introduction of WBCOs as direct penalties for domestic and gender violence (2003, 2004) and has shot up with the establishment in December 2007 of WBCO as a direct penalty to be imposed in very frequent traffic offences.

This has led to WBCOs constituting around 25% of all penalties imposed in 2008 while 45% of the offenders sentenced in Spain received a WBCO. This means that in a few years WBCOs have ceased to be scanty applied punishments (1996-2003) to constitute a very substantial part of the working penal system. This situation makes it

¹¹ In this research reconviction is understood as a new contact with the prison administration or with the department responsible for implementation of community measures; this means that the offender has been sentenced for an offence committed after the WBCO and that the sentence is being or has been executed at the time of measurement (Villacampa/Torres/Luque 2006).

relevant to ponder about the situation of WBCOs in the system of sanctions as a whole.

Place in the penal system. Although no specific data is available, from interviews with judges and public prosecutors, WBCOs seem to be used to punish first time offenders for non serious offences. Road safety and family violence account for 96% of all orders imposed. Since legislation establishes WBCOs as direct penalties for these offences, and supervisors and researchers acknowledge very small percentages of substitution, it follows that orders are being used as direct penalties. This technically means that every time a WBCO is passed by a judge, a prison sentence (established as an alternative for the given offence in the CC) is being avoided.

However, when trying to explain the fluctuations in imprisonment rates in Spain, authors have not attributed any relevance to WBCOs, but instead relate them to changes in the Criminal Code (Cid 2008). Relatedly, as detailed earlier in this paper, the introduction of WBCOs as direct penalties has accompanied an increase in the penal response, and sometimes legitimated the possibility of imposing prison sentences for previously non imprisonable behaviours (Blay 2008:250). So if we consider the evolution of the law, we can observe that WBCOs are often being used for offences previously punished with fines or offences that were previously administrative and not criminal infractions. Thus from this point of view, it can be stated that WBCOs are having a net widening effect.

As for their role as substitutes for prison sentences, it seems that only a very small percentage of orders are used as such. Possible explanations for this scant use are offered elsewhere (Blay 2008:252), here we shall only point to the lack of tradition of utilising the substitution mechanism amongst judges, and to the long orders that would result from applying the one day imprisonment-one day of work equivalence established in the CC (art. 88 CC).

They are used as ‘soft’ punishments, and although academic commentators regard them as more severe than fines, they somehow seem to be replacing them as a credible first recourse alternative to prison. This development is both related to the problems faced by day fines as credible punishments (Cid/Larrauri 2002) and to the disregard for the punitive bite of WBCOs¹².

The pressure of numbers and the birth of a new model of implementation. The Increase in the number of orders being passed has also been accompanied by a change in the profile of offenders. These offenders tend, to a greater extent than ‘traditional’ users of the penal system, to be employed and educated, and not to present particular needs in terms of rehabilitation (or at least this is the perception in senior ranks of both administrations; thus, ‘it could be us’).

Soaring numbers have forced the correctional administration to revise implementation practices and make them more efficient¹³; and these changes have somehow been facilitated by the described change in the profile of offenders. Thus, tailor-made implementation plans have given way to more standardised practices, group

¹² The fact that public interest work might also be undertaken legally as a sanction for administrative and not criminal offences and as a substitute for local administration fines (eg. art. 93 Ordenanza Cívica de Barcelona) would support this view.

¹³ Hints have been given of the will to develop in the Catalan administration a two-tier system that would allow for a closer supervision of those offenders with needs in terms of rehabilitation and intervention and a swifter supervision for the ones who do not present such needs, which are thought of as the majority.

placements and less direct supervision by the Penitentiary Social Services during compliance.

A further change in supervision practices consists of the specialisation of WBCO supervisors in Catalonia. Until very recently, the same professionals dealt with the implementation of WBCOs, suspended sentences with treatment (probation sentences) and other community measures. The pressure of numbers and the search for more effective management has led the Justice Department to require a greater degree of specialization: there are now teams of supervisors charged exclusively with the implementation of WBCOs. These professionals have larger caseloads than the ones implementing probation orders (75 to 100 and 50 cases, respectively¹⁴), and this is justified in terms of offenders sentenced to WBCOs having less need for intervention and close supervision during compliance than other community measures. Both specialisation and increased workloads have been the result of Justice Department management demands to the agency undertaking the supervision of orders and are requirements related to contestability. These have not been welcomed by supervisors, and they seem to be interpreted as signs that they are being required to 'manage' orders rather than to supervise (social work style) offenders in the community.

Accompanying these transformations, the skills required in supervisors are also changing. New supervisors being recruited are required to be more executive and expedient than interventionist or 'carers' in style (Arnau Mateu, personal communication).

These very rapid and ongoing changes seem to be leading not only to discomfort but also to a crisis in the professional identities of these individuals, a matter that merits further research.

Albeit at a slower pace and allowing for great territorial variety in resources and sizes, similar changes seem to be taking place in the rest of Spain. Contestability is clearly rejected, and specialisation of supervisors is only taking place where the size of Penitentiary Social Services teams allow for it. However, a comparable tension between the social work drive of supervisors and the more expedient demands of senior civil servants has been voiced ('an implementation plan may be drafted by clerks, no social workers are needed'). Supervisors are being asked to implement penalties with as much efficiency as possible, and not to provide unwanted, unneeded and undeserved interventions.

It could then be tentatively suggested that soaring numbers and changing profiles have spurred the change of WBCOs from tailor-made rehabilitative interventions in the community for a population thought of as in need of intervention, towards a standardised punishment closer to a fine on time for middle class offenders.

Contestability. In Catalonia, responsibility for implementation lies in Penitentiary Social Services, located within the Justice Department. However, direct implementation has long been contracted out to a non profit making organisation in the area of Barcelona, and it shall be contracted out in all Catalonia from January 2010 onwards. These external agencies shall operate under the control and direction of the Department of Justice. This model, based on contracting out and contestability, is defended by senior civil servants in terms of effectiveness (César García, personal communication). It is thought of as a more effective form of responding to changes such as the current soaring numbers, thus allowing for rapid increases in the number of supervisors without having to follow the slow processes related to public

¹⁴ No data on the workload in Spain has been made available.

employment. Additionally, it is defended in economic and labour relations terms, as a much more flexible and cost effective system than supervision by public employees.

Contestability is perceived with discomfort by supervisors. It leads to insecurity in the work place and to increasing pressure to assume greater caseloads to meet targets set by the Justice Department. Insecurity and targets are perceived to affect the quality of the intervention, and a tension between the social work ethic of supervisors and the more managerial demands of the Justice Department seems to be developing.

Visibility. Visibility of offenders is a recent development. It currently implies offenders carrying out their work wearing bright coloured vests reading “Community services” on the back. This development is striking because pains were taken in the earlier years to protect the identity of offenders. It is explained by senior civil servants by reference to labour safety rules, that would make the wearing of vests compulsory for anyone working in certain circumstances, such as in the underground system or with a local police team. Additionally, civil servants point to the lack of social stigma associated with road safety offences, which would make it not problematic for the offenders to be seen as having been convicted.

Although it has not roused discussion, or negative attitudes by offenders, public visibility is a development to be watched. As established in the CC, WBCOs should always preserve the personal dignity of the offender (art. 49 CC), and respect for this statement should prevent these orders becoming shaming penalties.

Concluding remarks

In recent years WBCOs have evolved from a scantily used punishment to a central element in the working penal system. This role has been developed because orders are being imposed as punishments for very common driving offences, and to a lesser extent for some non serious form of family violence.

The growth in the number of orders and the perceived change in the profile of offenders being sentenced with WBCOs are leading to far reaching transformations in the implementation and supervision of orders, away from more interventionist practices towards more managerial supervision styles.

At another level, this rapid growth has not led to a reduction in the use of prison sentences; on the contrary, prison population is growing and WBCOs are often used to punish persons for offences which were not criminal offences before or were mere misdemeanours. So the expansion in the use of WBCOs is accompanying the expansion of the penal system as a whole.

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