

Probation by right

Recommendation to the Dutch State Secretary for Security and Justice and the Probation Services, dated 17 October 2013

Over the past years, probation and after-care service have been given a stronger judicial hallmark. In procedures concerning the imposing and executing of sanctions increased importance is attached to Probation Service advice.

Community service was given a legal basis in 2001, establishing the duties and powers of the Probation Service as the executing body for community service sanctions. The potential length of the Probation Service supervision (e.g. detention under hospital order with conditions) has increased considerably. Also for the execution of custodial sentences, the Probation Service was given important executive tasks (recommendations regarding the granting of freedoms, supervision during conditional releases). Because of these developments, the possible consequences in terms of legal status of Probation Service interference have become more radical for the justiciable person. This requires a proper legal protection for the offender.

In this recommendation, the Council discusses the question whether the legal protection of the offender links in with these developments and meets the requirements as laid down in legislation and international principles.

The Council considers that

- the offender is entitled to information on what the Probation Service is able to, is allowed to and has to do;
- the complaint scheme does not offer enough in terms of conflict settlement and error correction at a moment that this is still of importance to the client;
- further legal discourse on conflict settlement at the Probation Service is not the proper way;
- an offender equipped with more *empowerment* (information, engagement) can participate more actively in behavioural interventions, an essential condition for success in the welfare-oriented probation and after-care service.

The Council concludes from this that the offender is in need of

- a. timely mediation in matters of legal position and treatment and
- b. information, explanation, specification and support for questions he cannot or does not want to put to the Probation Service.

These needs can be met by introducing a 'person' (in practice: a number of people) who is independent from the Probation Service but has expertise in the matter. By way of comparison: detainees can turn to the commissioner of the month of the supervisory committee. The commissioner of the month supplies the detainees with information and acts as an outpost of the complaints committee.

The Council is of the opinion that questions and disputes on what the Probation Service is able to, allowed to and has to do can be treated more simply and more effectively. This means that there is profit to be achieved from this by both the Probation Service client and the organisation.

Apart from the recommendations, this advice offers an overview of the applicable legislation, the policy frameworks and instructions in the field of probation and after-care

service, criminal conditions and community service sanctions.

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The recommendation can be obtained from the secretariat of the Council
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