

THE COMMUNITY SERVICE ORDER IN KOREA

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The Community Service Order (CSO), which requires an offender to serve for the benefit of the community without monetary reward, is now widely available as an alternative option in sanctioning criminals in Korea. This measure endorses non-custodial sentences, allowing offenders to exercise social functions, and bringing managerial efficiency into the operation of the criminal justice system. Moreover, it is an integrated form of criminal sanction from the perspective of punishment, restitution, and reintegration, which the criminal justice system has aimed for, for a long time.

The amendment of the Juvenile Act in Dec. 1988 and the prescription of the probation Act enabled us to apply probation (CSO, Attendance Center Order (ACO), and Reg. Probation) to juveniles first, and its application was extended to adults by the revision of the Criminal Law in December 1995. It was implemented on December 1, 1998. Moreover, the fact that the CSO, which has been seen as an additional disposition of probation, only applicable to the juvenile, now is becoming a distinct and independent sanctioning device, implies significant growth and development of our criminal justice system. Since the application of the CSO, there has been remarkable development in our society. Its achievement and contribution are quite noticeable.

However, we have also witnessed many barriers that are hindering our evolutionary efforts. The major problem areas are seen in the structure of manpower, budget, service philosophy, and theoretical models. This manuscript, prepared for the 121st Training Course, discusses the CSO in Korea in the following aspects: legal basis, background, outline of the CSO, organisation, measures taken for breaches, statistics, and problems and evaluation.

A. The Legal Basis

The legal characteristics of the Community Service Order in Korea are viewed in two aspects: Juvenile Act and Criminal Law. The Community Service Order in the Juvenile Act is regulated as an additional disposition of short-term probation and regular probation sanction. (Juv. Act. Art.32-3). With a revision of the regulation, 4057, in Dec. 1988, the Juvenile Act adopted the Probation, Community Service Order, and Attendance Center Order as a part of the protective decrees in juvenile protection cases and it was activated effective on July 1, 1989.

Therefore, the major dispositions like short-term probation and regular probation sanctions are viewed as a transformed execution of criminal sanctions, and the Community Service Order as an additional disposition is also seen as a structural component of a part of them. Hence, the legal characteristics of the Community Service Order in the Juvenile Act (law) is a transformed means of the execution of criminal sanction as an additional disposition of short-term and regular probation.

The Community Service Order in Criminal Law, however, needs to be viewed in a somewhat different way. The Community Service Order in Criminal Law is not an additional disposition of probation sanction, but is seen as an equal. With the revision of regulation 5057 in December 1995, the Criminal Law adopted the following: probation to be placed on the deferred sentences, probation, Community Service Order, and Attendance Center Order in the case of the suspended sentence, and probation in the case of early released offenders. These were activated on January 1, 1997.

The Criminal Law prescribes that the cases of suspended sentence on the penal servitude and confinement can be placed on probation, Community Service Order, or Attendance Center Order (Art. 62, Sec.2-1). The Criminal Law equates the Community Service Order with probation and the attendance center order.

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Chronologically, the Community Service Order was created as an alternative form of sentence that is free from confinement, it is also subject to a guilty finding, imposing labour as an obligated condition, and revoking the suspended sentence in case of violation of the obligated condition. These are therefore seen as strong implication of sanctioning element as a transformed execution of criminal sanction.

However, this is a system that includes the combination of the suspended sentence selectively and possesses the condition of the suspended sentence and additional dispositional character. Therefore, this can't be pronounced as an independent court judgment from the suspended sentence and subject to the pronouncement simultaneously with the suspended sentence. Since it contains the character of the suspended sentence condition, a violation of a Community Service Order invites revocation of the suspended sentence and execution of the criminal sanction.

In the Juvenile Act, the Community Service Order requires the subjects to be juvenile and they should be subject to assessment as a juvenile protection case. Thus a juvenile who is indicted can't be placed on a Community Service Order. The subjects for the protection cases are juvenile delinquents and juvenile offenders. A juvenile offender is one who committed the crime as a juvenile (Juvenile Act. No. 4, Sec.1-1). They are the ones notified by the school principals, the social welfare agencies (the same Act. No. 4-3), cases referred to the juvenile court by a prosecutor who judged the crime committed deserved less than a fine or the need for a protection disposition (the same Law, No. 49), or a case that the court referred to the juvenile department due to an identification with the reason of criminal indictment (the same Law, No. 50).

Delinquent juveniles are juveniles who are identified as either those who tend to present an habitual disobedient demeanour to the guardian's supervision, a juvenile over 12 years of age who would be apprehended for the possibility of impeding criminal sanction due to behaviour influenced by personal character and his/her surrounding environment and with either conditions, or a juvenile who is referred or reported to the court by the chief of police, the school, or the director of protection facilities (The same law, No. 4, 1-3, 2, 3).

In the Juvenile Act, imposition of a Community Service Order requires the court disposition of short term probation or a regular probation sanction (Art. 32-3). For the investigation and evaluation of the protection cases, the Juvenile Department of the Family Court requires a recommendation from psychiatrists, psychologists, social workers, and other professional and the juvenile classification committee (Art. 12).

However, the Community Service Order can't be imposed in all cases of a short term and regular probation disposition but only to juveniles who are 16 years or older can be considered, at the court's discretion (Art. 32-3). Under the Criminal Law, the Community Service Order should satisfy the element of the suspended sentence of punishment. The suspended sentence of punishment should have a considerable reason for the circumstance in case of the imposition of less than 3 years of penal servitude or confinement according to the Criminal Law Art.51 sec.1. Accordingly, a fine does not qualify for a suspended sentence. There is no age limit in terms of imposing a suspended sentence. Hence, in contrast to the juvenile Act, the Community Service Order can be in a theoretical sense imposed on the juvenile whose age is under 16 years. However, because of the nature of the Community Service Order, it is not desirable for a juvenile under 16 years of age to be sentenced to a Community Service Order. In the case of the suspended sentence of punishment, the imposition of probation or Community Service Order and Attendance Center Order is applicable (Art. 62-2-1). In this regulation, a question is raised about the relation between probation and a Community Service Order and Attendance Center Order, the issue being "Is the imposition of probation a prerequisite for a Community Service Order as in the case of a juvenile?"

There is a theory that the combination of these may be necessary in the case of a suspended sentence. First, it is a view that probation only might be ineffective in the prevention of the recidivism, and Community Service Order & Attendance Center Order only may be a limited range of the execution of conditions imposed by authorities. Second, in other countries like England, the combination order was adopted in her revised Criminal Justice Act (1991). This view basically reflects the diversified aspects of penal sanctions and the judges' discretion in the disposition of criminal cases.

However, according to other practitioners of law, the above view is seen as the result of a misinterpretation of the major ground of the Community Service Order (Chung, Dong-Ki, 1997). In the Criminal Law of Korea, probation, Community Service Orders and Attendance Center Orders are an independent means of control added to the suspended sentence. The Community Service Order and Attendance Center Orders are especially burdensome to the probation service. Therefore, combining these can be exercised only if the law regulates its necessity.

As seen in England's practice of the Community Service Order, it was operated as an independent criminal sanction. Although it was later revised that the combination order can be imposed if needed (1991), there still has been argument in the practice of this as a combination order. The United States also utilizes Community Service Orders as a part of probation conditions. However, it is an issue of legal policy but not a legal interpretation.

Chung Dong-Ki, a senior prosecutor, argues that the above mentioned "a lack of prevention in recidivism and a limited execution of condition" are a matter of policy-decision issues, but not an interpretative issue of legality in the Community Service Order. He also posits the view that violent sex offenders can be good candidates for combination orders.

B. The Introduction of the Community Service Order

In Korea, probation was first legalized as a form of protective decree in juvenile protection cases by the amendment of the Juvenile Act in 1963. But it has not been fully incorporated into our legal system due to the lack of procedural regulations and organisational structure. In the late 1980s, an important transition was brought into the operation of probation as a legal system. A full revision of the Juvenile Act was completed in July 1988. The Probation Regulations were enacted by the Juvenile Act in 1988. The systematic operation of probation was enforced on delinquent juveniles along with the combination of a Community Service Order & Attendance Center Orders in 1989.

With the amendment of the Social Protection Law in 1989, the parolee from the protective custody center became a subject for probation (post release supervision). The amendment of the Punishment of Sex Offenders, and the Victim Protection Law in 1994 brought an opportunity to consider the imposition of probation to the adult criminal for the first time in our legal system. In 1995, Congress passed the revised Criminal Law concerning Probation, Community Service Orders and Attendance Center Orders. This was enacted as law on January 1, 1997 after a one year trial period of operation.

C. The Background to the Introduction of the Community Service Order

1. Why a Community Service Order was Needed?

The background that affected the birth of the Community Service Order along with the system of probation is deeply grounded in western philosophic orientations. Professionals both in the academic and the legal community began to reexamine the efficacy of our penal system as a whole in the 1980s. The major rationale behind the reflection of our criminal justice system seemed to be associated with the wide range of disillusion on the current exercise of our criminal sanctions such as penal servitude and confinement as the basic penal sanctions. More specifically by the late 1980s, it had become widely recognized that custodial sentences were generally ineffective as a deterrent against further offending and the rehabilitative efficacy of institutional treatment was increasingly questioned. Imprisonment had, moreover, been recognized as having detrimental effects upon individual offenders and their families and concern was being expressed at this time both about the levels of overcrowding in penal institutions and the high cost of maintaining the prison system.

Other movements were concern for the needs of the victim and the desire for penal sanctions to serve to reconcile victim and offender. The Community Service Order, as recommended and introduced, was the result of the confluence of these factors. The most attractive feature of the Community Service Order was the opportunity it gave for constructive activity in the form of personal service to the community and the possibility of a changed outlook on the part of the offender. It was hoped that offenders would come to see it in this light, and not as wholly negative and punitive.

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The above are reasons why the Community Service Order emerged as an attractive penal option and the process by which the Community Service Order were translated from an idea to a sentencing option.

The practical implication in the operation of the Community Service Order in our legal system aimed at the following elements:

First, the need for more stringent criminal sanctions: The Community Service Order might have been seen in the public eyes as a lenient measure against crime. At the time of an increasing crime rate, which resulted in overcrowding situations, the system required more reliable means to reduce the custodial population by which public safety may be enhanced at a measurable level.

Second, the need for reparation: Traditionally, the notion of restitution was focused on the victim him/herself, however, gradually the general notion of reparation came into practice in relation to society. Therefore, the Community Service Order is seen as a transformed restitution to the community through offenders' labour without monetary compensation.

Third, the need for reintegration and community involvement: The balance between general deterrence and rehabilitation of offenders has long been an issue in the administration of the criminal justice system. The offenders are in need of treatment in relation to the community from which he/she came. Society is also encouraged to participate in giving them opportunities for their needs. The best result anticipated would be a reconciliation of the offender and his/her community as the prime objective of the penal system. This exercise would play a leading role in delabeling the offender so that they can be grounded again in their communities. Within these perspectives, it is seen that the offenders recognize the sense of responsibilities and altruism to become a normal citizen.

From an administrative standpoint, the background on the introduction of the Community Service Order is as follows:

(i) *Failure of juvenile protection*

Since the enactment of the Juvenile Act on July 24, 1958, (No. 3047), the ideal of the Juvenile Act protection was not properly exercised by the court personnel due to a lack of understanding of the procedural regulations. For example, first, the juvenile police devised their own regulations regarding juvenile delinquents and most of them were released by the police after some counselling without referral to the juvenile court. This caused the release of juvenile delinquents unprotected by the Juvenile Protection Act. Second, the prosecution department interpreted the protection disposition as a compromising position between the suspension of indictment and sentencing by the court. This resulted in the lack of consideration for juvenile protection.

(ii) *Limited application of protection disposition*

Before the 3rd amendment of the Juvenile Act, there were six protection dispositions in the Act (Art. 30-1):

- Referral to guardian supervision (Disp. No. 1)
- Referral to juvenile protection group, temple, or church (Disp. No. 2)
- Referral to hospital or sanitarium (Disp. No. 3)
- Sending to a reformatory facility (Disp. No. 4)
- Sending to juvenile detention center (Disp. No. 5)
- Imposing probation (Disp. No. 6)

Disposition No. 4 was nullified due to the closure of the reformatory facilities in 1961. Disposition No. 2 was also rarely utilized due to the insufficient number of juvenile protection groups. Consequently only disposition No. 1 and No. 5 were utilized. This became critical in terms of the application of the juvenile protection disposition as a programme in the Juvenile Act.

(iii) *More focus on formality rather than substantive content*

The probation disposition (No. 6) was introduced at the time of the first revision of the Juvenile Act in 1963. However, the regulation concerning procedures and contents of probation was not enacted. Therefore, the court enforced rules concerning the court investigators' report as the probation disposition.

The Juvenile Judgment Rule was enacted by Supreme Court rule No. 823 on December 31, 1982. This rule regulated various procedural stages and necessary conditions to be utilized in dealing with the juvenile cases as protection dispositional sanctions. The details are discussed later in the section on procedures and contents of the Act.

From the above development, the necessity for the rearrangement of the protection disposition was discussed. Consequently, disposition No. 1, in which the juveniles were released to a crime-breeding environment without any condition, was nullified. With the disuse of disposition No. 4, disposition No. 6 was activated by adding a short-term period of probation (6 months to 2 years) along with the combination of a Community Service Order and an Attendance Center Order.

2. Supporting and Opposing Arguments to its Introduction

The Ministry of Justice held the 5th seminar on the issue of youths guiding answers in May 22, 1987, and asked professionals in various fields regarding the contents of the revised Juvenile Acts. A considerable degree of opposition was raised. At the time, the Supreme Court opposed the rearrangement of the juvenile protection disposition. The Association of Korean Lawyers suggested the following to be rearranged:

- (i) Protector guide referral disposition.
 - Group guide referral disposition
 - Probation referral disposition
- (ii) Treatment referral disposition
- (iii) Juvenile Center sending disposition

On the basis of suggestions and recommendations from professionals in academic and legal fields, the revision of the Juvenile Act was enacted in June 18, 1988. The newly revised Act was passed in congress as a new Juvenile Act (Art. No. 4057). During the process of revising the Juvenile Acts, especially juvenile disposition No. 1, the Ministry of Justice attempted to nullify No. 1 due to its ineffective administration practice, the Supreme Court and the congressional law makers committee opposed this disposition because the legal interpretation on the efficacy of this disposition was different from the Ministry of Justice. The Association of Korean Lawyers also suggested views that were incongruent with the Ministry of Justice. This was because the association believed the juveniles would be interfered by the guiding objectives toward the right direction by imposing a Community Service Order and an Attendance Center Order. The enforcement of the newly revised Juvenile Act became effective on December 31, 1989, since its enactment on July 24, 1958.

D. An Outline of the Community Service Order

1. Definition

The Community Service Order is an alternative sentence by which offenders who are sentenced to a Community Service Order work without monetary compensation at public, private or nonprofit agencies in the community for a certain period of time. They are therefore allowed an opportunity for repentance while leading a free life in lieu of incarceration.

2. Purpose

The major elements of the Community Service Order are reflected in the consolidation of punishment, reparation/ restitution and reintegration. Offenders and society both draw benefits from the Community Service Order by: providing offenders with a sense of fulfillment and satisfaction; allowing offenders an opportunity for repentance and restitution; producing budget-saving effects along with retribution effects; fostering good work ethics and self-esteem; and helping offenders return to the

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community as law-abiding citizens. Communities and victims also benefit out of the restitution paid by the offenders.

3. The Criteria for Imposing a Community Service Order

(i) The minimum age requirement for applying a Community Service Order was discussed in an earlier section of this manuscript. In relation to the age of criminal responsibility as an adult, it is not limited by law.

(ii) The number of hours of service imposed on the juvenile is different from the adult. In the Juvenile Act, the Community Service Order is no more than 200 hours in the case of probation and no more than 50 hours in the case of short-term probation. The minimum number of hours is not regulated (Art. 33-4). There are no empirically based research results determining the limit on the number of hours. However, western country practices have been employed as comparative criteria. The 50 hours or less service order is available only in regard to a short-term probation case because the probation period is only for 6 months. The number of Community Service hours is determined by the juvenile court judge when the juvenile protection disposition is determined (juvenile Judgment regulation Art. 32-1).

Under the Criminal Law, the Community Service Order is no more than 500 hours (law concerning probation Art. 52-1). The Community Service Order (in criminal law) must take into account the upper limit of 5 years for the suspended sentence.

Regarding the time limit of the Community Service Order, in the case of short-term and regular probation, the Juvenile Act requires the Community Service Order to be executed within 6 months and 2 years, respectively. If the Community Service Order is not executed within the limited time, it will expire at the end of the short-term and regular probation (Art. 33-4).

However, the juvenile court judge can extend it for one year, but only when a probation officer requests it (Art. 33-3). The Community Service Order is required to be executed within the period of the suspended sentence (Criminal Law, Art 62. Sec. 2-3). Accordingly, the case of a one year penal servitude along with 2 years suspended sentence is subject to the Community Service Order to be executed within 2 years. This stipulation might create an inefficacy in the implementation of the Community Service Order because the law emphasizes only the legal time limit rather than the realization of the substance of it.

For example, an offender, who is required to do 500 hours of Community Service within a 5 year period might request that it be delayed due to personal reasons. In this situation the major effects of a Community Service Order may be lessened because offenders are not complying with the requirements in a speedy manner, which may result in less fulfilled obligation of reparation and reintegration from the task perspective. Therefore, it is suggested that the Community Service Order needs to be executed in relation to the time limit of the suspended sentence.

(iii) Kinds of offences suitable for a Community Service Order

The rules and regulations concerning probation, Community Service Orders and Attendance Center Orders, both in criminal and juvenile cases. The following are introduced as selection criteria for those who are subject to the Community Service Order:

a) Adult offenders

1. Those who put themselves down, conduct purpose-less lives, or fail to recognize their usefulness.
2. Those who isolate him/herself from society or present a fragmented life style.
3. Those who lack the spirit of labour, lust other people's properties or receive inappropriate benefits in relation to his/her official tasks.
4. Those who drive while intoxicated, drive without a proper license, or violate the traffic rules.
5. Those whose cases are judged to be proper for the imposition of a Community Service Order.

b) Juvenile offenders

1. Those who possess a self-centered and an exclusive personality influenced by their parents over protection.
2. Those who lack the experience of destitution
3. Those who lead an idlers' life and lack the spirit of labour.
4. Those who are under the influence of an enjoyment of a decayed life and over consumption.
5. Those who are isolated from the family due to repeated misdemeanours.
6. Those whose cases are judged to be proper for a Community Service Order.

c) Inappropriate offenders

1. Those who commit a felony due to addiction to drugs and alcohol
2. Those who commit a felony by the repeated and severe use of force or sexual perversion
3. Those who are mentally ill or have severe mental retardation.
4. Those who are unable to perform the assigned tasks due to their physical disability.
5. Those who commit public safety crimes that are subject to probation.

Seen in this regard, the kinds of offences suitable for a Community Service Order are not just limited to minor offences. In the execution of the Community Service Order, it is enforced without the consent of the defendant, in our system.

(iv) Applying guidelines for the Community Service Order

In order to apply the Community Service Order to the subject, the law requires the completion of the pre-sentence investigation report on the designated subject. At the court's request, the probation officer conducts investigations on the offenders' environment and the cause of the crime. The major function of the pre-sentence investigation is to provide the sentencing authority, the court, with reference information for the imposition of the right amount of time to be served and for the individualized services. The major task of the investigation includes the records of the offender's crime and criminality, family background, educational data, employment history, financial assets, physical and mental conditions, the motive for the crime, and victim-related information. These data are obtained by means of an in depth interview, psychological test, and verification of the relevant factual information.

One of the core elements in the system of probation is how the probation guidelines are appropriately applied to the subject. Under the Juvenile Act, the Community Service Order is an additional disposition of probation and the probation guidelines are applied to the juvenile subjects too.

First of all, the subject for the Community Service Order is responsible to report his/her status to the local probation office where the subject resides within 10 days after the court disposition. Second, the subject is obligated to follow the supervising probation officers instructions regarding the execution of orders. Third, the subject should notify the supervising probation officer regarding a change of residence or travel if it is longer than one month. Fourth, the subject should follow the special conditions which the court imposes to fit the circumstances of each case.

In addition to the above conditions, the court can impose special conditions to fit the circumstances of each case, for example, visiting a pleasure street is prohibited, drinking any alcoholic beverage is prohibited, possession and using any narcotic, dangerous or restricted drugs, are prohibited, and familiar responsibilities should be maintained.

E. Enforcement Organisation

1. Agencies Responsible for the Enforcement of the Community Service Order

The Bureau of Social Protection and Rehabilitation in the Ministry of Justice is divided into 5 divisions: the protection division, the investigation division, the probation and parole division, the 1st Juvenile division, and the 2nd Juvenile division. The Bureau is functioning to accomplish the following:

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to establish comprehensive planning for social protective custody cases, and to operate the community protection committee which examines the parole of protective custody inmates. The Bureau also manages and supervises the operation for the probation offices, the parole examination committee, the juvenile training school, the juvenile classification offices, the psychiatric institution, and the Korean Rehabilitation Agency. Since the launch of the Social Protection and Rehabilitation Bureau in 1981 with the enactment of the Social Protection Law, the function of the bureau has continued to expand its services to the community-based operation of probation and parole. Currently, the Probation and Parole Division is in charge of operating the system of probation including the Community Service Order.

2. The Personnel Involved in the Monitoring of Offenders are Probation Officers

To be assigned as a probation officer, although no special qualifications are required, he/she should be competent at his assigned task with a good range of professional knowledge in various fields of social science such as criminology, criminal policy, social welfare, pedagogy, psychology that are supportive intellectual resources for the supervision duties.

Volunteers in the supervision system also take a role along with the probation officer in their assigned tasks. They are appointed by the Minister of Justice upon the recommendation of chief probation officers. Qualifications to become a volunteer include good character, high moral integrity, a sense of responsibility that promotes social betterment, good health and social service orientations.

The probation officer and volunteer are guiding those under supervision in order to promote their well-being by rehabilitating them, providing necessary support to ensure the person's self-reliance, such as helping him/her to find employment for job training and generally improving the person's environment.

3. The Types of Community Service Orders which are Currently being Implemented are as follows:

- Activities for ecological conservation such as sweeping up garbage waste.
- Services at botanical gardens such as watering flowers and tending to flowers.
- Services at libraries such as arranging books
- Services at historical sites and ancient places such as preserving and repairing the sites and guiding visitors.
- Services at judicial and correctional institutions such as directing traffic and assisting in patrols for crime prevention.
- Services at institutions for the handicapped, the elderly and the weak such as assisting the disabled.

4. Benefits from the Operation of the Community Service Order are as follows:

- It provides offenders with a sense of fulfillment and satisfaction.
- It allows offenders an opportunity for repentance and restitution.
- It fosters good work ethics and helps to recover self-esteem
- It helps offenders to return to the community as a law-abiding citizen.
- It has budget saving effects and retribution effects.

5. The site of the Community Service Order

The selection of the field and the place of the Community Service Order is determined by the probation officer on the basis of the offenders crime, the distance between work and his/her residence, and his/her familiar environment. But since the court has primary designating authority in this regard, many cases follow the court direction on the selection of work site and field.

As seen in the types of the Community Service Order above, some sites are as follows:

- Basic living aid such as wallpapering, bathing, and house cleaning for the aged living alone, the disabled or orphans.
- Social welfare facility aid, which includes helping children, senior citizens, the disabled, orphans, or eating assistance.
- Public work aid such as guidance of public order, repairing of equipment at public places like railroad stations, parks, children's playgrounds, etc.

- Rural farming and village aid by harvesting fruit and rice.
- Natural disaster recovery aid.

F. Measures Taken for Breaching the Conditions of the Community Service Order

1. The Possibility of the Revocation of the Community Service Order

The probation officer can terminate the process of the Community Service Order if those under supervision violate the condition, present a considerable reason to believe that the subject might breach the condition, show no consistent residence, fail to respond to a writ of summons, escape, or seem to escape.

Consequently, a warning, a court warrant for arrest, detention, or revocation might be activated. In detail, before a revocation, the probation officers can initiate the investigation of the breach of conditions and issue a warning. If the offender fails to comply with one or more conditions of the Community Service Order, the offender is subject to appear before the court. A judge exercises his authority to issue a warrant on the written information provided by the probation officer that the offender has failed to comply with any of the condition in the order. If the judge believes that the information is valid, he may issue a warrant for the arrest of the offender and the Community Service Order will be cancelled and the offender imprisoned.

In an urgent situation, the subject may be brought into custody without a court warrant. Those arrested should be either released or detained by the court within 48 hours.

Supervision terminates upon the occurrence of any of the following: expiry of the term of supervision, nullification of suspension of sentence, revocation of suspension of execution, revocation of parole or of early release from training school, modification of protective disposition and a decision to terminate indeterminate imprisonment.

2. The Possibility of Imposing Another Sanction

Administratively, there is no possibility of the continuation of the Community Service Order once a breach of conditions is identified by the probation office. However, only when the court is not satisfied that the offender has failed without reasonable cause to comply with the conditions of the order, the continuation of the order is possible.

3. The Possibility of Continuation

There is a possibility of imposing additional sanctions, that is, the extension of the time of the order, only when the offender commits another offence(s) during the period of the Community Service Order. Committing an additional crime requires the court to suspend the criminal disposition in Criminal Law and change the protection disposition in the juvenile Act. Consequently, the extension of the time of the order or other criminal and juvenile sanction is imposed as an additional sanction.

G. Legal Effect of the Completion of the Community Service Order

In the Juvenile Act the completion of the Community Service Order with the ending of short term or regular probation means that the Community Service Order is an additional disposition of probation. Since the closure of the major protection disposition is made, the extension or remainder of the major protection disposition is not a valid exercise. In a situation where the residual amount of time is considerable, the offender is subject to the cause of change of the protection disposition. Also, when the Probation Examination Committee orders an early discharge of the order, the Community Service Order ends the execution of the order (Juvenile Act Art. 33-4). If the early lifting of the order is cancelled, then it seems reasonable that the execution of the order resumes.

In addition, the execution of the Community Service Order ends when a change of the protection disposition is required due to the violation of any of the conditions or the possible breach of the order due to inappropriate conduct.

Under the Criminal Law, the execution of the Community Service Order ends in cases where the designated time served is incomplete even after the duration of the suspended sentence. This is because

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the Community Service Order implies the nature of an additional disposition or a conditional sanction of the suspended sentence. As indicated in Criminal Law, Art 62-2, the suspended sentence can be terminated if the offender purposely exercises negligence, malicious intention, or escapes with the purpose of postponing the execution of the ordered time. In Criminal Law, the cancellation of the suspended sentence is applicable to the offender whose breach appears to be of a serious nature only and less serious violators are not subject to this legal control. This has been raised as a legal issue in the execution of the Community Service Order. It is therefore desirable that these cases need to invite additional sanctions like a fine or detention as measures to control this problem.

H. Statistics on the Community Service Order

1. Number of Cases Imposed Since its Introduction

The Community Service Order has been a widely available sentencing option in Korea for almost 15 years. The application of this measure has been gradually increasing and by the year 1997 the number of offenders subject to Community Service Order has drastically jumped. On average, 3,000 probationers daily are assigned Community Service at 1500 sponsoring local agencies throughout the nation. The current state of Community Service Orders as of April, 2002 is as follows:

Table 1. Current Status of Community Service Order Since Its Application

Year	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	Total
Number	121	2,107	2,860	3,546	3,811	5,331	5,405	8,019	23,528	40,430	36,174	42,761	33,927	43,361	251,381

As of June, 2002, ninety seven officers, out of a total of 543 probation staff were exclusively engaged in the enforcement of this order. The major supervising force for the subjects in the field are local citizenry as volunteers. The heavy reliance on local agencies has brought various problems. First, the quality of supervision was in question due to differing degrees of the difficulty of the services asked by sponsoring institutions. Second, the sponsoring agencies are limited to certain areas of services of which the result is the work doesn't always use the skills possessed by the offender.

In order to resolve the above mentioned problem, the bureau launched a new programme entitled "The local community service center" in 5 major probation districts; Seoul, Inchon, Kwangju, Changwon and Cheju in July 2000 on a trial basis.

The Local Community Service Centers are (directly quoted from Reforms in Protection and Rehabilitation Administration in Korea, published by the Ministry of Justice, 2001) "composed of the Community Service Demand Research Department, the Community Service Order Enforcement Department, and the Volunteer Pool Management Department. The Local Community Service Center grasps the service demand either by visiting the scenes or through requests from civilians, organisations, or corporations. Confirmed service demands are then classified according to content, time, and period and are processed through the Probation Integrated Information Service and then automatically linked to the saved information on the aptitude and qualifications of the subjects under probation. In this process subjects are assigned to places or fields where services are needed.

Enforcement of Community Service Orders by Local Community Service Centers are broadly speaking, divided into 1) basic living support areas for the low income class such as house repairing, papering, and boiler construction, 2) social welfare facilities support areas such as tending to the blind and the elderly with imbecility, 3) public work support areas such as resource recycling and environmental cleaning, 4) agriculture service areas such as rice-planting and fruit harvesting, and finally 5) disaster relief activities areas such as storm, flood, heavy snow, and wood fire relief activities.

2. The Outcome of the Community Service Order

It has largely been considered to be a successful programme as an alternative sentencing option. Those who failed to comply with the conditions during the Community Service Order period were subject to warning, arrest, detention, cancellation of the suspended sentence and family protection disposition, change of protection services, or extension of time service.

Table 2. Subjects Who Poorly Performed or Violated the Order (December 2001)

		Total	Warning	Arrest	Urgent arrest	Detention	css ¹	cfpd ²	cpd ³	ets ⁴
Total		7,593	6,250	462	70	506	140	0	152	13
Juvenile	Sub total	3,061	2,365	219	38	250	26	0	151	12
	Criminal Law	681	545	48	8	55	25	0	0	0
	Juvenile Act	2,368	1,811	170	30	194	0	0	151	12
	Sex offence	12	9	1	0	1	1	0	0	0
	Domestic violence	0	0	0	0	0	0	0	0	0
Adult	Sub total	4,532	3,885	243	32	256	114	0	1	1
	Criminal Law	4,390	3,749	241	32	254	114	0	0	0
	Sex offence	33	29	2	0	2	0	0	0	0
	Domestic violence	109	107	0	0	0	0	0	1	1

1. cancellation of the suspended sentence
2. cancellation of family protection disposition
3. change of protection disposition
4. extension of time served

The majority, 35,768 (83%) out of 43,361 (2002), completed their order successfully (see Table 1). 7,593 offenders (17.5%) were returned to court for failure to comply with the requirements and had their orders revoked.

The majority of breaches occurred as a result of repeated failure to attend to work as instructed and in some cases combined with a failure on the part of the offender to notify the Community Service Order of a change of address, the execution of sentences, and other unidentified reasons.

As shown in Table 3, the failure rate is very minimal, 2.8%. This figure shows the number and the rate of the cases of recidivist after the offender completed the orders.

Table 3. Current Status of Recidivism

	2002			1989 to 2002		
	Completion	Recidivist	Rate	Completion	Recidivist	Rate
Total	38,131	846	2.2	190,111	5,311	2.8
Juvenile	8,590	510	5.9	83,535	4,236	5.1
Adult	29,541	336	1.1	106,576	1,075	1.0

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Table 4. Community Service Order by Categories of Offence (1999-2000)

Category	Year	1999	2000
		Total	35,433 (100.0)
Community Service Order	Act of Violence	9887 (27.9)	9383 (25.2)
	Larceny	6711 (18.9)	6205 (16.6)
	Sexual Perversion	1238 (3.5)	1297 (3.5)
	Robbery	1671 (4.7)	1518 (4.1)
	Hallucination Drug	975 (2.8)	1119 (3.0)
	Traffic	8363 (23.6)	10779 (28.9)
	Threat	146 (0.4)	167 (0.4)
	Fraud	2373 (6.7)	2509 (6.7)
	Environment	476 (1.3)	548 (1.5)
	Civil Disobedience	48 (0.2)	8 (0.0)
	Others	3555 (10.0)	3762 (10.0)

As shown in Table 4, out of 37,295, traffic related offences are the highest (28.9%), the next is acts of violence (25.2%) and larceny (16.6). This is similar to the previous year in number of offences. The reason we believe so many felons are given a Community Service Order is that the law aims to help offenders realize the value of hard work through participating in community services so that they can change their attitudes.

3. Category of Community Service

Information regarding the categorical classification of community service is limited to only 5 major probation districts where a new programme entitled “the local community service center” is under operation. The nationwide data by category of community service is not available. The results of the operation of the local community center from July 1, 2000, to September 30, 2001 is as follows:

Table 5. Category of Community Service (Type of Work Performed in Agency)

Classification	Total	Seoul	Inchon	Kwangju	Changwon	Cheju
Total	25,065	10,522	5,210	3,054	3,185	3,094
Basic Living Aid	5,790	1,962	994	724	843	1,267
Social Welfare Facility Aid	5,516	2,743	917	413	519	924
Public Project Aid	9,712	4,923	2,397	993	867	532
Relief Activity Aid	1,867	376	476	347	399	269
Agricultural Activity Aid	2,000	413	397	572	511	102
Volunteer Pool	180	105	29		16	

As seen in Table 5, 25,065 subjects who received the Community Service Order have been assigned to community work. Those ordered to the services are classified by the type of community service in which they were engaged in. Public work, such as parks and subway cleaning predominated. The reason for the highest number of participation in this field is that the work was available year round,

and no special qualifications was required. Practical tasks, such as domestic work (kitchen and cleaning duties), house repair, general handiwork and garden cleaning were also fairly common. Certain types of personalized work, such as care duties (bathing the old and helping out outdoor activities), driving/escorting and befriending were common too. The numbers taking part in relief and agriculture were low. This is due to the demand of services that are required in an emergency or in a particular situation focused on a short-term assignment.

Most agencies felt that the work the offenders were engaged in brought them into direct contact with their clients/users. Not surprisingly, offenders who were involved in work of a personal nature had high levels of such contact than those employed on other tasks.

Most of the agencies seemed to believe that the assistance provided by offenders on community service was of direct benefit to the individuals or groups for whom the agency provided services. Personal tasks were seen as being of more benefit than was practical work.

I. Evaluation and Future Prospects

The yearly average population of convicts in Korea is about 204,000. Sixty eight percent of those are under the supervision of the probation system. As of December 2001, 31 percent of those who are placed on probation are currently doing community service. As seen in Table 1, the number of offenders who are sentenced to Community Service has been gradually increasing since its application in December 1989. In 1997, the numbers drastically jumped and thereafter increased substantially. It can be partly accounted for by the incremental development of community service in Korea, with additional schemes being developed each year such as the Local Community Service Center. This trend indicates that prison is no longer a major reservoir for the convicts and we are at the stage of transforming our population structure into an alternative to traditional custodial measures.

Undoubtedly it is clear, almost 15 years on, that the Community Service Order as an alternative criminal sanction has more than a symbolic appeal, but has become firmly established among the repertoire of the court dispositions available in Korea's criminal justice system. The operation of the Community Service Order has greatly contributed toward the objective of reducing the prison population.

Although we have strived to focus both on the reduction of the prison population and returning offenders into the community, we have faced many challenges in this regard.

First of all, we are in need of restructuring the operating organisation by its number, manpower, budget, and theoretical models.

There are 12 main probation offices along with 16 branches in the nation. It is far short of the number of prosecutors offices. Maintaining a similar ratio between them seems to be desirable for more accountable system operation. The manpower involved in the operations, compared to the advanced countries, is in a miraculous situation. As of today, the total number of staff involved in the system is 543. The number of probation officers at rank 5 or above is only 125. The others are ranked from 9th to 6th along with the clerical staff. The average caseload per probation officer ranges from 500 to 600. The effectiveness and the efficiency of the operation of a system which largely depends on the quality of managing staff are limited to the extent in which the expectation is fulfilled. The problems mentioned above are mainly associated with two factors. First, the lack of funding from the government which is due to the government having set certain policies in terms of recruiting government officials. Each year only a few are allowed to be incremented in each department of the government. With the current rate of government incremental policy, it is almost impossible to have recruited enough qualified probation officers. Therefore, the dependency on the public sector is visibly increasing with the full recognition of the government objectives by the citizen's perspective. Second, the title of probation officer is only given to 5th rank personnel, not allowing other lower ranked staff to engage in the quality supervision of the Community Service Order. Thus, it is desirable to restructure the force of the probation officers along with the other lower ranked staff in the system operation. Therefore it must be said that the current success of the system is the result of a considerable amount of support from the local collaborating

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civilian agencies which supplied most of the major manpower resources required for in the field supervision.

Secondly, due to the government recruiting policy, probation officers must pass examinations that cover areas of knowledge in social sciences with special emphasis on Criminal Law and correctional administration. There is less emphasis on a social work orientation in the recruiting processes.

This exercise is far different from other advanced countries' recruitment policies where a stronger educational background is given to social work. Therefore, theoretical models that lead the practitioners from an ecosystem perspective which values the transaction between the individual and his/her immediate environment as a major intervening strategic tool are lacking, thus resulting in an imbalance in treating offenders.

Although it is beyond the scope of this manuscript, there are areas to be addressed as problems. Those are the definition of the concept of probation in relation to procedural rules and regulations in the enforcement of the Community Service Order in the probation system and the legislative concerns in terms of providing a precise direction for the administration regarding Community Service.

In addition to these, there are some concerns among the prosecuting attorneys led by Chung, Dong-ki, a senior prosecutor at the prosecution department, in terms of regulating the Community Service Order as a distinct and independent sanctioning means in our criminal justice system. The pros and cons are still ongoing on this issue. It is the position of the author that the Community Service Order is in need of having full legal empowerment so that the implication of this operation is accountable as originally designed in our criminal justice system. In conclusion, it is our hope that the Community Service Order as symbolic restitution, involving redress for victims, less severe sanctions for offenders, offender rehabilitation, reduction of demands on the criminal justice system, and a reduction of the need for vengeance in society, or a combination of these will be realized. We also hope that the community benefits out of the restitution paid by the offenders, offenders benefit because they are given an opportunity to rejoin their communities in law-abiding responsible roles, and the courts benefit because sentencing alternatives are provided. Achieving these hopes are our challenges and outlook for the future in the operation of the Community Service Order in our criminal justice system.

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