DETENTION AT THE GOVERNMENT'S PLEASURE TREATMENT OF CRIMINAL PSYCHOPATHS IN THE NETHERLANDS

Contents

Treatment of Criminal Psychopaths in the Netherlands

I. Origin of the present treatment

'Detention at the Government's pleasure', as it is officially known in the Netherlands, is a measure[1] which may be applied by the criminal court. Statutory regulations governing this type of detention (herinafter given the Dutch abbreviation of T.B.R.) are therefore included in the Criminal Code and in implementary acts and decrees based on the Criminal Code. T.B.R. is statutorily classified under the heading relating to the 'lack of, diminished and increased responsibility for criminal behaviour'.
Section 37, para 1 of the Criminal Code provides that

'no one shall be punished for a crime for which he cannot be held responsible due to defective development or impairment of his mental faculties'.

Cases in which this provision applies are not subject to criminal jurisdiction. Thus the court refrains from sentencing the accused because he has been found to suffer from mental disturbance so severe that there can be no question of criminal responsibility. Under criminal law the accused can in no way be regarded as guilty. In such cases the court *may* order the accused to be committed to a mental hospital for a period not exceeding one year, though this period may be extended as often as required out of court under the Lunacy Act.

[1] In Dutch criminal law 'measures' are contrasted with punishment.

Soon after the Criminal Code came into force in 1886 it became apparent that further provisions for mentally disordered offenders were needed. The main objection to existing legislation was that all offenders were placed squarely in one of two categories, viz. those held *fully* responsible and those *not* held responsible at all for criminal offences. Persons falling into the first category were punished while those in the second might be committed to psychiatric hospitals. The rigid division between the two groups gave rise to practical difficulties from the very first. Courts frequently found themselves in difficulties when dealing with persons who, though not insane, had, at least in some degree, 'defective development or impairment of their mental faculties'. On the one hand such offenders could hardly be held fully responsible for their crimes but on the other there would always be a few dangerous, recalcitrant criminals among them whom society had to be adequately protected. The law as it stood did not provide for this. In 1925 a number of new provisions were made for the 'partially responsible' group of offenders in the Criminal Code. The most important of these provisions was that offenders who had 'defective development or impairment of their mental faculties' at the time of the crime, could be detained at the Government's pleasure and ordered to undergo treatment. However, this penal measure must always be definitely in the 'interests of public order'. The detention order is for a period of two years but may be extended any number of times by one or two years by the courts as required. The detention order may also be suspended.

The following sentences can now be passed on offenders found to be *not responsible at all* for their crimes:

1. discharge
2. discharge and committal to a mental hospital[2]
3. discharge and T.B.R.
4. discharge, committal to a mental hospital and T.B.R.

Offenders with diminished responsibility for their crimes *must* be given a penal sentence. The judge may order T.B.R. as well, if the protection of society warrants it. For each separate case it must be

[2] The Criminal Code still contains this outdated name. Nowadays it is called a psychiatric hospital or centre.

ascertained to what extent the offender's mental disorder admits of responsibility for the crime and what punishment will apply. *Punishment must be imposed according to the degree of guilt.* However, while the 'Psychopath Acts' were still being prepared protests were already being lodged against the compulsory imposition of punishment in addition to the T.B.R. It was held that either a punishment or a committal order should be imposed and that the choice should be governed by considerations of effectiveness. In 1972 the Minister of Justice presented to the Second Chamber of the States General a 'Memorandum on Detention at the Government's Pleasure', proposing that courts be granted statutory authority to refrain from imposing an additional punitive sentence when a committal order is to be made. In practice complications are currently arising, particularly when the committal follows a long prison sentence. Such situations are of no benefit to the mentally disturbed offender in need of help.

ii. The nature of T.B.R.

As the foregoing indicates, T.B.R. meets two distinct needs, the protection of society from sometimes serious crimes committed by mentally disturbed offenders, and the right of the mentally ill to suitable treatment. The two interests are united in the execution of a committal order. At any rate it has become obvious that punishment alone is not an effective means of preventing crime by mentally disordered offenders, as no regard is had for cause or motivation. T.B.R. is specifically aimed at the 'special prevention' of criminal behaviour, since it endeavours by therapeutic means to set processes in motion that will allow the offender eventually to find a place in society. These processes relate not only to the offender himself but also to the environment from which he came and to which it is hoped he will return one day. Obviously, treatment usually begins by the admission of the offender to an institution. This is indicated on both therapeutic and social grounds. As will be contended at greater length later, it is most important that during the entire treatment contact with the outside world be maintained as much as possible. After all, the main purpose of a committal order – this is laid down in the Act – is to prepare the offender for his return to normal society. A prolonged stay in an institution is not conduicive to this, but unfortunately, in serious cases it cannot at present be avoided.

III. Some figures

About 40,000 criminal sentences are passed annually, and approximately 12,000 prison sentences are carried out. In recent years about 100 persons a year have been ordered to await the Government's pleasure, including a number of suspended committal orders subsequently executed. Considerably more T.B.R. orders were made in the period between 1947 and 1960 than there have been since.

Table 1. T.B.R. orders

	after dismissal of case	combined with penalty	converted suspended T.B.R. orders	Total
1965	14	128	41	183
1966	16	114	43	173
1967	16	119	29	164
1968	25	123	25	173
1969	23	87	19	129
1970	14	94	22	130
1971	10	114	15	140
1972	11	89	14	114
1973	12	73	10	95
1974	16	70	14	100
1975	19	68	10	97
1976	18	78	8	104

IV. The Offender

Offenders detained under a committal order may be divided into two categories according to their criminal past. On the one hand there are the *habitual offenders,* receiving a T.B.R. order not only on account of their latest crimes but also for a string of previous offences. The other group comprises the *first offenders,* those committed after their first offence; they are in the minority. Both groups consist almost exclusively of aggressive offenders guilty of serious crime. The group of habitual offenders also contains offenders against property and sexual offenders, giving us three groups altogether.

Table 2 compares the composition of the categories. (It should be noted that the figures are drawn up on the basis of the criminal

offences for which the T.B.R. order was imposed. The offenders' 'criminality' is actually many-sided.)

Table 2. Offenders on committal orders detained in institutions from 1971 to 1975, classified according to the offence

	Offences against property		Crimes of violence		Sexual offences		Other offences		Total	
	No.	%	No.	%	No.	%	No	%	No.	%
End 1971	311	43	185	26	190	26	39	5	725	100
End 1972	238	38	193	31	151	24	37	6	619	100
End 1973	182	35	191	37	130	25	16	3	519	100
End 1974	132	30	185	42	104	24	16	4	437	100
End 1975	100	25	193	47	98	24	16	4	407	100

It is clear from the foregoing that many of the offenders committed on a T.B.R. order have already served other sentences, including imprisonment. This fact often hampers effective therapy. A checkered criminal record, frequently going back to the offender's youth, does not make him pre-eminently disposed to cooperate in 'compulsory treatment' imposed, once more, by a criminal court. The offender will usually have a great aversion to the strong arm of the law and he will have to be won over before any treatment can produce results. Moreover many offenders committed for treatment find it very difficult to accept the role of patient and to admit that here is anything wrong with them. From the point of view of treatment and crime prevention it would be more efficient not to wait until other measures have proved ineffective before committing offenders for treatment. Such action would scarcely be possible, however, while the law retains the condition that the interest of public order must demand it. This imposes obvious restrictions. The law regards T.B.R. as a drastic measure and does not wish to see it treated lightly.
The term 'psychopath' is used in common parlance to denote those made subject to a T.B.R. order. Apart from its various emotional connotations this use of the word is not covered by any medical definition of the term 'psychopath'. At most the legal use of the word can be justified as denoting any offender to whom the Psychopath Acts are declared applicable, thus including those made subject to a T.B.R. order suffering from a mental disorder

other than what could be medically diagnosed as psychopathy, such as mental defectives, psychotics, neurotics, epileptics, etc. Conversely there are many psychopaths in the medical sense who are not delinquent, or at least have not been committed for treatment. A very considerable proportion of offenders committed under a T.B.R. order have developed behavioural disorders as a result of character disorders stemming from serious emotional neglect in early childhood.

V. Execution of the T.B.R. order

Altogether three authorities are concerned with the execution of a T.B.R. order: the court, the Government and the institution giving treatment.

To ensure the smoothest possible execution of the order each authority must have an appreciation of the functions of the others. There can be no effective cooperation without it.

The judiciary

The court has sole right of 'handing over' the offender. Only by a decision of the court can an offender be subjected to compulsory treatment and the court will reach that decision only after careful consideration of the relevant facts. At least once every two years, for each case, the court has to decide whether the order is to be extended. In principle, the same criteria apply as were used in the initial decision. Needless to say the offender's condition will be a major consideration and the opinion of the institution treating him will carry much weight.

The aforementioned Bill proposes several modifications to the existing system of prolonging the order. The regulations at present in force contain some obvious shortcomings, particulary where the machinery for consultation on T.B.R. extension is concerned.

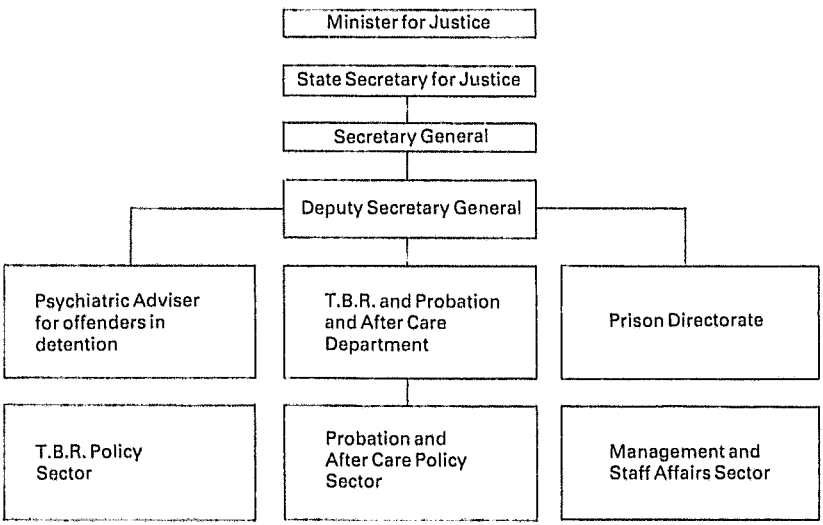
The court which made the original order is, as a *permanent* authority, also responsible for periodic decisions on whether or not to extend the term of the order. The place of detention, on the other hand, is a *variable* factor, owing to frequent transfers from one institution to another. The court has to deal with different advisers all the time, often at a considerable distance. This sometimes hampers effective communication, which is necessary, especially in the more complicated cases, in which a variety of interests and responsibilities must be given careful

consideration. The present proposal, therefore, is to have the District Court of the area in which the patient is being treated at the time deal with the matter of prolonging the detention, so that there will be closer cooperation between public prosecutor and court on the one hand and the institutions treating the patient on the other. In determining whether or not the order should be extended by a year or two, essentially the same interests are at stake as when the order was initially made. If the order is to serve a useful purpose, treatment will generally have to be continued until it can be assumed with a reasonable degree of certainty that the patient will be able to live a normal life in society without undue risk. Nor must we be blind to the magnitude of every new decision to extend an order. A basic human right is also at stake: that of individual freedom. Extensions to committal orders must therefore be accompanied by the necessary legal safeguards. With this in view the aforementioned Bill on Detention at the Goverment's Pleasure proposes that offenders in institutions, if they so wish, be allowed the services of a legal adviser when the public prosecutor applies to the court for an extension of the order. In addition, the Bill empowers the court to assign a legal adviser if the offender is without one. If the application is granted and the court orders an extended term the offender would then be able to appeal to a higher court which will centralise such appeal cases. Of course, the public prosecutor would then in his turn be able to appeal against a court decision which rejected an application that had already been granted.

The Government

The Government is solely responsible for the execution of a T.B.R. order. The task is delegated to the Minister of Justice, and special departments of the Ministry, T.B.R. Policy and the Management and Staff Affairs sector, assist him in this. This Branch, together with the Prison Service and the Probation and After-Care Branch, is part of the organisational structure of the Directorate for the Application of Criminal Law. The Minister also uses the services of a psychiatric adviser for the treatment of criminal psychopaths.

The *organisational* chart of the Ministry, in so far as it is of importance, is shown below:



The Ministry's responsibility is mainly an administrative one. The Ministry directs and controls policy-making and implementation, is responsible for continuity in the implementation of policy, takes decisions regarding the selection, admission and discharge of patients and provides the necessary financial resources. In addition, the Ministry 'keeps a record' of all the activities associated with the process of executing T.B.R. orders. In short, it is the machinery creating the right internal and external conditions to ensure the success of the measure. The Minister bears political responsibility for whatever is done on his orders in the treatment and nursing of patients.

The Institutions

The institutions treating the offender are the real implementers of a T.B.R. measure. It is their job to make the treatment meaningful, and treatment is nearly always begun with institutional care. The institutions should be regarded as a special type of psychiatric institution. They may be termed institutions of 'forensic psychiatry'.

After having been selected, offenders in detention may be placed

in one of these special institutions. Selection generally takes place at the Selection Institute in Utrecht.

There are two State institutions: the 'Dr. S. van Mesdag Clinic' in Groningen, which is the most heavily guarded centre for offenders in detention, and the 'Veldzicht' institution in Avereest There are also five private institutions which under an agreement with the Government reserve most of their capacity for offenders on unconditional detention: the 'Dr. Henri van der Hoeven Clinic' in Utrecht (the most 'closed' of the private institutions); the 'Prof. mr. W. P. J. Pompe Clinic' in Nijmegen; the 'Oldenkotte' Division of the Association of Institutions in Rekken (Vereniging Rekkense Inrichtingen) at Rekken; the 'Hoeve Boschoord' Institution for the Mentally disabled in Boschoord in the municipality of Vledder and the 'Groot Batelaar' Probation and After-Care Community which is an open centre.
The Ministry of Justice meets in full the costs of running these establishments.
The private institutions may also accept other types of patients: those conditionally pardoned or released and those sentenced by a Juvenile Court.
Sections 47 and 120 of the Prisons Act allow for those sentenced to a term in prison to be admitted to the State and private TBR establishments on the grounds of their being mentally disturbed. In addition, offenders detained unconditionally may also be assigned to psychiatric institutions in the field of general mental health care. Numerous patients are being kept at the cost of the Ministry of Justice at the state Psychiatric Institution in Eindhoven. The capacity of the private TBR establishments i.e. the total number of beds minus the capacity of the sick bay and the separation and isolation units, ranges between 35 and 85. All centres for TBR detainees have been provisionally designated as institutions within the meaning of the Exceptional Medical Expenses (Compensation) Act, whilst the 'Dr. mr. W. P. J. Pompe Clinic' in Nijmegen have been designated 'appointed institutions' within the meaning of Section 7, sub-section 2 of the Lunacy Act of 1884. Until recently the State institutions took the majority of patients although the law expresses a preference for private care.
Nowadays the balance has shifted and slightly more than 50% of those in care are in private institutions. Architecturally State institutions are reminiscent of outdated prisons. However,

extensive reconstruction and modernisation is currently taking place. In the private sector the 'Dr. Henri van der Hoeven Clinic' and the 'Prof. mr. W. P. J. Pompe Clinic' are new buildings designed to take mentally disturbed offenders and therefore meet all the requirements of modern treatment.

When institutional treatment is no longer required, care of the offender becomes the responsibility of a *rehabilitation and after-care organisation.* As far as the Government is concerned the committal order has then been suspended, but in fact extra-mural treatment is continued for a time under the guidance of the National Probation and After-Care Association which has regional rehabilitation units specialised in socio-psychiatric guidance.

VI. T.B.R. viewed as a process

As soon as a committal order becomes final, the most suitable institution for the offender is decided upon. Full particulars of each patient must be available, and since 1952 the Selection Institute in Utrecht has performed a complete clinical personality test. On the basis of its report, the Minister of Justice decides in what institution the offender shall be placed. There are no fixed norms though a number of factors are always carefully considered. They are, for instance, the diagnosis of the personality disorder, the history of the social conflicts at work, the crimes committed, the danger of escape, the threat to the community and, of course, the most suitable treatment. Patients who still constitute a serious danger to the community are in the main placed in the high-security State institutions. Patients are re-assessed and transferred at regular intervals for various reasons.

'A therapeutic environment'

Treatment in an institution is a particularly difficult and complicated business, to which a brochure such as the present cannot really do justice. One or two general remarks are perhaps called for. The principle is that forensic psychiatry provides the framework within which treatment is to take place. This means that the medical diagnosis of behavioural and personality disorders determines the therapy.

Psychiatry is continually developing and the institutions for offenders use some of the more modern methods of treatment, including various types of psycho-therapy, drug therapy, social therapy, creative therapy and movement therapy. The organisational pattern of the institutions as a social system, and the role assigned therein to the patients, are becoming increasingly important. The behavioural sciences, such as psychology and sociology, have been prime movers in the creation of institutional conditions usually termed 'therapeutic environment'. In the daily routine of the institutions the concepts of free activity, responsibility, social awareness, etc. are applied as much as possible. Understandably enough, heavy demands are made on all the staff, particularly those known as *group leaders or social therapists,* 'front line' workers in charge of the continuous supervision of groups of patients. Such staff are therefore carefully trained. They received their training in the schools of Social Work where they study psychology, psychiatry, sociology and criminology to give them a wide knowledge of the behavioural sciences which enable them to cope with their difficult work.

Progressive freedom

Working with offenders committed for treatment requires much tact and patience. Rapid results are rarely obtained. Allowance must be made for resistance on the part of the patient and repeated disappointments must not result in discouragement. Treatment is often a long process of trial and error.

In accordance with the purpose of the T.B.R. order, treatment is designed systematically to achieve social rehabilitation and the return of the patient to a normal independent life. Obviously return to normal life cannot be achieved from one moment to the next. Many of the offenders have been cut off from the outside world for years and it is highly improbable that they would be able to maintain themselves if suddenly released from the institution. For this reason a system of *progressive freedom* is regarded as part of the treatment, and is used according to the individual progress of the patient. The amount of freedom granted is gradually increased and the success or failure is checked at every stage. The possibilities include escorted leave into town or to visit relations, attending sporting or other events, visits to 'adopted' families, leave of several days' duration for

visiting friends and acquaintances, transfer to the 'open department' of the institution, employment in industry during the day, etc. If favourable results are obtained application may be made to the Ministry to authorise the granting of a *'provisional release'*, whereby a link with the institution is maintained but the patient lives more or less independently in the community. If the provisional release proves successful the committal period is conditionally terminated and the *after-care* stage begins, in which the patient receives further support and assistance from the probation and after-care service until such time as the judicial authorities decide that the order need no longer be extended.

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