

How to study decision-making comparatively?

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General aims of COST

- Develop new multidisciplinary and comparative methodological approaches
- Develop overarching theoretical frameworks, concepts and models

Aim WG DM

- **Situated understanding** of DM in different jurisdictions
 - ➔ Culturally sensitive approach
- Multiple contexts of decision-making
 - Material, social, political, cultural, organizational, professional, legal aspects
- ! Relationships between different actors
 - Internal and external
- Gender, ethnicity, social position, legal status, ...

How to compare?

Qualitative research approach

- Observations, interviews, focus groups, dossier analysis....

Aim of comparative work

- **Describe** differences and similarities : → the ‘**WHAT-question**’
 - DMpractices : pre-sentencing, sentencing, implementation/release
 - DM as a process
 - Decisions are constructed during the DMprocess through the interaction of different actors
 - Use of which information of whom?
 - ! status of the information provider

Aim of comparative work

- **Understand / explain → the ‘why and how questions’**
 - Identify internal and external context factors for each case/jurisdiction
 - Holistic approach → ! Context
 - No ‘kip kap’ → intuitive aspect/ hunch / experience
- **Compare**, understand the why of the differences
- **Evaluate** the differences and similarities :
 - based on standards/principles...
 - Reductionist policy, PS as a last resort?
 - Fair treatment / procedural justice
 - Rehabilitative/ retributive / restorative policy
 -

Beyens (2000)

- **Aim** : understand the DM with regard to the ‘custody threshold’
 - When PS / non custodial sentence?
- **METHOD** : Interviews with sentencing judges (N = 35)
 - 4 **vignettes** of short fictitious cases
 - (1) Assault in family context, (2) (minor) drugs dealing, (3) burglary, (4) fraud
 - **Variation with possible relevant factors**
 - Seriousness of offence
 - Previous remand custody or alternative
 - Gender and ethnicity of offender
 - Criminal record of the offender
 - Aggravating and mitigating circumstances
 - Characteristics of the victim
 - Presence of defence solicitor/offender at the court session
 - Requisitory of prosecutor
 - Pre-sentence report, social reports, expert reports
 - Behaviour of offender during court session
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Beyens (2000)

- **Check list** with general themes
 - Socio-demographics and previous professional career
 - Aims of punishment
 - Custodial and non custodial sentence
 - Custody threshold?
 - Which offender characteristics are important?
 - What is a 'dangerous' offender?
 - Importance of the victim in the DM?
 - View on other relevant penal and external participants
 - Defence lawyer, prosecutor, public opinion, non-execution of punishment
 - What is a 'short' / long prison sentence?



Beyens (2000)

- Discursive knowledge, reasons, rational level
 - Quid tacit knowledge? → ! Observations
 - Interactions, routines, culture...
 - Quid unconsciousness??
- Influence of the judges by the aim of the research?
 - Stay rather vague on the aim of the research
- Start with the vignettes
 - Influence is undeniable
- ! Introduction and credibility, reputation of the researcher
- Difference between what they say and what they do
- Practice versus discourse



Judges' accounts (Beyens, 2000)



- **Prison sentence**

- ! Characteristics and attitudes of offender
 - **non deserving** → foreigners (no residence, culturally different, 'otherness') socially disembedded or marginalised, 'criminal' mindset, unreliable, showing no remorse
- Nature of the crime
 - violence, drugs dealing, sexual crimes...
- Absence at the court hearing → long sentence to oblige the offender to present himself
- Remand custody (cover by a prison sentence)
- Prison as a last resort → discourse...

Judges' accounts (Beyens, 2000)

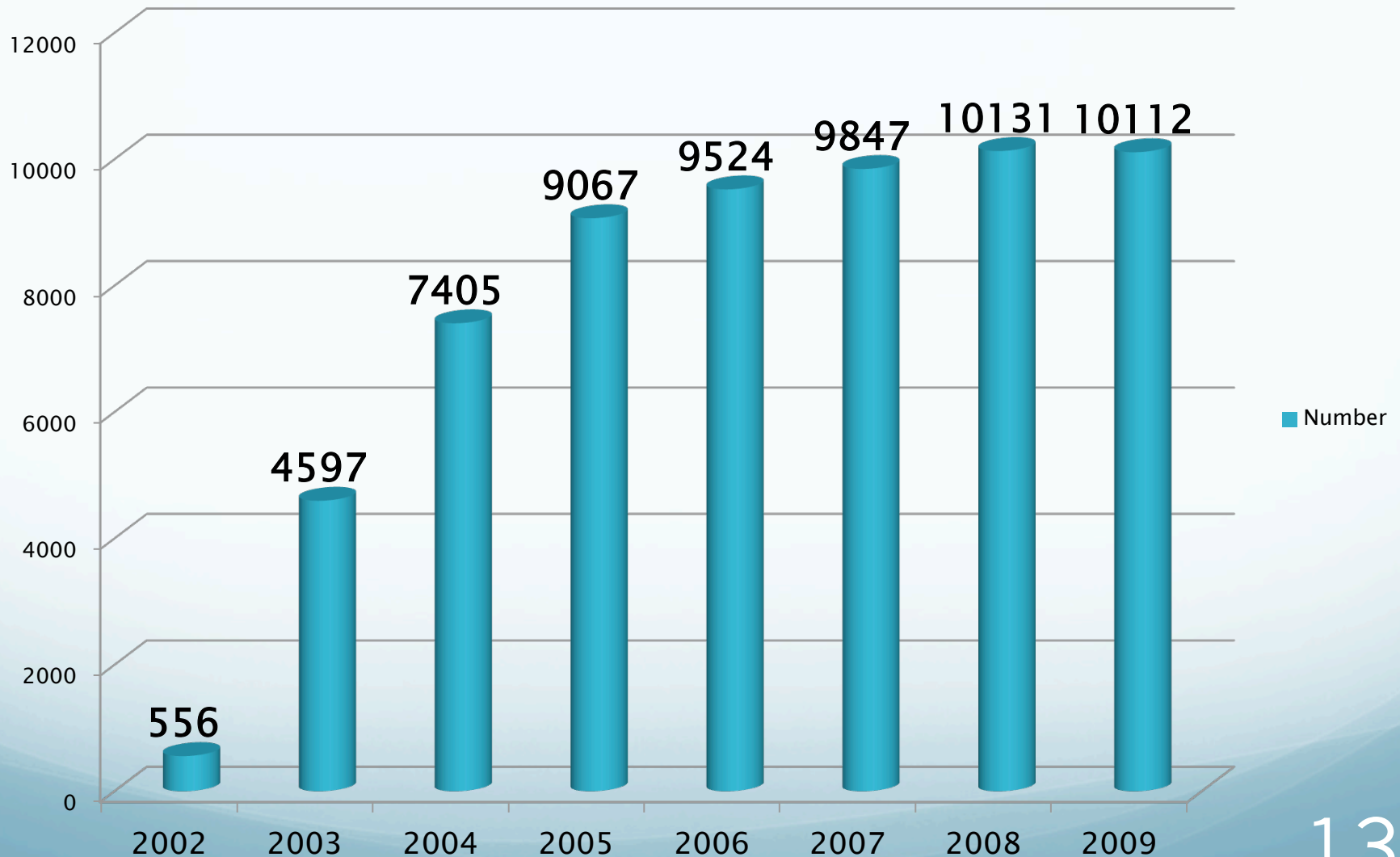


- **Community Service (probation measure)**
 - Favour, dismissive attitude, lack of “punitive bite”
 - Rehabilitative nature of probation does not fit in their classical thinking and views (retribution and deterrence)
 - ! Characteristics and attitudes of offender
 - **Deserving** → socially integrated, job, ‘redeemable’, motivated, remorseful, student, young, no ‘criminal’ mind set, reliable
 - Only minor offences
 - No criminal record
 - Presence at the court, no remand custody
 - Good, ‘credible ‘ defence lawyer, who does not plead ‘against the case’

2002 : Introduction unpaid work

- From Community service to '**Autonomous Work Penalty**'
 - Principal penalty in the penal code
 - ! Substitute for a prison sentence up to 5 years
 - 20h – 300h of unpaid work in non profit organisations
 - Up to 600h in case of criminal record
 - Wide legal application possibilities
 - Serious offences
 - 'Serious' offenders → no restrictions with regard to criminal record

Yearly number of AWP : 2002 - 2009



Lefevre 2009) : Judges' views on AWP

- 2009 : 9 interviews with judges
 - 4 vignettes (idem Beyens, 2000)
 - assault in family context
 - (minor) drugs dealing
 - Burglary
 - fraud
- AWP is not imposed in the fraud case (prison sentence and fine)

Lefevre (2008-2009) : Judges' views on AWP

- Changing discourse → AWP is no 'alternative sanction' any more but is regarded now as a retributive sentence
- Autonomous legal status as a major penalty in the penal code enhances the propensity to impose AWP
 - Legal code has an influence!
- Credibility → confidence in the execution of the AWP >< execution of imprisonment
 - Substitute prison sentence IS executed → !
Deterrence and retribution
- ! Presence at the court hearing (>< no legal obligation)

Verbist (2013): Judges' views on AWP

- 2013: Interviews with judges (N=7; N=11; total : N=18)
 - AWP more imposed than in Lefevre's and Beyens' research
 - **Important factors :**
 - Nature of the offence, criminal record, remorse, payment of the victims, age of the offender, non-execution of the short PS
 - Judges do not admit that nationality plays a role in their DM (cf. Beyens, 2000) → ! culture of equality
 - BUT : language is an important obstacle in practice
 - No AWP for fraud → PS (cf. Beyens & Lefevre)
 - Judges see the AWS as a retributive - punitive sentence
 - AWP can meet different aims : retribution, deterrence, rehabilitation, redress
 - AWP for joblessness and offenders with a job

General conclusions

- AWP has become an accepted sentencing option
- Some judges still do not use it
- ! presence of the offender in court → sign of remorse, analysis of behaviour in court (who is the offender?)
- Social reports are not regarded as a real added value
- Methodology : vignettes fit more in the reasoning of judges, who are practitioners
 - General questions do not really work

Vignettes and comparative research : some suggestions

- **Sampling** : who to include in the research?
 - Sentencing judges, defense solicitors, sentence implementation judges, ...
 - ! Access
- **Construction of vignettes → cultural sensitive vign.**
 - Choice of offences, characteristics offenders, situations,
 - Translation to local contexts
 - 'Similar' vignettes in different jurisdictions
- **Individual interviews or focus groups?**
 - Merits and disadvantages
 - Cultural acceptance and access to judges?
 - Via professional organizations?
 - Educative aspect of the research

Vignettes and comparative research : reflections

- Cross-sectional research : compare
 - **Punitiveness** : sentence severity : sentencing output
 - BUT : be very careful
 - cf. non execution of short PS in Belgium → compensation mechanisms in the sentencing phase (Beyens, Scheirs & Françoise, 2010; Beyens, Snacken & van Zyl Smith, 2013)
 - ! Imposition versus implementation → differences in sentence implementation between jurisdictions in general
 - **Reasoning, process** : what are the decisive factors → ! Discourse, process

Vignettes and comparative research : reflections

- Vignettes : imitation of real life sentencing
 - BUT : judges find it very difficult to make the exercise and emphasize the artificial nature of the interview situation
 - Look for good situations
 - Real life or constructed vignettes?
- ! Concept-equivalence
 - How are seemingly similar ideas and practices named, formed and framed in different contexts?
 - Cf. use of term 'bail', release, EM, community service etc...
 - Names reflect different values, views.
 - ! To understand the names in their local contexts before working with them in a comparative framework

Vignettes and comparative research : reflections

- To tape or not to tape?
 - Transcriptions!
 - Translations
 - Analysis
- Off tape-phenomenon

Vignettes and comparative research : reflections

- DM is a process
 - ➔ who prepares the DM?, influence of discourses and interactions with previous participants/report writers
- Cultural sensitiveness of the methodology
- ! Clear narrative about the benefits of the research (! Pepe) ➔! cooperation, acceptance, dissemination!
- Triangulation of methods, data, perspectives

Vignettes and comparative research : reflections

- How to include globalizing trends in our analysis of local – national practices
 - Study of decisions in their ‘glocal’ contexts
 - ‘glocalized practices’ as a new synthesis involving both transnational and local elements
 - European norms and regulations
- Also take the regional, interregional and national variations into account → avoid the risk of homogenisation of differences within countries
- BUT : the specific characteristics of national penal systems remain important

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