

# Managing and Delivering Justice in the Netherlands in the 21st Century

## Towards an Empowerment of the Judiciary

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### 1 History

#### *1.1 Phase I (1988 –1994): Decentralisation of management and the introduction of planning and control*

The changes presently taking place in the management of the Dutch Judiciary must be placed in the perspective of a development that was set in motion during the latter half of the 1980s.

The increased caseload and the first round of Dutch Government cutbacks triggered a drastic reorganisation of the Dutch judicial organisation. At that time, the judicial organisation comprising the Judiciary and the Public Prosecutions Department, and its management (personnel, offices, and finances) fell entirely under the Secretary of State for Justice.

The perception that the judicial organisation and many other implementing organisations will function better if management authority and responsibilities are placed at as low a level as possible led in 1990 to the appointment of a governing director in each district: the Director of Legal Support (DLS). This director was made head of the department of all official support personnel, and was given control of all budgets and responsibility for the other management positions. Up until then these tasks and responsibilities had been largely implemented in a classic centralist manner at the Ministry.

The Presidents of the judicial tribunals and heads of the public prosecutor's offices remained heads of the 'legal' personnel bearing responsibility for policy, i.e. the efficient running of the administration of justice and law enforcement. Other than that, there was barely any policy at all within the Judiciary. Cases were brought and handled without there being any explicit steering process.

The introduction of the DLS structure did not result in integral management in the sense that policy and management were controlled from one central point. The

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directors and their magisterial opposite numbers had to coördinate management and policy by covenant. In other words: it was a dual model.

Once the DLSs had made their entrance the Ministry of Justice substantiated the steering and accountability relationship with the districts by way of a planning and control cycle.

Although this cycle could only be maintained with the DLSs in formal terms, it quickly became clear that Presidents and Chief Public Prosecutors could by definition exert considerable influence on the management of their authorities. There was no point, for example, in making management agreements with a DLS about the number of criminal cases to be settled if the President had the final say on drawing up the court timetable.

At the same time the Ministry and the management of the PPD, at that time the meeting of Procurators-General, discovered planning and control as an instrument that could be used to steer law enforcement up to a certain level better than the circulars that were previously used. As from 1992 the national priorities of the PPD, such as fraud, traffic and the environment, formed a fixed part of the management agreements that were made annually with the Chief Public Prosecutors.

In actual practice, the steering and accountability relationship between the Ministry and the districts was extended to the Presidents and the Chief Public Prosecutors. Although they did not bear a formal responsibility for management, there was an increasing commitment to the management agreements among them. Most of the Presidents became willing to answer to the Ministry for the development of their judicial tribunal's operating performance. Appendix 2 offers an overview of the management tools used in the planning and control cycle.

## ***1.2 Phase 2 (1994 – 1998): The reorganisation of the Public Prosecutions Department***

In 1993, the public, the press, and Parliament expressed fierce criticism on the running of the Department, and this directly resulted in a reorganisation. The criticism concerned a number of releases of suspects, believed to be caused by procedural errors of the PPD. The Secretary of State for Justice set up the so-called Donner Committee, and in 1994 the Committee made the following recommendations:

- to convert the PPD into one organisation instead of the function which until then was attached to the individual courts.
- to place the policy and control under one roof both nationally and at local level instead of the existing dual model (national: meeting of Procurators General and Ministry, local: Chief Public Prosecutor and Directors of legal support).

The Committee had suffered some criticism from the Chief Public Prosecutors about the DLS structure. This may or may not have to do with people being too quick to take out their own powerlessness, fully in or part, on the – often troublesome – management apparatus. The advice of the Donner Committee was in any event logical from an integral management viewpoint.

At the beginning of 1995 a 'Committee of Procurators General' was formed on an informal basis as a national management committee of the PPD. At the same time the reorganisation of the PPD started. The planning and control cycle was being directed more and more at the Committee in its capacity as the PPD management, and much less towards the individual Chief Public Prosecutors. The Committee was accountable for the implementation of the 1997 and 1998 annual plans that received the approval of the Minister of Justice.

As from 1 January 1998 the new relationships has been settled in formal terms. The fact that the PPD's policy mandate is conferred on the Committee directly by the Minister, while the management mandate – as is the case with other justice sections – runs via the Director-General, made the new structure relatively complex:

- Policy frameworks for the PPD are laid down by the Minister of Justice; partly long-term, but in any event also annually and linked to the national budget cycle; the Committee has a policy implementation mandate.
- Management frameworks for the PPD are set by the Director-General; the Committee has a management mandate.
- At each stage of the planning and control cycle policy and management are explicitly linked to each other.
- The new Judiciary (Organisation) Act contains a number of procedural regulations for specific directives that the Minister of Justice can give to the PPD.
- The heads of the Public Prosecutor's Offices are integral managers of their offices and are as such accountable to the Committee.

### ***1.3 Phase 3 (1994 – 1998): The debate on the management of the judiciary***

Developments in the Judiciary had a different dynamic. Between 1994 and 1998, discussions took place concerning the administration and management of the administration of justice, which discussions had been prompted by several internal and external factors.

- The Hoekstra Committee was set up by the Cabinet, mainly to study the intended reorganisation of the PPD. Its report was published in 1995, and formed the main external basis for this discussion. The report proposed a type of integral management for the Judiciary, where the management of means would be assigned to management committees to be formed for every court.
- Furthermore, many Presidents had increasing doubts on the viability of the dual system. The judicial tribunals have been modernised at a fast pace over the last ten years. The link between the content and quality of the administration of justice, on the one hand, and management, on the other, has become increasingly stronger. Many members of the judiciary recognised the fact that an organisation that is already so complex can no longer be kept on course by two captains.
- Last but not least, a small, but active number of Judiciary members were aware that to a certain extent the administration of justice would have to adapt to the changing demands of society in the late 1990s. If they did not, the Judiciary

would lose its effectiveness, and eventually its legitimacy. All these factors contributed to the start of 'Project ZM (Judiciary) 2000', which also concluded that the management of the judiciary would have to be strengthened.

In view of these developments, the desirability of also introducing integral management to the judiciary and charging either the Presidents or management committees with its implementation was also subscribed to by the Presidents and the Procurators General at the Supreme Court. They did however assert that introducing integral management, and especially the duty of accountability to the Minister of Justice, would bring about considerable risks concerning the institutional independence of the Judiciary. This is why they proposed the founding of a national Council for the Administration of Justice which would, for instance, consult directly with the Lower House for the setting of the budget.

At the end of 1996, the Lower House adopted a motion where the Secretary of State for Justice was asked to set up a Committee, which would make recommendations concerning the future organisation and equipment of the Judiciary. This so-called Leemhuis Committee comprised mainly external experts, but also a number of Judiciary members. In its work, the Committee was able to use the results from discussions and reports from previous years.

The Leemhuis Committee reported in January 1998, and made the following recommendations:

- To form a Council for the Administration of Justice, which constitutes a guarantee for the institutional independence of the Judiciary;
- To join the courts and district courts in terms of management, as this increases the manageability of the administration of justice at local and national level;
- To introduce integral management in each of the courts;
- To develop a modern personnel and quality policy, and pay specific attention to improving working processes;
- To earmark 250 million Euros during the coming Parliament for improving capacity, necessary investments in information technology, and other innovative developments.

## **2 The process in 1998**

After the Dutch parliamentary elections in 1998, the report of the Leemhuis Committee played a role during the formation of the new Cabinet. The coalition agreement of August 1998 for the second Cabinet of Prime Minister Wim Kok, included the most important recommendations from the Leemhuis Committee. Due to limited financial room, the budget increase was set at 15 million Euros for 1999, rising to 65 million Euros in 2002.

In order not to lose time, officials from the Ministry of Justice organised a conference during the formation of the coalition. The conference was attended by

representatives from the Judiciary and by a number of outsiders – the implementation of the recommendations from the Leemhuis Committee was the main point on the agenda. The majority of delegates concluded that it was about time that the Judiciary itself took responsibility for this reorganisation.

In June, the first plan of action for a ‘Reinforcement of the Judicial Organisation Project’ was drawn up. It emphasised the management of courts, the implementation of a professional personnel policy, the improvement of working practices, encouragement to focus on the community, and future developments relevant to the administration of justice.

At the start of July 1998, the Presidents of the courts gave their support to this plan of action, and indicated their willingness to commission the project.

At the end of August, they appointed a ‘Core Team’ from their members, and a Project Manager who would be responsible for the further preparation of the Reinforcement of the Judicial Organisation Project.

In August, the new Justice Minister Job Cohen took office, and was given responsibility for the reorganisation of the Judiciary. On 2 September 1998, he discussed the Leemhuis Committee report with the Select Committee for Justice. He stated that he broadly subscribed to the Leemhuis recommendations, but that he wanted to incorporate them in an overall plan for the future of the administration of justice. The Justice minister gave a commitment that an ‘outline’ of the administration of justice in the 21st century would be submitted to the Lower House no later than December 1998. The plan quickly assumed the working title ‘White Paper’.

During the next few months, the Ministry of Justice worked hard on this paper. The intensive round of consultations on a draft version of the White Paper, held in November by the Justice Minister and the departmental management, was particularly important. The ‘professional body’ for the Judiciary, the Dutch Association for the Administration of Justice, held a special place in these consultations, and eventually agreed to the policy proposals contained in the White Paper.

During the same period, the Judiciary continued the planning of the Reinforcement of the Judicial Organisation Project. During the planning, there was full coordination with the Ministry of Justice, and the main points of the JIP were incorporated in the White Paper.

As promised by the Justice Minister, the final version of the White Paper was sent to the Lower House before Christmas 1998, after it had received approval from the cabinet.

### **3 Administration of Justice in the 21st century**

The policy document ‘Administration of Justice in the 21st century’, contains five central aims:

- To offer ‘tailor-made administration of justice’ to citizens, which includes room for out-of-court settlements, and alternative dispute resolution (ADR).

- To reduce the processing times, which requires specific investments in capacity and a redesign of business processes.
- To increase the accessibility of the courts, which means an increased use of modern means of communication.
- To strengthen equality before the law and unity of law, which requires the introduction of more information, registration, and expert systems.
- To stimulate the external focus of the administration of justice, which requires regular studies of how those subjected to the administration of justice rate the service.

These aims can only be achieved if the organisation of the administration of justice is strengthened. The ambitions require an organisation responsible for its own management and strong and powerful management aimed at achieving results at national and local level. The introduction of integral management in the courts and simultaneously setting up a Council for the Administration of Justice are the most important pillars of strengthening the judicial organisation.

The Council for the Administration of Justice will be the body that takes on responsibility for the Judiciary, as set out in the Reinforcement of the Judicial Organisation Project.

The details and the implementation of the reorganisation are organised along three tracks:

- First, there is the aforementioned **Reinforcement of the Judicial Organisation Project**. This comprises those elements of the reorganisation for which the Judiciary itself is responsible. The setting up of local committees, development of a personnel policy for legal personnel, and the redesign of business processes are not the type of subjects that can be detailed by civil servants behind desks.
- The future relationships between the Secretary of State for Justice, the Council for the Administration of Justice, and the management committees of courts will have to be laid down properly in an amendment of the **Judicial Organisation Act**. This should respect both ministerial responsibility for expenditure on the administration of justice, and judicial independence. Whichever way the tasks of the Council for the Administration of Justice are organised, legislation will have to answer a number of difficult questions.
- Finally, there are a number of activities within the framework of administration of justice in the 21st century that will be carried out under the direct responsibility of **departmental management**. They include preparations for setting up the Council for the Administration of Justice, the introduction of a new budget system, but also the administrative joining of courts and district courts. All of these projects will be carried out in close co-operation with the Judiciary. In some cases, these projects are led by project leaders from the Judiciary, albeit under the responsibility of civil servants.

The legislation and formal preparations are due to be completed on 1 January 2002.

#### 4 Current state of affairs

Exactly one year before this EGPA annual conference, the Justice Minister and the Lower House signalled the kick-off for the reorganisation. They were agreed that the Judiciary itself had brought the ball into play! During the past year, a number of important steps have been taken.

To start at the **political level**: In April 1999, the Lower House agreed all proposals contained in the White Paper, except for the administrative joining of courts and district courts. Initially, the majority of the Lower House feared that such administrative joining would lessen the specific qualities of the administration of justice in district courts, such as speed and accessibility. The Lower House was strengthened in this opinion by a lobby of district court judges. During a second meeting in June 1999, the Justice Minister managed to convince the Lower House that this fear was unfounded.

The important issue for the **Reinforcement of the Judicial Organisation Project** is that in March the Justice Minister laid down a set of criteria for the Programme Plan, which formulate the requirements the Programme should meet. In fact, the set of criteria draws a clear line between the political responsibilities of the Justice Minister and judicial independence.

In April, the draft programme plan and the set of criteria were approved by the Justice Minister, and sent to the Lower House. There were also extensive discussions on a covenant between the Justice Minister and the Meeting of Presidents, which would formalise the agreements on the implementation of the Programme. On 6 September 1999, all Presidents and the Justice Minister signed this covenant, which constitutes a formal accountability relationship between the 'Core team' and the Ministry of Justice.

The drafts of the **White Papers** that enable the formation of the Council for the Administration of Justice and the formation of management committees for courts are ready. They have been sent to the delegates of a major legislative conference that is to take place in mid-September. At the conference, more than 100 members of the Judiciary and other involved persons will exchange ideas on these White Papers.

In August 1999, a number of important **departmental projects** were started, including the preparations for setting up the Council for the Administration of Justice, the formation of local management committees for courts, and a new design for the budgeting system that will be applicable between the Justice Minister, the Council for the Administration of Justice, and the local management committees.

#### 5 Some conclusions

1. With the decentralisation of management and the introduction of a planning and control system, as described in Chapter 1, the foundations for the current reorganisation have been laid. The Dutch Judiciary was relatively quickly convinced of the need for these activities, but although the management of the judicial

organisation improved, the management limitations within a dual system have also been brought to light.

2. The Judiciary also appeared sensitive to external pressure for reorganisation of the DPP, and to the partly internal signals that the Administration of Justice, too, would have to adapt to a changing society. The judicial powers were not pushed on the back foot, but faced these developments in a realistic manner.
3. The preparatory process for the reorganisation meant the formation of what were often joint committees – entirely in keeping with the Dutch compromise culture. At crucial times (Hoekstra Committee and Leemhuis Committee), an external chairman and external committee members was necessary to establish a break-through in relations.
4. During the implementation of the reorganisation, the management of the process will be divided between the Ministry of Justice and the Judiciary. This unique approach requires both sides to show openness and trust, a strong awareness of their own responsibilities, and respect for the responsibilities of the other partner – this is a precarious aspect of the operation.
5. The reorganisation of the administration of justice in the Netherlands will lead to a clarification of the relationship between the Trias Politica. The strengthening of the Judiciary's responsibilities for management in particular will improve the independence, quality, and efficiency of the administration of justice.



## Appendix 1

### *An overview of the management instruments of the judicial organisation in the Netherlands*

In this appendix there will be outlined the set-up and operation of the management instruments within the judicial organisation in slightly more concrete terms. The planning and control cycle referred to in the paper plays an important role here.

It is still the case in the Judiciary that most justice is done to the principles on which the management of judicial organisation were founded at the beginning of the 1990s: *managing in outline, managing at a distance and managing according to output*. Central to this is the processing capacity of the judicial tribunals. The cases must after all be settled within a reasonable period of time and in a manner determined by the judiciary itself.

There is generally more detailed management at the Public Prosecutions Department. The national policy priorities of the PPD in the planning and control cycle have up to now been detailed in a fairly specified manner, for instance. The public prosecutor's offices therefore not only had to hear 20% more environmental cases, but also had to apply an environmental chart, set up a local consultation structure and promote expertise. The reorganisation of the PPD did of course also lead to a recalibration of this management concept. Nowadays there is sooner a global planning in advance and a more detailed accountability afterwards.

In practice, the planning and control cycle works as follows:

- In June the substantive and budgetary frameworks for the judicial tribunals and Public Prosecutor's Offices are laid down in the 'planning and division letter'.

*This letter lays down the target levels for the development of the processing capacity of the Judiciary, the policy priorities of the Public Prosecutor's Offices are formalised and the provisional budgets for these authorities are determined. This allocation is made with the aid of an objective division system. This allocation system is intended to prevent the decentralised organisation from expending all its energy in trying to acquire resources, but to utilise the available resources as efficiently and effectively as possible.*

- During the summer months the judicial tribunals and the Public Prosecutor's Offices draw up their annual plans, based of course on the set parameters.

*It is important in this respect that the Public Prosecutions Department and the judiciary mutually co-ordinate the number of criminal cases to be heard. In the new management structure co-ordination between the judicial tribunals, Public Prosecutor's Offices and collective management department will grow in importance.*

- In the autumn consultations are held between the Ministry and the Committee of Procurators General concerning, on the one hand, and the judicial tribunals and public prosecutors offices on the other, the annual plans and the proposals for management and budget agreements being based on them.

*During these consultations the proposals are checked against the set parameters. Proposals for adjustment are submitted where necessary and possible. In some cases further consultations are held concerning co-ordination within the criminal law system.*

- In mid-December the management and budget agreements are confirmed by the Ministry and the Committee of Procurators General. This means that the judicial tribunals and the Public Prosecutor's Offices have their budgets as from 1 January of the year in question and that the way in which they are to be used is also laid down.

*The management agreements for the judicial tribunals are largely quantitative and are laid down in the 'planning and control overviews' (appendix). These provide on a single A4 page an insight into the development of what was done in the years t-1 and t, and in the proposals and agreements for the year t+1. The 'weighted production' is determined using a workload measuring system in which the various 'key products' are given a 'weighting factor'. The 'input' and 'output' comprise the absolute numbers of cases brought and settled.*

- The realisation of the management agreements is of course monitored before and after the year of implementation. For this purpose correspondence is conducted about the management reports issued by the judicial tribunals and Public Prosecutor's Offices and local consultations are held with the Presidents, other legal authorities and the directors.

*In the 'monitoring discussions' the local management gives account to a certain level for the development of the processing capacity of its tribunals. Explanations are sought for deviations from the prognosis, and it is established whether factors that can or cannot be influenced are at issue.*

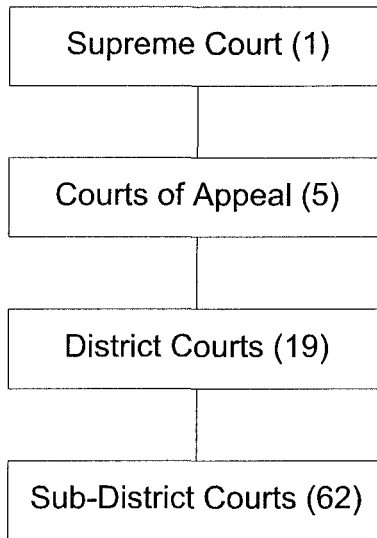
The data from this planning and control cycle lend themselves ideally to consolidation into efficiency figures at judicial budget level. The fact that Justice came second in a comparative investigation of the General Court of Auditors into the application of efficiency figures can be attributed to a significant extent to the planning and control cycle of the judicial organisation.

Giving the processing capacity and the implementation of policy priorities a central position certainly does not imply that no attention is being paid to the quality of management and administration in the management and accountability relationship.

Financial administration (the General Court of Auditors was less favourable on this point!) has in recent years been improved on a project basis, for instance. The results of this project will be embodied in frameworks. Compliance with these frameworks will be monitored through audits, possibly using the self-evaluation approach of the Netherlands Quality Institute. An approach of this nature will also be developed for other areas of administration, such as automation and security.

## Appendix II

Diagram 1



Organisation of the Courts

Diagram 2

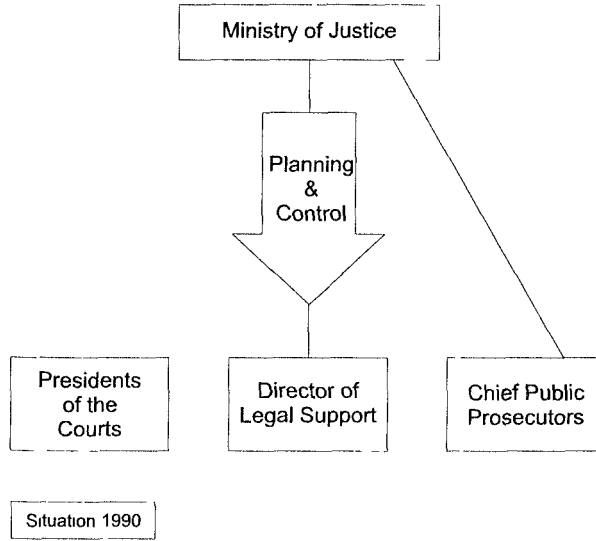


Diagram 3

