



Universiteit  
Leiden  
The Netherlands

## **Security, safety and criminal justice in the Netherlands: an organizational and legal perspective**

Muller, E.R.

### **Citation**

Muller, E. R. (2012). *Security, safety and criminal justice in the Netherlands: an organizational and legal perspective*. Deventer: Kluwer. Retrieved from <https://hdl.handle.net/1887/61498>

Version: Not Applicable (or Unknown)

License: [Leiden University Non-exclusive license](#)

Downloaded from: <https://hdl.handle.net/1887/61498>

**Note:** To cite this publication please use the final published version (if applicable).

Security, safety and criminal justice in the Netherlands:  
An organizational and legal perspective



# Security, safety and criminal justice in the Netherlands: An organizational and legal perspective

Prof. dr. E.R. Muller LLM

Cover design: Verheul Communicatie BV

ISBN: 978-90-13-10961-0  
E-book: 978-90-13-10012-9  
NUR: 823-330

© 2012, Kluwer b.v.

This publication is protected by international copyright law.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the publisher.

Author and publisher alike are entirely aware of their task of providing an as accurate possible publication. Nevertheless, they cannot accept any liability for inadequacies which might occur in this publication.

A C.I.P. Catalogue record for this book is available from the Library of Congress.

# Contents

|                                                                    |    |
|--------------------------------------------------------------------|----|
| Introduction                                                       | 13 |
| 1 Security, safety and criminal justice in the Netherlands         | 15 |
| 1.1 Security, safety and criminal justice in the Netherlands       | 15 |
| 1.2 Definitions and perspective                                    | 17 |
| 1.2.1 Definitions                                                  | 17 |
| 1.2.2 Legal and organizational perspective                         | 21 |
| 1.3 Security and safety in a democratic state                      | 22 |
| 1.4 Security system in the Netherlands                             | 25 |
| 1.5 Contents                                                       | 29 |
| 2 Ministers, mayors and municipalities                             | 31 |
| 2.1 Ministers and ministries                                       | 31 |
| 2.1.1 Organization                                                 | 31 |
| 2.1.2 Security policy and Dutch cabinets                           | 33 |
| 2.1.3 Tolerance and mildness are history                           | 44 |
| 2.1.4 National security policy                                     | 47 |
| 2.2 Mayors and municipalities                                      | 50 |
| 2.2.1 Role of municipalities and mayors in security more important | 50 |
| 2.2.2 Local security policy                                        | 53 |
| 2.3 Trends                                                         | 57 |
| 2.3.1 Complex                                                      | 57 |
| 2.3.2 Centralization                                               | 58 |
| 2.3.3 Focus on municipalities and mayors                           | 58 |
| 2.3.4 Partnerships                                                 | 59 |
| 2.3.5 Content of security policy                                   | 60 |
| Part A Criminal justice                                            | 61 |
| 3 Police and policing                                              | 63 |
| 3.1 Organization, facts and figures                                | 63 |
| 3.2 Police and Dutch society                                       | 72 |
| 3.2.1 Police in change 1977                                        | 72 |

|        |                                                                               |     |
|--------|-------------------------------------------------------------------------------|-----|
| 3.2.2  | <i>The police in evolution 2005</i>                                           | 75  |
| 3.2.3  | <i>Developments relation police and society</i>                               | 77  |
| 3.3    | Police work and accountability in the Netherlands                             | 78  |
| 3.3.1  | <i>Police care in the Netherlands</i>                                         | 79  |
| 3.3.2  | <i>Normative principles</i>                                                   | 80  |
| 3.3.3  | <i>Issues relating to accountability of the police</i>                        | 82  |
| 3.4    | Principles of proper policing                                                 | 85  |
| 3.5    | Trends in police and policing in the Netherlands                              | 88  |
| 3.5.1  | <i>Police is integrated in society</i>                                        | 88  |
| 3.5.2  | <i>Police system in constant debate and reform</i>                            | 89  |
| 3.5.3  | <i>Police is becoming a professional organization</i>                         | 91  |
| 3.5.4  | <i>Intensive cooperation with others</i>                                      | 91  |
| 3.5.5  | <i>Police has to balance due process and crime control</i>                    | 92  |
| 3.5.6  | <i>The culture of the police is crucial</i>                                   | 93  |
| 3.5.7  | <i>Content of police work more attention</i>                                  | 93  |
| 3.5.8  | <i>Police: primary focus on repression, prevention is for others</i>          | 94  |
| 3.5.9  | <i>All aspects of police work have an international dimension</i>             | 94  |
| 3.5.10 | <i>Police science has become richer</i>                                       | 95  |
| 3.6    | Closure                                                                       | 95  |
| 4      | Judiciary: Courts and Public Prosecution Service                              | 97  |
| 4.1    | Judges and law                                                                | 98  |
| 4.1.1  | <i>Structure</i>                                                              | 98  |
| 4.1.2  | <i>Administrative levels of the judiciary</i>                                 | 99  |
| 4.1.3  | <i>Criminal law</i>                                                           | 104 |
| 4.2    | Public Prosecution Service                                                    | 105 |
| 4.2.1  | <i>Organization</i>                                                           | 105 |
| 4.2.2  | <i>The Prosecution Service and criminal investigation</i>                     | 109 |
| 4.3    | Media and public prosecution                                                  | 111 |
| 4.3.1  | <i>Public Prosecution Service and the media</i>                               | 112 |
| 4.3.2  | <i>Patterns in relations with the PPS and the media</i>                       | 114 |
| 4.4    | Trends                                                                        | 115 |
| 4.4.1  | <i>The judiciary operates increasingly in close interaction with society</i>  | 116 |
| 4.4.2  | <i>The demand for justice will increase quantitatively and qualitatively</i>  | 117 |
| 4.4.3  | <i>Organization of the judiciary crucial characteristic of democratic law</i> | 118 |
| 4.4.4  | <i>Public confidence essential</i>                                            | 119 |
| 4.4.5  | <i>Judiciary develops towards a professional and modern organization</i>      | 120 |

|        |                                                                                  |     |
|--------|----------------------------------------------------------------------------------|-----|
| 4.4.6  | <i>More centralization and uniformity in management, governance and policy</i>   | 121 |
| 4.4.7  | <i>Judges and magistrates more apart</i>                                         | 122 |
| 4.4.8  | <i>Cooperation and coordination is becoming increasingly important</i>           | 123 |
| 4.4.9  | <i>Instrumentality versus legal protection</i>                                   | 123 |
| 4.4.10 | <i>Ethics, integrity and symbols as crucial values for the judiciary</i>         | 124 |
| 4.5    | <b>Conclusion</b>                                                                | 125 |
| 5      | <b>Detention, prisons and probation</b>                                          | 127 |
| 5.1    | <b>Facts and figures</b>                                                         | 127 |
| 5.2    | <b>Structure and organization</b>                                                | 129 |
| 5.2.1  | <i>Forms of detention</i>                                                        | 129 |
| 5.2.2  | <i>Prison Service</i>                                                            | 130 |
| 5.2.3  | <i>Sectors of the Dutch Prison Service</i>                                       | 132 |
| 5.2.4  | <i>Probation</i>                                                                 | 136 |
| 5.3    | <b>Trends in detention</b>                                                       | 137 |
| 5.3.1  | <i>Detention is highly dependent on societal developments</i>                    | 137 |
| 5.3.2  | <i>Changing demands for detention: need for flexibility</i>                      | 139 |
| 5.3.3  | <i>Defective knowledge of detention</i>                                          | 140 |
| 5.3.4  | <i>Detention is a highly juridical policy area</i>                               | 141 |
| 5.3.5  | <i>New attention towards recidivism</i>                                          | 141 |
| 5.3.6  | <i>Need for long term policy</i>                                                 | 143 |
| 5.3.7  | <i>The detention sector is prone to incidents</i>                                | 144 |
| 5.3.8  | <i>Functionality and safeguards</i>                                              | 145 |
| 5.3.9  | <i>Detention is an integral part of many policy chains</i>                       | 146 |
| 5.3.10 | <i>Quality of detention is an important indicator for the quality of society</i> | 148 |
| 5.4    | <b>Conclusion</b>                                                                | 149 |
| 6      | <b>Criminal investigation</b>                                                    | 151 |
| 6.1    | <b>Criminal investigation in the Netherlands</b>                                 | 152 |
| 6.2    | <b>Investigation and evidence</b>                                                | 155 |
| 6.2.1  | <i>Completing lines of investigation</i>                                         | 155 |
| 6.2.2  | <i>Classification of cases</i>                                                   | 158 |
| 6.2.3  | <i>Choice of investigation category</i>                                          | 159 |
| 6.2.4  | <i>Investigation strategy</i>                                                    | 160 |
| 6.2.5  | <i>Identification stage and evidence stage</i>                                   | 161 |
| 6.3    | <b>Organisation of the criminal investigation process</b>                        | 161 |
| 6.3.1  | <i>Centralised or decentralised</i>                                              | 161 |
| 6.3.2  | <i>General or specialist knowledge</i>                                           | 163 |



|        |                                                                                          |     |
|--------|------------------------------------------------------------------------------------------|-----|
| 6.3.3  | <i>Priorities or posteriorities</i>                                                      | 163 |
| 6.3.4  | <i>The reason for an investigation</i>                                                   | 164 |
| 6.3.5  | <i>Preparation or immediate start</i>                                                    | 165 |
| 6.3.6  | <i>Objectives</i>                                                                        | 166 |
| 6.3.7  | <i>Composition of the team</i>                                                           | 166 |
| 6.3.8  | <i>Division of tasks</i>                                                                 | 167 |
| 6.3.9  | <i>Form of management</i>                                                                | 168 |
| 6.3.10 | <i>Information transfer</i>                                                              | 168 |
| 6.3.11 | <i>Support and administrative organisation</i>                                           | 169 |
| 6.3.12 | <i>Form of direction and control</i>                                                     | 169 |
| 6.3.13 | <i>Media management</i>                                                                  | 170 |
| 6.4    | <i>Methods</i>                                                                           | 171 |
| 6.4.1  | <i>Research at and around the crime scene</i>                                            | 171 |
| 6.4.2  | <i>Neighborhood survey</i>                                                               | 172 |
| 6.4.3  | <i>Observation and posting</i>                                                           | 173 |
| 6.4.4  | <i>Composition drawing and confrontations</i>                                            | 173 |
| 6.4.5  | <i>Tapping and printing</i>                                                              | 174 |
| 6.4.6  | <i>Interrogation</i>                                                                     | 175 |
| 6.4.7  | <i>House search</i>                                                                      | 176 |
| 6.4.8  | <i>Information, knowledge and experience</i>                                             | 176 |
| 6.5    | <i>Conclusion</i>                                                                        | 177 |
| 7      | <i>Forensic investigation</i>                                                            | 179 |
| 7.1    | <i>Facts, figures and organization</i>                                                   | 179 |
| 7.1.1  | <i>Netherlands Forensic Institute</i>                                                    | 179 |
| 7.1.2  | <i>Police and forensic investigation</i>                                                 | 182 |
| 7.2    | <i>Crucial forensic cases in the Netherlands</i>                                         | 184 |
| 7.2.1  | <i>Schiedam Park Homicide</i>                                                            | 184 |
| 7.2.2  | <i>Putten Homicide Case</i>                                                              | 187 |
| 7.2.3  | <i>Programme to improve forensic investigation and prosecution</i>                       | 189 |
| 7.3    | <i>Trends in forensics</i>                                                               | 191 |
| 7.3.1  | <i>Forensic expertise very diverse</i>                                                   | 192 |
| 7.3.2  | <i>Forensic expertise independent role</i>                                               | 192 |
| 7.3.3  | <i>Clear standards for forensic experts needed</i>                                       | 193 |
| 7.3.4  | <i>Much attention has to be paid to expound and explain technical forensic knowledge</i> | 194 |
| 7.3.5  | <i>Advancing knowledge and technology should be cause for review</i>                     | 194 |
| 7.3.6  | <i>Need for more knowledge for police, judges and lawyers about forensic expertise</i>   | 194 |
| 7.3.7  | <i>More attention for processes, cooperation and management</i>                          | 195 |

|                                   |                                                                             |     |
|-----------------------------------|-----------------------------------------------------------------------------|-----|
| 7.3.8                             | <i>Contra-argumentation and review as standard</i>                          | 195 |
| 7.3.9                             | <i>Strengthen international exchange of forensic expertise</i>              | 196 |
| 7.3.10                            | <i>Forensic science has to work together more intensively</i>               | 196 |
| 7.4                               | Closure                                                                     | 197 |
| <i>Part B Security and safety</i> |                                                                             | 199 |
| 8                                 | Intelligence and security services                                          | 201 |
| 8.1                               | Introduction                                                                | 201 |
| 8.2                               | The General Intelligence and Security Service (AIVD)                        | 202 |
| 8.2.1                             | <i>Functions and tasks</i>                                                  | 202 |
| 8.2.2                             | <i>Powers and intelligence</i>                                              | 203 |
| 8.2.3                             | <i>Organization AIVD</i>                                                    | 207 |
| 8.2.4                             | <i>Intelligence and criminal investigation</i>                              | 209 |
| 8.3                               | Regional Intelligence Services                                              | 210 |
| 8.4                               | Control and supervision                                                     | 211 |
| 8.4.1                             | <i>Control</i>                                                              | 211 |
| 8.4.2                             | <i>Supervision</i>                                                          | 212 |
| 8.5                               | Trends in intelligence services                                             | 220 |
| 8.5.1                             | <i>Principles for intelligence and security services in the Netherlands</i> | 221 |
| 8.5.2                             | <i>Environment</i>                                                          | 223 |
| 8.5.3                             | <i>Powers</i>                                                               | 224 |
| 8.5.4                             | <i>Much intelligence available but sharing is difficult</i>                 | 224 |
| 8.5.5                             | <i>National cooperation</i>                                                 | 225 |
| 8.5.6                             | <i>International cooperation</i>                                            | 225 |
| 8.5.7                             | <i>Control and supervision</i>                                              | 225 |
| 8.5.8                             | <i>Organization and capacity</i>                                            | 226 |
| 8.6                               | Closure                                                                     | 226 |
| 9                                 | Public order maintenance                                                    | 227 |
| 9.1                               | Powers of public order maintenance                                          | 227 |
| 9.2                               | Policing public disorder                                                    | 233 |
| 9.2.1                             | <i>Breaking point 1966</i>                                                  | 234 |
| 9.2.2                             | <i>Hard confrontations: new breakpoints</i>                                 | 234 |
| 9.2.3                             | <i>Learning from crises</i>                                                 | 237 |
| 9.2.4                             | <i>Optimizing and anticipating the unforeseen</i>                           | 239 |
| 9.3                               | Trends in public order                                                      | 240 |
| 9.3.1                             | <i>Individualization</i>                                                    | 240 |
| 9.3.2                             | <i>Differentiation</i>                                                      | 240 |
| 9.3.3                             | <i>Intensification</i>                                                      | 241 |
| 9.3.4                             | <i>Provision of information</i>                                             | 242 |

|        |                                                                                     |     |
|--------|-------------------------------------------------------------------------------------|-----|
| 9.3.5  | <i>Transnationalization</i>                                                         | 242 |
| 9.3.6  | <i>Permissive culture</i>                                                           | 243 |
| 9.3.7  | <i>Repressive tendencies</i>                                                        | 243 |
| 9.3.8  | <i>Private and public order</i>                                                     | 244 |
| 9.3.9  | <i>From events to constellations</i>                                                | 244 |
| 9.3.10 | <i>Variation in public disorder</i>                                                 | 245 |
| 9.4    | Closure                                                                             | 247 |
| 10     | Terrorism and counter-terrorism                                                     | 249 |
| 10.1   | Introduction                                                                        | 249 |
| 10.2   | Modern terrorism                                                                    | 249 |
| 10.3   | Terrorism in the Netherlands                                                        | 254 |
| 10.4   | Counter-terrorism in the Netherlands                                                | 260 |
| 10.4.1 | <i>Before 9-11</i>                                                                  | 260 |
| 10.4.2 | <i>After 9-11</i>                                                                   | 262 |
| 10.5   | Trends in terrorism and counter-terrorism                                           | 274 |
| 10.6   | Final remarks                                                                       | 281 |
| 11     | Defence and armed forces                                                            | 283 |
| 11.1   | Introduction                                                                        | 283 |
| 11.2   | Organization of armed forces in the Netherlands                                     | 284 |
| 11.2.1 | <i>Organization</i>                                                                 | 284 |
| 11.2.2 | <i>International operations</i>                                                     | 287 |
| 11.2.3 | <i>Netherlands Defence Doctrine</i>                                                 | 288 |
| 11.2.4 | <i>National operations</i>                                                          | 292 |
| 11.2.5 | <i>Military Security and Intelligence Service</i>                                   | 293 |
| 11.3   | Armed forces in the Dutch state                                                     | 298 |
| 11.3.1 | <i>The armed forces' crucial but changing role in the state</i>                     | 298 |
| 11.3.2 | <i>Inviolability of the primacy of politics over the armed forces</i>               | 301 |
| 11.3.3 | <i>The deeply embedded loyalty of the armed forces to the state</i>                 | 302 |
| 11.3.4 | <i>The state's duty of care for the armed forces</i>                                | 304 |
| 11.3.5 | <i>Legal aspects</i>                                                                | 304 |
| 11.3.6 | <i>The military's own decision-making power relating to operational assessments</i> | 305 |
| 11.3.7 | <i>Intensive monitoring of the armed forces</i>                                     | 306 |
| 11.3.8 | <i>The crucial importance of democratic accountability</i>                          | 307 |
| 11.3.9 | <i>Internationalisation of management and control of the armed forces</i>           | 308 |
| 11.4   | Trends in military and armed forces in the Netherlands                              | 309 |
| 11.4.1 | <i>The armed forces as part of a broader security policy</i>                        | 309 |
| 11.4.2 | <i>The ever changing armed forces</i>                                               | 310 |
| 11.4.3 | <i>Fragmented management and control of the armed forces</i>                        | 310 |

|        |                                                                                                                                 |     |
|--------|---------------------------------------------------------------------------------------------------------------------------------|-----|
| 11.4.4 | <i>Managing the armed forces: an art too</i>                                                                                    | 311 |
| 11.4.5 | <i>Increasingly professional performance of the armed forces</i>                                                                | 312 |
| 11.4.6 | <i>Desirability and inevitability of the integration of the organisation and operations of the branches of the armed forces</i> | 313 |
| 11.4.7 | <i>Constant revaluation of the relationship between the armed forces and society</i>                                            | 313 |
| 12     | Emergency services and crisis management                                                                                        | 315 |
| 12.1   | Safety regions                                                                                                                  | 315 |
| 12.1.1 | <i>Act on Safety Regions</i>                                                                                                    | 315 |
| 12.1.2 | <i>Attention factors for safety regions</i>                                                                                     | 318 |
| 12.2   | Fire brigades                                                                                                                   | 320 |
| 12.2.1 | <i>Organization fire brigades</i>                                                                                               | 320 |
| 12.2.2 | <i>Trends in fire services and organization of fire brigades</i>                                                                | 321 |
| 12.3   | Medical Emergency Services                                                                                                      | 328 |
| 12.4   | Crisis en crisis management in the Netherlands                                                                                  | 330 |
| 12.4.1 | <i>Crises in Holland</i>                                                                                                        | 330 |
| 12.4.2 | <i>Crisis management in the Netherlands</i>                                                                                     | 332 |
| 12.4.3 | <i>The Dutch crisis system</i>                                                                                                  | 334 |
| 12.5   | Trends in crisis and crisis management                                                                                          | 339 |
| 12.5.1 | <i>Crises become more important</i>                                                                                             | 340 |
| 12.5.2 | <i>New and old threats</i>                                                                                                      | 340 |
| 12.5.3 | <i>Risk acceptance is lower</i>                                                                                                 | 341 |
| 12.5.4 | <i>Role of the media and communication are becoming increasingly important</i>                                                  | 341 |
| 12.5.5 | <i>Citizens have a crucial role</i>                                                                                             | 342 |
| 12.5.6 | <i>Prevention and preparation as an enabler</i>                                                                                 | 343 |
| 12.5.7 | <i>Response crucial for operational emergency services</i>                                                                      | 343 |
| 12.5.8 | <i>After-phase core of crisis management authorities</i>                                                                        | 344 |
| 13     | Trends and conclusions                                                                                                          | 345 |
| 13.1   | Trends on criminal justice, security and safety                                                                                 | 345 |
| 13.1.1 | <i>Organizations</i>                                                                                                            | 345 |
| 13.1.2 | <i>Processes</i>                                                                                                                | 349 |
| 13.2   | Trends on security, safety and criminal justice                                                                                 | 351 |
| 13.2.1 | <i>Safety, security and criminal justice will remain important</i>                                                              | 352 |
| 13.2.2 | <i>Safety and security become broader and more integrated</i>                                                                   | 353 |
| 13.2.3 | <i>Information is crucial</i>                                                                                                   | 354 |
| 13.2.4 | <i>Security and safety means management of expectations</i>                                                                     | 355 |
| 13.2.5 | <i>Security, safety and criminal justice are big business</i>                                                                   | 355 |

|         |                                                                      |     |
|---------|----------------------------------------------------------------------|-----|
| 13.2.6  | <i>Security organizations are structurally receiving more powers</i> | 356 |
| 13.2.7  | <i>Security and safety are a responsibility for everyone</i>         | 357 |
| 13.2.8  | <i>Security and safety are local and international</i>               | 359 |
| 13.2.9  | <i>Complexity and nationalization</i>                                | 360 |
| 13.2.10 | <i>Dutch security system can be improved</i>                         | 360 |
|         | Bibliography                                                         | 363 |
|         | Glossary                                                             | 381 |
|         | Author                                                               | 385 |
|         | Index                                                                | 387 |

## Introduction

Criminal justice, security and safety are crucial aspects of a democratic state. In the Netherlands these themes are subject of intensive political and public debate. These debates are mostly oriented on national aspects. But some of these debates are also relevant for other countries. Maybe other countries can learn from the problems and solutions in the Netherlands. In this book I have tried to give an overview of the main aspects of the discussions on criminal justice, security and safety in the Netherlands.

This book is mainly based on fourteen Dutch volumes edited by expert authors and myself. These fourteen volumes are Police, Armed Forces, Safety and Security, Detention, Enforcement, Judiciary, Fire Brigades, Forensic Sciences, Terrorism, Crisis, Crime, Intelligence and Security Services, Crises in the Netherlands and Risk. Many authors and editors have made important contributions to these volumes. Together these books contain more than ten thousand pages of scientific descriptions and analyses of criminal justice, security and safety in the Netherlands. I am very grateful for the time and effort of these authors and editors to write an chapter in one of the before mentioned volumes. These volumes and chapters were my main inspiration to write this book which can be seen as an overview of the insights in these volumes. Next to these volumes I used my other academic publications on security, safety and criminal justice.

The main parts of this book I wrote during a Visiting Fellowship at the Centre for Criminology at Oxford University. My stay in Oxford in 2009 was a very inspiring and life changing time. I am thankful to the director and staff of the Centre for Criminology at Oxford University for the opportunity of this Visiting Fellowship. I am grateful to my publisher Kluwer for also publishing this English book on Dutch security, safety and criminal justice.

I dedicate this book to Berber Krop, my love.

Erwin Muller

May 2012



# I Security, safety and criminal justice in the Netherlands

## 1.1 Security, safety and criminal justice in the Netherlands

Security, safety and criminal justice are key issues in an ever-changing world, also in the Netherlands. Security, safety and criminal justice in the Netherlands are prominent topics on the Dutch political and public agenda. In recent years many new safety, security and criminal justice policies have been initiated and implemented. The organizations which are concerned with criminal justice, safety and security, such as the police, the public prosecutors, the judiciary, the armed forces, the secret services and the prison services, have grown intensively. The legal authority of most of these organizations has been expanded. The extent and intensity of criminal justice, safety and security policies have a direct relationship with the quality of society. The organizations of criminal justice, security and safety have become crucial parts of the modern state.

In the Netherlands I edited fourteen Dutch volumes on security, safety and criminal justice with all kinds of different experts.<sup>1</sup> These fourteen volumes have the following titles: Police, Armed Forces, Safety and Security, Detention, Enforcement, Judiciary, Fire Brigades, Forensic Sciences, Terrorism, Crisis, Crime, Intelligence and Security Services, Crises in the Netherlands and Risk. Scholars and practitioners wrote chapters on all aspects of these topics and the relevant organizations. Each volume functions as a reference book and textbook for the study on this topic. These volumes give an overview of the current state of knowledge concerning a specific topic or organization. The authors gave insight into the history, present and future of the subject. They tried not only to give a description but also a proper analysis and vision on the topic. By integrating the available knowledge, new theoretical insights, practical guidance and future research questions are formulated. The presentation of scientific insights regarding the subject is a crucial purpose of these volumes. In doing so, the authors used the available international scientific literature.

<sup>1</sup> Muller 2004; Muller, Starink, Bosch and De Jong 2004; Muller en Vegter 2005 and 2009; Michiels en Muller, 2006; Helsloot, Muller and Berghuijs 2007; Muller and Cleiren 2007; Fijnaut, Muller, Rosenthal and Van der Torre 2007; Broeders en Muller, 2008; Muller, Rosenthal and De Wijk 2008; Muller, Rosenthal, Helsloot and Van Dijkman 2009; Muller, Van Der Leun, Moerings and Van Calster 2010; De Graaf, Muller and Van Reijn 2010; Muller 2011; Ale, Muller and Ronner 2012.



These volumes are in Dutch. The descriptions and analysis are useful for science, professions and higher education in the Netherlands. But some important aspects of these volumes should also be accessible for scientists, students and practitioners outside the Netherlands. The topics and organizations of criminal justice, safety and security in the Netherlands are relevant for other countries. To know more about criminal justice, safety and security in other countries gives scientists, students and practitioners an opportunity to reflect on these themes in their own country. The specific characteristics in the Netherlands put criminal justice, safety and security in other countries into perspective. This reflection is useful because criminal justice, safety and security will be important and crucial over the next decades.

At this moment, there are only a few recent English books on aspects of security, safety and criminal justice in the Netherlands.<sup>2</sup> In different international journals parts of criminal justice, security and safety policies and organizations in the Netherlands are described and analysed.<sup>3</sup> At this moment an integral comprehensive English book on these subjects is lacking. It is not possible to give the reader all the information that is available in aforementioned volumes. Together these volumes consist of more than 10,000 pages of information, description, analysis and scenarios. Apart from these volumes I use, in this book, other empirical academic research on security, safety and criminal justice which I performed with other scholars in the Netherlands.<sup>4</sup>

Throughout the text footnotes are placed to make clear when I cite from or base on my own (Dutch or English) published articles and books on security, safety and criminal justice in the Netherlands (sometimes with others). The footnotes “based on and cited from” refer to citation, editing and translation of my own publications. When these footnotes are used in this book quotation marks are not used. If I cite from Dutch texts the translation is my responsibility and not the translation of the original author.

In this book I present the insights which are most relevant for scientists, students and professionals outside the Netherlands. It is also a useful overview on security, safety and criminal justice for Dutch scientists, students and professionals. With this book I want to serve the following purposes:

- give an overview and analysis of the organizations of security, safety and criminal justice in the Netherlands;

2 Cachet, De Kimpe, Ponsaers e.a. 2008; Tak 2008; Tonry and Bijleveld 2007; Steden 2007; Swaaningen 2006; Jones 1995; different publications of Pakes.

3 I will refer to these international articles in the specific chapters.

4 Such as Muller 2002; Beunders and Muller 2005; De Poot, Bokhorst, Van Koppen and Muller 2004; Muller and De Roos 2006; Muller, Kummeling and Bron 2007; Muller, Rogier e.a. 2008; Muller, Brainich e.a. 2011; Muller, Zannoni e.a. 2011.

- give an overview and analyses of the policies of security, safety and criminal justice in the Netherlands;
- analyse the crucial themes in the present scientific, public and political discussions;
- analyse the dilemmas these organizations are confronted with and which may be more universal;
- formulate criticisms of and recommendations for the Dutch system of security, safety and criminal justice.

In this book I will reflect on the question of how to organize safety and security in a democratic state which wants to uphold the rule of law. In what way must the police be organised to comply with the rule of law? What is possible in a constitutional state in case of a major terrorist attack or a dramatic crisis? How independent is the judiciary and the public prosecutors in a constitutional state? What powers do the armed forces have within the state? In what way is enforcement organised? These and other questions will be addressed in this book. I focus on a legal and organizational perspective on security, safety and criminal justice in Holland.

## 1.2 Definitions and perspective

### 1.2.1 DEFINITIONS

It is necessary to give a definition of the central concepts of this book: security, safety and criminal justice. In Dutch there is only one word to describe safety and security: *veiligheid*. A well-known dichotomy in the Netherlands is that between social insecurity (threat to health and property by deliberate criminal acts of third parties) and physical insecurity (threat to health and property by all kinds of accidents). In the Netherlands it is common to describe social insecurity as a security issue and physical insecurity as a safety issue.<sup>5</sup>

The concept security is in Dutch mainly used if one wants to describe the protection against deliberate attempts of hurting someone or causing damage. Insecurity is caused by people who are intentionally trying to hurt people or cause damage to goods. Crime and terrorism are subcategories of security in this sense. Safety is used to describe the protection against accidents regardless of the source of the accident. Unsafety is caused by the risk of accidents where people or goods are involved. Disasters, accidents with hazardous material and water flooding are subcategories of safety in this sense.

<sup>5</sup> Helsloot 2004.

“Security is derived from the Latin *Securitas*, which was, since the Middle Ages, concerned with persons and goods and thus with the protection of life and property. After the Middle Ages this meaning became important. We can translate this as the protection of citizens against other citizens. This interpretation of *Securitas*, which we can call internal security, stood next to another meaning of the term. *Securitas* was for the protection of the community as a whole and thus indicative of defence, external security. Security in the sense of internal security has a double meaning: protection against fellow citizens and protection against the state. This double meaning is rooted in our legal thinking like the democratic rule of law and characteristics of the modern state concept. This leads us to the theory of social contract, in which security a central point appears to be. (...) A further elaboration on the basis of safety, security and the importance of the social contract brings us to the idea that the law in the context of security and safety should be provided by means of individual rights and legal subjectivity. Legal certainty should ensure order and peace and the law must be maintained. An analysis of the classical values of *Rechtsbruch*, efficiency, justice and legal protection supports these results: safety and security is connected with fundamental rights, the right to enforce these rights and the effective enforcement of these rights. When we talk about security, we should take this into account in our current law and policy.”<sup>6</sup>

“Security is the state of being secure, specifically freedom from fear, danger, risk, care, poverty and anxiety. Security also implies certainty. The roots of the term are in the Latin *securitas/securus*, derived from *sine* (meaning without) *cura* (care, anxiety, pains, worry). Safety is closely related to security. Safety also means freedom from danger or risk. However, it has additional connotations which have more to do with physical conditions e.g. freedom from injury, the safety of the body and property. In this context certainty refers to certainty of order, assurance and predictability.”<sup>7</sup> In this dictionary of criminology the concept of safety is not defined. Criminal justice is defined as “the process through which the state responds to behaviour that it deems unacceptable. Criminal justice is delivered through a series of stages: charge, prosecution, trial, sentence; appeal; punishment. These processes and the agencies which carry them out are referred to collectively as the criminal justice system.”<sup>8</sup>

The Oxford English dictionary gives several descriptions of the concept of security:

1. The condition of being protected from or not exposed to danger.
2. The provision or exercise of measures to ensure such safety.

<sup>6</sup> Van Zuylen 2004.

<sup>7</sup> McLaughlin and Muncie, 2006, p. 371.

<sup>8</sup> McLaughlin and Muncie, 2006, p. 94.

3. Freedom from care, anxiety or apprehension: a feeling of safety or freedom from danger.
4. Freedom from doubt; confidence, assurance.
5. The quality of being securely fixed or attached, stability.

The same dictionary gives the following descriptions of the term safety:

1. The state of being protected from or guarded against hurt or injury; freedom from danger.
2. Close custody of confinement.
3. A means or instrument of safety; a protection, a safe guard.
4. The quality of being unlikely to cause hurt or injury; the quality of not being dangerous or presenting a risk.

It is difficult to establish a single definition of security. Over the last years, many books and articles have been published on security.<sup>9</sup> Many use entirely different definitions of security, some do not define the concept at all. Zedner makes it clear that using security as a concept eases the achievement of specific goals. If a problem or a solution is put into the security perspective this leads to increased attention and increased financing possibilities. She speaks of an obsession with security.<sup>10</sup> "Security is a promiscuous concept. It is wantonly deployed in fields as diverse as social security, health and safety, financial security, policing and community safety, national security, military security, human security, environmental security, international relations and peacekeeping. For security to keep such varied bedfellows as these, it must only be promiscuous but also inconstant, appearing as different object of desire in different places at different times. Yet security wears the multiple identities so lightly it is easy to overlook the fact that it is not a single, immutable concept, but many."<sup>11</sup> Zedner distinguishes five meanings of the concept of security: security as objective state, security as subjective state, security as a pursuit, security as a practice and security as a symbol.<sup>12</sup> It is important to make clear which kind of security concept is really used. Traditional, security comes from the science of international relations but now covers almost all sciences. It is difficult to make an explicit distinction between all forms of security and insecurity.<sup>13</sup>

Safety is not a main topic in scientific research. When it is mentioned it is in the context of health safety, road safety or safety of the human body. In law, public administration and criminology the concept of safety is hardly used.

<sup>9</sup> See for example Wood and Dupont 2006; Wood and Shaering 2007; Reiner 2007; Loader 2007; Neocleous 2008; Zedner 2009.

<sup>10</sup> Zedner 2009, p. I.

<sup>11</sup> Zedner 2009, p. II.

<sup>12</sup> Zedner 2009, chapter I.

<sup>13</sup> See Gardner 2001; Hope and Sparks 2000.

Criminal justice is a widely used concept in the English scientific literature. Sometimes it refers to the specific criminal investigation processes and stages, in other situations it is concerned with organizations, agencies and institutions which are involved in crime fighting. There are many textbooks on criminal justice mostly on the criminal justice system in the UK and the USA.

There are no definitions of the main concepts in this book on which all scientists and practitioners agree.<sup>14</sup> An author has to be explicit on his own definitions and perspectives. Unlike other science, the researcher chooses his own definition in the absence of a general system of concepts. The choice for the definition of the key concepts must be explicit.<sup>15</sup>

In my view, security and safety problems are comparable. The similarities are greater than the differences. There is not only crime and nuisance, but also accidents, unsafety, disasters, threat of terrorism, possibility of an epidemic etc. They all have far-reaching consequences for the lives and welfare of citizens. These risks are a reality for the public. They do not distinguish between these risks. We need a broader concept. This is not just about whether and how one becomes a victim of crime, but also what risks people run to become victims of a terrorist attack, industrial accident or a major fire. Security and safety should then be understood as a convergence of the prevention and threatening of risks for citizens. There can only be a safe and secure situation if conceivable risks are mitigated. Not only the risks of crime, but also the risk of an attack by a terrorist organization or the risk of a major fire or disaster should be incorporated in the concept of security.

In this book I define *security and safety* as prevention and response to intentional and accidental risks for men and goods. Intentional risks are, for example, the risks of crime or a terrorist attack. Accidental risks are risks such as accidents by hazardous materials, flooding or infectious diseases. *Security* refers to intentional risks and *safety* refers to accidental risks. I do not define it as human security which refers to all risks that an individual runs. I am only concentrating on the intentional and accidental risks. I define *criminal justice* as the organizations and processes which are concerned with crime, defendants or criminals. These are, for example, the police, the Criminal Investigation Departments, the judges and the courts, the Public Prosecution Service, the Prison Service the Probation service, the criminal investigation process and the forensic investigation process. Criminal justice organizations and processes are in my definitions a substantial part of security.

<sup>14</sup> See also Den Boer and De Wilde 2008; Pieters 2006.

<sup>15</sup> King and Wincupe 2008.

## 1.2.2 LEGAL AND ORGANIZATIONAL PERSPECTIVE

In this book I use a legal and organizational perspective on security, safety and criminal justice. Law, criminology and public administration are the main scientific disciplines which I used and refer to in this book. In this legal and organizational perspective, I use the organizations that play a crucial role in security, safety and criminal justice as a starting point. These are organizations such as ministries, municipalities, mayors, police, public prosecution, courts, prisons, probation, fire services, medical assistance, inspections, enforcement agencies, intelligence and security services, armed forces and forensic investigation agencies. In this book I refer to them as security and safety organizations. With respect to these security and safety organizations in the Netherlands the following legal and organizational questions arise:<sup>16</sup>

- \* What are the powers and authorities of these organizations and their employees?
- \* What is the legal structure of the organization?
- \* What are the legal and actual goals of these organizations?
- \* What formal and actual policies do these organizations have?
- \* How are these organizations organized internally?
- \* How do these organizations cooperate with other organizations?
- \* In which network of organizations do these organizations have to act?
- \* How do these organizations function in practice?
- \* How can these organizations be controlled?
- \* How can these organizations be made accountable and monitored?
- \* What is the legitimacy of these organizations?
- \* How much legal and actual power and authority do these organizations have?

These legal and organizational questions show how security and safety policies in the Netherlands are designed. Not so much security and safety policy is the central aspect of this book, but the way security and safety organizations are dealing with insecurity and unsafety.

To deal with these subjects in the Netherlands I have divided the book into three parts. Firstly, I distinguish the crucial organizations and processes in criminal justice. Organizations such as the police, the judiciary, the public prosecution and the prison services are the main parts of the criminal justice systems.<sup>17</sup> Crucial processes such as criminal investigation and forensic investigation are also

<sup>16</sup> Based on Tsoukand and Knudsen 2003; Ferlie, Lynn and Politt 2005; Hatch and Cubnille 2006; Moran, rein and Goodin 2006; Peters and Pierre 2007; Barry and Hansen 2008; Greenwood, Oliverm Sahlin and Saddaby 2008; Bercovitch, Kremenjuk and Zartman 2009; Clegg and Cooper 2009.

<sup>17</sup> Zedner 2004.

important parts of the criminal justice system in the Netherlands. Of course criminal justice is a crucial part of security in the Netherlands. To make the book more recognizable for the reader, I describe and analyse the criminal justice organizations and processes in a separate part.

Secondly, I distinguish several other crucial security and safety aspects. Public order is the regular known order in a social system. Public order maintenance is the activity of all organizations concerned with the prevention or repression of public order disturbances. National security is concerned with the internal and external threats to the whole society such as terrorism. Crucial organizations in public order maintenance and national security are, for instance, the intelligence and security services, counter terrorism organizations and the armed forces. I also describe and analyse the specific aspect of safety in the Netherlands. In this book I limit safety to physical safety: the threat to lives and goods by external accidents such as industrial explosions or water flooding. Crises are events which deeply affect the functioning of an organization or a social system in which under uncertainty and profound time pressure major decisions have to be taken. In this book I limit myself to crises such as disasters, terrorism, public order disturbances, events, infectious diseases, water crises, food safety and international crises. Within safety, risk and crisis management organizations such as the specific ministries, fire brigades and medical emergency services are crucial.

The distinctions I make are related to the legal and organizational perspective which I use in this book. One of my purposes is to give an overview of and insight into the functioning of the many organizations in the Netherlands which have a task in security, safety and criminal justice. If one chooses a different perspective, different definitions of these concepts are possible. The definitions of security, safety and criminal justice are relative and dependent on the perspective of the specific author. There is no such thing as the ultimate definition of these concepts. The relative character of these definitions makes it necessary for authors to be explicit about their choices.

### **1.3 Security and safety in a democratic state**

Security and safety in a democratic state under rule of law have received much attention in recent years. Security and safety have become one of the main issues for the public, media and politics. Security and safety are hot and sexy items, which are attracting much attention. This is not necessarily due to the increased objective insecurity or unsafety of citizens. It does have a relationship with increased subjective insecurity and unsafety that citizens (and companies) experience. One of the most complex questions is how these subjective feelings of the public are affected. It seems that these subjective feelings are not so much

affected by their own experiences of insecurity and unsafety by the public but mainly by the images that people have via the media, stories and otherwise.

The increased attention security and safety has also increased the scientific attention.<sup>18</sup> The number of scientific publications in this field is large and still growing. Not only in criminology and law but in many fields of science, scientists focus on safety and security. Mainly the academic literature is concerned with security. Safety is hardly a topic for academic research in law, criminology and public administration.

It is currently almost impossible to provide an overview of all the different perspectives or aspects related to security issues. However, an overview of important issues in the current academic literature on security in a democratic state under the rule of law is possible. In the next chapters I will describe these developments more thoroughly. It gives the reader a first impression of the topics which I will address in describing and analysing security and safety in the Netherlands.

Much attention is paid to whether the intensity and scope of the jurisdiction, authority and powers of security organizations have been increased. Has the threat of (new) risks, such as terrorism, increased the number and nature of the powers of different security organizations? It seems certain that police, intelligence services and others have seen a strong increase in the number of powers in recent years. It is not always clear whether these powers are actually needed. It is also not always clear for which threat these powers have been granted. And it is also not always clear whether increasing the powers has an effective impact on reducing insecurity. The debate on security is often about the precise conditions in which each organizations can use the new powers. The entire debate on security has therefore a strong legal connotation.<sup>19</sup>

Another crucial issue in the debate on security in a democratic state concerns the question of whether there is too much infringement on citizens' rights. That the powers of all organizations involved were extended seems clear. That this potentially leads to a further breach of fundamental rights of citizens seems in no doubt. The debate is on the question of whether these powers are lawful and legitimate. Can the state infringe intensively on the rights of an individual to protect the mass? And which safeguards are available for those who face these powers? Different sides are formed around the answers to these questions. An

<sup>18</sup> See for instance Loader 1999; Zedner 2003; Loader and Walker 2004; Muller 2004; Zedner 2005; Goold and Zedner 2006; Pieters 2006; McLaughlin and Muncie 2006; Maguire, Morgan and Reiner 2007; Zedner 2009;

<sup>19</sup> Zedner 2005.



army of human rights specialists considers the infringements on fundamental rights too much and too far-reaching. Another army of mostly politicians, police, prosecution services and intelligence services representatives claims that the current security threat makes it necessary to breach them.

A theme that is increasingly gaining attention in the scientific literature on security is the extent to which the state has a continuing responsibility to achieve security for its citizens. Traditional security was seen as one of the distinctive core tasks of the government. The government has the monopoly on violence. In recent decades there has been an explosive increase in private security industry. In many countries the number of private security officers is much larger than the public security officers. In many countries parts of security responsibility are privatized. In some countries prisons are run by private companies. This leads to extensive questions about responsibility and accountability but also on quality, management and control. Is security a public service or just a commodity?<sup>20</sup>

How safe or unsafe it is, is also an important aspect in the scientific debates about security. Figures on security always lead to discussion. Who has collected them, who interpreted them, and what topics are covered are only a few questions which are raised. There is no clear image on how safe or unsafe it is. Although there are many official figures, there is always debate about the specific scope. Information and knowledge on security means power and authority. The person who can determine what formal figures are established also decides what policy is successful and what not. It is unnecessary to say that this has important organizational aspects.

The cooperation between all organizations involved in security is another crucial issue. Many organizations are involved in security. In each country, the security system is organized in a different way. Every organization has different powers. The responsibilities of these organizations differ and there is some overlap of responsibilities between these organizations. There are intensive and complex cooperation arrangements to effectively work together and coordinate. The complexity of such cooperation does not always lead to good results.<sup>21</sup>

An important topic in today's scientific literature on security and safety is risk. Many authors stressed that over the past few years risk has become dominant in actions with regard to security and safety. It is now especially important to prevent security and safety problems. These risks should be avoided and stopped. This means that on the basis of risk analysis one estimates which persons, situations,

<sup>20</sup> Loader 1999; Loader and Walker 2001; Loader and Walker 2004.

<sup>21</sup> Loader 2000.

places and processes are most at risk. With regard to these persons, situations, places and processes preventive measures are implemented. These preventive measures are often related to the ability to collect information on these persons, situations, places and processes before the risk has materialized. That means that on many issues personal information is collected without an actual suspicion of an offense. In the past, security and safety organizations focused on responding after a crime or an accident had occurred. The focus of many of these security and safety organizations is now moving into the prevention of risks.<sup>22</sup>

The degree of responsibility of citizens and businesses for their own security and safety is also an issue that regularly is described and debated. The state is currently in many countries mainly responsible for security and safety. Although in some cases parts of security and safety are privatized, there remains a solid line to public responsibility. It is now clear that the government alone is not sufficient to ensure that the risks are prevented and combated. In addition, citizens and businesses also have to play a role. The question is how far this responsibility of citizens and businesses goes. Can all people be expected to take preventive measures? How can an equivalent level of safety be achieved for both richer and poorer citizens? These questions lead to complex discussions on the responsibility of state, citizens and businesses for security and safety.

#### **1.4 Security system in the Netherlands**

The Netherlands are a constitutional state.<sup>23</sup> In the Dutch Constitution the most important organizations which play a role in safety and security are explicitly mentioned. In this paragraph I give a short introduction into the legal aspects of the Dutch security system. In the coming chapters I will describe, in more detail, the institutional aspects of these different organizations in the Netherlands.

Holland is a constitutional monarchy. The Dutch people are represented in the Dutch Parliament which consists of the Lower House and the Upper House or Senate. The Lower House is directly elected by the Dutch population every four years while the Senate is indirectly elected through provincial elections. The Lower House consists of 150 members and the Upper House has 75 members. Cabinet and Parliament form together the legislative authority in the Netherlands. In the Netherlands a multi party systems exists. In 2009 more than ten political parties had members in parliament. In the Netherlands there is always a need for

<sup>22</sup> See Gardner 2008.

<sup>23</sup> In this book I use the Netherlands, Holland and Dutch as similar concepts. See Lechner 2008; State 2008.

a coalition cabinet. In recent Dutch history there was not a dominant political party which could form a cabinet on its own. The coalition cabinets in the Netherlands have to make a coalition agreement in which the most important decisions on all policies are written down.

In the Netherlands various State departments are involved in security. Until 2010 these were primarily the Ministry of the Interior and Kingdom Relations and the Ministry of Justice. In 2010 the new Ministry of Security and Justice was formed which is a combination of both of the afore-mentioned ministries. But the Ministries of General Affairs, Defence, Foreign Affairs, Health, Welfare and Sport, Infrastructure and Environment and Social Affairs and Employment have also responsibilities for specific security and safety issues.

The ministers in the Netherlands are appointed by the Queen and are politically responsible to parliament. The ministers are not also members of parliament. The political parties which form the coalition cabinet nominate the minister for the departments which they have received in the coalition agreement. The Prime Minister in the Netherlands is just another minister. In Holland he is the first amongst equals. The Prime Minister does not have powers over the other ministers. He chairs the weekly Council of Ministers. If one of the ministers has to resign because parliament lost political confidence in the minister, a new minister is nominated by the specific political party or the cabinet as a whole resigns. Although the informal position of the Prime Minister has become more important in the Netherlands, this function is not comparable to the Prime Minister in the UK or the President of the USA.

In the Netherlands there are twelve provinces and more than 400 municipalities. In these municipalities the mayor plays a crucial role in security and safety policy. He is the competent authority over the police and fire brigades. The mayor forms together with the aldermen the executive board of the municipality. They are controlled by the directly elected municipal council. The mayors in the Netherlands are appointed by the Queen on behalf of the Minister of the Interior. The directly elected town council now makes a nomination which is regularly followed by the Minister of the Interior. But Dutch mayors are not elected by the people directly. This differs from most of the other European countries. Although several attempts were made to change the Constitution to make it possible to elect the mayor, all failed. It seems that the independent position of the mayors in the Netherlands is valued more than the possibility to elect them. The provinces have a limited role in security policy. The Commissioner of the Queen, who is the chairman of the executive board of the province, has a supervisory role in relation to the municipalities and the mayors.

The organization of the court system is regulated by the Judicial Organization Act (*Wet op de rechterlijke organisatie*). Judges are appointed for life by the Crown, and retire at the age of seventy. Supreme Court justices are appointed from a list of nominees drawn up by the Lower House. "Criminal offences are dealt with by criminal courts at three levels. The first instance level are district courts (*rechtbanken*). There are nineteen such courts. The district courts differ greatly in size, which depends mainly on the number of inhabitants of the jurisdiction. The second level is the court of appeal (*gerechtshof*), of which there are five. The highest level is the Supreme Court (*Hoge Raad*) in The Hague. Unlike the other courts, the Supreme Court does not deal with the facts, but reviews the lawfulness of judgments of lower courts and the manner of proceedings."<sup>24</sup>

"The prosecution service is a nationwide organization of prosecutors. It is organized hierarchically. At the top is the Board of prosecutors-general. The service functions under responsibility of the Minister of Justice, but it is not an agency of the Ministry of Justice. The service is part of the judiciary (...). The organization of the prosecution service is regulated by the 1827 Judicial Organization Act (JOA)."<sup>25</sup> The prosecution service is responsible for criminal investigations in the Netherlands and has authority over the police on this matter.

The police in the Netherlands still consist of 25 regional police forces and one national police force. The task of the police force (sect. 2 Police Act) is to enforce the legal order, and to assist those who need help. The enforcement of the legal order comprises the enforcement of criminal law, the enforcement of public order, and the performance of judicial services. The mayor is responsible for the police in case of public order maintenance and the public prosecutor is responsible if the police conduct any criminal investigation. The mayor of the largest city in the region has a responsibility for the management of the regional police force together with the other mayors in the region. The organization of the police is regulated in the Police Act 1993. At this moment (2012) the government is preparing an act to nationalize the Dutch police organization. The total amount of policemen in the Netherlands is about 50,000.

The Prison Administration and the development of prison policy is the responsibility of the Minister of Justice. The National Agency of Correctional Institutions coordinates the decentralized management of prisons in the Netherlands. The most important legislation on enforcement of prison sentences are the 1998 Penitentiary Principles Act (PPA), and the attached Penitentiary Rules.

<sup>24</sup> Tak 2008, p. 55.

<sup>25</sup> Tak 2008, p. 49.

An intelligence service protects a democratic state against threats to national security. The function of the Dutch General Intelligence and Security Service, AIVD, is to give information to other government bodies and/or individuals to enable them to take measures either with the purpose of removing a certain threat, or with the purpose of increasing their resistance to threats. The AIVD has far-reaching powers to conduct their investigations. The AIVD is controlled in several ways:

- A. by the service itself using internal rules, guidelines and procedures and external publications such as reports and annual reports;
- B. by the ministers concerned in particular the Minister of Interior Affairs;
- C. by the Lower House in the form of the Commission on the Intelligence Services and the Standing Committee for Interior Affairs;
- D. by independent external audit as the Commission of Supervision on the Intelligence Services, the National Audit Chamber (in particular the secret expenditure), the National Complaints Court (specific complaints about the AIVD) and the courts (whether administrative, civil and criminal);
- E. by the media, scientists, and citizens' groups.

The Royal Navy, the Royal Army, the Royal Air Force, the Royal Military Police, the Service Command and the Defence Material Organization are all a part of the Dutch Ministry of Defence. The Minister and the State Secretary together lead the Ministry of Defence. Defence has more than 60,000 employees and is one of the larger employers in the Netherlands. Within the Dutch armed forces there is also a Military Intelligence and Security Service which plays an important role in collecting intelligence for military deployments but also for counter terrorism.

In the Netherlands all municipalities, particularly the mayor, are responsible for a fire brigade. At this moment the hundreds of local fire brigades are working together in newly established safety regions which have the same size and boundaries as the police regions. The tasks of the fire brigades are mentioned in the 1985 Dutch Fire Services Act (*Brandweerwet*): “the prevention, containment and extinguishing of fire, the limitation of fire hazard, the prevention and limitation of fire-related accidents and all related activities; the limitation and counteraction of hazards for persons and animals in the event of non-fire related accidents; the containment and management of disasters”. Most of the about 30,000 Dutch firemen are volunteers, only a small part of the fire fighting force are full time professionals. Next to the fire brigades the mayors and the safety regions are responsible for maintaining a medical emergency service.

The Dutch Central Bureau of Statistics publishes every year comprehensive reports and data on crucial data on security and safety in the Netherlands.<sup>26</sup> Some crucial facts and figures are mentioned below:

<sup>26</sup> [www.cbs.nl](http://www.cbs.nl)

- \* The total number of crimes in the Netherlands has been for some years about 1.2 million every year.
- \* About 22% of these crimes are solved by the police.
- \* A quarter of the Dutch population (25 percent) of 15 years and older sometimes feel unsafe and two percent of them often feel unsafe.
- \* In their own neighborhood one in seven residents (16 percent) sometimes feel unsafe. Two percent often feel unsafe.
- \* Citizens have about 25% chance of becoming a victim of crime in Holland.
- \* The Dutch government spending on public order and security amounted to 11.3 billion euro in 2007. This is 6 percent more than in 2006. The prison system and administration of justice in particular cost more.

## 1.5 Contents

This book consists of two parts. Before the first part in chapter 2 an overview is given of the role of the ministries, mayors and municipalities in Dutch security policy. These organizations play a crucial role in different aspects of security, safety and criminal justice in the Netherlands.

Part A concentrates on the criminal justice organizations in the Netherlands. In chapter 3 the police and policing are described and analysed, while in chapter 4 the judiciary and the public prosecution are portrayed. Chapter 5 concentrates on detention policy and the prison service organization. In chapter 6 the criminal investigation process in the Netherlands is described, while in chapter 7 this is done for the forensic investigation.

Part B focuses on the security and safety in the Netherlands. In chapter 8 I give an overview of the Dutch intelligence and security services. Chapter 9 concentrates on the public order disturbances and the public order maintenance in the Netherlands. In chapter 10 terrorism and counter terrorism policy and organization in the Netherlands are described and analysed. The Dutch armed forces are the main topic of chapter 11. The fire brigades and the medical emergency services and the organization of crisis management are described and analysed in chapter 12. This book ends with chapter 13 in which I give an overview of the most important trends and conclusions.

The text of this book was closed on March 1, 2012. Developments after that date are not included in the text.



## 2 Ministers, mayors and municipalities

Before we look into the various security and safety organizations and processes in the Netherlands, it is necessary to give a more general overview. Some authorities and organizations such as ministries, mayors and municipalities have a central and dominant role in security, safety and criminal policy. They are not only involved in specific security and safety organizations or specific security and safety policies but they have a broader responsibility for security safety and criminal justice. For a good understanding of the rest of the book, it is necessary to describe the organization and activities at national and local level.

### 2.1 Ministers and ministries

#### 2.1.1 ORGANIZATION

In the Netherlands various State departments are involved in security, safety and criminal justice. Primarily, in 2010 a Ministry of Security and Justice was established which is a combination of parts of the old Ministry of the Interior and Kingdom Relations and the entire old Ministry of Justice. But the Ministries of General Affairs, Defence, Foreign Affairs, Health, Welfare and Sport, Infrastructure and Environment and Social Affairs and Employment also have responsibilities for specific security and safety issues. Shortly, I will address the responsibilities of each of these ministries in the Netherlands.

The Ministry of Security and Justice has an integral responsibility for security and criminal justice in the Netherlands. Within this ministry national security policy plans are made. The Minister reaches agreements with police regions and security regions on performance targets. Crucial parts of the management of the police and fire brigades (and in some cases the medical emergency services) are performed from within this ministry. This management covers everything from finances, staff and equipment to vehicles, uniforms and weapons. The influence of the Ministry of Security and Justice on the day to day management of the police, fire brigades and medical emergency services has risen in recent years. Crisis management and disaster management are also a crucial part of the responsibility of the this ministry. The management of the new National Police Force takes place from within the Ministry of Security and Justice.



On some aspects of security and criminal justice there is a joint responsibility of the Ministry of Security and Justice and the Ministry of the Interior and Kingdom Relations. The General Security and Intelligence Service is the responsibility of the Ministry of the Interior. The Ministry of Security and Justice is responsible for counter terrorism. The National Coordinator Counter Terrorism is partly subjected to the Minister of the Interior and Kingdom Relations and to the Minister of Security and Justice. The nomination of mayors in the Netherlands is the task of the Minister of the Interior. As the mayor has a significant role at local level with regard to security and safety, the Minister of the Interior has in this way some influence. Within the Ministry of Security and Justice an Inspectorate of Security and Justice operates for monitoring and controlling security policy and organization in the Netherlands. This Inspectorate monitors police, fire brigades, medical emergency services and municipalities on all kinds of security and safety topics.

The Ministry of Security and Justice is primarily responsible for law enforcement and counter terrorism. This Ministry is the competent authority of the Public Prosecution Service, which has largely an independent role. The Ministry of Security and Justice and the Public Prosecution Service issue directives to organize and regulate law enforcement by the police and special investigative agencies. This department also manages the judiciary in conjunction with the Council for the Judiciary and the Board of Prosecutors General. In addition, the prisons are the responsibility of this Ministry as well as the Dutch Forensic Institute.

The Ministry of General Affairs, the department of the Prime Minister, has a specific role in determining the foreign task of the Dutch intelligence services. It houses also a coordinator for the Intelligence and Security Services in the Netherlands. The Prime Minister chairs the plenary meetings of the Ministerial Council. The decisions in the Cabinet are prepared by Subcouncils. The Subcouncil for Security and Legal Order prepares the cabinet decisions on security. The Ministers of Internal Affairs and Security and Justice are coordinating ministers for this Subcouncil.

The Ministry of Defence has a direct responsibility for the armed forces and military deployments. Also, the Military Intelligence and Security Service is the responsibility of this Ministry. The Minister of Foreign Affairs has an important role in shaping the international security policy. He also has a role in determining the mandate of the intelligence services regarding their foreign tasks.

The Ministry of Infrastructure and Environment has the primary responsibility for external security. This is the prevention of damage to men and buildings in response to accidents. This ministry also has the primary responsibility when it

comes to water safety and preventing floods. The Ministry of Health, Welfare and Sport is in part responsible for the ambulances and the medical emergency services. These departments also have a coordinating responsibility for specific types of crisis respectively environmental incidents, flooding and infectious diseases.

Many departments in the Netherlands have a responsibility for security and safety. It is needless to say that this leads to intensive coordination. This creates, in some cases, intensive political agency conflicts. Actually, none of these departments can independently take far-reaching decisions concerning security. There is always a need for cooperation with other departments. In the Dutch government no one minister has authority over another minister. Even the Prime Minister has to reach joint decisions. Partly because of the ever-present need for political coalitions in the Netherlands there is no hierarchical relationship between the Prime Minister and other ministers. The Prime Minister is first among equals. The result of this compromise structure – also known as polder politics – is that only small changes in security and safety policy can be realized, however, mostly with broad support from politics, civil servants and experts.

#### 2.1.2 SECURITY POLICY AND DUTCH CABINETS

The Dutch government publishes long term policy plans regarding security. In this section I briefly describe these national policy security plans. The Netherlands does not have an integrated national security and safety plan for all the different forms of security and safety. Above we have already seen that this takes place within the various departments.

##### *Security policy plans*

Since the eighties, the Netherlands became familiar with the phenomenon of national security plans.<sup>1</sup> The first plans focused on petty crime. These plans made clear that not only the police but also all other public organizations and citizens have a role in combating this form of crime. After a dominant focus on petty crime in the eighties, the policy attention in the nineties was mainly devoted to organized crime. Partly in response to a parliamentary inquiry into police methods, organized crime received major attention from politicians, authorities and officials. From the nineties an attempt was made by the Dutch government to achieve a more integrated policy by the so-called Integrated Security Reports. This integrated security policy tried to bring the different organizations together which play a role in relation to security. Cabinets in the Netherlands showed growing attention to security. In 1999, a policy memo on Policing 1999-2002 was

<sup>1</sup> Cachet 2008.

published by the Cabinet in which they directly intervened in the functioning of the police. Until then, the interpretation of the role of the police was mainly left to the municipalities and regions. In 2002 a National Security Programme was published by the Cabinet. This programme showed a further nationalization of security policy.

The national policy on security over the past thirty years has increasingly been shaped by the national government. Although the mayor and the public prosecutor have formal authority over the police, and the regional council has a formal role in the management of the police, the national government attained new functions and powers and implemented far-reaching policies. The nationalization of security policy in the Netherlands is increasingly becoming a reality. The implementation of (national) security policy has to take place in the individual municipalities. To show this development I describe the security policy plan of the last and the current government in the Netherlands.

*Coalition Cabinet Christian Democrats, Socialists and Christian Party 2007-2010*

In 2007 the Dutch Cabinet reached a coalition agreement with explicit objectives on security. The coalition agreement between the Christian Democrats, Socialists and Christian Party presents the core of the security policy in the Netherlands. This Cabinet reigned from 2007 until 2010. It is useful to display several key components of this integrated policy. It displays the current characteristics of Dutch security policy that differs from the tolerant image that many outside the Netherlands still have.

“Safety is a core government task and a precondition for a free society that creates a sense of belonging and togetherness. Crime has declined in recent years, and this trend must be continued. However, measures to reduce the number of violent crimes have not yet met with sufficient success and therefore merit substantial extra investment. The Netherlands must be made even safer. Our efforts to fight terrorism and radicalisation must not slacken. Measures to combat fraud, financial/economic and organised crime, and cybercrime will be intensified. Crime prevention must also receive plenty of attention. Probation and youth work services have a prominent role to play in this, and will therefore receive extra funding. A safe society requires more than clear rules that are properly enforced. Mutual respect and common decency are also essential in creating a safe climate.

1. A new public safety programme will be launched, with the aim of reducing crime in 2008-2010 by 25% compared with 2003. The functioning of the police and Public Prosecution Service will be strengthened, and optimum use will be made of new technology to improve the crime clear-up rate. Problems will be ironed out and no new obstacles, procedures or restrictions will be imposed. Prison system reforms will be continued, to create scope for greater differentiation. Extra attention will be given to the level of support for work for prisoners, including

those serving short sentences, and for treatment and aftercare. Reoffending will be further reduced by reintroducing release on parole and tailored guidance and aftercare.

2. Safety must be ensured nationally, and embedded locally; it must exist in neighbourhoods, districts, villages and rural centres. Joint action by police forces and cooperation between them must be improved. The bill to strengthen state powers will be introduced as soon as possible. There is a need for an integrated police information system and ICT network, specialisation between forces and a common policy on human and material resources and management. Integrated and joint tasks can be funded centrally. The power of the Minister of the Interior and Kingdom Relations and the Minister of Justice to issue designation orders will be simplified. Consideration of the bill introducing a national police organisation will be suspended. If cooperation does not produce adequate results, the process will be resumed, but in the light of the prevailing situation. The government will take a decision before the end of 2008.
3. Safety begins with prevention. The government should encourage the public, young people, schools, businesses, public services and institutions to play their part. Neighbourhood initiatives to improve safety and curb antisocial behaviour will be supported. We will work with schools to create a climate of safety. Crime Prevention and tackling the laundering of the proceeds of crime (as laid down in the Public Administration (Probity in Decision-making) Act are part of an integrated municipal policy on safety. Reoffending will be reduced by introducing release on parole, and strengthening supervision by the probation service and aftercare by municipalities and civil society organisations. A project plan will be drawn up setting out policy, initiatives and measures in the field of prevention.
4. The creation of 'safety regions' will be continued, and care will be taken to ensure that they have adequate democratic legitimacy locally. No statutory measures will be taken to force local fire services to regionalise. Providing an alarm centre is a public responsibility.
5. Municipalities' integrated safety policy will be further developed. As part of the strong local approach mentioned above, efforts will continue to ensure that every neighbourhood has its own police officer. We will seek ways of increasing public involvement in improving safety at neighbourhood level, e.g. by means of 'safe neighbourhood' budgets or by ensuring greater participation in setting priorities. To promote safety, municipal wardens will be given the authority to hand out fines for antisocial behaviour in public. Police numbers in rural areas will be increased where necessary. Greater emphasis will be placed on prevention and on quality rather than quantity when agreeing performance targets with police forces.
6. To protect public order and safety, clothing that covers the face may be banned.
7. Fighting terrorism and preventing radicalisation are an ongoing concern. The Minister of Justice is responsible for combating terrorism and has the authority to take measures in other ministers' areas of competence in emergencies. The necessary legislation will be submitted and introduced as quickly as possible.

8. To stop the dissemination of radicalising messages and information on terrorist weapons, it will be made possible to prohibit internet providers from transmitting certain information.
9. Maintaining law and order and enforcing legislation are preconditions for social integration and development. Toleration of non-compliance with the law is not enforcement, and existing practices in this regard will be minimised or abolished. Measures will be taken to prevent further fragmentation of enforcement; an integrated municipal safety policy and systematic enforcement by the authorities will be promoted. The government will explain the need for any measures taken and their impact on peoples' privacy.
10. Combating drug production and trafficking will continue unabated, as will the fight against nuisance caused by drugs. The bill to shut down homes involved in the illicit sale of drugs will be ushered through parliament as quickly as possible. A vigorous prevention policy will be pursued with respect to young people. 'Coffee shops' (which sell soft drugs) near schools will be closed and their presence in border regions will be curtailed. Efforts to tackle large-scale weed cultivation will be intensified; there will be no experimentation and we will work closely with neighbouring countries in border regions. 'Coffee shops' must meet strict criteria: no advertising, no hard drugs, no nuisance, no sales to under-18s, no more than five grams per transaction. Any that fail to meet these criteria will be closed, without exception.
11. Special measures are needed to tackle growing crime among youth: on-the-spot penalties, greater sanctions, targeting risk groups, prevention through parenting support, coaching, tackling early school leaving, and dealing firmly with truancy.
12. Priority will be given to tackling crime and antisocial behaviour. Streamlining criminal-law and other measures will contribute to a clear and effective policy capable of influencing behaviour (e.g. suspended sentences, conditional decisions not to prosecute, mayoral orders).
13. The 'citizens network' (a telephone network enabling the police to enlist the assistance of the public in search actions) will be rolled out nationally.
14. Legislation designed to deprive people of the proceeds of crime will be amended to make it easier to seize profits resulting from criminal activities and to broaden its applicability to include minor offences.
15. Measures to tackle domestic violence and 'honour crimes' will be pursued vigorously and help for victims and their children will be improved.
16. Prostitution – despite being legalised – is still very much synonymous with black economy work, traffic in women, money laundering and other forms of illegality and criminal activity. Vigorous measures are required, but current instruments are inadequate. There is therefore a need for more robust inspection and enforcement, transparency and the creation of more individual liability (including prosecuting clients of under-age and illegal prostitutes), using new instruments and amending legislation where necessary. Victims and women who want to leave the prostitution sector should receive extra attention, protection and aftercare. Municipalities will be given greater freedom to take account of existing brothels in their spatial

planning policy; this also applies in the region where the municipality concerned is situated and includes the 'zero option'.

17. The position of victims in criminal proceedings will be strengthened. Help for victims of serious violent crimes will be intensified, and extra attention will be given to victims of domestic and honour-related violence. Assistance in collecting compensation for victims from offenders convicted by the courts will be improved.
18. The Netherlands is involved in efforts to strengthen executive cooperation between the police and criminal justice system, and in the field of migration in Europe.”<sup>2</sup>

The government has translated the coalition agreement into a policy programme for the period 2007-2011. The Ministries of Justice and Interior Affairs have translated these objectives into a concrete programme. Safety begins with prevention.<sup>3</sup> In addition, the Dutch government has presented an action plan Nuisance and Degeneration. This specific action plan focuses on reducing the nuisance and degeneration in Dutch municipalities.

*Coalition Cabinet Liberals, Christian Democrats and Party for Freedom 2010*

In 2012 in the Netherlands a minority government rules. This governments consists of ministers from the Liberal Party and the Christian Democratic Party and is parliamentary supported by the Party for Freedom. On the topic of public safety the three parties reached an agreement which I cite here. I cite this agreement in full to give the reader insight in the way the Dutch government intends to improve security in the Netherlands.

“Public safety is a core government responsibility. Freedom and public confidence cannot flourish in an unsafe environment or one in which people feel constantly threatened. Life in our streets, neighbourhoods and public areas needs to be made safer. An effective crack-down on threatening or anti-social behaviour, intimidation, aggression, violence and crime demands a vigorous display of authority on the part of the police and criminal justice authorities.

Anti-social behaviour, aggression, violence and crime will be tackled more directly and effectively.

- ☐ The government will produce a proposal to extend powers to stop and search.
- ☐ The government will produce a proposal for harsher penalties for violence against members of the police, fire and ambulance services and against other authorities.
- ☐ There will be more video surveillance.

Transgressive behaviour by young delinquents, operating individually or in gangs, will be tackled, for example by responding instantly, removing them from the streets,

<sup>2</sup> Coalition Agreement Dutch Cabinet 2007; [www.government.nl](http://www.government.nl)

<sup>3</sup> Ministry of Justice and Ministry of Internal Affairs and Kingdom Relations, Safety begins with prevention, 2008, p. 4.

bringing them before the courts and imposing immediate penalties. Wherever possible, summary proceedings will be used (e.g. 'night courts').

- Efforts will be made to find a meaningful and effective way of dealing with this group by way of a combination of criminal penalties, street bans, community service and re-education via the home or school. Such punishment packages will be imposed, for example, in cases of vandalism, threatening behaviour and property crime, and could include payment of compensation, confiscation of property or the proceeds of crime, parental accountability and an obligation to report regularly to the local police station. In cases of non-cooperation or recidivism, overnight detention may be added to the package. The aim of this approach is resocialisation and to get young offenders back in school or work. The community safety partnerships (*veiligheidshuizen*) may have a role to play in this.
- The government will produce proposals for an adolescent criminal code for the 15 to 23 age group.
- Children under twelve who display delinquent or criminal behaviour will be identified as quickly as possible so that immediate action can be taken to address the problem. Their parents will be made more immediately and financially accountable. This will also be done in the case of older children.

The government will produce proposals for the introduction of minimum sentences for adults convicted twice within ten years of an offence carrying a maximum statutory sentence of twelve years or more. Courts will be able to deviate from these minimum sentences in the light of highly specific individual circumstances but will have to state their reasons for doing so. The specific circumstances will be spelled out in draft legislation, as will the minimum sentence for each offence. The minimum sentence for re-offending will be at least half of the maximum statutory prison sentence for the offence concerned.

Offenders must be dealt with in their own home environments. The community safety partnerships will have a major role to play in this. Through them, the various agencies involved can take a concerted, offender-oriented approach to combating anti-social behaviour, domestic violence and crime. This method of prevention has produced good results and will therefore be continued and developed further.

Institutions where criminal offences have been committed by calling for or inciting violence should be closed down and this will be done wherever possible, making use of the available instruments.

The ban on squatting will be actively enforced as a matter of urgency.

Security in public transport will be improved. Employers in the public transport sector will lodge criminal complaints on behalf of any employee who has become the victim of violence. The same applies in other parts of the public sector, such as schools, hospitals and the fire and ambulance services.

Tougher action will be taken to stop animal abuse by a force of 500 ‘animal cops’. A dedicated emergency number will be introduced for cases of animal neglect or cruelty and the animal ambulance service will be connected to it (for example, 1-1-4 ‘animal rescue service’).

Action will be taken to combat anti-social and criminal behaviour linked to prostitution and drug trafficking.

- Coffee shops (which sell soft drugs) will become private clubs, with access limited to people over the age of majority, resident in the Netherlands and able to produce proof of membership.
- There will be a ban on locating coffee shops within 350 metres of schools.
- The minister will tighten up central government policy and will ensure that municipalities enforce the distance-from-schools criterion and other relevant parts of central government policy in their permitting procedures.
- The government will produce proposals for harsher penalties for importing or exporting drugs (or making preparations to do so) and for cultivation and trafficking; it will also modify the distinction between hard and soft drugs.
- To combat the trafficking and exploitation of women, the statutory minimum age for prostitutes will be raised to 21. Greater efforts will be made to detect and clamp down on trafficking in women. The administrative law approach (e.g. using the Public Administration (Probity Screening) Act (BIBOB)) will also be stepped up.

Serious crimes, such as violent and sexual offences, have an extremely deep and traumatic effect on victims and their immediate circle, especially if the damage is irremediable. In addition, they diminish public confidence in the legal system and affect the public’s perception of safety levels. To protect society against the perpetrators, it is therefore essential to take measures to deal with them, including the imposition of adequate sentences (custodial or otherwise).

- Action will be taken to ensure that those convicted of serious violent or sexual offences remain (or are taken into) custody pending any appeal proceedings.
- When a ‘cold case’ is solved and new information emerges, the government will make it possible to re-open the relevant criminal proceedings using the new information to the possible detriment of the former accused (bill 32044); the same will apply in cases of manslaughter, and violent or sexual offences resulting in death. If necessary, the statute of limitations for manslaughter and certain other violent and sexual offences will be relaxed to permit this.
- The government will produce proposals to extend the statute of limitations for serious violent and sexual offences.
- The number of mentally ill offenders being placed under hospital orders (TBS) will be minimised, without losing sight of the risks to society.
- Retrenchment measures will be taken in long-stay wings, provided that this does not make them unmanageable.
- Following on from existing plans to improve cooperation between the regional mental health authorities (GGZs) and the justice system, research will now be done



on the possibility of permanent surveillance of sexual offenders who have completed psychiatric treatment under a hospital order (TBS).

- The ministerial power to issue directives will be broadened and there will be retrenchment in contracts with private TBS institutions and GGZ institutions, without losing sight of the risks to society.
- The government will produce proposals to the effect that any offender subject to a TBS hospital order who absconds while on temporary leave will not be granted such leave again for at least one year, except on compelling compassionate grounds.
- If an offender fails to comply in full with an alternative sanction or other order, or to fulfil the conditions for a suspended sentence, every effort will be made to ensure that deprivation of liberty is the result.

Offenders will be dealt with more harshly and the position of victims will be strengthened.

- Victim support will be improved.
- The means will be created under criminal law to seize the assets of defendants at an early stage so that they can be used later to compensate victims and cover their legal costs.
- A ministerial directive will be issued to the Public Prosecution Service and police to the effect that people who defend themselves against attackers or burglars in their own homes or business premises should not be arrested unless the examining magistrate decides at the request of the Public Prosecution Service that they should be remanded in custody on the grounds of strong suspicions that they have deliberately taken the law into their own hands.

Speed checks will be stepped up where the safety of road users is at stake. Heavier fines will be imposed in the case of serious speeding offences.

The police will take more effective action to ensure the safety of people and animals.

- The government will increase the operational strength of the police by 3000 officers, including 500 'animal cops' to combat animal cruelty. Manpower will also be increased in the criminal investigation field and the judicial system.
- More frequent use will be made of the armed services when joint teams of police officers and members of other services are being set up.
- Police response times will be improved in both urban and rural areas.
- The government will produce guidelines or, if necessary, regulations to ensure that citizens can lodge criminal complaints quickly and easily, wherever they may be, and that they are informed promptly about the action taken in response to their complaints.
- Ticket quotas will go and will not be replaced by anything similar.
- The national and regional priorities laid down in annual police plans will take more account of local problems in districts and neighbourhoods.

A national police force will be established under the responsibility of the public safety minister, who will also bear final responsibility for its management. There will be ten police regions, based topographically on the ten district court areas. Mayors will remain

responsible for public order, the deployment of police manpower for local duties, and permitting policies in their municipalities. Where there is disagreement about police deployment within a region, the mayor of the region's largest municipality will have authority to decide, after consulting the regional Chief Public Prosecutor and the regional police chief. The relevant mayors should agree procedures for this with the other mayors in their region. Where there is inter-regional disagreement about police deployment, the decision will be taken by the minister or a person he has mandated to act on his behalf. In the regions, the usual triumvirate (public prosecutor, mayor and head of police) will decide on police deployment, with the mayor having the deciding vote. The existing bill to amend the Police Act (30880) will be redrafted to enable all this.

The police service will be made organisationally more efficient and effective.

- ☐ The duration of police training will be reduced without loss of quality.
- ☐ The government will produce proposals for the amendment of the Working Hours Act and the national regulations on police working hours so that the police have more time to perform their primary duties.
- ☐ There will be cuts in bureaucracy, overheads and procedures and more scope for the police to do what they are trained to do. The result will be more officers on the beat.

The government will produce proposals for the costs of policing occasional commercial events requiring permits to be passed on to the organisers.

The dynamic system of speed limits will be expanded. The speed limit on motorways will be raised to 130 kph. Those on other roads will also be reassessed. Speed limits will be reduced if air quality, noise pollution or traffic safety so require.

As soon as drug saliva tests are reliable, they will be used to combat the use of drugs by road-users.

Vehicle recognition will be used to facilitate the prevention, investigation and prosecution of crimes and the enforcement of fiscal obligations. To this end, wide use will be made of automatic number plate recognition systems.

The government will prepare to privatise tasks relevant to the prison system, with an eye to retrenchment and cost-effectiveness. In this respect, the government will take account of the results of the 2005 and 2009 studies on the privatisation of the United Kingdom prison service.

Information security and personal data protection will be improved.

- ☐ Wherever possible, deadlines will be set for planned measures on the storage, linking and processing of personal data and the effectiveness of such measures will be checked thoroughly at the preparatory stage.
- ☐ The government will produce proposals for all public and private-sector information society services to have a duty to report any loss, theft or abuse of personal data to a

national supervising body, which will have powers to impose fines if any leakage of such data is found not to have been reported.

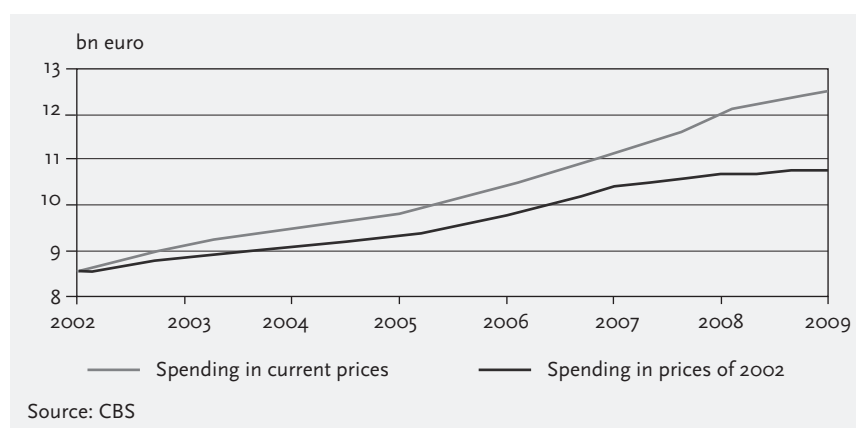
- Systematic action will be taken to achieve closer supervision of large-scale computerisation projects and the solution of problems with computer systems.
- The government will introduce an integrated approach to tackling cyber crime.”<sup>4</sup>

In 2012 in the Netherlands a minority government rules.

### Finance and staff

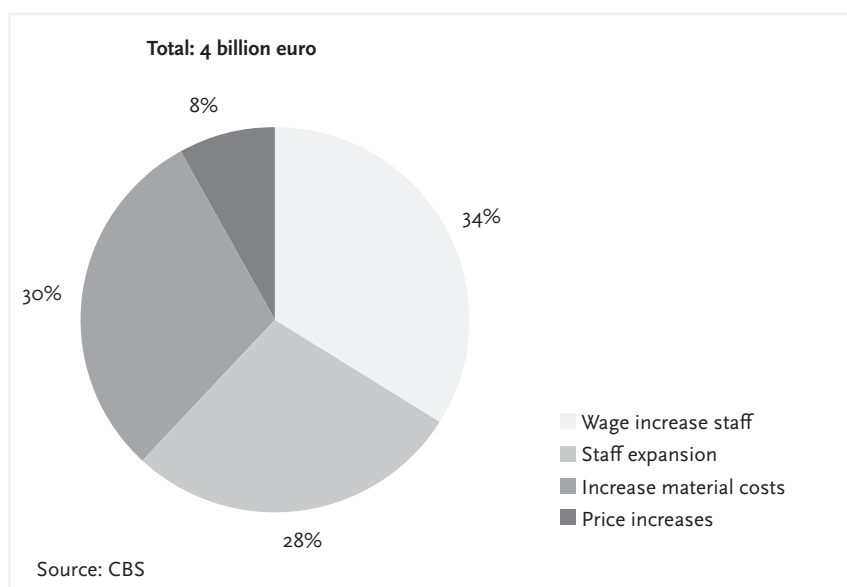
The amount of finances for security in the Netherlands has risen significantly. Nearly 12.5 billion euro, i.e. 2.2 percent of the gross domestic product (GDP) was spent on prevention and combat of crime, urban decay and inconvenience in 2009, an increase of 4 percent relative to 2008.

*Spending on security care, 2002-2009*

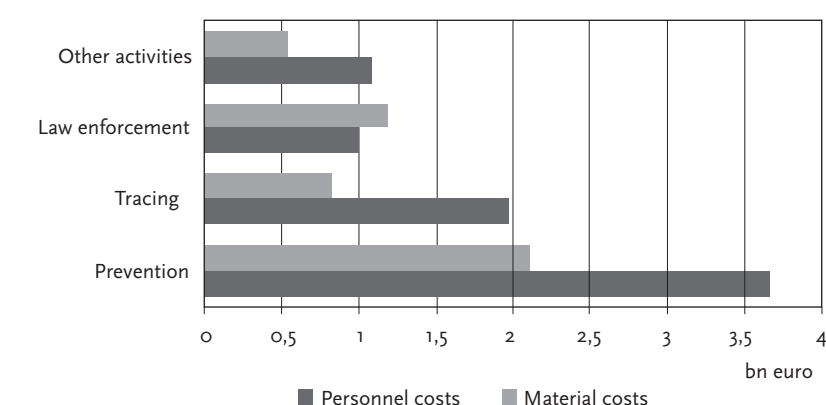


In recent years, spending on security care has risen considerably. In 2009, expenditure on security care was 4 billion euro up on 2002, an increase of nearly 50 percent. Corrected for inflation, the increase was approximately 2.3 billion euro, i.e. 757 euro per capita. Personnel costs have risen by 2.5 billion euro over the period 2002–2009. Just over half of this amount was spent on higher wages, the remainder was spent on expansion of staff. In the same period, material costs increased by 1.5 billion euro. Only 20 percent of the increase was the result of higher prices; 80 percent concerned material costs.

4 Parliamentary Support Agreement VVD-CDA-PVV, 30 September 2010.

*Share in growing security care costs, 2002–2009*

Nearly half of the total costs of security care in 2009 were prevention-related. Police and security firms are the main providers. The police are also responsible for tracing criminals and offenders. The third important activity is law enforcement, which is predominantly the responsibility of the Department of Judicial Institutions (DJI). Management and maintenance of detention facilities, (e.g. prisons) by the DJI weigh heavier on the budget than personnel costs. This explains why law enforcement accounts for a higher share of material costs than other activities.”

*Spending on security care by activity in current prices, 2009*

Source: CBS

## 2.1.3 TOLERANCE AND MILDNESS ARE HISTORY

The Netherlands has long been famous abroad for tolerance and mildness towards deviant and criminal behavior. In the seventies this became clear by low crime rates, a low number of people in prisons, low penalties and tolerance on abortion, euthanasia and drugs. For some, the Netherlands was seen as a lightening example of how to deal with deviant and criminal behavior.<sup>5</sup>

This image is no longer applicable. “Tolerance lost its positive connotation of post-materialism: it became a symbol of governmental indifference.”<sup>6</sup> Although the Netherlands has formalized policies regarding abortion, euthanasia and drugs,<sup>7</sup> the security policy of the Dutch government has no longer tolerance and mildness as their key elements. As in many other European countries, Dutch security policy consists mainly of both repressive and preventive measures. In the Netherlands, government is trying to create a security policy which is a combination of preventive and repressive powers and measures. Both the security policy plans which I cited before are examples of this development.

However, the Netherlands had to catch up in the last ten years with other European countries with regard to the repressive side of security policy. Powers of the police, the Public Prosecution Service and intelligence services have been expanded, the amount of staff of most security organizations has increased, the penalties have been extended, the size of the population in prisons has increased.

<sup>5</sup> Downes 1988.

<sup>6</sup> Buruma 2007, p. 85.

<sup>7</sup> Tak 2008, chapter 2.

The current security policy, as shown in the previous section, shows a very different picture than the old security policy of tolerance and mildness.

#### *Reasons for new security policy*

There are several reasons for this significant change in the Dutch security policy.<sup>8</sup> In the first place, the increase in crime contributed to the need and wish for more repressive measures. Preventive measures and tolerance were not effective anymore. Another strategy was needed. Additionally, the nature of crime in Holland changed. Crime became more violent and more organized. And maybe even more important, more people in the Netherlands were themselves confronted with crime. Although there is no direct relation with the increase in crime rates, Dutch citizens – and thereby the media and the politicians – became, at the end of the eighties, fed up with crime. Crime rates were at that moment stabilizing, but in the perspective of the public and the media were much too high.

Secondly, in Dutch public opinion, media and politics a change occurred in the nineties. Crime, nuisance and insecurity were less tolerated. Citizens, businesses and politicians wanted the government to act upon this insecurity. The government was held fully accountable by both political parties in parliament and local councils and by the intense media attention. The experiences in other surrounding countries contributed to the belief that security policy and measures had to change in the Netherlands. Only preventive measures were not sufficient enough.

In the third place, some far-reaching incidents in the Netherlands and abroad accelerated these changes. The political murders of Pim Fortuyn in 2002 and Theo van Gogh in 2004 and the terrorist attacks on September 11, 2001 in the US and in Spain and England in later years caused anxiety in the Netherlands. The Dutch could not remain immune from the threat of terrorism. The Netherlands is a (small) but integral part of an international security system. It is not possible anymore to isolate one country from the security developments in other countries.

Fourthly, there seems to be a political and cultural change in the Netherlands where compromise, coalition and agreement become less important. The composition of the Dutch population has changed dramatically over the last years and especially became more multi-ethnic. Normative ideas regarding punishment, tolerance and security changed and became generally harder and more one-dimensional. In this hardened political-cultural climate, the demand for hard repression intensified. The ruling political coalition was not always able to offer resistance against these calls.

Dutch security policy now resembles the security policies in other European countries. The facts and figures of Dutch security and security measures are at a

8 Compare Pakes 2004; Swaaningen 2005; Pakes 2006; Tak 2008; Tonry and Bijleveld 2007.

moderate level compared with other European countries. Because of the international nature of the Netherlands it is almost impossible to sustain their own form of security policy. More and more security policy will be formulated at European level. The possibility for a national Dutch security policy will not increase.

### *Drug policy*

This is now also the truth for the Dutch drug policy. The Dutch drug policy has changed fundamentally. Tak describes the unique elements of the Dutch drug policy:

- “a distinction is made between substances with acceptable health risks for the users, such as marihuana or weed, and drugs with unacceptable health risks such as heroin, cocaine, XTC or other synthetic drugs. Substances with acceptable health risks are called soft drugs; the other hard drugs;
- the market for soft drugs (coffee shops) is strictly separated from the market of hard drugs;
- drugs users are not treated as criminal offenders but as medical patients who might need help to improve their physical and mental health;
- the main feature of the Dutch drugs policy is harm reduction and its objectives are to prevent the use of (hard) drugs and to limit the risks and harm to the drug user;
- law enforcement is concentrated in the production, possession, selling, import and export of drugs. The maximum statutory sentences for these offences differ considerably dependent on the type of drug involved.”<sup>9</sup>

The Netherlands is famous abroad for their coffee shops. These coffee shops sell soft drugs for which a permit from the municipality is required. The mayor can close a coffee shop if there is a threat to safety or health. Coffee shops have some negative side effects. To supply the coffee shops with drugs different forms of drugs-related crime emerges, such as large weed plantations and home-grown weed. In addition, there is a lot of nuisance in the border area where drug users from abroad come to the Netherlands to buy and use drugs. Drugs runners create a lot of security problems in and around the border towns. Drugs tourism is now, for some communities, an almost unsolvable problem. “It was inconsistent that a user buying small quantities of cannabis in a coffee shop was tolerated but is was illegal for anyone to supply the coffee shop with its merchandise. Moreover, the Netherlands is a small country, and many people from Germany and France hopped over to buy their cannabis. This led to complex disputes in the context of the European Union.”<sup>10</sup>

<sup>9</sup> Tak 2008, p. 21-22.

<sup>10</sup> Buruma 2007, p. 88.

These negative side effects have led to a major change in Dutch drug policy. The support of politics and public for a tolerant drug policy is declining. The number of coffee shops in recent years has fallen from about 1,200 in 1997 to around 700 in 2007. In the vast majority of municipalities in the Netherlands there are no coffee shops. Licences for new coffee shops are no longer given. Existing coffee shops face tighter regulation. Mayors close a coffee shop faster if there are security problems. There are now programmes in schools in which the use of soft drugs is discouraged. All in all, this means a fundamental change in the drug-tolerant Netherlands.

#### 2.1.4 NATIONAL SECURITY POLICY

##### *National security strategy*

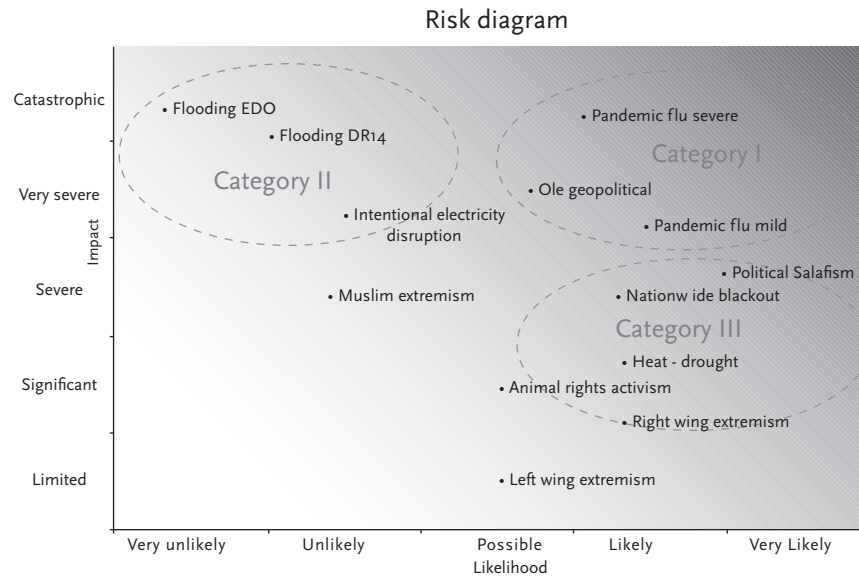
The Netherlands has adopted a national security strategy. Following other European countries the Dutch government formulated a national security strategy. "Threats to our security are changing and becoming ever more intertwined. Relatively minor threats can, through increasing interdependencies, lead to societal disruption. Answers to existing and new threats can therefore no longer be formulated and implemented by a single ministry or organisation. We need an integrated and coherent approach that can look beyond current threats. Planning and policy should no longer be primarily based on individual (known) threats, but on the extent to which overall national security is or can be threatened. In order to realize this approach, the Cabinet has drawn up a national security strategy. The aim of the strategy is to protect society and citizens within Dutch territory against internal and external threats. Our national security, however, cannot be viewed in isolation from the security of other countries, in particular those of our European partners and NATO allies. This also explains why internal security policy, which this strategy mainly deals with, and Dutch international security policy are so closely linked. National security is jeopardized when vital interests of the Dutch state and/or society are threatened to such an extent that one can speak of – potential – societal disruption. The following vital interests have been defined: territorial security (threatened through breach of territorial integrity), economic security (undisrupted trade), ecological security (living environment), physical security (public health) and social and political stability (e.g. respect for core values such as freedom of expression)."<sup>11</sup>

This national security policy must lead to a better understanding of the risks inherent in Dutch society. For now, it is primarily a document in which risks

<sup>11</sup> Ministry of the Interior and Kingdom Relations, National Security, 2007, p. 9



are identified. This has led to the following inventory and assessment of risks in the Netherlands.<sup>12</sup>



In the coming years this should lead to concrete strategies on how all relevant government organizations, citizens and businesses act with respect to these risks. In 2008, in particular attention is paid to flooding and major evacuations. In 2009, specific attention is paid to all relevant aspects of an influenza pandemic.

#### *Protection of vital infrastructure*

Within this national security policy, the protection of vital infrastructure plays an important role. "The Dutch government has identified 29 products and services such as electricity, drinking water, dams, and banks as critical for society. If one of these critical products or services fails, our society can turn into chaos and societal breakdown can occur. To prevent this kind of critical products or services to fail, the Dutch program Protection of Critical Infrastructures has been created in 2002. Nine Dutch ministries are involved in this policy program, coordinated by the Ministry of Interior and Kingdom Relations. Within this program the government works together with the public and private owners of critical infrastructure and with the largest Dutch employers' organization (VNO-NCW).

<sup>12</sup> Ministry of the Interior and Kingdom Relations, National Security Progress Report, 2008, p. 4.

Protection of critical infrastructure demands an intensive collaboration of private and public parties. The program's aim is threefold:

1. to prevent large scale failure or disruption as much as possible;
2. to ensure public and private sectors are adequately prepared for the consequences of failure or disruption;
3. to allow effective repressive measures to be taken in order to minimise damage caused by failure or disruption as much as possible.

There are 12 critical sectors and 33 critical products or services.

| Sector                              | Product of Service                                                                                                                                                                                                                                                                                        |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Energy                              | <ol style="list-style-type: none"> <li>1. electricity</li> <li>2. natural gas</li> <li>3. oil</li> </ol>                                                                                                                                                                                                  |
| Telecommunications/ICT              | <ol style="list-style-type: none"> <li>4. fixed Telecommunications service</li> <li>5. mobile Telecommunications service</li> <li>6. radiocommunications and navigation</li> <li>7. satellite communications</li> <li>8. broadcasting</li> <li>9. internet access</li> <li>10. postal services</li> </ol> |
| Drinking water                      | <ol style="list-style-type: none"> <li>11. drinking water services</li> </ol>                                                                                                                                                                                                                             |
| Food                                | <ol style="list-style-type: none"> <li>12. food services and safety</li> </ol>                                                                                                                                                                                                                            |
| Health                              | <ol style="list-style-type: none"> <li>13. emergency management</li> <li>14. medicines</li> <li>15. sera and vaccines</li> <li>16. nuclear medicine</li> </ol>                                                                                                                                            |
| Financial                           | <ol style="list-style-type: none"> <li>17. financial system</li> <li>18. financial transfer government</li> </ol>                                                                                                                                                                                         |
| Stemming and managing surface water | <ol style="list-style-type: none"> <li>19. management water quality</li> <li>20. stemming and management water quantity</li> </ol>                                                                                                                                                                        |
| Public Order and Safety             | <ol style="list-style-type: none"> <li>21. enforcement public order</li> <li>22. enforcement public safety</li> </ol>                                                                                                                                                                                     |
| Legal Order                         | <ol style="list-style-type: none"> <li>23. dispensation of justice en detention</li> <li>24. maintenance of law and order</li> </ol>                                                                                                                                                                      |
| Public Administration               | <ol style="list-style-type: none"> <li>25. diplomatic communications</li> <li>26. information handling government</li> <li>27. military order</li> <li>28. decision making public administration</li> </ol>                                                                                               |
| Transport                           | <ol style="list-style-type: none"> <li>29. mainport Schiphol</li> <li>30. mainport Rotterdam</li> <li>31. National infrastructure (main roads and rivers)</li> <li>32. railway system</li> </ol>                                                                                                          |
| Chemical and nuclear industry       | <ol style="list-style-type: none"> <li>33. transportation, storage and production/handling of chemical and nuclear substances</li> </ol>                                                                                                                                                                  |

Some of these critical sectors are owned by the government, such as the management of surface water and public order and safety. About 80 percent of the critical infrastructures is owned by private parties. The protection of critical infrastructures always demands a public-private cooperation to be effective.”<sup>13</sup>

The protection of vital infrastructure requires intensive cooperation between the government and industry. The project called Vital has been running for many years and in practice, it is extremely difficult and hard to reach agreements about security of vital infrastructure. Problems concerning powers and responsibilities, information and finances prevent an optimal protected vital infrastructure in the Netherlands. The vital infrastructure is owned by both public and private organizations. At this moment there is no one organization which has the authority or the power to lay down all regulations on all vital organizations involved. Therefore, it is necessary to consult, to coordinate and to compromise.

## 2.2 Mayors and municipalities

### 2.2.1 ROLE OF MUNICIPALITIES AND MAYORS IN SECURITY MORE IMPORTANT

The role of municipalities in Dutch security policy is important. Increasingly, tasks in the field of security are delegated to municipalities. The Dutch municipalities are responsible for all kinds of security policies. A quote from the Minister of Internal Affairs shows the increased role of municipalities and mayors in the Dutch security policy.

“The importance of the role municipalities is stressed by a policy guideline by the Ministry of Interior. Antisocial behaviour, minor lawbreaking, and organised crime all need to be tackled not only by the police and criminal justice authorities, but also by the municipalities. So municipalities are to take responsibility locally for policy on public order and safety. The Government will assist municipalities and other local bodies and agencies in their efforts to reduce public nuisance and neighbourhood decay. Urgent measures are required to deal with antisocial behaviour by juveniles, nuisance around pubs and clubs, and a decline in residential neighbourhoods. One example is a bill to combat football hooliganism and serious antisocial behaviour. Another is an act that, from 2009, will empower municipalities to impose on-the-spot fines on persons causing a public nuisance. The Government is also examining the possibility of giving mayors the power to evict antisocial families who cause serious problems in their neighbourhood (...) Some antisocial behaviour involves juveniles under the influence of alcohol. Young people are drinking more and starting younger. This calls for stricter monitoring of the sale of alcohol. In 2010, the Government will transfer responsibility for this

<sup>13</sup> Website Ministry of the Interior and Kingdom Relations, April 2009.

monitoring from the Food and Consumer Product Safety Authority to the municipalities. Mayors will be empowered to take action against persons who sell alcohol to juveniles. Under the new approach to fighting organised crime, the Government will create a number of centres for joint operations by the municipalities, the police service, the criminal justice authorities, the Tax and Customs Administration, the Fiscal and Economic Investigation Service (FIOD-ECD), and the Social Security Information and Investigation Service (SIOD). Participation will also be open to non-governmental actors such as housing associations, estate agents, property developers, notaries, accountants, and tax lawyers. The goal is to prevent criminals from infiltrating legitimate businesses and exploiting legitimate structures and methods to carry out illegal activities. (...) Nine municipalities will this year launch five pilot projects to develop citizens networks (Burgernetten). These involve the police approaching people during a search operation and asking them to look out for a person or vehicle. If the results are favourable, the Government may introduce a nationwide Citizens Network programme in 2009. Polarisation and radicalisation are being tackled mainly at local level. Community police officers, youth and welfare workers, teachers and truancy officers work together to identify, prevent and if necessary to combat polarisation and radicalisation. At central government level, this local approach is supported by seven ministries and the Association of Netherlands Municipalities. The General Intelligence and Security Service is responsible for the timely identification of threats and risks to national security. Its intelligence and advice serve as a basis for policymaking and action at local, national, and international level.”<sup>14</sup>

The more than 400 municipalities in the Netherlands play an important role in security policy. Partly because of the central role of the mayor in relation with the police and firemen, the Dutch local government has in recent years become a central nucleus in security and safety policy. The mayor in the Netherlands has authority over the police and fire brigade. In the tripartite consultation between mayor, public prosecutor and police chief and in the pentagon consultation between mayor, public prosecutor, police chief, fire brigade commander and the regional medical officer many aspects of security and safety issues are decided. These include both safety and security policies.

The position of mayor in the Dutch constitution is particular. He is an official authority appointed by the Crown. He is not directly elected by the people, although the town council now makes an almost binding nomination to the Minister of Interior. Neither the mayor nor the board of mayor and aldermen but the city council is the head of the Dutch municipality. Nevertheless, the key powers in the field of public order and safety are entrusted to the mayor.

The mayor has different roles regarding security. He has authority over the police force and the fire brigade. He conducts administrative leadership during a

<sup>14</sup> Website Ministry of the Interior and Kingdom Relations, April 2009.

crisis. He can exercise many powers to restore public order or to prevent public order being disturbed. The mayor receives a lot of (confidential) information about security and safety. The mayor plays an important role in the triangular consultation with the prosecutor and the police chief. The mayor participates in the regional council, which is responsible for management of the police. In some cases, the mayor is also the police force manager, chairman of the safety region and chairman of the fire region and the region of medical emergency service. The mayor coordinates the administrative enforcement. The mayor has perseverance powers over other organizations to realize actions by a specific person.<sup>15</sup>

In Dutch practice, we see that the mayors fulfil these roles quite differently. Some mayors act as a sheriff and tackle all security problems of their citizens directly and repressively. Some choose to remain in an administrative position above all parties in the security domain. Others try to help specific individuals and ensure strong cooperation between all organizations involved. And of course there are many possible combinations of task performance. It is highly dependent on the personality of the mayor, the extent of the security in the town and the external pressure (from city council, media and citizens) how the mayor in security and safety practice acts.

The city councils in the Netherlands have, in recent years, put more pressure on the municipalities and the mayors to pay more attention to safety and security. This has led to extensive safety and security programmes especially in the larger municipalities.<sup>16</sup> It also led to an increase in the number of people and resources at local municipal level working with security. No longer, are only a few people directly around the mayor concerned with safety and security, but all parts of the municipal services do have to contribute to safety and security in a municipality. It has also led to substantial expansion of powers of the mayor and the municipality in the field of public order maintenance.

The municipalities vary greatly in size and capacity. The most intensive form of local security policy will take place in the larger municipalities. The smaller municipalities often try to create regional security policy. The regionalization tendency is important for security in the Netherlands. The police, fire services, medical emergency services and crisis management and disaster relief are now realized in regional organizations. To this end, specific organizations are formed such as the police regions, fire regions, medical emergency service regions and safety regions.<sup>17</sup> The local security policy must be linked to these regional organizations. This leads to complex coordination problems as a fact sheet from

<sup>15</sup> Ministry of the Interior and Kingdom Relations, *Burgemeester en Veiligheid*, 9 April 2009.

<sup>16</sup> See Marks and Van Sluis 2008 for example of Rotterdam.

<sup>17</sup> In chapter 12 I will describe the concept of the safety regions in more depth.

the Association of Dutch Municipalities shows. “The safety and security policy of a municipality consists of five fields: safe living environment, activity and safety, youth and security, physical security and integrity and security. Within the security field there are many different themes: from nuisance to drugs, road safety to the risks of natural disasters. Another feature of the security area is the great momentum at both national and local level. What is not a priority today, could tomorrow top the political agenda. A good example is radicalization. The multitude of issues and stakeholders increases the probability of a large fragmented approach. The challenge for municipalities is to achieve a comprehensive security policy that is borne by the partners.”<sup>18</sup>

The government wants the municipalities in the Netherlands to perform a more directive role with respect to security and safety. They must be able to address the parties involved in security and unite them. This more directive role will be legally incorporated and the municipalities will receive specifically designated perseverance power over other organizations. The municipalities are required to make a four-year security plan in which the security policy is conducted and it is pointed out which organization will make which contribution. In this way, the role of municipalities and mayors in the security policy becomes even more important.

#### 2.2.2 LOCAL SECURITY POLICY

##### *Integrated security policy*

In Dutch municipalities there was a strong urge to formulate integrated security policy plans. The core of this integrated security approach was:

- Understanding: the structural needs for security as an independent administrative product. This is only possible if there is sufficient understanding (numerical and otherwise) of the problems, risks and effects of different policies for security.
- Security: ensuring safety must be more than a reactive and exclusively on enforcement and control post-oriented approach. Therefore, the idea of a safety chain is introduced. The various links – pro-action, prevention, preparation, repression and aftercare – should give all organizations the possibility for better coordination.
- Consistency: safety has interfaces with many other public functions. Attention is drawn to the fact that security has both social and physical components. In addition to law enforcement and public order maintenance there are also occupational safety, environmental safety and road safety.
- Cooperation: Police and justice should not only be responsible for safety and security for. Collaboration with others, in particular, the local level is needed.

<sup>18</sup> Factsheet Association of Dutch Municipalities.

The local administration has a central nucleus in establishing such cooperation. Later this is called the direction role of the municipality. But there is a still responsibility for the State government. The local government should be encouraged and facilitated by the State.<sup>19</sup>

This text looks suspiciously similar to the texts currently circulating on the new forms of security. In 2004, Cachet and Ringeling came to the following conclusions over ten years integrated security policy in the Netherlands. “The integrated security policy has had some effect. More attention to safety has emerged. The policy of the central government has encouraged and helped communities to formulate security policy, although some municipalities had little need for this help or were already engaged in the development of security policy. Many pretensions of the policy are not realized. The integral aspect of the approach is very relative. Security is still perceived relatively limited. Reactive performance to acute security issues still requires more attention than policymakers had expected. The result is that the pro-active role got less attention than it deserves in their eyes. Cooperation between public and private parties was in many cases not obligatory. Whether at municipal level formulated policy was always effectively carried out, is a difficult question. The same applies to the question what exactly the policy has been. The influence of the national at local level can certainly be identified. Nevertheless, municipalities were faced with significant challenges to the effective conduct of security policy: scarce resources and expertise, difficulties with partners, lack of stable political and managerial attention to safety issues. The worlds of policy makers in The Hague and at the local level still seem to lie far apart.”<sup>20</sup>

Integrated Security Policy in the Netherlands is still very important. In many projects in municipalities one is trying to enhance security. The projects focus on a multitude of subjects: bike theft, nighttime violence, youth violence, nuisance, burglary etc. For these projects, many grants are available. These grant are paid by the national and sometimes local government. For every spot or issue a separate project is initiated and implemented. Every time new organizations and new individuals have to be involved. Ideally, all projects shared have a positive impact on security in a municipality. This full impact is not always clear in practice. “For all these impulses, the development of the local safety policy is still a difficult process. Successive studies conducted by the Court of Audit show that there has been some progress, but usually in dribs and drabs. This has partly to do with the trouble which local authorities have in steering more or less autonomous organizations such as housing corporations, social work agencies, and all sorts

19 Integrale Veiligheidsrapportage 1993 in Cachet and Ringeling 2004, p. 638.

20 Cachet and Ringeling 2004, p. 660.

of juvenile care or health institutions. However, it has also to do with the multiversity, intricacy, and incomprehensibility of many safety issues: violent crime, juvenile problems in general, often serious problems with certain immigrant juveniles (especially from Morocco and the Antilles), school absenteeism and dropping out, nightlife violence, neighbourhood quarrels, noise pollution, vandalism and destruction, drugs and alcohol addictions etc.”<sup>21</sup>

#### *Security Houses*

A much more recent development is the creation of security houses in Holland.<sup>22</sup> In many municipalities security houses are formed which consist of a network of all relevant organizations to combat crime and nuisance.<sup>23</sup> In these security houses different organizations are working together in tackling crime and nuisance: municipalities, youth and health care, police and judicial authorities. This happens as much as possible at the level of specific individuals, families and spots. In case consultation between all relevant agencies decisions are made on how the different organizations will intervene with regard to a specific individual or family. The activities of various organizations are intensively coordinated. There are several variants of security houses.<sup>24</sup>

The initial experience with these security houses is positive. The central government has decided to establish a nationwide network of security houses. A recent survey identifies the following success factors for the development of security houses.

- “A good cooperation between justice partners and care partners is a critical success factor. The strength of cooperation lies in connecting the different networks around a client. The strength of the security house is that from a physical location where all partners have working space, information about a client directly can be shared with one another.
- The professionals working in the security house. Trust in each other and working with enthusiastic, creative professionals from various cooperating partners allows information about a client to be shared.
- The judicial case consultation. They exchange information about the client in this case consultation. This is the binding agent between the professionals.
- The local approach. Problems are tackled and addressed locally. On this basis, the appropriate (local) partners are put together. This flexible approach and commitment of security houses makes it possible to tackle local crime problems.”<sup>25</sup>

<sup>21</sup> De Kempe and Cachet 2008, p. 228.

<sup>22</sup> See for history Terpstra and Bakker 2004.

<sup>23</sup> Ministry of Justice and Ministry of the Interior and Kingdom Relations, Veiligheidshuizen, 2009.

<sup>24</sup> Adviesbureau Van Montfoort 2008, p. 73.

<sup>25</sup> Adviesbureau Van Montfoort 2008, p. 10.



An evaluation of security houses led to the following conclusions. Amongst the involved professionals a broad consensus exists about the fact that security houses contribute to the quality of interventions, because interventions are more aligned and integrated. Moreover, there are (less strong) indications that cooperation in a security house contributes to earlier and better diagnoses of safety problems and more rapid reactions to these problems. Realising sufficient input, throughput and output turns out to be difficult in the initial phase, but there are indications that in most cases the production gets going after some time. The research into the shortening of completion times of interventions is scarce and the results are contrary. In the realm of outcome and impact the research indicates that security houses contribute to social improvements in the lives of clients and (as a consequence) to lower recidivism rates in this group. Other crime reducing effects have not been researched. Some studies report that security houses realise cost-benefit advantages. These studies state that the additional cost of cooperation is lower than the benefits that are gained from the lower rates of recidivism. However, these studies invoke various theoretical and methodological questions. Research into possible scale of efficiency effects is still absent. Other possible societal effects/benefits of security houses have not been researched. Beside positive results, the studies sum up a great number of problems that security houses face realising their goals. From the list of problems that were mentioned a Top-7 of most mentioned problems is listed:

1. the (internal) information about individual cases is insufficient
2. the functioning of and the cooperation with the donating mother organisations is insufficient
3. the control and organisation of the security house is insufficient
4. relevant partners are missing in the cooperation
5. specialized local care facilities for repeat offenders and former prisoners are insufficient
6. the security house has formulated vague goals
7. (internal) communication between parties is insufficient

Comparative studies confirm that the conditions here presented as mayor problems are important to realise results. security houses that do well perform better with regard to these conditions. Moreover it turns out to be important that local cooperation leads to concrete decisions in individual cases. Cooperation without decision making is less effective. Some more theory oriented studies show that many conditions must be met for security houses / (network organisations) to be effective.<sup>26</sup>

<sup>26</sup> Rovers 2011, 2001, different chapters.

There are still some problems in the organization and functioning of the security house: the direction of the security house, the manner in which information on individual persons can be handled, the registration of information, the extent of the problems, finances, relationships with the new centres for youth and family, etc. The security houses constitute a new contribution to the institutional structure of security in the Netherlands in which an integrated security solution for specific persons, families or spots are created.

## 2.3 Trends

At the end of this chapter I briefly sketch some institutional trends regarding the role of ministers, mayors and municipalities in security, safety and criminal justice in the Netherlands.

### 2.3.1 COMPLEX

The institutional security system in the Netherlands is complex. Many organizations and individuals are involved. At the national level, none of the departments can independently make far-reaching decisions on security issues. Almost always there is a need for inter-departmental coordination. None of the ministers has sufficient power over the other ministers to actually overpower them. Even the Prime Minister in the Netherlands always needs coordination, consultation and compromise. There is now a Ministry of Security and Justice in which the most important aspects of security and criminal justice in the Netherlands are decided on. This situation arose late 2010 so it is still unclear what the organizational consequences will be.

The disadvantage of this complexity is that always a lot of long consultations and coordination is necessary. It is rarely possible to reach for a quick decision. Another disadvantage is that only in a few cases substantial decisions can be reached. Most of the times only small steps that can be taken. It is always necessary to achieve compromises. Also there is the disadvantage that agency policy conflicts between departments and other organizations can play a major and sometime dominant role.

This complexity also has a number of advantages. The consultation and coordination give way to many relevant arguments. A specific security problem is looked at from different perspectives. The extensive consultation and discussion creates the situation that ultimately maximum support for the decision exists. It is probably not the best decision, but it is certainly the most supported decision. For the implementation of decisions this is crucial. In this complex security structure a system of checks and balances has emerged. No organization in the Netherlands

can monopolize the decisions relating to security. The negative effects of a monopoly in respect of security decisions will not occur quickly.

### 2.3.2 CENTRALIZATION

Unmistakably, however, in recent years in a centralization of security has occurred in the Netherlands. We will continue in more detail on this in the next chapters. The government and the ministries control, through a variety of ways, security in the Netherlands. They have more powers to control the police forces, fire brigades, medical emergency services, municipalities, etc. They have been given a greater role in appointments of key people in these organizations. They have through the allocation of finances and resources many possibilities to influence the security priorities in the Netherlands. They have the key information on safety and security. They are often the key contacts with foreign countries where security and safety organizations in partly depend on. They make specific policies and specific performance guidelines for all stakeholders in the security and safety policies.

This centralization and nationalization of security policy is a response to increased public and political unrest in the Netherlands about safety and security. Security cannot only be the responsibility of municipalities and security is a key concern for Dutch politics. Especially in response to some incidents and attacks in the Netherlands the focus on security has increased significantly. The involvement of the national government is rapidly increasing. Another argument also plays an important role. One assumes that economics of scale in security will increase effectiveness and efficiency. This is always one of the key arguments for further nationalization.

My expectation is that in the next few years this tendency to centralization and nationalization will continue. The Netherlands seems too small for too much of a decentralized institutional security.

### 2.3.3 FOCUS ON MUNICIPALITIES AND MAYORS

Traditionally the main focus of security policy is at the municipalities. The mayor is the central authority in the security field. He is the authority on police and fire department and participates in many consultation bodies in the security field. In recent years the emphasis has been firmly placed on the municipalities. Municipalities have to perform a directive role regarding security. They should not only perform better themselves but also encourage others to do so. This is also true for organizations which have no direct organizational relationship with the municipalities. In the past, these organizations operate in a network with each other. Through plea conviction and compromise a security policy was designed. Now the idea is that the municipality, and in particular the mayor, should have a more

influential role. This perseverance will increase the expectations regarding the performance of municipalities in the area of security. It is questionable how these expectations can be realized.

The role of the mayor is changing in the Netherlands. In many municipalities he/she is not the person anymore who functions above all parties and mediates between parties. The new mayor is actively engaged in security. The councils and the media encourage this behaviour of mayors. In some municipalities this leads to a kind of sheriff behaviour by some mayors. Mayors have acquired, in recent years, many new powers. With these powers, the mayor can in depth intervene in the lives of citizens, even before a crime or public disorder has occurred. The question is whether the expectations of the real potential of the mayor are not too high. A mayor will not be able to resolve all security problems to the satisfaction of all concerned. Another risk is that the mayor becomes too much of a factor in the security field and he can therefore not fulfil his position above parties. The mayor becomes just one of the contesting parties in the crowded field of security and safety policy in the Netherlands.

#### 2.3.4 PARTNERSHIPS

Because of the inherent consultation and compromise nature of the Dutch security policy, many partnerships are created. In the following chapters we will find many examples of them. Integrated Security Policy in the Netherlands is an example of one type of institutional cooperation that has existed for many years and played an important role in this field. Often there are intensive cooperation projects in which it is not always clear what the practical results should be. The number of consultations in respect of security and safety in the Netherlands is extremely high. The administrative and bureaucratic busyness in relation to safety is therefore very intense. There are many examples in the Netherlands of integrated security projects but not so many examples of real long-term integrated security policy.

In particular, the concept of security houses should be mentioned. What is special about this form of cooperation is that all organizations involved in a community, region and province come together to discuss and decide on a specific person, family or spot. Security houses are aimed at concrete solutions. It seems one of the main reasons for success. These security houses make it possible to intervene effectively in individual cases. All organizations agree to the specific tasks of these organizations towards a person, family or spot. It creates a much more customer-oriented approach with individual goals. My expectation is that these forms of cooperation in the coming years will increase in importance and intensity.

## 2.3.5 CONTENT OF SECURITY POLICY

The Netherlands was in the past famous for its tolerance of deviant behavior. The small number of people in prisons, the tolerance of drugs, abortion and euthanasia, the friendliness of the police, the relatively lower crime rates and high security feelings were features which seemed to make the Netherlands unique in the western world. These times seem long gone. The Netherlands has just become a regular European country with respect to safety and security. Tolerance and mildness fit no longer the public and political awareness of security and criminal justice in the Netherlands.

The outline of the contents of the security policy in this chapter shows that the Dutch government but also the Dutch municipalities are no longer afraid for tougher punitive and repressive approaches to security. In recent years, a kind of catch-up with the rest of the world seems to have occurred. However, in the Netherlands the awareness is deeply penetrated that prevention and avoidance is a crucial part of the security policy. To this end, specific policies, programmes and organizations have been set up. The powers to act before a security problem actually occurs, have only increased. Also in the Netherlands risk perception has an increasingly dominant position.

## PART A CRIMINAL JUSTICE



### 3 Police and policing

Police and policing in the Netherlands are multifaceted. In this chapter I discuss the organization, both formal and factual, of the Dutch police and their role in Dutch society. The developments in the Dutch police can be characterized in regards to developments in Dutch society, especially to the extent to which the Dutch are permissive or not.

After an introduction into the organization, facts and figures of the police in the Netherlands, paragraph 3.2 is concerned with the role of the police in Dutch society and two important reports by the police themselves. In paragraph 3.3 I will address the topic of accountability of the police in the Netherlands. In paragraph 3.4 I give a sketch of the principles of proper policing. In the last paragraph I will present ten trends in policing and the organization of the police in the Netherlands. This chapter is mainly based on the volume *Police: Studies on its functioning and organization* (2007) edited by Fijnaut, Muller, Rosenthal and Van der Torre.<sup>1</sup> In this large volume (more than 1250 pages) almost every aspect of the police and policing in the Netherlands is described en analyzed (in Dutch).<sup>2</sup>

#### 3.1 Organization, facts and figures

To provide the reader with a picture of the organization of the police in the Netherlands hereby some key facts and figures:

- \* In 2007, more than 52,000 police officers were part of the Dutch police. In 2011 the total amount of police in the Netherlands was 49,500.
- \* Per year more than 250,000 suspects are arrested by the police and delivered to the Public Prosecution Service, which has to make the decision on prosecution.
- \* The Dutch population seems fairly satisfied with the availability of the police, but less satisfied with the results and the quality of the police. Only 20% agree with the statement that the police successfully combat crime. The percentages on the interaction between police and citizens are also low. The relationship between the police and society can be increased. The Dutch Bureau of Statistics has also specifically looked at the reasons of those who were less satisfied with the contact with the police.

<sup>1</sup> Compare Newburn 2005 and Newburn 2008.

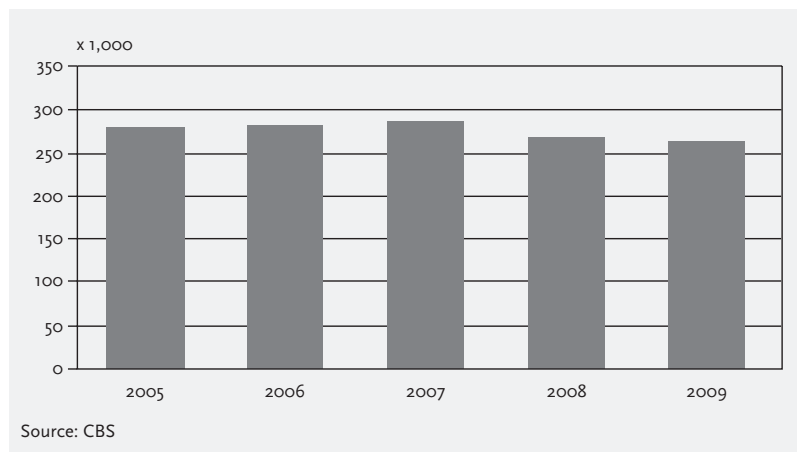
<sup>2</sup> See for history Jones 1995; Van Steden and Huberts 2006; Wintle 1996.



- \* “The police spent more than 2.4 billion euro in 2009 on investigation activities, i.e. an increase by 12 percent relative to 2005. The police registered a 7 percent increase in offences from 2005, but the number of crimes solved by the police in 2009 dropped by 5 percent. Public spending on investigation activities rose by 12 percent over the period 2005-2009. The crime solution rate declined by 5 percent from 279 thousand in 2005 to 264 thousand in 2009. The number of crimes solved by the police grew marginally in 2006 and 2007, but in 2008 decline set in and the decline continued in 2009.

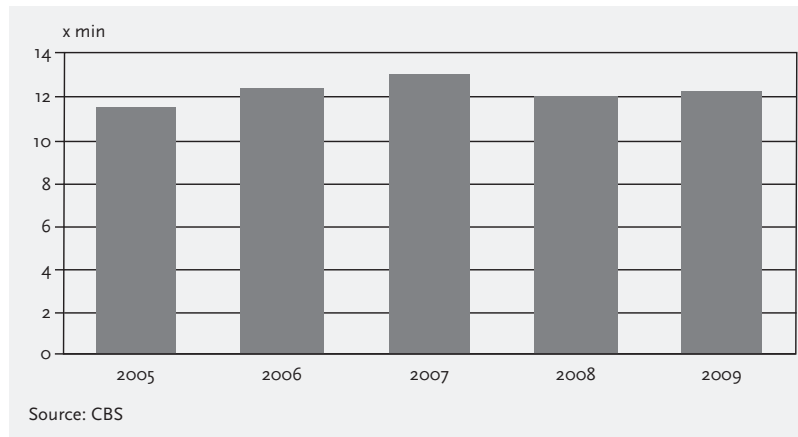
*Crimes solved by the police*

---



- \* Crimes make up approximately 2 percent of criminal offences solved by the police. The other 98 percent are offences. The police registered 12.2 million offences in 2009, an increase by 7 percent from 2005. More than three quarters of offences are speed limit violations; one in ten concern illegal parking or red light jumping. This type of offences is solved at the moment they are registered. The fines are forwarded by the police to the Central Fine Collection Agency (CJIB), accountable for the collection of traffic fines.
- \* On average, the police spent 195 euro on the solution of crimes and offences in 2009. Adjusted for inflation, the price of solution of criminal offences has risen by an average of 5 percent.”<sup>3</sup>

<sup>3</sup> CBS Web magazine, 07 April 2011 15:00.

*Average amount spent on solved criminal offences*

#### Structure<sup>4</sup>

The Dutch government made an informative English brochure on policing in the Netherlands which gives a good overview of the main organization of the police in the Netherlands.<sup>5</sup> “The Dutch police are divided into 25 regional forces and the National Police Services Agency (KLPD), with various supporting divisions. A regional police force is responsible for policing in a given area known as the police region. The size of a regional force depends on factors such as population size, crime levels and building density. Each regional force is in turn divided into a number of districts or divisions. Districts are usually subdivided into basic units. In matters concerning the maintenance of public order or the rendering of assistance in emergencies, the competent authority is the mayor of the municipality in which the police act. Responsibility for the maintenance of public order in a province rests with the Queen’s Commissioner, who checks that the police carry out their duties properly. The Minister of the Interior and Kingdom Relations is responsible at central government level for the maintenance of public order and security. Where the police are enforcing the criminal law or carrying out duties for the justice authorities, they act under the authority of the public prosecutor. Similarly, the Board of Procurators General of the five Courts of Appeal supervises the police in the exercise of these duties. The Minister of Justice is politically accountable for the work of the public prosecutor and the procurators general in

<sup>4</sup> See for history of the Dutch police Fijnaut 2007. See also Punch 1979 for one of the first English studies on Dutch policing.

<sup>5</sup> Ministry of the Interior and Kingdom Relations, *Policing in the Netherlands*, The Hague, 2007.

this respect. Authority over the police is therefore determined automatically by the nature of the police work and those having this authority are determined locally. Tripartite consultations on policing are held regularly by the mayor, the public prosecutor and the head of the local police force.<sup>6</sup>

The management of each of the 25 police forces is determined regionally. A regional force is allowed wide discretion in the exercise of its duties and the definition of its priorities. For example, it can itself decide on such matters as funding, staffing, equipment, buildings, organization, operational management, information systems and computerisation and the organisation of the regional criminal investigation department.

The police force manager is the mayor of the largest municipality in the region. As such he liaises with the Minister of the Interior and Kingdom Relations. The force manager generally delegates some of his decision-making powers to the chief officer, particularly in matters of personnel policy. The administrative centre of the regional force (i.e. the central police station) is also located in the largest municipality of the region.

The main policy decisions are taken by the regional executive, which comprises all the mayors of a region and the chief public prosecutor. Once policy has been formulated in outline, the details are worked out by the force manager in consultation with the chief officer and the chief public prosecutor. (...)

It is in keeping with Dutch tradition that no single body should have sole authority over the police and that authority should be divided between two ministers (the Minister of the Interior and Kingdom Relations and the Minister of Justice) on the one hand and the provincial and municipal authorities such as the Queen's Commissioner, mayor (force manager) and municipal councils on the other. At central government level the Minister of the Interior and Kingdom Relations is responsible for the arm's length management of the 25 regional police forces. He is also directly responsible for management of the KLPD. In cases where this management involves the enforcement of the criminal law or the performance of police duties for the justice authorities, the Minister of the Interior takes decisions jointly or after consultation with the Minister of Justice. Examples are the enforcement of traffic laws and the implementation of duties under the immigration laws. This is because the Minister of Justice is politically accountable for the enforcement of the criminal law, starting with the criminal investigation duties of the police, and for the management of the other stages of the judicial process (i.e. the prosecution, trial and punishment of serious offences).<sup>7</sup>

<sup>6</sup> See Albert 1996.

<sup>7</sup> Ministry of the Interior, *Policing in the Netherlands*, 2007, pp. 10-11.

### **Police Act and powers**

The organization and functioning of the police in the Netherlands is based on the Police Act 1993.<sup>8</sup> In this Act, the functions and (part of) the powers of the police are described. In Article 2, the tasks of the Dutch police are displayed: enforce the legal order and render assistance or those who need help. The enforcement of the legal order consists of the enforcement of criminal law and the enforcement of public order. As noted above, the mayor exercises authority over the police when it comes to maintaining public order and the prosecutor when it comes to criminal enforcement of the law. The police have thus two immediate bosses, the mayor and the prosecutor. They are responsible for the operations of the police. The prosecutor is formally head of the criminal investigation, although of course many duties and powers are delegated to police officers. Senior police officers are also auxiliaries to the public prosecutor and in this capacity they can carry out some tasks of the public prosecutor. To align the tasks of the police properly there are regular tripartite consultations between the mayor, prosecutor and police chief.

In exercising its functions, the police use a variety of powers based in part on the Police Act 1993, partly in the Code of Criminal Procedure and part on the basis of specific laws.<sup>9</sup> The police may use violence, in some cases lethal force, under strictly defined conditions. The police have the powers to investigate the body and cloths of individuals, to arrest and seize goods. The police can interrogate suspects. The right to silence and counsel is crucial in exercising this power. The police can search a house and correspondence and may within specific terms exercise different forms of collusion detection (systematic observation, infiltration, etc). If the powers are more severe a auxiliary to the prosecutor has to make the decision to use the power. This is also a (senior) police officer. To maintain, hold and stop for questioning the police officer has its own authority. More severe powers must be approved by the prosecutor and in some cases even by the court commissioner. The police can solve certain offences themselves by issuing a warning or a reduced penalty.

### **Monitoring and accountability**

Monitoring the functioning of the police is done by different authorities. The regional executive has a control role in the management aspects of the police. The municipal council can call the mayor to account for the exercise of its jurisdiction in respect of public order and authority over the police. The Lower House can call the Minister of Security and Justice to account on how the Public Prosecution service made use of its authority powers. The Minister of Security and Justice has jurisdiction over the public prosecutors. The Minister of the Interior has no direct

<sup>8</sup> Elzinga, Van Rest and De Valk 1995; Michiels et al 1997.

<sup>9</sup> Buruma 2007.

authority relationship with the mayor and has no direct authority over the police. However, the Minister of the Interior has extensive management powers which enable the Lower House to hold the minister accountable. This means that there is a limited and often indirect accountability of the operation and organization of the police. There is in no direct elected body that can exercise full supervision on the organization and functioning of the police.<sup>10</sup>

### **Nationalization**

At the beginning of 2009, new plans for changes to Dutch police system were made public. Although the government explicitly stressed that the regional police system is preserved, the proposals all concentrate on forms of centralization and. The proposal was to give the Council of Police Force Managers a statutory and more influential role. The Council of Police Force Managers is the gathering of all 26 police force managers (mayors of main cities) in the Netherlands. The Council of Police Force will make arrangements directly with the Minister of the Interior on the performance of the police in the Netherlands in general and the police in the region in particular. Also, they have to agree on the task performance and management of the police. The decisions of the Council of Police Force Managers shall be binding for all regions. This council will have an independent chairman. The Council shall be accountable to the Ministers of the Interior, which is then accountable to the Lower House of Parliament. The Council of Chief Constables gets an advisory role in relation to the Council of Police Force Managers. There will also be a national police organization, in addition to the individual police regions, which is responsible for personnel, information, organization, finance, automation, communications and housing of the Dutch police.

In 2010, the new cabinet presents far reaching plans concerning the organisation of the Dutch police. The press release of the Minister of Security and Justice show the impact of these decisions.

“The current 26 police forces will disappear and there will be one national police force under the responsibility of the Minister of Security and Justice. National organisation of the police will lead to less bureaucracy, increased unity, more professionalism, better and swifter cooperation between the various units of the police and more police officers involved in executive police duties. The objective is a safe living environment and more effective investigation. This is written today by Minister of Security and Justice Opstelten in a letter to the Lower House in which the main lines of the legislative proposal to introduce a national police force are set out. Upon recommendation of Minister Opstelten, the council of ministers has agreed to submit the legislative proposal for consultation. Minister Opstelten:

<sup>10</sup> See also Hoogenboom 2008.

‘Safety and police expertise are of primary importance to me. The Netherlands has to become safer for citizens.’ The Minister wants, inter alia, to have increased police presence in communities. Community police officers now spend 65 percent of their time in their community; the Minister wants to increase that percentage to 80 percent. The number of investigation hours will be extended as well, the reporting process will be simplified and the capacity for catching offenders in the act will be increased. Bureaucracy and overhead will both be reduced by 25 percent. (...)

The national police has its basis close to citizens, therefore in the community and the municipality. Jurisdiction of the police will therefore remain at the local level. The mayor will continue to manage the police in the enforcement of public order and provision of assistance in his municipality. The Public Prosecutor will continue to manage the police during investigations. Minister Opstelten intends the legislative proposal to strengthen the role of the municipal council when determining the objectives for the police and the democratic management of the police at the national and local level.

There will be one national police force, under the responsibility of the Minister of Security and Justice. The existing regional police forces, the National Police Services Agency, the Dutch Police Collaboration Facility and all other supra-regional facilities will be incorporated in this single police force, which will consist of ten regional units and one or more national operational units such as the current National Investigation Service. The ten regional units will be responsible for performance of the executive police duties in their area. They do so as part of the national police force. The boundaries of the regional units are similar to the proposed boundaries of the court districts (revised judicial map). This will simplify cooperation in the judicial chain.

Police management will come under the direct responsibility of one minister, the Minister of Security and Justice. This contributes to police unity in management and to social functioning, which allows the police to deal more flexibly and decisively with continuously changing safety problems. The supporting operation duties IT, accommodations, purchasing, personnel and organisation and financial management will be concentrated in a single unit, where this results in efficiency gains. The efficiency gains will benefit the work on the street.

The Chief Constable will be charged with the management of the national police force, and is therefore also the figurehead of the national police. The Chief Constable will be in charge of the regional and national units of the police force. The Minister of Security and Justice will be in charge of the national Chief Constable and set the framework within the Chief Constable performs his duties.

A new official within the police system is the regional mayor. The regional mayor is the mayor of the municipality with the largest number of inhabitants in one of the ten regional units. The regional mayor has a special role in the determination of the regional policy plan. If persons of authority (the mayors and chief public prosecutor) from the area of a regional unit cannot reach agreement concerning the above, the regional mayor will determine the policy plan.”<sup>11</sup> The planning is that the new national police organization will be operational in 2012.

The management aspects of the Dutch police are with these proposals effectively nationalized. The development is clearly towards a national police organization. Authority and management are formally separated in the Dutch police system. But of course they have everything to do with each other. Now finances, personnel, housing, organization, information etc will be organized and decided at national level, the scope for national substantive control of the tasks and priorities of the police increases. The minister has formally no direct authority over the police, they actually get it through the management decisions. Managerially the Dutch national police becomes reality if these proposals are agreed upon.<sup>12</sup>

This description makes clear how complex the Dutch police organization is. The Dutch police system is also always in transition. The relationships between all organizations involved are complex. History, structure and culture largely determine how the police organization in the Netherlands operates. The exact structure of the police system is still under discussion. It will change substantial in the coming years. Some find it too centralized, others too decentralized. Some find it effective, others not. Some believe that the mayors have too much power, others have the opinion that the role of the Public Prosecution Service is too important. Some believe that national priorities should have priority, others believe that the emphasis should be on the local community. Some believe that the national government should have much more to say about the police, others believe that the police should primarily remain a local matter. Some believe that the police should be monitored by a directly elected parliament, others defend the indirect accountability that now exists. These questions will remain. They are all concerned with the power and authority over the police.

### **Privatization**

In the Netherlands, the private security market has expanded in recent years, although not as sharply as in other countries. There are about 30,000 private security officers in the Netherlands (at a total of over 50,000 police officers). In total there are approximately between 250 and 400 operational security companies in

<sup>11</sup> Press Release Ministry of Security and Justice, 14-12-2010.

<sup>12</sup> Vlek and Muller 2004; Muller 2009.

the Netherlands, which have a yearly turnover of 1.16 billion in 2005.<sup>13</sup> Despite the importance of the private security industry there is still hardly any scientific attention devoted to this theme. With the exception of Hoogenboom and recently Van Steden the number of data and analysis are limited.<sup>14</sup> In comparison with other European countries the Netherlands has only limited privatization.<sup>15</sup>

*Table 1 Size, order and ranking of private security industry in the EU*

| <i>Country</i> | <i>Population</i> | <i>Police</i> | <i>Security</i> | <i>Security/police ratio</i> |
|----------------|-------------------|---------------|-----------------|------------------------------|
| Hungary        | 10,000,000        | 40,000        | 80,000          | 2.00                         |
| Poland         | 38,600,000        | 103,309       | 200,000         | 1.94                         |
| Ireland        | 3,900,000         | 12,000        | 20,000          | 1.67                         |
| Luxembourg     | 462,000           | 1,573         | 2,200           | 1.40                         |
| Estonia        | 1,400,000         | 3,600         | 4,900           | 1.36                         |
| United Kingdom | 60,270,000        | 141,398       | 150,000         | 1.06                         |
| Slovakia       | 5,400,000         | 21,500        | 20,839          | 0.97                         |
| France         | 60,400,000        | 145,000       | 117,000         | 0.81                         |
| Finland        | 5,200,000         | 7,500         | 6,000           | 0.80                         |
| Germany        | 82,500,000        | 250,000       | 170,000         | 0.65                         |
| Netherlands    | 16,300,000        | 49,000        | 30,000          | 0.61                         |
| Portugal       | 10,500,000        | 46,000        | 28,000          | 0.61                         |
| Slovenia       | 2,000,000         | 7,500         | 4,500           | 0.60                         |
| Czech Republic | 10,200,000        | 47,400        | 28,101          | 0.59                         |
| Sweden         | 9,000,000         | 18,000        | 10,000          | 0.56                         |
| Greece         | 10,700,000        | 49,900        | 25,000          | 0.50                         |
| Cyprus         | 776,000           | 3,000         | 1,500           | 0.50                         |
| Lithuania      | 3,600,000         | 20,000        | 10,000          | 0.50                         |
| Latvia         | 2,300,000         | 10,600        | 5,000           | 0.47                         |
| Belgium        | 10,300,000        | 39,000        | 18,321          | 0.47                         |
| Spain          | 40,280,000        | 193,450       | 89,449          | 0.46                         |
| Malta          | 397,000           | 1,800         | 700             | 0.39                         |
| Denmark        | 5,400,000         | 14,000        | 5,250           | 0.38                         |
| Italy          | 58,100,000        | 240,114       | 55,000          | 0.23                         |
| Austria        | 8,200,000         | 30,000        | 6,790           | 0.23                         |
| European Union | 456,185,000       | 1,495,644     | 1,088,550       | 0.73                         |

Sources: CoESS/UNI-Europa (2004) and Benyon et al. (1994).

Van Steden indicates that the growth of the private security industry in the Netherlands is mainly caused by the government policy toward private sector participation and economic rationalities. Causes such as the increase in crime, the growth of mass private property and an overburdened police force would be less applicable in the Netherlands. The professionalization of the private security has made a contribution to this growth. His expectation is that this growth will occur.<sup>16</sup>

In addition, the Netherlands has a long tradition of intensive public-private partnerships in the field of security. This public-private cooperation, both on very specific situations such as the security of shopping centers or business terrains but

<sup>13</sup> Van Steden 2007, p. 76.

<sup>14</sup> Hoogenboom 1994; Hoogenboom 1999.

<sup>15</sup> Button 2007

<sup>16</sup> Van Steden, chapter 11 en 12. See also Van Steden and Huberts 2006.



also on joint projects to prevent crime. In regional and rural bodies intensive cooperation between government and industry in the area of security is organized.<sup>17</sup>

### 3.2 Police and Dutch society

Together with education and health care, the police are considered to be one of the institutions that have a central role in present day Dutch society. The days in which these institutions were taken for granted, are long gone. In 1993 the police was restructured in a new Police Act. Although the basic tasks of the police remained the same compared to the previous Police Act of 1957 – maintaining order, giving aid to those who require it and solving crime – opinions in society as to how the police should perform these tasks had changed dramatically. From the outside, the Netherlands are often considered a rather permissive society, but within that broader framework, there are all kinds of nuances. In short, developments during the last decades can be sketched as follows. In the fifties: this is allowed and that isn't; in the sixties: it should be allowed; in the seventies: everything goes; in the eighties: should everything go?; in the nineties: it can't go on like that!; in the new era: we are going to do something about it.

The latter called for action by the police against violations of norms that were tolerated in previous decades. That also has put the police in the spotlight of public, political or media attention. At the same time, the solutions that are required from the police are less straightforward than they were in the first half of the twentieth century. A simple wrong-is-wrong approach is not accepted any more. Instead, Dutch citizens expect the police to adjust their work to individual needs of citizens and to deliver tailor-made solutions to problems. In short: the police are expected to deliver more than just repression.

To describe the relation between the Dutch police and society I emphasis two crucial reports on policing in the Netherlands. These two reports give an overview of ideas on policing in the Netherlands. Both reports were written by leading policemen. In the last subparagraph I will describe the main developments in the relationship between police and Dutch society.<sup>18</sup>

#### 3.2.1 POLICE IN CHANGE 1977

The development of the police was partly steered by developments in society, but also by the police themselves. Until the report *Politie in Verandering* (Police in change) by the Projectgroep Organisatiestructuren (Taskforce Organisation Structures 1977) the Dutch police force was a technocratic organisation strongly

<sup>17</sup> Hoogenboom and Muller 2002.

<sup>18</sup> Compare with Jones 1995 who gives an analysis of the organization of the Dutch police in the eighties and nineties.

directed to perform a government task. This report caused, at least within the police, a fundamental change in the traditional manner of thinking about police work and tasks. This report has been very important to present day functioning of the police. Therefore, we will discuss it in more detail.

In the first decades after the Second World War the Dutch police could stick to their classical manner of behaviour: dutiful enforcement of law conformity. But the rapid successions of social changes during and after the sixties necessitated organisational and structural changes in the police. In the report *Politie in Verandering* a new view of police work was developed in terms of what functions the police should have and in what manner these functions should be performed. The report started from a historical analysis, both from the period before 1966 – the traditional approach – and the period after 1966 – the so-called technocratic approach.

In the traditional police approach not their role in society, but their function for the government was central. The exercise of authority was justified by legal rules, that in turn were seen as the highest norms supporting government behaviour and thus also police behaviour. The formal goals of police activities were maintaining the law and, related to that, maintaining public order. More socially oriented assistance was of lesser importance than maintaining law and order. The dominant police attitudes were detached and reactive. Preventive work by the police was limited to mere public presence.

The absolute and oversimplified application of legal norms before 1966 left little room for social developments. Police behaviour showed a painful lack of flexibility and thus was seen as serving to maintain the social status quo. The same lack of flexibility caused a very bureaucratic police organisation. The police organisation was very centralised and hierarchical structured and left little room for discretion for individual police officers. Decisions were made at the top, but were also often based on incomplete information and an erroneous representation of reality.

This type of organization of the police really had to change when rapid changes in society took place in the middle of the sixties. For the government in general the society went from a stable, well divided society into an instable and heterogeneous one that showed uncertainty in many respects. As many parts of Dutch government, the police had not anticipated these changes. Instead, the police reacted with an abundance of sanctions and an even stricter application of law and order. Soon, however, it was realized that all this large scale force only demonstrated that the police force was defeated and was not up to present day society any more. The course was changed; first only by introducing better technical means and methods. In *Politie in Verandering* this was called the “means emancipation”: the means became the target. This technocratic approach prevented a fundamental discussion of the functions of the police.

The police concentrated themselves on the tasks where the frictions between police and society were the most evident: maintaining the public order. Still, as during the age of the traditional approach, the main task was keeping law and order, but a shift took place to maintaining order, and maintaining law was more and more seen as a means to maintain order.

At the same time, the police started to anticipate on social events to maintain safety, order and social peace. Social problems started to receive attention, but still were mainly assessed from the point of view of public order. Police assistance became a task to further welfare, and maintaining law and order were the means. But, assistance took place in a detached and impersonal fashion, based on a technical instrumental concept of police work. Because social elements of police work were missing in this manner, special police squads were created for social police tasks.

In the meantime, the organisation of the police was still based on the old bureaucratic structure. The tasks were differentiated more and more, causing a growth in hierarchical levels in the police organisation. The police followed democratization in other parts of society, so police employees started to participate in committees and work council type of organs, but all decisions were still made at the top of the centralized organisation. And the top was quite far away from every day practise. The wealth of information that was available at the bottom of the organisation just did not reach higher levels. The growing social isolation of the police thus was felt much more by common police officers than by the top of the organisation.

In *Politie in Verandering* it was tried to change this sorry state of affairs drastically. The report argued that the police should give a contribution to society in the form of social control, not just to protect, but also to create conditions for social developments, aimed at realizing essential values in the Dutch democracy. This marked the change from classic police behaviour to an initiating role in social development and renewal. The taskforce thus followed the social developments in the years prior to 1977. Dutch citizens became more critical towards the police and towards government in general. The gap between the police and the citizenry needed to be closed. Under the motto: know and be known, authority needed to be based less on the law and more on personal relations. The police needed to be integrated in society, but not to an extent that it would prevent intervention when called for.

Optimal integration would also mean that the police could have more social information than in the past and would be able to act based on interests, needs and opinions in society. Social control would then be more than just repression, but also be aware and prevent problems and conflicts. Policing would then be not just fighting symptoms, but taking away causes also.

This new form of policing required the police to decentralize to small districts. In these districts the police would take up all necessary police tasks. Police officers

were going to work in teams with strong internal coherence. Responsibility was to be also decentralized to each team. The number of hierarchical levels needed to be brought down and all police officers were going to participate in development of policy.

The report *Politie in Verandering* has brought about major changes in the Dutch police. Most of the proposals have been realized and have proved useful in practice. Even the reorganization of the police in 1993 has not changed much to this model. This reorganization brought about larger police forces, organized by region, for purposes of costs and efficiency, but the organisation in small districts is upheld everywhere.

### 3.2.2 THE POLICE IN EVOLUTION 2005

Headed by the police chief of Amsterdam a group of police chiefs wrote in 2005 a new report which they named *Police in Evolution*. Their purpose was to develop a new perspective on the police and policing in the Netherlands for the coming years. This perspective is now agreed upon within the Dutch police to be a major guideline for policy and organization in the coming years.

At this time this report plays an important role in the discussion about the future course of the police and policing in the Netherlands. It is too early to say if this report will have the same influence as the report I described before. But because of a massive attempt by the police to implement these ideas it could be happening. Therefore it is important to sketch the main points of this report which they have summarized in ten points.

- “1. *The Dutch police want to contribute to safety* In order to contribute to public safety, the Dutch police service must take up a clear position in the administrative, societal and even the operational fields of influence. The police protect the agreements and institutions that bind the members of society and link them together. The police make the greatest possible contribution to the safety of citizens given their responsibilities, powers and capacity. At the same time, the police represent the rule of law. This means that the Dutch police embrace a twin set of responsibilities.
2. *Reporting and giving advice is an explicit task of the Dutch police* The task of reporting and giving advice results from the three tasks stipulated in the 1993 Police Act, namely law enforcement, criminal investigation and emergency assistance. Reporting and giving advice means that the police indicate the areas where they feel that administrators, the Public Prosecution Service and partners could and should contribute to the improvement of safety.
3. *Police Tasks Subordination WITH authority determines the direction of the Dutch police* The Dutch police want to be a professional organisation with their own area of responsibility. They perform their profession in an expert way and with a level of independence that befits their professionalism. This

professional space is filled with due observance of the responsibilities of the authorities. The situation can be characterized as: *freedom in restraint*. Based on their professionalism, the Dutch police strive for an authoritative position in relation to their environment.

4. *The community focus will remain a guiding principle for the Dutch police*  
The Dutch police choose to continue to work in close proximity to citizens and to provide basic safety on behalf of the authorities in that way.
5. *A nodal orientation is a necessary supplement to the local orientation in the community focus* Traditionally, the Dutch police mostly focus on *locations* (areas, territories). Social processes, however, are more and more defined by *flows* of people, goods, money and especially information. The same applies to crime and terrorism, for example. (...) The police will intervene at points where the flows using the infrastructure come together, i.e. at the infrastructure network's *nodes*. At these nodes the police can carry out checks on people, goods, money and information that are aimed at identifying potential and current threats to public safety.
6. *The Dutch police are focused on policing of communities* The Dutch police want their work to be integrated in society. The work not only concerns the enforcement of rules (task-oriented), but also the provision of assistance (demand-oriented, problem-oriented). In this respect nothing has changed relative to the philosophy presented in *The Changing Police*. What is crucial, though, is the recognition that contributing to safety is not just the responsibility of the police, but of society as a whole.
7. *The Dutch police want to work in an information-driven manner*  
Police work is to a large extent knowledge-driven. Knowledge about people, situations, standards and processes determines what needs to be done. The police aim to have information and knowledge play a more central role.
8. *The Dutch police consider programme management as an adequate means of collaboration* Within the general safety policy, the police service is a crucial link because of its added value in terms of improving safety. Other parties, however, share in these responsibilities as well. There is a need to clearly define responsibilities and the connections with these other parties in order to avoid any overlap of working areas.
9. *The Dutch police form an organisational entity*  
Over the past few years the police have shown that collaboration between the different services is increasing. The police services together have started work on a Netherlands *Police Organisational Entity*.
10. *The Dutch police consider close collaboration between European police services as a self-evident element of joint EU safety policy* The Dutch police accept shared responsibility for safety within the European territory based on the realisation that the police need to make a fundamental contribution to matters of

Community importance with a view to achieving the objectives of the European Union.”<sup>19</sup>

### 3.2.3 DEVELOPMENTS RELATION POLICE AND SOCIETY

The relationship between the Dutch police and the society has changed in the period between the two reports. This is not surprising since both society and the police have undergone significant changes. Driven by both domestic and foreign developments, the relationship between police and society is characterized by a number of changes. In this paragraph I try to sketch the current relationship between police and society.<sup>20</sup>

The mutual dependency between the police and society has intensified in the Netherlands. The police needs society and its citizens for the necessary information to do their work. A sufficient degree of legitimacy of the actions of the police in society is also necessary for the police. Security has become increasingly important within the Dutch society. The police are one of the major organizations within the Dutch society which should realize this security. The police received from society extra powers and extra resources to achieve these security goals. The attention to and criticism of the police has in recent years increased substantially. The relationship is becoming closer and is becoming more direct.

To accommodate this more intense relationship between society and police specific organizational concepts were subsequently designed. Community policing has traditionally been a major concept in the Dutch police. Community officers try to create an intensive network of contacts in the society. Community officers should also be directly available and contactable for citizens. They are the frontline of the police in society. Every police force in the Netherlands has introduced some form of community policing although in each corps it is given a specific name.

At the same time, in recent years the preventive element safety and security policy in the Netherlands increased. Stopping, prevent, prevention have been important concepts in Dutch security policy. In order to achieve effective prevention a close relationship with society and its organizations is necessary. The police participate therefore intensively in various partnerships.

On the other hand, there is a certain distance between police and society in the Netherlands. The police are aware that a close and friendly relationship between police and society is not always workable. In the eighties the Dutch police imaged themselves as the best friend of the people. This worked unsatisfactorily because

<sup>19</sup> Police in evolution, 2005, p. 10 and further.

<sup>20</sup> See also Punch, Hoogenboom and Williamsom 2005; Cachet and Versteegh 2007.

the police have also an enforcing and punitive role in relation to the population. At regular times, it is also necessary that the police can use its assigned repressive instruments. That does relate well with a too close and friendly relationship between police and society. A degree of tension and distance is needed even in the Netherlands.

This was promoted by the more business like work by the police. There are – similar to New York experiences – targets and performance indicators. In these arrangements explicit production number on suspects and fines are important exponents. Such an approach does agree well with a very intense relationship with society. The organization and management of the Dutch police is becoming more national. Local and regional embedding plays a less explicit role and the relationship between police and society becomes more distant.

The relationship between the police and society in the Netherlands may actually be best described as a kind of LAT relationship: living-apart-together. There is an intense mutual dependency and there are all kinds of intensive relations between police and society. But there is also a kind of necessary distance to achieve a workable and effective relationship in the longer term.

### **3.3 Police work and accountability in the Netherlands<sup>21</sup>**

Accountability for police actions is a heavily debated subject in the Netherlands and it is a problem that figures prominently among Dutch police scientists. In everyday Dutch police practice, however, the subject receives much less attention. How the police account for their actions is apparently considered to be of little consequence for the police force's daily performance. It would seem that this subject is merely something that police scientists and the odd management cop worry about.

Here we concentrate on the relationship between police actions in practice and the accountability for those actions. With many others we share the principle that the justification of police work is essential in a democratic constitutional state. A properly controlled police force is a prerequisite in a constitutional state.

The relations between the police, the government, the law and parliament constitute the police force's weakest point. Without good relations between these different parties, a police force cannot be efficiently managed and controlled. In the past, poor communication between the police, the government and the law has led to serious problems in the police's performance in the streets. There is a relationship – be it a rather distant one – between the managerial and control

<sup>21</sup> Based on and cited from Muller 2002.

activities of the highest police officers, the mayors and the public prosecutors and the police's actual work in the streets.

### 3.3.1 POLICE CARE IN THE NETHERLANDS

Police care in the Netherlands is under a lot of pressure, since the organisation and performance of the police, the government and the law are under constant debate. In the recent past, various major incidents gave rise to national discussions on the police. These discussions sometimes put down the police as part of a crisis in our constitutional state. There have been two parliamentary inquiry committees on policing methods, while these kinds of committees are rare in the Dutch parliamentary tradition. Heated debates in our parliament and town councils have led to sweeping statements on the police. Magistrates and political and other authorities are suffering the consequences of the constant flow of incidents concerning police care in the Netherlands.

We are faced with the problem of “structural incidentalism” – a constant pattern of incidents that has major consequences for the organisation and performance of the police, the law and the government, whose legitimacy is now at stake. This structural incidentalism can be followed back to fundamental questions concerning the performance of our democratic constitutional state and concerning the violation of civilians' basic rights, one of which is the right to safety.

Fighting crime and safety ranks highest, and has been raking highest, on the public's list of priorities. The debate on this issue, however, tends to focus too much on the organisation of security care and too little on what that security care should entail. This leads to a gap between the public's security requirements and the limited organisational conditions under which the police, the government and the law have to function. Although the level of crime has been stable for the last ten to fifteen years, new large-scale public order problems around football fields, in entertainment centres and particular town districts are intensifying the public's feelings of dissatisfaction concerning lack of safety and security and the government's failure to take effective measures against it.

The authority of the police and the government in general has suffered the consequences of the constant problems in security care and the long series of incidents. The legitimacy of the actions of the police and the government, but also those of ministers, is no longer a matter of course. All those parties have lost a lot of their credibility. The public is aware of a discrepancy between political bombast and the actual actions taken. There seems to be no end to the series of incidents involving clashes between personal interests and public morals. The police and the government will have to make efforts to re-convince the public of the legitimacy of their actions.



The organisation of the current police force is highly complex and is flawed in several respects. There is insufficient dualism of authority and management. The managerial dualism is unclear. The relations between central and local management and control are unclear. The democratic justification system is inadequate. The various parties operating within this faulty organisation go to a lot of effort to arrive at consensus with respect to managerial issues, but the organisation as a whole is characterised by substantial managerial chaos. The process of arriving at managerial decisions involves a lot of personnel, and for many of those involved the amount of time that has to be spent on consultations and planning is just too great. History will show that the present police organisation is a transitional one.

Democratic accountability of regional police care is still highly limited. The adjustments that have been and are being made in the administrative structure and organisation of police care in several regions have done nothing to change this situation. Town councils have no actual influence on the management and control of the police. The competent authorities have sufficient formal possibilities of management and control, but they do not use these possibilities. They make too little effort to manage police actions and exercise no actual control over the police whatsoever. But it must be said: the police handle the latitude they are offered in a responsible way and do not attempt to operate independently.

Different mayors in the police regions have different powers. The police force manager – the mayor of the largest town – is in every respect more powerful over the police than the mayors of small towns. These actual differences in administrative powers are at conflict with the formal equality of the individual mayors in a regional council and are leading to discrepancies in the exercise of authority.

In some way related to that, is that police care in the Netherlands is too dependent on informal, personal relations. Only too often police performance is determined by chance chemistry between the various parties directly involved in the police's management. There are insufficient corrective mechanisms. Key individuals often prove to be more important than key functions. And at times all this may work out well, but in some cases it leads to serious problems. A personal conflict between a force administrator (mayor), a field officer and a force chief may lead to a complete standstill in the police's operation. The police organisation is strongly founded on the premise that a compromise will always be found and on a striving for consensus.

### 3.3.2 NORMATIVE PRINCIPLES

The need for democratically sound, effective and efficient police care is now greater than ever. Such can be laid down in seven normative principles related primarily to the organisation of police care, which is in turn directly related to the

content of police care. Optimally organised police care is of great importance for both objective and subjective safety and security.

1. *Law and practice.* A first important improvement from which police care would greatly benefit would be to narrow the gap between law and practice. A wide gap between the two implies a waste of administrative and organisational energy. In a living constitutional state it is quite alright to have tension between the law and the practice of law. But a prerequisite for constitutional police care is that the laws and the regulations based on them are not too far removed from administrative practice.
2. *Disclosure.* Also important for good police care is that administrative decisions are disclosed to the public, even if that may sometimes involve difficulties. Disclosing administrative decisions is the best way of ensuring broad involvement in administrative decision making and is in the interest of democratic justification.
3. *Transparency.* Another important factor in good police care is transparency of complex structures and processes. The police force functions in a context in which consensus, consultation and compromising are highly valued. Of great importance for ensuring transparency is an unambiguous distribution of powers and responsibilities.
4. *Prevention of concentrations of power.* Police care will benefit greatly from efforts to prevent concentrations of power, dual positions and personal unions. Checks and balances, including dualism of authority and balance of interests, are key issues in the Dutch constitutional state, and hence also of great importance for sound police operation.
5. *No authority without responsibility, no responsibility without justification.* Because of their appointed powers and the means at their disposal – including the possibility of using violence – the police occupy a special place in society. A strict rule holding for all conditions, relations and forms of consultation within the police organisation is that all powers must be coupled to responsibilities, and responsibility means that all actions must be justified.
6. *Integral democratic justification.* Something else from which police care would greatly benefit is integral justification to a democratically chosen body. Such integral democratic justification would enhance the legitimacy of the actions of the police, the government and the law. At present, there is no form of democratic justification of the police.
7. *Primacy government.* Irrespective of the great importance of safety and police care, the police force must conform to the government's basic characteristics and not vice versa.

## 3.3.3 ISSUES RELATING TO ACCOUNTABILITY OF THE POLICE

Based on an evaluation of the Police Act 1993 some major issues relating to accountability of the Dutch police arose which are still relevant today.<sup>22</sup>

#### **Formal and informal**

Informal, personal relations between the parties involved in the police are crucial. The need for good personal relations, especially between the members of the regional triangle, is widely acknowledged. It is virtually impossible to enforce the provisions of the Police Act if there are problems in the personal relations. The Police Act is entirely in line with the Dutch political-administrative culture of consultation, compromising and conflict avoidance. Many decisions relating to the management and control of the police are taken in an informal manner. Only rarely are the formal procedures followed. The advantages of informal decision making are that decisions can be quickly made and that they are usually widely supported. Disadvantages are the difficulty of controlling such decisions and their susceptibility to change. Of importance in this respect is the existing management culture in a particular region.

#### **Consultation and decision making**

The management and control of the police are topics of discussion in many different contexts, such as the executive committee, regional triangle, bilateral consultations, staff meetings, district consultations and local consultations. Because these forms of consultation are so complex, it often happens that the same subject is discussed in meetings in different places. Efforts are made to coordinate expectations and wishes in all the different circuits, to avoid the risk of actual decisions being taken by a formal committee, such as the regional council. Police force managers realise that giving all the parties involved ample scope for consultation is the best way of arriving at a successful police policy.

The many forms of consultation make decision making a diffuse process. It is virtually impossible to reconstruct when and by whom a particular decision was taken. The “formal” decision making procedures may have been followed, but the background and reasons for the decisions often remain unclear. The main aims of the many consultations actually prove to be coordination and implicit decision making. And the main purpose of the formal institutes, such as the regional council, is then to ratify the decisions. But as all the different parties have had the opportunity to express their wishes in the extensive consultations, the great majority of the members of the regional council support this development. And in this way the regional council’s decisions end up being widely supported. This

<sup>22</sup> Rosenthal, Bruinsma, Muller et al, 1998.

form of decision making also means that the mayors in the regional council have virtually no opportunity to influence decisions.

### **Information to town councils**

The provision of information to the town councils is a case apart within the wider context of information and communication. Under the terms of the Police Act, the police force managers and the mayors are obliged to pass all relevant information on to the councils without delay. In practice, however, this is not always done. The police force managers almost always immediately forward the regional councils' reports to the town councils, but the other mayors are usually more selective in providing information to the town councils. This depends on the mayor's style of management and his or her relationship with the town council.

All this does not alter the fact that the town councils are presented primarily with the results of formal communication patterns within their regions, optionally supplemented with an explanation from the mayor. They get to hear virtually nothing about the reasons for and backgrounds of the decisions. And they are therefore never fully informed about the management and control processes in their regions. Town council members of non-central towns rarely ask for further information on general aspects of the regional police. They are interested in detailed information on local safety. Town council members of central towns tend to have more interest in information on the regional force. But it is often difficult to draw a line between information relating to the mayor's authoritative role and that relating to the force manager's managerial role. In actual fact the councils of central towns quite regularly, both formally and actually, make statements about managerial issues concerning the regional force or ask the force manager to justify police actions. This is the great disadvantage of the dual role of the force administrator/mayor of a central town.

### **Democratic accountability**

Although the way the police forces account for their actions to the town council meets the formal statutory requirements, they only account for the broad outlines of their policies. The police forces seldom give a detailed account (through the mayor) of the way they conduct their policies. Town councils generally approve the reports by the police forces without much discussion. In-depth discussions about the measures taken and the choices made are rare.

When it comes to the management of the police forces, democratic accountability is essentially non-existent. Mayors are seldom called to account by their town councils for their role in the regional council. Town councils only discuss the way the mayor exercises his or her authority in maintaining public order within the municipality. The fact that in a few cases "authority" is confused with "management" is taken for granted by both the mayor and the council. But if democratic accountability for the management of the police forces is virtually non-

existent, the situation with regard to democratic accountability for the mayor's authority in preserving public order is not much better. The town councils primarily focus on their role in influencing the development of local and regional plans.

### **Power and authority**

Huberts et al conducted an empirical research on power and influence of different organizations and officials on policy, management and authority of the Dutch police.<sup>23</sup> In two tables the outcome of this research are shown. The police force manager, the chief public prosecutor and the chief constable are the main officials who have a large influence and power on policy, management and authority of the police. The chief constable and other police chiefs are supposed to have the most power and influence on the policy, management and authority of the police. The police control themselves for the most part.

The regional council has some influence and power, although they are formally the council where the main decisions on management should be made. The influence of the mayor and the prosecutor is less although they formally have authority over the police. Ministers have an increasing influence and power over policy and management of the Dutch police. Members of town councils do not have any influence and power at all and members of the Lower House of Parliament have very little influence.

Huberts et al come to the following conclusion. "All in all, it is clear that the security system operates differently than the law requires. These differences between law and reality are fairly stable. The (management) triangle is the central actor, the chief constable plays one of the main roles. That does not lead to great dissatisfaction. Satisfaction dominates, with one exception. The position of the police force manager is seen as problematic. This officer has not managed to develop into a public administrator of and for the whole police region."<sup>24</sup>

### **Overview**

Police practice and accountability do not relate very well. In the Netherlands, in spite of well-meant rhetoric and principles endorsed by all, accountability has led to a situation where the police are controlled only to a limited extent. In the Netherlands, as well as in other countries, alternative forms of control are applied, such as complaints handling schemes, planning cycles and self-evaluation. In these forms of control, the controller is mainly the police force itself. There is too little objective control from outside the police. Neither the police nor civilians seem to make an issue of accountability. Especially in the Netherlands, the police

<sup>23</sup> Huberts 2004.

<sup>24</sup> Huberts 2007, p. 158.

are assumed to operate within the confines of the law. There is no wish for further accountability and disclosure.

### 3.4 Principles of proper policing<sup>25</sup>

Dubelaar, Muller and Cleiren conducted an intensive empirical research on the judgements of the National Ombudsman and the Complaints Committee of the Amsterdam police to see if there were principles of proper policing.<sup>26</sup> The Dutch Police Act and the Criminal Code are organizational and power acts. They hardly give police guidelines on how to handle in specific situations. Dubelaar, Muller and Cleiren described and analyzed thousands of judgements and came up with the following principles of proper policing. These principles are important in policing in the Netherlands because an individual police officer has a large discretionary power. Within this discretionary power there are fifteen principles of proper policing in the Netherlands which I describe below with some examples of actual situations.

1. *Necessity*. The actions of the police in a particular case must be necessary to solve the problem. There must be an acute or urgent reason to act or in some cases not to act. If it is possible the citizens are to resolve their problems themselves.

A recently divorced woman wants to collect some stuff from the former matrimonial home. She asked the police to be present in connection with a possible escalation. The police meet this request and together with the woman they enter the house without the consent of the occupant, the ex-husband of the woman. The question in the proceedings before the National Ombudsman is if the entry of the home was necessary to avert an imminent danger. As the woman was not in the house at the time of request, the National Ombudsman considers that entering without the consent of the occupier was not necessary, since there is no identifiable acute danger to the safety of persons or cargo. The entry was not appropriate.<sup>27</sup>

2. *Proportionality*. The actions of the police should be proportionate to the problem. The performance of the police should be proportionate to the size or intensity of the problem. A small problem should be handled with limited resources and powers.
3. *Subsidiarity*. The police should always use the means that infringe the least on the rights of citizens or existing powers. The police always have to consider

<sup>25</sup> Based on and cited from Dubelaar, Muller and Cleiren 2006.

<sup>26</sup> Dubelaar, Muller and Cleiren 2006.

<sup>27</sup> National Ombudsman, 12 October 2001, report 2001/230.

whether a lighter power can be used. Only if that is not workable and effective, there could be more astringent methods used.

Mr. G., in possession of a transport ticket, is taken from the subway on September 5th at about 00.15 hours by the police, because he has refused to retrieve his feet from the bank. The Police Complaints Commission Amsterdam-Amstelland states that “the police has the power to act against undue behavior in metro stations or underground trains and it finds that the police could confront the complainants reasonably because of his behaviour. When the complainant continued to refuse to take his feet from the bank and did not react on the demand of the police to leave the train, the police could reasonably decide to take him off the train.”<sup>28</sup>

4. *Care*. The police have a duty of care for persons and goods with which they are faced. The police must ensure suspects, detainees and seized goods. In carrying out the acts of the police they should take care of the property of others.
5. *Reasonable and equitable interests assessment*. The police must act within a reasonable balance of interests. This means balancing between the risk that a person or situation entails for others and the intensity with which powers should be used on the individuals that mitigate this risky situation. The reasonableness of an informed outsider would represent the evaluation criterion.
6. *Diligence / timeliness*. The police should act vigorously and in time. If the police decide to act, then it is expected that this will be done immediately. How fast immediately is strongly depends on the specific situation.
7. *Active and adequate information*. The police should give adequate information to stakeholders on that they are doing. Whether suspects, family, bystanders in a conflict or other stakeholders, the police have a duty to provide sufficient information. The police should have a proactive attitude towards providing information.
8. *Legality / correct legal basis*. The police must act lawfully and on basis of the appropriate legal terms. This principle is the heart of policing. The legality of the actions of the police is essential for the democratic state. This legal principle is crucial for policing in the Netherlands.

On December 17, 1997 Mr G. drives through a red traffic light. He is stopped by the police and given a fine. One of the policemen notes that the car comes from a company that has admitted selling stolen cars. He wants to check the chassis number, and therefore he has to look at the inside of the right door of the car. During this check, he sees a plastic bag in front of the chair. He has the impression that there are bottles or something like that in the bag. He asked Mr. G. if he may look in the bag. G. asks why, but gets no answer. Without G's authorization (but G

<sup>28</sup> Compliant Committee Amsterdam Police, 8 July 1998, 3274.

does not show disapproval), the policeman looks in the bag. There appears to be nothing special. Mr. G. finds it unfair that the agent has looked in his bag. Since there was no explicit consent given, no security reasons available and the police had not otherwise any jurisdiction, the National Ombudsman considered it incorrect that the police looked in the bag.<sup>29</sup>

9. *Impartiality.* The police should do its work in impartiality. The police should not take sides for one of the actors in a conflict, especially as the interference of the police is an initial act to a criminal investigation. The police cannot show preference or bias. The presumption of innocence is of crucial importance to the police.

On June 8, 1999, Mr X. has a dispute with the employees of a gas station about a settlement, because X. believes that had to pay twice for the same fuel. Police officials E. and M. come to the gas station following the notification of the employees of the service station on the conflict. They first want to speak with the employees to hear what the problem is. X. would like the first word, but the police officials would not listen to him because they first want to speak to the employees of the gas station. The situation gets out of hand. According to the National Ombudsman it is not incorrect "that the officials concerned first wanted to speak with the employees to find out what is causing the conflict, and then wanted to speak with the applicants. They noted, however, that the applicant very much wanted to tell his story and that he exhibited excited behavior. Therefore, they should have decided because of mediating action and avoiding the appearance of partiality to agree that one of them would speak with the employees and the other with the applicant, for him to try to calm down."<sup>30</sup>

10. *Good and further research.* The police should do good and further research if the situation is not completely clear. The police may not rely on assumed facts and have to take different perspectives of a specific situation in mind.
11. *Careful.* The police should act carefully. Carefulness requires precision, but also ensures that all stakeholders are addressed. It is also necessary that the police do not make the problem any more complex than it already is.

On July 16, 1999 Mr. B. and M. are playing music in the house of M. The neighbor of M. experiences this nuisance and warns the police. The police come to the house and the situation escalates when the cops threatened to give a minute because of noise. Mr. B. calls one of the agents asshole. The police promptly arrest B for insulting an official in office and bring him to the police station. The National Ombudsman concluded, that in the light of the fact that the police in carrying out an investigation in principle have to choose a process for the accused that is the

29 National Ombudsman 19 October 1999, report 199/45.

30 National Ombudsman 27 March 2001, report 2001/266.



least burdensome, they had to refrain from arresting. All relevant facts were already revealed. Also, the identity and address of Mr M. were known.<sup>31</sup>

12. *Equality*. The police cannot discriminate in its work and all involved are entitled to an equivalent treatment. This does not mean that the police cannot make a founded distinction but it does mean that equality is a crucial aspect in policing.
13. *Visibility and clarity*. The police should be recognizable. The public should always know that they are policemen because they are told so or because they can see clear symbols. In addition, the police should make the public explicitly clear what the police want of them.
14. *Hear both sides*. The police should always hear both sides. In this way, a clear picture of the situation can arise and legitimate desires of stakeholders can be satisfied.
15. *Trust*. Citizens need to rely on statements and actions of the police. If the police promise to act or not to act, the public has to trust the police.

The police must meet many standards. This is necessary because the far-reaching powers they can exercise. This means that the police should know about these standards and apply them correctly. In the Netherlands the regional complaint committees and the National Ombudsman are handling complaints about the way the police acted. With these principles police as well as complaint committees have more transparent guidelines.

### 3.5 Trends in police and policing in the Netherlands

In this last paragraph I give the major trends in police and policing in the Netherlands.<sup>32</sup> These trends are based on and cited from the volume *Police and the research* that was done by many authors for that book. When I describe these trends I will refer to this research.<sup>33</sup>

#### 3.5.1 POLICE IS INTEGRATED IN SOCIETY

The Dutch police are fully integrated in Dutch society. In the past there was sometimes a debate on how great the distance between the police and society was. That is no longer the case. The police have positioned themselves in relation to citizens in such a way that the satisfaction of citizens about the police is now very high. The perception of the citizens by the police is no longer customers or best

<sup>31</sup> National Ombudsman 19 September 2002, report 2002/83.

<sup>32</sup> Based on and cited from Muller 2007.

<sup>33</sup> Compare Johnston and Shaering 2003; Joyce 2006.

friends, but it differs according to the specific task the police have to provide towards the citizens. It is clear that this perception is quite different when the police are handling a suspect, or when they are confronted with an old woman who is robbed. This differentiation makes the functioning of the police more effective.

In the Netherlands the police have decided to combine regional police forces with local policing. In this way it responds to the wishes of many mayors, municipalities and citizens to have police service in their own communities. This strengthens the relationship between the police and the community, although in terms of effectiveness and efficiency another choice could have been made. The new national police force will have to deal with these regional and local expectations about the role of the police.

The confidence of citizens is crucial for the police. Through the media, the police tried to create a more positive image of the police. That has only been successful to some extent, partly because the differences between the police and the Public Prosecution Service, both are mainly concerned with their own image. Today, the majority of police forces use their own performance as a guide for the valuation of the public. This means that they are also increasingly try to inform the citizens directly rather than through the media. In that way they think they are more capable to influence the confidence of the citizens in the way the police are organized and functions.

### 3.5.2 POLICE SYSTEM IN CONSTANT DEBATE AND REFORM

The police system is a troubled property. For many years there has been discussion about further changes in the police system in the Netherlands. Meanwhile a new Police Act is submitted that suggests a substantial centralization of the management of the police towards a national police force. This centralization should lead to more effective and efficient policing in the Netherlands. The discussion on the police system will continue in the coming years. Although most stakeholders do not want to talk about the structure, in effect, they often do.<sup>34</sup>

First and foremost it is important for the discussion on the police system to consider the wider issues around security and safety. Safety and security are now much more than just fighting crime. Many other forms of safety and security have taken organizational positions. These other organizations have interests and desires. In the discussion on the new police system, these other organizations have to be heard.

But it is obviously important that safety and security issues are considered more integral. A safety and security problem has not just a police dimension but has more and other dimensions. The police alone cannot solve insecurity and

34 Compare Savage 2007.

unsafety. There are others organizations that can and have to contribute. There is a need for an integrated organizational approach to safety and security problems.

The development of safety regions in the Netherlands could affect the organization of the police system. In the new established safety regions police, fire brigades and medical emergency care are organizational integrated to prepare for and act during crises and disasters. Police, fire brigades and medical emergency care will be organized more closely together in an administrative, organizational and operational way. There is already some discussion about an operational emergency organization where all services are integrated. It will take a long time before this is realized but it looks as if this is a conceivable perspective. The organizational integration of the police, fire brigade and the medical emergency care creates an organization which can be better managed and controlled. Safety regions in which police, fire brigades and medical emergency care have become one organization can easier be steered and controlled by the national government. This could lead to an even more far reaching centralization. The debate around the safety regions is still heavily focused on crisis management. The current proposals are not creating safety regions as well as disaster regions. Police, fire brigades and medical emergency care are working together to improve crisis management in the region. But between the lines you can read that the safety region will not always only be on crisis management but will also handle broader issues of safety and security.

Democratic control of regional safety system seems to be just as imperfect as the democratic control on the police system. In some plans there were ideas of a directly elected security and safety board but this idea has now moved to the background. The dominant view is that the affiliation will be sought to the existing political-administrative structure in the Netherlands. This will mean that the weakness of the democratic control will continue. There is no direct elected council that can hold the police, fire brigades and medical emergency care accountable. This has to be done indirectly by the town councils of the mayors.

There are significant resistances to many of these plans and developments. The organization of the Dutch public administration has been shown to be steadfast. Institutional interests are high. A comprehensive security and safety system cannot be introduced at once. These developments will vary in each region inevitably. In some regions they are already integrated the different organizations, other regions have just started. In some regions, the police have a role in the enforcement programme, in others they are only active on the sidelines. Support for fundamental change is obviously needed.

Will a broader perspective on safety and security help the police? In the longer term this will be the case, but in the short term, this means much time and attention has to be paid to organizational reform. In the longer term, it will be more secure and safe as a fully integrated safety and security organization. But before this has been achieved in the Netherlands a long time will pass.

### 3.5.3 POLICE IS BECOMING A PROFESSIONAL ORGANIZATION

The police became, in recent years, a more professional organization. There is a functioning quality system. There are performance contracts between police regions and the ministries on the basis of quantitative and qualitative targets that actually work. Training for the police has been largely improved and professionalized. There are more and more specific standards on how police work should be done. There is increasing attention to the contents of the work. There is a full complaints and disciplinary structure. There is a procedure for appointing the top of the Dutch police. Conflicts between mayors and police still exist, but they are resolved without much media attention. More and more, the Dutch police functions as one organization.

This development into a professional organization is also reflected by the police's own vision of the organization and functioning of the police in the report *Police in Evolution*. In this document, the top of the police has, for the first time since the report *Police in Change*, written their own vision for the future of the organization and functioning of the police. It should be noted that the document within the police, with authorities, departments and science has not yet created much enthusiasm. The embedding of its own vision in the broader thinking within the public deserves more attention.

The trend towards further professionalization of the police can only be welcomed. The police shall work more effectively, efficiently and lawfully. Of course there are some wishes for the future. For the competent authorities it means that the knowledge and skills of the police should be valued more. For the police it means that they should give the competent authorities sufficient information on the possibilities and limitations of the police. Professionalization of the police can and must not mean that they will act independently from the competent authorities.<sup>35</sup>

### 3.5.4 INTENSIVE COOPERATION WITH OTHERS

The police work closely with others: local government, the Public Prosecution Service, special investigation services, military, fire brigades and others. In recent years, there have been intensive contacts between all these organizations. This time the police have learned from the past. Increasingly, the exact duties are clearly defined in agreements. The police do not perceive themselves as the leading actor of all issues in the field of security, safety, law enforcement, crime control, public order and combating nuisance. The police negotiate with other agencies to agree on who is responsible for which task. The establishment of

<sup>35</sup> Compare Sheptycki 1999.

performance contracts has helped.<sup>36</sup> The police were forced to accurately determine what they could do and what should be done by others.

This attitude of the police force is prudent and necessary. Only in this way can it actually help to realize safety and security. This means that there will always be a need for accurate agreements with other partners. The police shall often act as initiator, but not as sole director and controller. Security and safety are tasks for many organizations, inside and outside the public domain.

Security and safety can not only be realized by government organizations. Citizens and businesses have a own responsibility for security and safety. The government had claimed a monopoly on security and safety for a long time. Based on the size of the problem and the necessary measures an awareness arose that not only the government has a role in safety and security. Security is a broad responsibility for all participants in modern society. The police have a role to initiate and coordinate the debate on strengthening the role of citizens and businesses in reducing safety and security.

#### 3.5.5 POLICE HAS TO BALANCE DUE PROCESS AND CRIME CONTROL

The police have many powers. In the Netherlands the police have no need for new powers. In recent years, the powers of the police (preventive search, better exchange of information, new counterterrorism powers) were further extended. Not only in respect of actual criminal acts (post crime), but mainly to avoid offences (pre crime). A further expansion seems hardly effective and efficient. It is first and foremost necessary to make better and more effective use of existing powers. The general principles of proper policing can help to ensure that the abstract standards of the legislature are workable for the police in specific situations. It is therefore important that the police continue to have sufficient knowledge about the legal aspects of the police. There are signs that this legal knowledge in recent years has declined.

The due process function within the police is less robust than previously. The law is used as a tool to achieve certain policy goals. But the law also provides for citizens' protection for a too intensive intervention by the government and in particular by the police in the life of citizens. It is important that within the police organizational provisions are made so that sufficient attention for the due process side of police work. To ensure public confidence in the police in the long term crime control is necessary but also the due process function is crucial. Recent incidents of miscarriages of justice in the Netherlands should serve as a warning for a too instrumental approach of law by the police.

<sup>36</sup> Jochems 2008.

### 3.5.6 THE CULTURE OF THE POLICE IS CRUCIAL

Confidence of citizens in the police is crucial. It needs measures and facilities in the structural sense to shaped a clear organization, clear rules and good agreements. But equally essential is the culture of the police. These include the way the police act towards citizens occurs and the knowledge they have about citizens and conflicts. It also deals with the composition and diversity of the police themselves. But also ethics and integrity of the police is of crucial importance. In the Netherlands different codes of conduct try to influence the culture of the police. The culture of the Dutch police does not differ very much from the culture of other police forces in Western Europe. Maybe the Dutch police have a more intensive relation with communities than in other countries.

In the Netherlands there were no major ethical or integrity problems within the police. Although there are several incidents, they still remain limited. The specific culture of the police does not conflict with citizens. However, there is no research on how the specific culture of the Dutch police has an impact on the organization and functioning of the police. In many discussions and debates about the police in the Netherlands one concentrates on the structural aspects and organizational components. Of course structure and organization of the police is very important, but the actual functioning of the police is mainly determined by cultural elements. This means that further discussion and debate about the organization and functioning of the police should give more explicit attention to the value (and, of course, limitations) of these cultural elements.

### 3.5.7 CONTENT OF POLICE WORK MORE ATTENTION

In recent years there has been more attention to the contents of the work of the police. Within the police there were intensive discussions on how certain activities can be handled in the most effective and efficient way. This has in many cases led to specific standards for task performance. The Dutch Police Knowledge Net brings these standards together. This professionalization of the work of the police is crucial for the further development of the art of policing. This will also allow showing the specific character of the art of policing. Especially if the police manage to combine combining with law, social and other sciences the art of policing can come to full maturity.

It should be called to ensure that too much implemented standardization does not fit the specific character of police work. Many of the police activities can be implemented with the help of standard, but there always has to remain some space for their own interpretation and creativity of the individual policemen. Increasingly, the duties of the police are put in planning. The freedom to act for individual police officers is becoming smaller. That is a valuable development for

the unity of policing. For the individual police officer, this may be a crushing experience. For the top of the Dutch police it is a challenge to achieve a responsible balance between the need for further standardization and adequate space for the creativity of the individual police officers.

#### 3.5.8 POLICE: PRIMARY FOCUS ON REPRESSION, PREVENTION IS FOR OTHERS

The police in the Netherlands have increasingly focused on repressive functions and less on preventive tasks. Criminal investigation, counter terrorism and crime fighting received the most attention. The use of specific legal powers is encouraged. The performance contract between the police regions and the Department of the Interior focus first and foremost on the repressive (and measurable) aspects of police work.

The police cannot take all preventive measures, there are others in the public administration and also in the business more responsible. The police in the Netherlands focus increasingly on their core business. These core activities are still of a more repressive nature. It should be noted that public order maintenance and public assistance played a less prominent role in police work. Especially when it comes to large-scale public order maintenance that knowledge and skills of the Dutch police are a diminishing presence. But public assistance is not only a task for the police. Other organizations in the public administration have also a task to assist the public.

This development can be assessed as positive. The police focus on the core tasks, primarily of a repressive nature. These core tasks has to be implemented by the police. The police will do what they can and will do no more. It is necessary that other partners in safety and security take their responsibility for the implementation of the preventive tasks. For it is undeniable that optimal safety and security can only be achieved if both repressive and preventive measures are effectively implemented.

#### 3.5.9 ALL ASPECTS OF POLICE WORK HAVE AN INTERNATIONAL DIMENSION

The police force has become increasingly international. Almost all parts of the police work have an international dimension. There are now international facilities within the regional forces but also at national level. That means that all police officers should always take into account what kind of international aspect is relevant for their work. The international police cooperation has a long way to go, although there are major improvements in the Netherlands on this cooperation. The increased focus on terrorism has contributed to it firmly.

Although policing has a more international character for a long time, much police work is still regional and rural. International police work remains the responsibility of specific departments within the police forces or at the national level. What really should happen is that all police officers automatically identify

the international dimension of their work. That means that police officers has to be trained to act in this more international way. But it is also important that international aspects become a more integral part of the structure of police work and the daily culture of the police.

#### 3.5.10 POLICE SCIENCE HAS BECOME RICHER

The police science in recent years in the Netherlands has become richer. There is considerable scientific and practical research on the organization and functioning of the police. The available scientific and practical knowledge of the police is significant and will grow in the coming years. The wealth of theoretical and practical knowledge of the police has great potential to improve the organization and functioning of the police and policing in the Netherlands.

There are still some problems with regard to the further development of police science. The police science is still too fragmented in different universities, colleges, the police academy and institutes. There is no integrated research program in which scientific and practical choices can be made by whom the police research is done. Cooperation between universities, colleges and the Police Academy can substantially be strengthened.

Also, the involvement of the police themselves in police science is of a minor nature. This is due in some cases to a hostile attitude of some of the top of the Dutch police in relation to scientific research. Too often they have to defend themselves against negative results. The impression exists that scientific knowledge hardly influences the Dutch police. The translation of existing knowledge for daily practice requires a great effort. Knowledge and science is important for the Dutch police. That is acknowledged by science and the police. Science and police in the Netherlands have to searching for the most effective and efficient ways to research the police and effectively use the outcomes of the research, off course within the boundaries of each others responsibilities.

### 3.6 Closure

The police force is an important organization. The way the police work is of great importance for the quality of a society. The society has given the police force the monopoly of violence. The police should handle this monopoly of violence as carefully as possible. The police force is a vital organization in a democratic state. It is necessary that the public confidence in the police maintains. That can only be realized if the police act effectively, efficiently, legally and constitutionally.<sup>37</sup>

<sup>37</sup> Roberg, Novak and Cordner 2009.





## 4 Judiciary: Courts and Public Prosecution Service

The judiciary is one of the most important institutions in a democratic state under the rule of law. The judiciary in the Netherlands includes both the courts and the judges as the public prosecutors and the Public Prosecution Service. The judiciary is a crucial power in the state. The way it is organized and operates determines to some extent the quality of the state. Confidence of citizens in the judiciary is crucial for the legitimacy of the decisions of judges and public prosecutors. Only if there is sufficient confidence in the judiciary, will citizens behave according to the judicial decisions. The realization that the organization and functioning of the judiciary is a necessary condition for a democratic state under the rule of law led, in the last decade, to many changes in the organization of the judiciary in the Netherlands.

Several new acts came into force concerning the organization of the judiciary in the Netherlands: on June 1, 1999 the Act reorganizing prosecution and setting the national prosecutor (Law of April 19, 1999, Stb. 194), on January 1, 2002 the Act on the organization and administration courts (Law of December 6, 2001, Stb. 2001, 582 ) and the Act on the Council for the Judiciary Law (Law of December 6, Stb. 2001, 583). This reorganization brought changes to the already existing structure of the judicial system since 1838. These changes built on and were partly related to the recent developments in the functioning and organization of the judiciary. Since the introduction of these laws, the developments within the judiciary have not stopped. Within the framework of this new legislation it is necessary to make even more changes in the organization and functioning of the judiciary because of the ever changing societal context.

This chapter is largely based on the volume *Judiciary: Studies on judiciary and law enforcement in the Netherlands* (2006) edited by Muller and Cleiren. This is one of the volumes in the series on security, safety and law in the Netherlands. In this chapter I will make extensive use of the chapters of some of the authors in this collection. I have used other scientific literature and documents of the Ministry of Justice, Council for the Judiciary and the Prosecution Service in order to ensure a comprehensive picture of the judiciary and prosecutors in the Netherlands.<sup>1</sup>

1 For example De Doelder 2008, Tak 2008; Margeury 2008.

## 4.1 Judges and law

The judiciary in the Netherlands consists of judges and the public prosecutors. Together they form the independent judiciary.<sup>2</sup> In this section I describe the main aspects of the organization of the judiciary in the Netherlands. The Act on Judicial Organization was enacted originally in 1827, but underwent major reform in 2002.

### 4.1.1 STRUCTURE

The judicial organization in the Netherlands consists of different bodies. On the website of the judiciary the organization of the criminal proceedings are explained as follows. “In the Netherlands, there are four bodies that are involved in criminal proceedings: the subdistrict court, the district court, the court of appeal and the Supreme Court. By no means all criminal cases are brought before the court: the criminal law also has other procedures. The police can dispose of some matters themselves, for example. So can the public prosecutor.

The *subdistrict court* is the ‘lowest court’ in the Netherlands. It only deals with summary offences. Often, these are cases in which the police or the public prosecutor has proposed an out-of-court settlement. If the suspect does not accept this proposal, the case comes before the subdistrict court. In that case, the suspect receives a summons stating exactly what he is suspected of. The court examines, at the hearing, exactly what happened. First of all, the public prosecutor addresses the court, then the suspect or his lawyer. The court can also examine witnesses. The suspect is always allowed to have the final word. The subdistrict court usually gives its oral decision immediately after the hearing. An appeal is possible to the district court against most decisions.

The *district court* in principle handles all criminal cases and appeals from the subdistrict court. Uncomplicated cases are handled by a single judge sitting in the police court as it is known. More difficult cases are considered by three judges. Here again, the public prosecutor addresses the court first, followed by the suspect or his lawyer. The police court usually gives its decision immediately. The district court judges give their decision fourteen days after the hearing. An appeal against these decisions can usually be lodged with a court of appeal. A number of specialist judges work at the district court. The police court for economic offences deals with infringements of the Trading Hours Act or the Commodities Act, for example. The juvenile court deals with cases in which children are suspected of having committed punishable offences.

The justices of the *court of appeal* generally handle all appeal cases. They reconsider exactly what happened and listen again to the accounts of the prosecution service and the suspect. The court of appeal does not have to take

<sup>2</sup> De Lange and Mevis 2007.

into account the decision of the district court. So, someone who has been convicted in first instance may be acquitted, but he may also be given a more severe punishment.

Parties who disagree with a decision can appeal to the *Supreme Court*. The justices of the Supreme Court do not reconsider the facts of a criminal case, but only examine whether the district court or the court of appeal has applied all the rules of law properly. If they have not, a different district court or a different court of appeal must review the case.”<sup>3</sup>

Besides these courts there are some other judicial courts. These are the Central Board of Appeal and the Board of Appeal for the Economy. The first deals with appeals in the civil service and social security matters, the second deals with cases in the field of socio-economic administrative law. The administrative law section of the Council of State deals with appeals. These are about administrative matters (cases against the government). The Council of State is not part of the judicial system.

The Council for the Judiciary is the link between the Minister of Justice and the courts. It represents the common interest of courts externally, ensuring facilities for all courts, oversees operations and financial management and makes general guidelines necessary in the field of business. The Council is the spokesman of the judiciary in the political and social debate.<sup>4</sup>

#### 4.1.2 ADMINISTRATIVE LEVELS OF THE JUDICIARY

In the Netherlands three administrative levels within the judiciary can be distinguished: the courts, the national Council for the Judiciary and the Ministry of Justice.<sup>5</sup> The Supreme Court exercises a supervisory function in relation to the judicial organization. This organizational structure has existed since the beginning of this century after a major restructuring process. Since January 1, 2002 there was a new law on court organization and this created a new judicial organizational system.

Langbroek gives a clear description of the specific changes and the current situation.<sup>6</sup> “The radical change in the law on judicial organization means that the judiciary functions within its own management framework, for which the Minister of Justice can be held political accountable. The renewal of the judicial

<sup>3</sup> [www.rechtspraak.nl](http://www.rechtspraak.nl)

<sup>4</sup> See [www.rechtspraak.nl](http://www.rechtspraak.nl)

<sup>5</sup> See Bovend'Eert 2006.

<sup>6</sup> Langbroek 2006.

system includes uniting the courts and legal services under the same organizational and institutional flag. The organizational integration of the courts and the legal services has taken place since 1989 and the new law gives this organizational integration a new institutional framework. The purpose of the renewal is to reduce the political responsibility to fiscal, legislative, regulatory and supervisory powers (...) The traditional political system with full ministerial management responsibility has been replaced by a system where this responsibility was largely transferred to the Council for the Judiciary.

But the Minister of Justice still has much control over the judicial system:

- The Minister has powers of legislation and regulations on the judicial system.
- The board of the courts and members of the Council are appointed by Royal Decree, as well as the judges. What differs is that the members of the Council and members of court boards are appointed for a period of six years, judges are appointed for life. The Minister of Justice makes the nomination for appointment.
- The Minister of Justice can nominate members of the Council for suspension and dismissal.
- The budget for the judicial system is part of the budget of the Minister of Justice (...)

The Council for the Judiciary has a budget distributive power towards the court organizations, has a supporting role for the organizational functioning of the courts and is also equipped with surveillance powers towards the boards and directors of the courts. Effectively, the Council for the Judiciary and the courts are independent governing bodies. (...) That does not mean that the Minister of Justice cannot have a significant regulatory influence on the administration of the judiciary. Prior to the renewal of the judiciary, the Ministry of Justice did not have good insight into management within the courts and district organizations of the public prosecutors. The new system promotes transparency in the relationship between the Ministry, the Council and the courts so that it is justified to say that the department has never had so much insight into the functioning of the judicial system as today. The department and the Council for the Judiciary 'are living separately' but they highly depend on each other for good management, and therefore are still 'together'.<sup>7</sup>

After this major reorganization of the judiciary an independent commission has done extensive research into how the modernization of the judicial system has

7 Langbroek 2006, pp. 117-119.

taken place. The main conclusions of these reports are positive about the changes introduced.<sup>8</sup>

“The Committee is impressed by what the judiciary has achieved in recent years. The principal objectives of the new legislation, and the modernisation operation in a wider sense, have largely come within reach. A major system change was conducted and successfully concluded, without significant shocks. Given the fierce debate during the preparation of the new system, this smooth transition had by no means been taken for granted. It is the Committee’s view that the courts involved, the Council for the Judiciary and the Ministry of Justice have each contributed their share to the judicial system’s successful modernisation.

The judiciary is now largely up-to-date again. There is, therefore, no need for any drastic changes to the recently innovated system. Where flaws can be found, they are not so much a consequence of the current statutory division of duties, authorities and responsibilities, but rather of the way in which they are currently put into effect by the parties involved. The Committee’s recommendations are largely aimed at adjusting certain aspects of various practices that have developed. The Committee was struck in particular by complaints of employees of the judiciary regarding forced production, bureaucratisation and risk of quality loss. To assess the value of those collective complaints and to separate fact from fiction, the Committee had an inquiry conducted. Based on this fact-finding mission, targeted measures can be proposed with due regard for the special position of independent judges within the system. In the recent pioneering years, much of the emphasis has, justifiably, been on sound financial and economic control of the new system. In the years ahead, the challenge for the judiciary will be to undergo the development from control to management. To make this possible, the legislature will need to offer the courts more opportunities and space to organise their management, subsidiary places of session and mutual cooperation. In turn, the Council and the courts will need to define the responsibilities granted to them more accurately and should actually assume them in the years ahead. The Committee is of the opinion that this process could transform the nature and scope of the current management model, which is perceived as bogged down in a culture of excessive consultations, and that it could improve the organisation’s responsiveness and reduce the work pressure and bureaucracy perceived by employees. The central theme in all of this is quality improvement (...).”<sup>9</sup>

8 Committee for the Evaluation of the Modernisation of the Dutch Judiciary, *Judiciary is quality*, The Hague, December 2006.

9 Committee for the Evaluation of the Modernisation of the Dutch Judiciary, *Judiciary is quality*, The Hague, December 2006, pp. 2-3.

Partly based on this report, the Council for the Judiciary made a new agenda for the Judiciary 2008-2011. This Agenda contains the following objectives:

- I. Expert law: This objective is both to increase the available expertise within the Judiciary as to improve the use of outside experts in procedures. Also the judiciary wants to learn from mistakes as an important tool for the maintain expertise.
- II. Reliable law: For reliability, alongside integrity it is especially important that the public can have confidence that the law acts in a uniform manner. Differences in procedure and / or outcome can be explained from the used decisionsystem and the characteristics of the present dispute and not by the individuality of the judge or the court.
- III. Effective law: For all sectors it is necessary that turnaround time of cases is standardized and that these standards are met. In addition, in certain cases it is necessary to give priority if time is of crucial importance.
- IV. Law in society: For embedding in society, it is important that the Judiciary has dialogues with its environment, is visible in the media, can pick up critical and is transparent. In addition, the different populations groups in the Netherlands must be visible in the staffing.”<sup>10</sup>

In 2010 a new Agenda for the Judiciary 2011-2014 was developed. The main objectives of this agenda are now:

- 1. The Judiciary contributes to strengthening the rule of law.
- 2. The courts reinforce the core values independence, impartiality, integrity and professionalism.
- 3. The courts work in line with needs in society.
- 4. The courts will implement the new judicial map.
- 5. The courts will become more professional and business organizations.

### **New plans**

At the beginning of 2009, the government announced further measures to make the law more accessible and make the judicial map of the Netherlands more efficient and effective. In fact, this means that certain judicial districts will be administratively moved to another area to make the districts more uniform. In a press release in 2011 the Ministry of Security and Justice gives the following overview of these organisational changes. “Changing the geographical distribution of district courts and courts of appeal will improve the efficiency of the judicial system. On the recommendation of Minister of Security and Justice Opstelten, the Council of Ministers has agreed to the legislative proposal that

<sup>10</sup> Website Council for the Judiciary [www.rechtspraak.nl](http://www.rechtspraak.nl).

provides for the revision of the judicial map of the Netherlands. The revision implies that the number of districts for district courts will be reduced from 19 to 10, and the number of districts for courts of appeal from 5 to 4. Since 1934 there have been 19 district courts in the Netherlands. The 5 courts of appeal date back to 1877. As a result of the new geographical distribution, several district courts will be merged, so that a total of 10 district courts will remain. In addition, the courts of appeal in Arnhem and Leeuwarden will be combined. This up-scaling will increase the possibilities of handling cases within a district court or court of appeal in a more structured manner. It will also widen the scope for courts to gain expertise in specialist fields, to administer customized justice, and to make the administration of justice more transparent for the citizens.

Each district court and each court of appeal will have various court locations. There will be a total of 32 court locations in the country that will be designated by order in council on the recommendation of the Minister of Security and Justice. In consultation with all the parties involved, the Council for the Judiciary will decide how cases will be divided among these court locations. In addition, the Council for the Judiciary may designate other temporary locations, for instance for trying cases concerning criminal offences committed in a large-scale incident. The new division into ten districts will also apply to the distribution of the future regional units of the national police corps which is to be set up. The Public Prosecution Service will also follow this division, resulting in ten district public prosecutor's offices. In addition, the existing five public prosecutor's offices at the courts of appeal will be replaced by one national public prosecutor's office at the court of appeal. However, not much will change for the Public Prosecution Service, because the new division of districts will coincide with the current division into regions, and because there already is one nationwide appeal court organisation in the so-called second-line. The legislative proposal also provides that the court executive committees will be organized differently. The court executive committees will become smaller and will be more involved in actually managing the courts. The 'new style' court executive committee will consist of two judges and one non-judge."<sup>11</sup> In the coming years these changes will be implemented. There seems to be broad support for this new reorganisation of the judiciary. It created hardly any public discussion in the Netherlands.

In the Coalition Agreement of the Dutch Cabinet of 2010 the following remarks were made about the topics of minimum sentences. "The government will produce proposals for the introduction of minimum sentences for adults convicted twice within ten years of an offence carrying a maximum statutory sentence of

<sup>11</sup> Press release Ministry of Security and Justice, 8-4-2011.



twelve years or more. Courts will be able to deviate from these minimum sentences in the light of highly specific individual circumstances but will have to state their reasons for doing so. The specific circumstances will be spelled out in draft legislation, as will the minimum sentence for each offence. The minimum sentence for re-offending will be at least half of the maximum statutory prison sentence for the offence concerned.” This government plan for minimum sentences created a lot of political and public decision within and outside the judiciary. The Council for the Judiciary opposed firmly to these plans. They fear that judges have to pass judgements which are not in accordance with the seriousness of the specific crime.

#### 4.1.3 CRIMINAL LAW

The Dutch law is concentrated, as in many countries, on civil law, administrative law and criminal law. Because of the aim of this book we concentrate on the criminal law. In the Netherlands we do not have lay judges. All criminal law is done by professional judges. The way current criminal law is organised is reflected in a quote from De Roos. “There is judged in two actual bodies, which is open to appeal in cassation before the Supreme Court of the Netherlands in The Hague. The Supreme Court does not judge on the facts of the case, but answers only the question whether criminal procedures have been violated or whether the law is violated. In doing so Supreme Court guards the unity of law and the legal developments in the Netherlands. The appeal seeks a new treatment of the case. Both ‘parties’ (the public prosecutor and the accused) can appeal. It is the Court of Appeal free to give a completely different opinion than the first lower court, even if that opinion is to the detriment of the defendant (*reformatio in peius*), though the latter can only be achieved by unanimity. The vast majority of cases are dismissed by a *unus iudex* (the magistrate). He can impose to one year imprisonment, which was not long ago only six months. That is one of many indications of political commitment to efficiency at the expense of quality. The *unus-law* is also more normal now in appeal cases. Criminal cases are taken to court by the Prosecution Service, in the nineteen district courts represented by the prosecutor. At the Appeal courts the Prosecution Service is represented by the Advocate General.”<sup>12</sup>

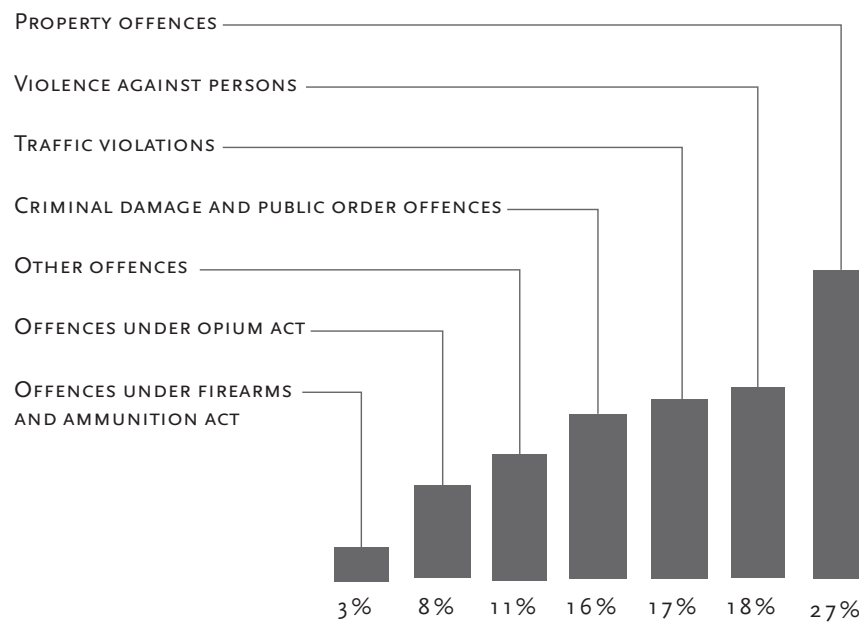
<sup>12</sup> De Roos 2006, p. 364.

## 4.2 Public Prosecution Service

### 4.2.1 ORGANIZATION<sup>13</sup>

The Dutch Public Prosecution Service has three main tasks: investigating criminal offences, prosecuting offenders and making sure that sentences are carried out properly. In the Netherlands the Public Prosecution Service is the only body that can decide to prosecute somebody. The Public Prosecution Service has a monopoly on prosecution. In the next table the cases handled by the Public Prosecution Services are shown.<sup>14</sup> After this table I present a table in which the criminal cases handled by the prosecuting authorities in European countries are compared.<sup>15</sup>

*Cases handled by the public prosecution service (by offence, in%)*



<sup>13</sup> See more in depth Marguery 2008, chapter 4. See also Pakes 1999.

<sup>14</sup> Public Prosecution Service, p. 15, website Public Prosecution Service [www.om.nl](http://www.om.nl).

<sup>15</sup> European Sourcebook of Crime and Criminal Justice Statistics, 2010, p. 134.

Table 4.2.1.1 Criminal cases handled by the prosecuting authorities – Output cases: Total

|                      | 2003  | 2004  | 2005  | 2006  | 2007  | % change<br>2003-7 |
|----------------------|-------|-------|-------|-------|-------|--------------------|
| Albania              | 354   | 442   | 448   | 480   | ...   | ...                |
| Armenia              | 312   | 332   | 270   | 298   | 293   | -6                 |
| Austria              | 8 076 | 6 903 | 7 489 | 7 238 | 7418  | -8                 |
| Belgium              | 8 923 | 8 024 | 7 514 | 7 000 | 6 836 | -23                |
| Bosnia- Herzegovina  | ...   | ...   | ...   | ...   | ...   | ...                |
| Bulgaria             | 2 405 | 2 624 | 2 269 | 2 444 | 6 131 | 155                |
| Croatia              | 1 053 | 1 082 | 1 053 | 1 085 | 1 078 | 2                  |
| Cyprus               | ...   | ...   | ...   | ...   | ...   | ...                |
| Czech Republic*      | 1 238 | 1 190 | 1 117 | 1 043 | 1 009 | -19                |
| Denmark              | ...   | ...   | ...   | ...   | ...   | ...                |
| Estonia              | ...   | ...   | ...   | 2 862 | 2 726 | ...                |
| Finland*             | 1 469 | 1 583 | 1 538 | 1 489 | 1 403 | -5                 |
| France               | 8 074 | 8 009 | 7 685 | 7 815 | ...   | ...                |
| Georgia              | ...   | ...   | 1013  | 1291  | ...   | ...                |
| Germany*             | 5 778 | 6 058 | 6 023 | 5 929 | 6 050 | 5                  |
| Greece               | 5 775 | 6 214 | 4 859 | 5 522 | 5 668 | -2                 |
| Hungary              | 1 124 | 1 352 | 1 384 | 1 340 | 1 298 | 15                 |
| Iceland*             | ...   | ...   | ...   | ...   | ...   | ...                |
| Ireland*             | 240   | 230   | 237   | 240   | ...   | ...                |
| Italy                | 5 018 | 5 103 | 4 697 | ...   | ...   | ...                |
| Latvia*              | ...   | ...   | ...   | ...   | ...   | ...                |
| Lithuania            | 1 080 | 1 844 | 1 988 | 2 004 | 1 801 | 67                 |
| Malta                | ...   | ...   | ...   | ...   | ...   | ...                |
| Moldova              | ...   | ...   | ...   | ...   | ...   | ...                |
| Netherlands*         | 1 803 | 1 803 | 1 751 | 1 757 | ...   | ...                |
| Norway               | ...   | ...   | ...   | ...   | ...   | ...                |
| Poland               | 4 020 | 4 038 | 3 929 | 3 606 | 2 888 | -28                |
| Portugal             | 4 841 | 4 837 | 4 640 | 4 723 | ...   | ...                |
| Romania              | 1 693 | 1 709 | 1 623 | 1 732 | 2 076 | 23                 |
| Russia*              | ...   | ...   | ...   | ...   | ...   | ...                |
| Slovakia             | 2 107 | 2 403 | 2 545 | 2 257 | 2 311 | 10                 |
| Slovenia             | 1 607 | 1 633 | 2 128 | 2 103 | 2 008 | 25                 |
| Sweden*              | 2 814 | 2 793 | 2 837 | 3 035 | 3 095 | 10                 |
| TFYR of Macedonia    | ...   | ...   | ...   | ...   | ...   | ...                |
| Turkey               | 2 576 | 2 849 | 2 906 | 3 304 | ...   | ...                |
| Ukraine              | ...   | ...   | ...   | ...   | ...   | ...                |
| UK: England & Wales* | 2 562 | 2 470 | 2 166 | 2 045 | 1 982 | -23                |
| UK: Scotland         | ...   | ...   | ...   | ...   | ...   | ...                |
| Mean                 | 3 123 | 3 147 | 2 964 | 2 906 | 3 115 |                    |
| Median               | 2 256 | 2 436 | 2 166 | 2 103 | 2 193 |                    |
| Minimum              | 240   | 230   | 237   | 240   | 293   |                    |
| Maximum              | 8 923 | 8 024 | 7 685 | 7 815 | 7 416 |                    |

Tak has described the current organization of the Public Prosecution Service as follows. “The prosecution service is a nationwide organization of prosecutors. It is organized hierarchically. At the top is the Board of Prosecutors General. The service functions under responsibility of the Minister of Justice, but it is not an agency of the Ministry of Justice. The service is part of the judiciary, but its

position differs from that of the other part of the judiciary, that is, the judges. The judges are independent, have life tenure, and are separate from the Ministry of Justice. Public prosecutors are civil servants, may be fired and fall under the political responsibility of the Ministry of Justice. (...) The prosecution service is organized in two layers, corresponding to courts of first instance and courts of appeal. At the (...) district courts, the prosecution service consists of prosecutors with the rank of the chief prosecutor, senior prosecutors, prosecutors, substitute prosecutors, and prosecutors acting in single court sessions. (...) At the five courts of appeal, the service consists of the chief advocate-general and the advocates-general. The main task of the service at the court of appeal level is to deal with charges in appellate cases.”<sup>16</sup>

In addition to the prosecution services at district court level there is a national prosecution office and a functional prosecution office. The national prosecution office is responsible for the criminal investigation of organized and international crime and terrorism. They supervise the National Criminal Investigation Department which is the police force which is responsible for criminal investigation of organized and international crime and terrorism. The functional prosecution office is investigating and prosecuting fiscal, economic and fraud crimes, social security crimes, health crimes and environmental crimes. Therefore they have the authority over four special investigative agencies: the Economic Control Agency and the Customs and Excise Investigative Office of the Inland Revenue Ministry, the Social Information and Investigation Agency of the Ministry of Social Affairs and Employment, the Investigative Agency of the General Inspectorate of the Ministry of Agriculture, Nature and Food Quality and the Information and Investigation Agency of the Ministry of Housing, Spatial Planning and the Environment.

The Dutch prosecution service is chaired by a Board of Prosecutors General. All public prosecutors in the Netherlands are subordinated to this board. The Public Prosecution Service in the Netherlands is now one organization. The Board can give general or more specific instructions to the public prosecutors. In the Dutch criminal justice system the public prosecutor is the leader of the criminal investigation process and has therefore authority over the police. The Public Prosecution Service has a large influence on the policing in the Netherlands. The Board of Prosecutors General can influence the acts of the individual public prosecutors in a far reaching way. The Ministry of Justice and the Board of Prosecutors General have a close relationship.

<sup>16</sup> Tak 2008, p. 49. Table from Public Prosecution Service, p. 25, [www.om.nl](http://www.om.nl).

### Powers of the Prosecution Service

The Public Prosecution Service has a specific position in the Dutch criminal justice system. 't Hart has done extensive research on the organization and operation of the Public Prosecution Service. The following quote shows how far reaching the powers of the Dutch Public Prosecution Service are. "The duties and powers of the Public Prosecution Service, following art. 125 of the new Law on the Judicial Organization, are performed by the Board of Procurators General, by the Advocate Generals and their deputies and by the public prosecutors and their alternates. But within the circle of these officers, there are differences, not just concerning the processes but also the powers themselves. The criminal investigation is governed by the Code of Criminal Procedure (CCP). In art. 141 CCP, the general criminal investigation civil servants are mentioned and, in art. 142 CCP the extraordinary criminal investigation civil servants are mentioned who have limited investigative powers. The public prosecutor is the first criminal investigation civil servant to be mentioned in art. 141 CCP. In addition, art. 148 CCP states, that the public prosecutor can not only personally exercise a criminal investigation, but he can carry out its investigative task by giving orders to the other criminal investigation civil servants. The public prosecutor is exclusively responsible for the criminal investigation processes. (...). This is as it actually should be: the public prosecutor decides, often in agreement with others, within the framework of policy directives; the public prosecutor is asked by the police when in a case serious decisions regarding the criminal investigation and their precise methods should be taken; the public prosecutor must ensure the law, the public prosecutor can take the lead in the criminal investigation processes himself in specific circumstances (...). The Procuror General and the Advocate General do not have investigative powers and they have neither the leadership of the criminal investigation."<sup>17</sup>

The Public Prosecution Service has formulated a long term perspective in which the following principles are applied. "The Prosecution Service does not lack attention and this will continue. The Prosecution Service is now permanently in a dynamic environment. This means that the organization must continually recalibrate in order to respond to any changes. In Perspective towards 2010, the long term plan of the Prosecution Service, the choices and concerns in policy and implementation of the Prosecution Service for the next four years are indicated. Crucial is the way in which the Prosecution Service will deal with developments in society and the (partly related) trends in crime. The society requires, for example, more protection against recurrent offenders. The police system is back in full discussion. The relationship with the lawyers and the media deserves more attention, and there is a tendency to criminal law in exchange for administrative

<sup>17</sup> 't Hart 2006, p. 168.

enforcement. The Prosecution Service itself is changing. It is restructuring her organization, so that the Prosecution Service can continue its mission.”<sup>18</sup>

But the public prosecutor or magistrate is not only responsible for the criminal investigation process. Since 2006 it has become possible for the magistrate to directly punish someone on the basis of the Public Prosecution Service Decision Act, 7 juli 2006. This new legislation creates a new independent power penalty for the Public Prosecution Service. The public prosecutor gets an independent authority, without intervention of the court, to impose a penalty for crimes and offences in which a sentence of imprisonment of up to six years is mentioned in the Criminal Act. The legislature intends by this Act to promote that only more serious crimes are judged by the courts. Some of the judgements which were previously monopolized by the judges are now transferred to the Public Prosecution Service.

#### 4.2.2 THE PROSECUTION SERVICE AND CRIMINAL INVESTIGATION

“The public prosecution service has an extraordinary central position in the Dutch criminal procedure. Its pivotal role is exemplified by the following features. The police functions under the command of the public prosecution service (Article 13 of the Police Act of 1993). A prosecutor is entitled to give orders to the police in criminal matters and the police is obliged to obey those orders. As far as the prosecution is concerned, the public prosecution service is placed in a monopoly-position (Articles 167 and 242 of the Code of Criminal Procedure). Third parties, including victims, can not institute proceedings against the suspected perpetrator of a criminal offence. Nevertheless there are some exceptions to this, the general rule is that a prosecutor is *dominus litis* in criminal procedures. Furthermore, the decision to prosecute is directed by the principle of opportunity or expediency (*opportuiniteitsbeginsel*, paragraph 2 of the Articles 167 and 242 of the Code of Criminal Procedure). For a long time this principle was applied in a negative way which meant that prosecuting was the rule and dismissal the exception. Nowadays it is understood in a positive way. This means that only when the public interest is served by doing so, prosecuting is the appropriate approach. At the end of a criminal procedure when a judge has imposed a punishment, the public prosecution service legally is responsible for the execution of it (Article 553 of the Code of Criminal Procedure). However, the execution of imprisonment-sentences is in practice more a matter of the Ministry of Justice than of the public prosecution service. On the other hand a

<sup>18</sup> Openbaar Ministerie, Perspectief op 2010, p. 3, [www.om.nl](http://www.om.nl).

prosecutor has a wide competence on certain other (forms of) punishments like the transaction and the conditions imposed for a suspended sentence.”<sup>19</sup>

The Public Prosecution Service in the Netherlands is thus most important in the criminal investigation process.<sup>20</sup> The public prosecutor is the leader of the criminal investigation process. He has to decide if certain specific powers can be used in a specific case. The police have to consult with him on a regular base on the use of specific powers. Although the Minister of Security and Justice has a political responsibility for the Public Prosecution Service, he will not intervene in a particular criminal case although formally he is capable to do so. The Public Prosecution Service can independently formulate demands in court. In the Netherlands political influence by a Minister of Justice in a specific case would be highly inappropriate. There is a deeply felt need for distance between the Public Prosecution Service and politics.

“The prosecutor is leading the investigation, and as such he has to legally supervise the criminal investigation by the police or the special investigation services. This is not only necessary for effective and efficient search for truth, but also to respect the interests of the accused and other stakeholders, such as witnesses, experts, victims or the families, the citizens in general (eg when it comes to telecommunications taps which information is obtained on innocent non-citizens only crime), the press and other public bodies such as municipalities (maintaining public order!) and provinces (environment).”<sup>21</sup>

The public prosecutor is also responsible for the interests of the defence. In the Netherlands the public prosecutor should act “magistrately”. Sometimes a Dutch public prosecutor is called a magistrate. This means that he is not only responsible for trying to get a defendant accused, proofed guilty and sentenced, but also for a fair trial and the correct use of investigative powers. This means that information that is positive for the defendant and is found by the police has to be included in the criminal case file. The public prosecutor is responsible for the way the police handle the defendant. Too much pressure to use non-allowed methods has to be prevented by the public prosecutor.<sup>22</sup>

The way in which the Public Prosecution functions, has changed a lot since the so-called Park Murder in Schiedam. In this murder investigation all kinds of forensic errors were made by the police and the Public Prosecution Service.<sup>23</sup> Police-officers and public prosecutors were too eager to get a conviction. Because

19 De Doelder 2000, pp. 187-188.

20 See also Pakes 1999.

21 De Roos 2005, p. 369.

22 See De Doelder and De Meijer 2006.

23 In chapter 7 forensic investigation I will describe this more thoroughly.

of that an innocent person was convicted. All these events led to a comprehensive Programme to Improve Criminal Investigation and Prosecution. In this Programme different kinds of measures are pronounced. The most important are to intensify the leadership of the public prosecutor over the criminal investigation by the police, the organization of counter-evidence and counter-discussion, a more intensive and better cooperation between the police, the Public Prosecution Service and forensics experts and audio-visual registration of interrogations. In the Netherlands there was a great political and public shock and discussion about this and other miscarriages of judgement. We did not have any experience with it in the past. They changed the way the Public Prosecution Services functions intensively.

### 4.3 Media and public prosecution

The proposition can be defended that “police”, “prosecution” and “media” have become key institutions in the minds of the everyday life of citizens. This sometimes leads to hyperbolic requirements to those institutions and even hyperbolic statements about the power of them. The reality is that the current network of police, prosecution and the media has no high degree of stability. When it comes to the battle between the various interest groups – politics, police, administration, Public Prosecution Service (PPS), injured citizens, lawyers, public opinion and the media – the only statement that can be made is that this game is played harder. This is all the more reason to pay attention to the structural relationship between police, prosecution and the media.

Crucial is the organization and content of the relationship between police, media and PPS, not only structurally but especially during incidents and crises. The importance of this relationship lies not only in the image of an organization like the police and the PPS, how important this has become in this time of image-building. A good image is more than a feeling of warmth, pride and self respect. It is, especially for organizations such as the police and PPS, vital for the implementation of the operational tasks which they are facing. Legitimacy is based partly on image. Without a good relationship between police, media and PPS there is no guarantee of good information to and from the citizens. In a democracy, this is and remains the fundamental task of a watchdog role of journalism.

The relationship between police, PPS and media has changed. It became harder, but also more complex. This has to do with the growing pressure on police and the PPS by “politics”, “public” and the legal profession. It also has to do with the changes in the media. The statement “the newspaper is a gentleman” is no longer true. Especially in television, but also in newspapers and radio, there is hardly a journalist-gentleman that is accountable, even though growing criticism on the media has now made the media more cautious.



Police, PPS and media are amongst the most powerful and most important institutions in society. They all feel increasingly uncertain about the relations to each other and to the other parties in the field of crime, security and safety. The unstable nature of the current media society reinforces this uncertainty to a great extent. The current media is also an emotional culture which has become highly susceptible to the virus of “scandal”, the moral panic, “the crisis” and “hype”.

Based on these principles an extensive empirical research into the relationship between police, PPS and media in the Netherlands was conducted by Beunders and Muller in 2005 (second edition 2009). During this research we not only interviewed many police officers, prosecutors and journalists but also made an extensive content analysis of the main newspapers in the Netherlands and held a survey amongst police spokesmen. In this paragraph I present the results of this research related to the interaction of the PPS and the media. The relationship between the PPS and media is not only relevant for the Netherlands.<sup>24</sup>

#### 4.3.1 PUBLIC PROSECUTION SERVICE AND THE MEDIA

The PPS has made a winding road to a structured media policy. It was difficult for the PPS to maintain a positive image in the media. The PPS faced, in the past, an almost exponentially growing interest in crime and criminal matters from the public, and in an almost equally exponentially growing number of TV programmes and journalists who – more occasionally than structurally – were dealing with crime. The PPS started courses for the media to improve their knowledge of policing and prosecution. Also it provides courses for special target groups, such as commercial journalists, for whom the legal knowledge was very limited. These courses are highly appreciated. The digital information from the PPS to the public has increased significantly. The sites [openbaarministerie.nl](http://openbaarministerie.nl) and [om.nl](http://om.nl) publish a selection of requisitoirs (as [rechtspraak.nl](http://rechtspraak.nl) does with some court decisions). The PPS site also answers audience questions, sometimes even (semi-) live, as, for example, after the murder of Fortuyn.

The written press and audiovisual media are still treated differently. The world of justice has traditionally been the world of quality newspapers and only since a decade or so it includes some high quality honorable news items on television, the NOS and RTL News, Network, Nova and Buitenhof on Sunday. This is the TV world where the top of the PPS feel themselves somewhat at home, and where they want to be accountable if it is really necessary. Other TV programmes such as

<sup>24</sup> See for history Brants 1993.

talk shows and certainly the programmes of the commercial broadcasters – such as Heart of the Netherlands, where crime every evening is an issue – do not seem to get much attention from the top of the PPS. However, the press prosecutors are welcome guests in the programmes of these channels.

In all those dozens of small and large trials, small and large incidents in the past ten years which created large media excitement, the media was publishing negatively on the PPS. It lasted until 2002, 2003 before the PPS reorganized their public affairs more professionally. This late moment was caused mainly by the traditional aversion to that elusive mass medium of television. Television contradicts the confidentiality which is characterized by Dutch law. The PPS centralized the information and media affairs and reduced the autonomy of the prosecutors on this point. The emphasis in the policy was shifted to the more legal, way of operating and public affairs. This led to a culture of silence within the prosecution organization. In the circle of reputable journalists who focus on crime and justice, the opinion on the PPS was not positive.

What impact has the growing reluctance of the PPS in the mainstream public affairs had on the media and the general public? This is not positive. But not only the PPS is to blame, the media themselves are not free of mistakes. First, the Dutch Society of Journalists decided to withdraw from a consultation meeting between police, PPS and the media. This rift was restored much later. But it is now not more than once per year. Secondly, “the media” have never shown any willingness to consider “pools” of journalists to attend court meetings. The media have not succeeded in achieving a joint arrangement on topics concerning the police and the PPS. Thirdly, the journalism itself used a growing self-censorship on the privacy of suspects in the nineties that almost corresponded with the PPS guidelines on the subject. Privacy was very important for all newspapers, even if the were suspects involved.

Almost all participants felt that nowadays only image counts. And almost all of them see that television and American television series on police and justice have a phenomenal influence on the perceptions of citizens of the police and the PPS. The PPS realized a much more intensive control over the information which it gives to the media. The PPS used the strictest possible interpretation of the new privacy legislation. This seems politically counterproductive. Last but not least, the competition with the police in the past ten years was an important motive in drafting of the media. Several times the PPS and the police quarreled over the media policy, both trying to protect their own image.

## 4.3.2 PATTERNS IN RELATIONS WITH THE PPS AND THE MEDIA

In recent years communication methods are used increasingly in the criminal investigation process. The media play an important role in these communication methods. Through newspapers, but increasingly through television and internet, the police try to solve crime. *Opsporing verzocht* (Crimewatch) on Dutch television is the best known example, but also Internet and telephone click lines are increasingly used. Citizens really want to assist in the criminal investigation process.

The media have a major impact on the perception of safety and security among citizens. Although the idea is that the media reports negatively about security and the police, the content analysis in the Netherlands showed that this is not the case. The dominant image of insecurity, however, remains prominent. The media did not only affect the perception of security, but also the picture that citizens have about the effectiveness and efficiency of the police. The police has increasingly recognised this problem of rising expectations.

The image of the organization and functioning of the police, as it is spread by fiction programmes, has important consequences for the image of the police. Not only the media and the public implicitly expect that the police acts as on television, but also the police themselves are trying to behave according to this expected pattern. The number of television programmes in which police and crime are prominent, is enormous. This makes it unlikely that this fact has no influence on the public's perception of the police.

Police and the PPS in the Netherlands became more and more concerned about their own image after several affairs. Not only substantive and organizational changes were necessary, but also better communication with citizens. Although police and the PPS are traditionally closed organizations, they have, for several years, been more open to the media. The result was that after initial positive imaging of police and the PPS increasingly negative images about the police and the PPS emerged. Slowly but surely the police and the PPS communicated less with the outside world. The previous consultation between the PPS, police and the press was becoming less frequent and substantive.

Within the media dissatisfaction existed on the way police public affairs were working. The restrictive directives and instructions of the PPS, and especially on its image policy, made the media an "enemy" for the police. The media were increasingly less able to collect independent information.

But also police public affairs officers were negative on the restrictive guidelines. These focused too much on the privacy of suspects. The police should not tell the media anymore that an arrest was made. Only after the accused had been led before the court commissioner were specific communications by the PPS possible. The police saw the opportunity to explain its work and influence of its own image, greatly reduced.

The police were becoming increasingly aware that “the media” did not exist. Newspapers, radio, television and the Internet are completely different worlds. Each medium is looking for a way in which messages can be formulated and disseminated. Crime and police news are ideal for specific groups. This meant for the police that they could choose where and how to deposit their messages.

Not only the actions of the police, but criminal cases get ever more attention from the media. At the beginning of the eighties the PPS was not prepared for this massive media attention. Over the years the PPS in the Netherlands learned. It was difficult for the PPS to determine what could and could not be said to the public in the media.

Not only police but also the PPS appeared sensitive to marketing and PR. The fight against crime is not only fought in court, but increasingly in the newspapers and on television. The PPS in the Netherlands took many and varied initiatives to try to improve their own image. Sometimes the PPS tried consciously to play the media, for example in some of the larger criminal processes.

The PPS tried to increase the authority over the police when it comes to providing information and pr. In the past it was allowed that the police held press conferences when sensational arrests were made. Today, this takes place under tight control of the PPS. The PPS has become much more cautious in its statements after a few lost criminal cases. A suspect is not yet convicted. Around public affairs and public relations there is growing competition between police and the PPS.

The PPS also used information as a political signal on specific legal or organizational problems. The PPS used – more than the police – information and media in its political management. Soon it became clear that the media operates according to their own known laws and that there was in the long-term little or no guidance by the interests of the PPS.

After a brief period of openness and proactive information, a more restrictive policy became dominant. A cautious strategy was used by the PPS, with minimal information to the media about ongoing criminal cases. Only when specific interests of the PPS were at stake or if national security is in danger would the PPS depart from this strategy.

#### 4.4 Trends

In ten propositions I reflect my view of the important trends and developments regarding the organization and functioning of the judiciary.<sup>25</sup>

<sup>25</sup> Based on and cited from Muller 2006.

#### 4.4.1 THE JUDICIARY OPERATES INCREASINGLY IN CLOSE INTERACTION WITH SOCIETY

The judiciary needs to adapt its organization to the expectations and aspirations of society. The recent restructuring of the judiciary and the prosecution service stemmed from political and public dissatisfaction with the functioning of these organizations. The often informal way of working does no longer fit with the desire for transparency and formality. Internal rules on which judges and magistrates act, have to be transparent. There is an increasing demand for openness and transparency of the work of the judiciary, for example cameras in the courtroom and published judgements. Judicial independence does not mean (anymore) that the judiciary can ignore the wishes and demands of society. In an organizational and regulatory sense, the functioning of the judiciary is increasingly regulated.

The judiciary and the law will remain favourite topics for political discussion. My expectation is that in the next few years this relationship between the judiciary and society will intensify. This may raise conflicts. The need for independence and distance of the judiciary is not in accordance with the short-term needs and desires of politicians, the media and the public. The members of the judiciary should therefore participate in public and political debate to constantly explain the position of the judiciary.

The judicial independence for decisions in concrete cases is still in place. There is no direct formal involvement of others. But we also see that politicians and citizens are intervening regularly with the content of a verdict. The distance between politics and law seems to be diminishing. The same can be stated with respect to citizens or action committees who demand criminal investigation on the basis of their own investigations. On the other hand, there are more judges and members of the Public Prosecution Service that are actively and publicly involved in the debate on new forms of legislation, for example terrorism legislation. The question is whether this is desirable. The separation of state powers, especially when it comes to the separation between the legislative and executive power on the one hand and the judiciary on the other hand, is crucial and essential for a democratic state under the rule of law. It is necessary that a sharp separation be continued. The long-term consequences of a breach of this separation are greater than the short-term benefits in a specific case.

In recent years in the Netherlands there have been some incidents which showed that people were wrongly convicted, as in the Schiedam Park Murder. This has led to considerable public and political commotion. This has also led to an active citizensgroups that conducted self-examination. The report on the Schiedam Park Murder has shown a number of weaknesses in the investigation and prosecution

processes. Following an evaluation, a programme to strengthen criminal investigation and prosecution was started. Improvement in the five central themes is elaborated:

- General requirements for the screening;
- The authority on the criminal investigation;
- Reinforcement of skills;
- The importance of leadership for a good criminal investigation and prosecution;
- A culture of contradiction and reflection, and continuous quality development.

Also, a structure is designed according to which old cases could be reviewed. The necessity of these measures is best supported by pointing to the need for public confidence in the judicial system. If too many incidents occur, this crucial trust will decrease. This is also reflected in an increasing relationship between the judiciary and the media. Law is very important for the media. The Public Prosecution Service in the Netherlands was closely involved in its own image-building. To a lesser extent it also seems that the judges are dealing with the media in the same way. The relation with the media is much more than just giving information. Media management has become an integral part of the work of the courts and the Public Prosecution Service. With the increasing media coverage of court cases, this will grow in the coming years. This requires a clear policy for the judiciary to handle the media. A more proactive approach of the judiciary towards the media will be necessary.

#### 4.4.2 THE DEMAND FOR JUSTICE WILL INCREASE QUANTITATIVELY AND QUALITATIVELY

The demand for justice will increase in the future. The quantity of the demand for justice will increase if only because of the growth of the population. In addition, there will be more and more conflicts brought to court. Alternative dispute resolution will lighten this a little, but it is not expected that the increase of the number of lawsuits will decrease substantially. This means that the organization of the judiciary will be confronted with an increasing stream of cases. This means a constant growth of the judiciary. The annual reports and annual plans of the judiciary show this growth. This automatically has impact on the financial position of the judiciary. Only with an equivalent financial growth, can the growth of the number of cases effectively and efficiently be addressed.

But alongside the growth in quantity there is also a growth in quality of justice to be expected. The justification of judgments will be more extensive and transparent. The legal knowledge of citizens will increase. The questions of journalists

will be better. The complexity of cases will increase because of the increasing complexity of society. Legislation and case law are becoming more extensive. The influence of international law and jurisprudence is increasing. Politics and the public will not be satisfied with vague decisions. Appeal Courts will judge more severely. All these developments have to lead to an increase in the quality of the judiciary. This implies intensive and continuous education and training. The plans and reports from the judiciary stress the importance of education, training and management development. There is the need of an explicit quality system for the judiciary, which is now developing in the Netherlands.

It is therefore also necessary to pay enough attention to the composition of the judiciary. It will be necessary for the judiciary – while maintaining the necessary legal expertise – to allow a more diverse composition in order to represent the actual societal composition more. But primarily the quality of the persons within the judiciary is of paramount importance. It would be desirable if the judiciary considers the experience gained with other organizations in the public sector with policy on diversity. In these other organizations there were in some cases expensive lessons learned because they diversified their organization too quickly and with too little quality. This has created sound problems.

#### 4.4.3 ORGANIZATION OF THE JUDICIARY CRUCIAL CHARACTERISTIC OF DEMOCRATIC LAW

The organization of the judiciary is of great importance for the functioning of the democratic state under the rule of law. A democratic state without an independent judiciary is not a democratic state. In the Dutch Agenda for the Law it explicitly states that the judiciary has a special responsibility to monitor the law and to ensure legal protection. The independence of the courts and the Public Prosecution Service is an asset in a state where there is a genuine separation of powers. The organization of the judiciary must be formed in such a way that it can judge without external interference.

In the Netherlands, both the courts and the Public Prosecution Service have been fundamentally reorganized. This has led to central-led organizations, which should ensure uniformity of law. This reconstruction contributed to a more effective and efficient organization, since more attention has been paid to governance and management. There is more emphasis on management and quantitative and qualitative objectives. Nobody will deny that in recent years much has happened within the organizations of the judiciary. Criticisms of previous commissions and studies on the functioning of the judiciary have been taken to heart and actually led to fundamental changes in both organization and operation of the organizations of judges and magistrates.

There are also criticisms with regard to these reorganizations. In summary they are concerned with the lack of distance between the judiciary and politics (and in particular the Minister of Justice). The independence of the judiciary may be jeopardized. They argue that the risk of political interference in the judiciary by political intentions is becoming too great. The Council for the Judiciary and the Board of Procurators General offers too little power to ensure that this does not happen in their opinion.

The political culture in the Netherlands ensured in the past that there was too much interference from politics in law. Not everyone realizes at this moment the need for distance. The tendency to react in the very short-term by politicians is sometimes too great. But key players in political and judicial positions are in general aware of the need for distance and independence of the judiciary. But it is unwise in the long term to depend on key players for such a fundamental principle function. In current regulations, the necessity of the separation has to be clearly regulated and formulated.

#### 4.4.4 PUBLIC CONFIDENCE ESSENTIAL

Public confidence in the judiciary is of crucial importance. Overall, it appears that citizens are satisfied with the content of judgments of the judiciary. This is an important finding. The judiciary must maintain and strengthen these positive confidence in the coming years. The duration of procedures is an important element, but the treatment of the parties is at least as important. The standards for the duration of the procedures must be tailored to the wishes of the parties. In addition, the professionalism of the judges is of great importance for the question if citizens having confidence in the judiciary. The general trend in society to achieve transparency and uniformity is also important for the judiciary, especially now that many judgments can be consulted via the Internet (in the Netherlands [www.rechtspraak.nl](http://www.rechtspraak.nl)).

The confidence in law depends not only on how the judiciary and the Prosecution Service operate. The confidence is partly dependent on the confidence in other public institutions, including the police and other investigating authorities. Incidents in these other organizations affect the level of confidence in the judiciary. The public seems to make little or no distinction between all organizations involved in law enforcement. That means that the courts should spend time on how their image is determined and can be affected. The image of the judiciary is not a way to distinguish itself from other organizations in public administration, but could be a way to improve public confidence in the law. That means, however, that citizens should be given good and sound information from the



judiciary. A targeted information policy aimed at strengthening public confidence in the law can make an important contribution.

An effective and efficient enforcement of the imposed sanctions is necessary to maintain the confidence of citizens in the law in the long term. Sanctions which are not implemented, or implemented at a very late stage, create public frustration. The obstacles in execution should therefore be resolved. It is necessary to create a higher status for the execution within the judiciary, but also in the academic world. It is an integral part of the functioning of the judiciary and one of the crucial elements of the chain of law enforcement.

A particular aspect of the confidence of citizens in the judiciary is the relationship between the Public Prosecution Service and the media. The Public Prosecution Service has travelled (...) a long and often winding road made with regard to the media. The path to the media was full of unexpected bumps and pits that are often too high or too deep to bring clearly the own policies and images to the front. The Public Prosecution Service faced in the past decade an almost exponentially growing interest in crime and criminal matters from the public, and an almost equally exponentially growing number of TV programs and journalists who are interested in crime and criminal investigation. (...) The competition with the police around the most positive image was in the past ten years an important motive towards the decided media policy. Several times had the judiciary found it necessary to act, because otherwise the police would collect too much honour.<sup>26</sup> In a new guideline on information from police and magistrates there is a plea for more openness and clarity. For the public's confidence in the police and the judiciary this is essential.

#### 4.4.5 JUDICIARY DEVELOPS TOWARDS A PROFESSIONAL AND MODERN ORGANIZATION

The judiciary is clearly and steadily developing into a professional and modern organization. The management and governance structure of the judiciary has fundamentally changed and improved. Management and policy have been separated and connected in a more meaningful way. Attempts have been made to realize integrated management in the administration of the courts and the Public Prosecution Service. Management issues are carried out by experts and not by judges or prosecutors. Quality assurance systems have been introduced and effectively implemented. The transparency of the judiciary as an organization is growing. IT has become an indispensable part of law. Experts from outside (including forensic expertise) play an increasing role in the law. Uniformity and

<sup>26</sup> Beunders en Muller 2006.

standardization of cases that are eligible is increasingly taken place. There are annual plans and annual reports on the various levels in the courts and the Public Prosecution Service. There are clear and quantitative targets on production and quality. The physical and logistical infrastructure of the judiciary has been improved. Management and administration are not deprived subjects with respect to the content. Partly as a result of some incidents structures are designed to learn from these incidents. Both organizations are constantly restructuring with the aim of becoming a better and more professional organization.

Although there are still some people who object to this organizational development, they are a minority. The benefits of development into a professional and modern organization are obvious. In this way a more effective and efficient law can occur where uniformity of law can be ensured. This requires a degree of bureaucratization of the judiciary at all levels. This is not a problem, since each organization needs a certain degree of bureaucracy. It is necessary to achieve a balance between the respective roles and responsibilities of all concerned within the law and the need for uniformity. The experience of other organizations in the public administration has shown that the risk of over-bureaucratization is always lurking. If this happens to the judiciary, the creativity and inventiveness of the members of the judiciary will reduce. Too much bureaucratization is never good.

#### 4.4.6 MORE CENTRALIZATION AND UNIFORMITY IN MANAGEMENT, GOVERNANCE AND POLICY

With the establishment of the Board of Procurators General and the Council for the Judiciary centralization occurred in the judiciary. The purpose is to create a greater degree of uniformity than is possible in a more fragmented organization. Internal reorganizations are still in progress. There are still questions about the precise relationship between the two bodies and the Minister of Justice. The position of the Supreme Court against the two agencies is not fully clear.

Centralization is a development that is visible in several areas of security and law enforcement. In the organizations of the police, fire brigades, prison services and in other sectors, such centralization can be seen. It has undeniable advantages particularly with regard to management issues of scale and uniformity that can be achieved. However, a certain degree of centralization and standardization of policy and content takes place. With such central bodies, it is easier to use directives, covenants and agreements to manage the judiciary. This may not be possible in a particular case, but the way priority is given to certain cases will be subjected to central control.

It has major advantages if the two bodies are aware that a certain degree of differentiation is possible. Not everything has to be centralized. In this way, the

judiciary can balance the wish for uniformity of law and the need for differentiation because of the characteristics of a case. The Council for the Judiciary and the College of Procurators General have to achieve a responsible balance between centralization and bureaucracy on the one hand and decentralization and individual creativity on the other hand.

#### 4.4.7 JUDGES AND MAGISTRATES MORE APART

Some authors speak about the law if they mean the judges, sometimes they mean the magistrates. Some do not want to include the magistrates in the judiciary any more. This is not always a conscious difference in the use of terms, but sometimes a real actual difference. Formally in the Netherlands the judiciary consists of both the judges and the magistrates.

Nevertheless, we note that the distance between the judges and the magistrates has grown in recent years. Although both formally were part of the judiciary, they both had their own organizational development. The judges are increasingly turning to the substantive aspects of justice. Legal protection is a main concern of the judges. The Public Prosecution Service focuses more increasingly on the police to lead the investigation and on the national policy on crime control and law enforcement. The Public Prosecution Service concentrates on the effectiveness and efficiency of the criminal investigation process. Of course there is coordination and consultation, but the character of the judges on the one side, and the prosecutors on the other side, is becoming more dominant. The fact that both are led by now powerful and strong central bodies contributes to this character.

This development is not negative per se. It offers the opportunity to develop the organization on the basis of the requirements of both organizations. These requirements are different, as we have seen in the first argument. Society demands something else from the judges than from the public prosecutors. That means that both organizations should given space to develop themselves in a manner in which they deal effectively and efficiently with the demands of the environment. Of course it is necessary that alignment and agreement between both organizations exists on crucial points. That must simply and clearly be protected. Both the prosecutors and the judges are a crucial part of the enforcement chain. But while this alignment and coordination takes place, there is no fundamental objection to more self-development in both organizations.

Sometimes the Public Prosecution Service uses the argument that if its focus on the police and crime fighting would increase, the acceptability of the Public Prosecution Service in court would be reduced and would be at the same level as the lawyers. This does not have to happen if the Public Prosecution Service

effectively anticipates the verdicts of the judges and act not only as crime fighters but also as real magistrates. It is also necessary that judges fully recognize the role of the Public Prosecution Service in the criminal investigation process.

#### 4.4.8 COOPERATION AND COORDINATION IS BECOMING INCREASINGLY IMPORTANT

Several authors are promoting enhanced judicial cooperation. Within the Public Prosecution Service cooperation is more natural because of the way it is organized and operates. Cooperation between judges and courts is not natural because of the judicial independence. There are various forms of cooperation now and in the future. For the unity of law it is essential that cooperation and coordination take place. There are now many forms of IT support that makes an effective implementation of judicial cooperation possible. This judicial cooperation will increase and be even more important in the coming years.

For the unity of law and the confidence of the citizens, judicial cooperation strongly is encouraged and should be standardized. This is an important task for the Council for the Judiciary. The College of Procurators General has realized this responsibility by publishing many policy guidelines. It would be valuable if such a structure would also be used by the Council for the Judiciary. In this way, citizens can themselves consider how judgments are passed. Of course, there is always a possibility to deviate in a specific case. In these cases there is a deviation from a standard which is known and clear.

#### 4.4.9 INSTRUMENTALITY VERSUS LEGAL PROTECTION

The development that the law is increasingly used as a tool for policy targets, continues unabated. The legal protection function is a function which seems primarily to be implemented by the judiciary (the judges and the prosecutors). The centralization of administration, management and policy within the two organizations makes it easier to use the law by government to achieve certain established policies. There is a direct relationship established between the government and the judiciary, making it more and more possible to translate political will into demands on policy, management and administration. From that perspective, the instrumentality of the law has further increased. The annual plans and vision documents make this clear.

But there is another trend to be aware of. Judges are becoming the guardians of the legal protection function. That is also explicitly reflected in the plans and reports from both organizations. It is significant that the legislative and executive power seem to favour the instrumental function beyond the legal protection function. In this way there seems to be a new kind of balance being created

between the legislative and executive focus on instrumentality and the judiciary on the legal protection. The Public Prosecution Service has a responsibility towards both functions.

The reality is not as dichotomous as I now sketch, but a clear development can be recognized. The question is whether this is a development that should be continued. In my opinion it would be desirable if the powers in the state make themselves a balance between instrumentality and legal protection. The legal protection function is also important for the legislative and executive power, as the instrumental function is important for the judiciary. It is not good if one of the forces identifies itself with one specific function. Constantly conflicting powers in a state do not contribute to the democratic ideal. This means that within each of the powers adequate organizational and substantive arrangements have to be made to balance both functions.

#### 4.4.10 ETHICS, INTEGRITY AND SYMBOLS AS CRUCIAL VALUES FOR THE JUDICIARY<sup>27</sup>

In this paragraph I note that public confidence in the law and the judiciary is crucial. This needs structural measures and facilities like a clear organization, clear rules and good agreements. But just as significant are the cultural elements for confidence in the law and the judiciary. Professional ethics for judges have the following core concepts: integrity, independence, impartial judgements, skills and behaviour, efficiency, management and organization. The judiciary should ensure its integrity. Behavioural policies are important to achieve this, but also actual compliance. That is also a crucial element of the culture of the judiciary. In the context of this discussion two documents are published concerning the improvement and structure of the integrity of the judiciary. It is in the Guideline Impartiality of the Judiciary and the Code for the Public Prosecution Services. Both documents provide general guidelines how to proceed with integrity conflicts.

In many discussions and debates on the judiciary, authors concentrate on the structural and organizational aspects of the judiciary. There should be more attention for the different cultural aspects of the judiciary. Of course structure and organization of the judiciary are very important, but the actual functioning of the judiciary is still largely determined by cultural factors. That means that in further debate and research on the organization and functioning of the judiciary the cultural elements should be given more attention.

<sup>27</sup> See more Loth 2005; Myjer 2005; Hol 2005.

## 4.5 Conclusion

The state of the judiciary is essential for the quality of the democratic rule of law. In this chapter I outlined the state of the judiciary. In the Netherlands there have been enormous changes in the organization and structure of the judiciary. In the next few years these changes will be further detailed and implemented. Standardization and unification will be key principles. It will also be important to be able to differentiate based on specific topics and themes within the judiciary. Unity is only necessary if it is crucial for an effective and efficient judiciary, but in some specific cases there is more to be said for a degree of difference between organizations, organization components, persons or components. It is crucial for the democratic state under the rule of law that the judiciary constantly adapts itself.



## 5 Detention, prisons and probation

Detention is one of the crucial links in the criminal justice chain in the Netherlands. The primary objective of detention is the implementation of court decisions. Offenders must be punished. The various detention organisations in the Netherlands are responsible for the manner in which this detention is designed. This is frequently changing. The ideas about the most effective detention develop in relation to social trends. Detention remains topical in the Netherlands. In the media and politics it is widely discussed. Not only incidents but also the broader detention policy gets ample attention. It is and remains a grateful subject for politics and media. In the Dutch academic world only a few are interested in this topic. In this chapter I give an overview of current and future detention in the Netherlands. Although detention in the Netherlands is not “a beacon of enlightenment”<sup>1</sup> anymore, it is still important to look at its institutional and organizational characteristics. The Dutch prison system was in the past appealing to international scholars.<sup>2</sup> This chapter is mainly based on the volume *Detention: Prisons in the Netherlands* (first edition 2005, second edition 2009, in Dutch) edited by Muller and Vegter.<sup>3</sup>

### 5.1 Facts and figures

For a long time the Netherlands was relatively famous for its low prison rates compared with other European countries. In the next table the actual prison rates in Europe are shown.<sup>4</sup> The Netherlands is now a regular European country at this point. The relative prison rate has risen substantially in the Netherlands over the last years.<sup>5</sup>

<sup>1</sup> Pakes 2000.

<sup>2</sup> Downes 1988; Vagg 1994; Pakes 2007; Downes and Van Swaaningen 2007.

<sup>3</sup> Compare Brand-Koolen 1987; Gelsthope and Morgan 2007; Jewekes and Johnston 2006; Jewekes 2007.

<sup>4</sup> European Sourcebook of Crime and Criminal Justice 2010, p. 295.

<sup>5</sup> See also Vagg 1994; Cavadino and Dignan 2006.



Table 5.2.1.1 Prison population per 100 000 population: STOCK – Total

|                      | 2003  | 2004  | 2005  | 2006  | 2007  | % change<br>2003-7 |
|----------------------|-------|-------|-------|-------|-------|--------------------|
| Albania              | 53.9  | 76.6  | 109.8 | 123.2 | 76.0  | 41                 |
| Armenia              | 170.6 | 88.9  | 87.7  | 88.2  | 116.5 | -32                |
| Austria              | 88.0  | 92.8  | 97.9  | 97.7  | 108.4 | 23                 |
| Belgium              | 88.2  | 92.5  | 93.0  | 98.5  | 100.5 | 14                 |
| Bosnia-Herzegovina   | 56.3  | 57.9  | 61.8  | ...   | ...   | ...                |
| Bulgaria             | 120.4 | 129.4 | 140.5 | 148.5 | 151.0 | 25                 |
| Croatia              | 63.1  | 68.1  | 78.5  | 86.3  | 95.5  | 51                 |
| Cyprus               | 49.3  | 74.1  | 70.7  | 77.7  | 85.4  | 73                 |
| Czech Republic       | 169.4 | 179.7 | 185.0 | 180.6 | 184.8 | 9                  |
| Denmark              | 66.7  | 68.8  | 73.8  | 72.4  | 66.7  | 0                  |
| Estonia              | 321.5 | 339.1 | 327.6 | 320.8 | 262.6 | -18                |
| Finland              | 65.8  | 65.8  | 72.7  | 70.4  | 65.5  | 0                  |
| France               | 92.8  | 91.8  | 92.3  | 91.3  | 99.6  | 7                  |
| Georgia              | 187.3 | 210.1 | 210.2 | 351.6 | 403.9 | 116                |
| Germany              | 94.5  | 94.9  | 94.4  | 92.8  | 89.8  | -5                 |
| Greece               | 73.8  | 80.6  | 88.9  | 92.2  | ...   | ...                |
| Hungary              | 198.3 | 187.2 | 172.2 | 162.1 | 150.4 | -24                |
| Iceland              | 39.1  | 39.3  | 40.2  | 39.1  | 38.1  | -2                 |
| Ireland              | 77.8  | 76.7  | 73.2  | 72.9  | 79.2  | 2                  |
| Italy                | 94.9  | 97.2  | 102.3 | 66.8  | 84.5  | -11                |
| Latvia               | 353.6 | 331.5 | 304.2 | 290.0 | 289.8 | -18                |
| Lithuania            | 233.4 | 236.5 | 238.3 | 238.0 | 220.0 | -6                 |
| Luxembourg           | 110.3 | 119.6 | 149.0 | 159.7 | 154.9 | 41                 |
| Malta                | 69.7  | 69.0  | 72.9  | 92.5  | 95.0  | 36                 |
| Moldova              | 298.4 | 288.1 | 250.1 | 245.9 | 183.9 | -38                |
| Netherlands          | 110.2 | 118.9 | 125.5 | 118.2 | 115.2 | 5                  |
| Norway               | 63.8  | 64.8  | 67.0  | 67.9  | 70.9  | 11                 |
| Poland               | 211.3 | 207.8 | 216.6 | 229.9 | 234.2 | 11                 |
| Portugal             | 130.6 | 123.4 | 120.3 | 117.6 | 107.2 | -18                |
| Romania              | 208.6 | 187.9 | 175.4 | 166.4 | 140.5 | -33                |
| Russia               | 585.9 | 530.6 | 575.4 | 611.8 | 624.7 | 7                  |
| Slovakia             | 164.1 | 176.6 | 172.4 | 160.6 | 151.2 | -8                 |
| Slovenia             | 55.0  | 56.4  | 56.6  | 64.8  | 66.5  | 21                 |
| Spain                | 131.5 | 138.7 | 141.2 | 145.5 | 147.0 | 12                 |
| Sweden               | 75.4  | 81.5  | 78.1  | 79.0  | 74.6  | -1                 |
| Switzerland          | 71.8  | 81.5  | 82.2  | 78.7  | 75.6  | 5                  |
| TFYR of Macedonia    | 78.8  | 86.0  | 104.7 | 99.9  | 99.7  | 26                 |
| Turkey               | 90.8  | 81.5  | 77.7  | 96.5  | 127.7 | 41                 |
| Ukraine              | 400.9 | 398.7 | 363.1 | 343.7 | 323.3 | -19                |
| UK: England & Wales  | 139.5 | 140.4 | 142.7 | 145.1 | 147.5 | 6                  |
| UK: Northern Ireland | 67.9  | 74.0  | 75.9  | 84.7  | 82.9  | 22                 |
| UK: Scotland         | 131.2 | 135.4 | 133.4 | 140.6 | 144.9 | 10                 |
| Mean                 | 141.8 | 141.4 | 142.7 | 149.0 | 148.4 |                    |
| Median               | 94.7  | 93.9  | 103.5 | 99.9  | 111.8 |                    |
| Minimum              | 39.1  | 39.3  | 40.2  | 39.1  | 38.1  |                    |
| Maximum              | 585.9 | 530.6 | 575.4 | 611.8 | 624.7 |                    |

In the past in the Netherlands only a limited number of people were in prison compared with other countries. In recent decades in the Netherlands we have seen a rise in the prison population towards a European average. The last couple of

years there has been a decrease in the total amount of prisoners. At this moment (2011) there is now an overcapacity of prison cells. Some prisons have to be closed now. The following table shows this tendency of decrease in the last years.<sup>6</sup>

|                           | 2001  | 2002  | 2003  | 2004  | 2005  | 2006  | 2007  | 2008  | 2009  | 2010  |
|---------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Total amount of prisoners | 12410 | 13060 | 13980 | 16455 | 17600 | 16230 | 14450 | 13530 | 13260 | 13295 |

## 5.2 Structure and organization

The Minister of Security and Justice is ultimately responsible for the detention policy and the Prison Service in the Netherlands. The State Secretary of Justice exercises this political responsibility in daily practice. The crucial legislation on the enforcement of prison sentences and the organization of the Prison Service are the 1998 Penitentiary Principles Act, and the attached Penitentiary Rules.

### 5.2.1 FORMS OF DETENTION

In the Netherlands different forms of detention can be distinguished. Detention can be imposed in anticipation of a criminal trial, so-called preliminary custody. “Detention can also be applied as a sanction after the court determines that an offence was committed. That detention can be imposed as a punishment or a measure. (...) For people over the age of eighteen years, there are two custodial sentences: imprisonment and custody. Imprisonment is the usual sentence for criminal felonies, while the main sentence for criminal offences is custody.”<sup>7</sup> Next to imprisonment and custody a new sentence was developed, so-called community service. “In practice, the core of the community service is usually the offender doing simple work done for the community.”<sup>8</sup>

These forms of detention are all sentences. It is also possible in the Netherlands to impose freedom restricting measures. The most important one is the detention during his Majesty’s pleasure (TBS) in specific TBS institutions. In the last years a new form of freedom restricting measures has arisen because of the so-called repeated offenders. In the Netherlands these repeated offenders can be placed in an institution for repeated offenders for a period of two years. Youth offenders have their own detention institutions for sentencing. The last form of detention which has to be mentioned here is the detention of aliens (strangers who are not naturalized).

<sup>6</sup> CBS 2012.

<sup>7</sup> Vegter 2009, p. 48

<sup>8</sup> Vegter 2009, p. 49.

“The guiding principles of the Penitentiary Act are: the principle of resocialization, the principle that a sanction is implemented as soon as possible after it is imposed, and the principle that the incarcerated person is to be subjected to as few restrictions as possible.

The Penitentiary Principles Act, furthermore, covers the principles governing the regulation of different types of penitentiary institution. The three different types are:

- remand houses mainly for implementation of pre-trial detention orders and for implementation of certain prison sentences or other kinds of deprivation of liberty;
- prisons for the implementation of prison sentences at large, and
- institutions for persistent offenders

Penitentiary institutions do not include institutions for the treatment of those under an entrustment order due to their mental disorder at the time of committing a crime, or the institutions for juvenile detainees. The Penitentiary Principles Act is not applicable for these institutions. A separate set of Principle Acts exists for the deprivation of liberty of juveniles and the implementation of entrustment orders. The Penitentiary Principles Act also elaborates the principles in respect of classification of prisons, level of association, selection of prisoners, use of control of and violence against prisoners, degree of contact with the outside world, social, spiritual, and medical care, prison work, recreation, discipline, and the complaint procedure for prisoners.”<sup>9</sup>

#### 5.2.2 PRISON SERVICE

##### **Organization**

The Prison Service in the Netherlands was reorganized thoroughly in the nineties of the last century. One of the main problems of the existing prison system was that each prison institution made its own policy and regulations. There was hardly any national policy or regulation. With the establishment of the national Correctional Institutions Agency a more integrated and national policy and organization of the Prison Service emerged. The Correctional Institutions Agency is the central authority over all prison services in the Netherlands. This agency has four divisions: prison division, division for Entrustment Orders Treatment Institutions, division for juvenile custodial institutions and a division for special detainees like illegal immigrants and drugs offenders.

The implementation of detention in the Netherlands is monitored by the Inspectorate for Sanction Application that is part of the Ministry of Security and

<sup>9</sup> Tak 2008, pp. 141-142.

Justice and became a part of the Inspectorate of Security and Justice in 2012. The independence of this inspection is ensured in a specific arrangement. This inspection has issued a large amount of specific inspection reports on virtually every part of detention in the Netherlands. “The Inspectorate for the Sanction Application is critical about the differences between judicial institutions and organizations in the Netherlands. Detainees can experience legal inequality. This is the main message in the year report 2008 of the Inspectorate for the Sanction Application. It appears that the operation and implementation of national rules in the detention organizations themselves are too different. Many prisoners come during their ‘career’ in contact with detention organizations in different locations, so they can make a comparison. The Inspectorate urges the head of the Correctional Institutions Agency again to give more guidance to the detention organizations systems and the introduction of new policies.”<sup>10</sup> The independent Council for Criminal Law Application and Youth Protection gives advice and passes judgments in specific complaints procedures. The council has 60 members: specialists in prison law, juvenile and family law and behavioural sciences, members of the judiciary and the legal profession, public administration officials, and a number of physicians.

In total, the Netherlands has about one hundred prison institutions. The various establishments have close contacts with the municipality, police and fire brigade. Especially after the major fire in a prison at Schiphol on October 27, 2005 where 11 detained illegal immigrants died, the safety side of prisons has become of crucial importance. This means that correctional institutions, municipalities, police, fire brigades and medical emergency services now exercise regularly various types of crisis that may arise. In addition, some of the correctional institutions participate in so-called security houses which are created in various municipalities.

There is much debate and discussion about the exact structure of the organization of the Prison Service in the Netherlands. Plans for large-scale reforms faced strong objections of employee participation organizations. There is a long discussion about the management structure of the Prison Service. Internal reorganization processes were delayed for a long time. The power of the individual prison directors and the strength of the employee participation organization within the Prison Service is too large to make direct extensive changes. The Dutch Cabinet made a new detention policy for the coming years to reduce the recidivism of prisoners. Assistance and support from the staff of the correctional institutions is therefore essential.

10 Press statement Year report 2007 Inspection for Sanction Implementation.

### More persons in one cell

In the Netherlands for many years there was great opposition towards a policy of more persons in one cell. This principle was not in accordance with the main prison policy which was dominated by resocialization. In the last five years many prisons were reconstructed to make more (mostly two) persons in a cell possible. There are now experiments with prisons where there are six persons in one cell. In its annual report of 2007 the Correctional Institutions Agency described these developments as follows: "Multiple-person cell use was introduced to the prison system in September 2004. Multiple-person cell use is now a regular and fully accepted way of enforcing penal measures. Increasing the use of multiple-person cells is an important government-assigned task. An investigation examining the possibility of an increase in multiple-person cell use in existing new-build institutions was therefore conducted in 2007. The Correctional Institutions Agency and the Government Buildings Agency took stock to find out how much space in the 22 most recently built locations could still be used for an increase in the number of multiple-person cells. Based on these findings, a decision will be made in 2008 on how to give shape to an expansion of the number of multiple-person cells. If new institutions are built, they will be fully suitable for multiple-person cell use. (...) Starting in February 2006, a new detention concept was tested at Lelystad Penitentiary Institution. Detainees stayed in six-person cells, and guards did part of their work with electronic aids, such as palm pilots (hand-held computers). The first experiences of this test became clear in 2007, following an assessment. It turns out that both a greater sense of responsibility among detainees and less personnel in this specific setting works well. The present concept will therefore continue to be used in Lelystad and further developed. To that end, special attention will be paid for the continued development of electronic aids, and work is being done to determine the exact cost per detention location."<sup>11</sup> At this moment in time hardly any discussion exists anymore about more persons in one cell. It is now an accepted way of detention in the Netherlands.

#### 5.2.3 SECTORS OF THE DUTCH PRISON SERVICE

##### Prisons and remand houses<sup>12</sup>

The main part of the Dutch Prison Service is the regular prison sector where the remand houses and the regular prisons are covered. They constitute the vast majority of correctional institutions and inmates in the Netherlands. Within this sector one high security prison is established.<sup>13</sup> Also some limited security institutions are a part of the regular prison system. The capacity of the regular prison system was in 2005 15,482 prisoners and in 2009 13,662.

<sup>11</sup> Correctional Institutions Agency, Annual Report 2007, p. 13 and p. 14.

<sup>12</sup> See in more depth Fiselier 2009.

<sup>13</sup> See Boin 2001.

There are also some special groups of prisoners within the regular prison system. Since 2004 the Reoffender Institutionalization Measure can be imposed which makes it possible to send persistent offenders (mostly drug addicts) to prisons. These persistent offenders are placed in institutions for persistent offenders in the Netherlands which generally are ordinary prisons and remand houses. This measure aims mainly to protect society and end the recidivism of the defendant. Mostly they are offenders who have already committed many offences, usually caused by a (drug) addiction.<sup>14</sup>

Women are a special category in Dutch prisons. In total there are approximately 900 places available for women in Dutch prisons. The main policy in the Netherlands is that female and male detainees are separated from each other.

There are some very specific correctional institutions for detainees who need special care such as institutions for special care of the psychologically immature, addicts guidance department, individual counseling department, forensic monitoring and guidance department, observation clinic Pieter Baan Centrum, detention hospital and terrorists institution.

#### **Institutions for mentally ill offenders<sup>15</sup>**

In the Netherlands there is a long history of institutions for mentally ill offenders. The legal basis for these institutions is formed by the Principle Act on Care for the Mentally Ill Offenders. In Holland it is possible to impose a so-called TBS measure. "The acronym TBS stands for 'placement under a hospital order'. TBS is a treatment measure the court imposes on people who have committed serious offences and suffer from a psychiatric illness or disorder, which influences their behaviour to a greater or lesser extent. As a result the court does not hold these people fully accountable for their actions. However, for the part of the offence for which the person in question can be held responsible the court can impose a prison sentence; the so-called combined sentence (e.g. eight years imprisonment in combination with TBS). In order to treat the disorder and prevent repeat offences (recidivism) TBS is imposed in addition to the sentence. The objective of TBS and combined sentences is to protect society. There are two variants of TBS: a hospital order with compulsory treatment (custodial measure) and a conditional hospital order. In general the hospital order with compulsory treatment, officially called 'TBS with a government order for compulsory treatment', is the one referred to most often. In this case an offender under a hospital order is placed in a custodial clinic and given treatment. In the case of a conditional hospital order the person is not forcibly placed in a clinic, but the court imposes conditions on the person's conduct. For instance, the person must undergo compulsory treatment, or is prohibited from using alcohol or drugs. If the person in question fails

<sup>14</sup> See in more depth Moerings 2007; Boone and Moerings 2007; Kooijmans and Meijer 2009.

<sup>15</sup> See in more depth Koenraadt and Mooij 2007; Veurink 2009.

to comply with these conditions the court can convert the conditional hospital order to a hospital order with compulsory treatment. The court will impose a conditional hospital order if outpatient treatment is sufficient to mitigate the risk of recidivism. The Netherlands has a total of eight custodial clinics and four Forensic Psychiatric Clinics (FPKs) where TBS treatment places are purchased. Today the custodial clinics and the FPKs are jointly referred to as Forensic Psychiatric Centres (FPCs).<sup>16</sup> The number of and capacity for TBS detainees has risen from 970 in 1998 to 2,084 in 2009. This is partly caused by the increasingly longer duration of TBS. In spite of the extension of capacity detainees must still wait for a suitable place in the TBS system.

The special characteristic of the forensic correctional institutions is that the vast majority is private. Only one of the forensic institutions is a public establishment, the others are all owned by private (hospital) organizations. Although the Minister of Justice states the conditions for the implementation of the TBS policy and gives guidelines on the demands on treatment, the implementation of the TBS is almost entirely privatized. There are many discussions on the degree of independence of these private TBS clinics. In some cases they are almost entirely part of private hospitals.

In the Netherlands in recent years there has been a lot of discussion and debate about the parole system for TBS detainees. In some cases, TBS detainees on parole committed serious crimes. These offences (murder and rape) created much political and public turmoil in the Netherlands. These events even led to a parliamentary inquiry committee that evaluated the total TBS policy. The security of TBS detainees on parole was subsequently intensified. Despite many objections, the Minister of Justice, backed by parliament, agreed to maintain parole as a key part of the Dutch TBS policy.

#### **Youth correctional institutions<sup>17</sup>**

In the Netherlands a specific sector for youth correctional institutions exists. Placing in these institutions was done on behalf of child protection or as punishment on the basis of the juvenile criminal law. Since 2008, this changed now that specific institutions for closed youth care are created for children in need of protection, in addition to specific judicial correctional institutions for the implementation of youth criminal penalties. The institutions for closed youth care are the responsibility of the Minister of Health, Welfare and Sports and the judicial correctional institutions are the responsibility of the Minister of Security

<sup>16</sup> Website Ministry of Justice [www.justitie.nl](http://www.justitie.nl)

<sup>17</sup> See more in depth Wijers and Liefwaard 2007; Liefwaard 2009.

and Justice. This change has taken place to prevent youngsters with a criminal history from being placed together with a youngster who is in need of protection.

The Netherlands had at the end of 2007 (before this new policy) fourteen youth correctional institutions with approximately 2,750 places. In the years before 2007 this number had increased substantive, partly due to the aggravation of the juvenile criminal law and the increased demand for closed places for child protection. After 2007 the amount of youth in correctional institutions decreased to 1,882 in 2009. The Principle Act Youth Correctional Institutions is applicable to these devices. These youth correctional institutions could be both public institutions and private establishments.

### Foreigners<sup>18</sup>

Illegal residence in the Netherlands is not a criminal offence. Nevertheless, there are several detention institutions in the Netherlands for illegal foreigners who have to leave the country. These are mainly rejected asylum seekers and foreigners who have no residence permits. The detention of illegal foreigners is not based on a criminal conviction but on the basis of an administrative measure on the basis of the Foreigners Act. Due to the increased number of illegal foreigners, and particularly the tightening of immigration and asylum policy and the intensification of control and detection devices specific foreigners detention institutions in the Netherlands were created. Even here, however, in recent years we have seen a decline in the use of available capacity for illegal aliens. In 2005 12,485 aliens were placed in a detention institution for illegal foreigners. This amount was in 2009 reduced to 7,867.

One of the current discussion topics is that detention of illegal immigrants is actually the same as criminal detention. The regime to which the detained aliens are subject is almost the same as detainees who have a criminal sanction. "Foreigners, along with suspects and convicts imprisoned under a regime that is established with a view to criminal proceedings, feel not without a reason discriminated and criminalized."<sup>19</sup> There is no special regime for detention of foreigners. This practice in the Netherlands has led to substantial (international) criticism.<sup>20</sup>

<sup>18</sup> See more in depth Van Kalmthout 2007; Van Kamthout 2009.

<sup>19</sup> Van Kalmthout 2009, p. 321.

<sup>20</sup> Committee for the Prevention of Torture and Inhuman and Degrading Treatment, Visit to the Netherlands June 2007, [www.cpt.coe.int](http://www.cpt.coe.int); Amnesty International, The Netherlands: The detention of irregular migrants and asylumseekers, jun 2008; Raad voor de Sanctietoepassing, Vreemdelingenbewaring, 16 June 2008 (all cited in Van Kalmthout 2009, p. 332).



## 5.2.4 PROBATION

Probation in the Netherlands has a long private history. Traditionally, there were many organizations that have a task in the field of probation. Recently, the organization and functioning of the Probation Service has changed intensively. Professionalism and efficiency are now key concepts. In the Netherlands there are three probation organizations: the Probation Department of the Salvation Army, the Social Rehabilitation for Addicted Offenders and the Dutch Probation Foundation. Together these organizations are the Probation Service in the Netherlands. "The Probation Service performs the following tasks:

- diagnosis and advice;
- supervision of conditional sanction modalities (for example, the suspended prison sentence, suspension of pre-trial detention under conditions and detention under hospital order with conditions);
- performing behavioural interventions;
- performing task penalties, in particular labour penalties.

The Probation Service can only perform probation activities as commissioned by the judicial authorities: the Public Prosecution Service, the judiciary and the prison system."<sup>21</sup> The rehabilitation organizations operate on the basis of the 1995 Probation and After-Care Order.

Each of these organizations has a specific group of persons for which they carry out probation tasks. The Salvation Army focuses on suspects and offenders who became criminals because of housing problems. They receive about 8% of the overall budget of the Probation Service and employ about 200 persons. The Social Rehabilitation for addicted Offenders concentrates on addict litigants. Here, approximately 500 employees annually treat about 16,000 people. They receive about 28% of the overall budget. The Dutch Probation Foundation provides probation for all other groups and is actually the largest probation organization. It has over 1,600 employees and every year more than 65,000 contacts with (ex-)detainees. They receive 65% of the overall budget.

The three organizations worked intensively in the Netherlands Foundation of Probation Offices but because of bureaucratic political conflicts this came to an end. The Minister of Justice now controls the rehabilitation organizations more thoroughly. In fact, they became a full part of the criminal chain. With its clients (Public Prosecution Service Ministry, the judiciary and Correctional Institutions Agency) concrete quantitative and qualitative production numbers are agreed. In each prosecutor district there is now a probation counter established which is the main contact for the probation orders from the Public Prosecution Service, the judiciary and the prison system and from which they tasks are distributed

21 Van Kalmthout and Tigges 2008, pp. 680-681.

among the three rehabilitation organizations. In some municipalities the Dutch probation organizations are participating in the newly established security houses.

Primary objective of the probation organizations is to prevent recidivism, and to a lesser extent the welfare of individuals. Contributing to the safety of society is the key task for the rehabilitation. The Probation Services in the Netherlands has gradually changed from an aid organization to a criminal justice organization.<sup>22</sup> “It cannot be said that the probation betrays its *raison d’être*, it can be said that the probation during its existence has been exposed to different influences and that some aspects of the probation work that were for a long time important are now due to the unilateral emphasis on effectiveness seem to be lost. This is especially true for those activities that express the concern that the probation has long been cherished for the welfare of litigants and ensuring their fundamental rights.”<sup>23</sup>

It seems impossible that the three probations organizations will become more integrated. The backgrounds and aspirations of the three probation organizations differ too much. This requires all stakeholders in the probation process but also in the criminal chain to realize different forms of cooperation and coordination. The tasks and organizations in the field of probation in the Netherlands are very fragmented. This has negative consequences for the effectiveness and efficiency of the probation tasks in the Netherlands. A more integral Probation Service could contribute to improving the realization of the probation objectives.

### 5.3 Trends in detention<sup>24</sup>

Detention is an ever-developing and changing topic. The future of detention is unpredictable. I would, however, like to try to sketch a few trends in detention and prisons in the Netherlands.

#### 5.3.1 DETENTION IS HIGHLY DEPENDENT ON SOCIETAL DEVELOPMENTS

The history of detention shows that in defining policies and structuring detention organisations, policy-makers have always taken societal developments into account. Even though there is sometimes a delayed response, the detention system always adjusts to new societal developments. In the 1960s and 1970s, the position of the defendant – and, hence, the inmate and his rights as well – received a great deal of attention. In the 1980s and 1990s, the emphasis shifted to improving

<sup>22</sup> Van Kalmthout and Tigges 2008.

<sup>23</sup> Boone 2009, p. 353.

<sup>24</sup> Based on and cited from Muller 2009. See also Pakes 2000; Pakes 2007.

effectiveness and efficiency in society and, therefore, of detention as well. The ever-changing regulations, directives, organisational forms and even new forms of detention reflect the constant need to adjust to a changing society. This means detention reflects thinking in society.

Two inmates in one cell, specific facilities for criminal addicts, changes in the entrustment order system and maximum security institutions all respond to specific societal trends. Society puts more emphasis on causing distress after a criminal offence rather than extensive forms of resocialisation. The detention sector follows. By far the most significant change in the detention system of the past few years has been the introduction of multi-occupancy cells. Some years ago, this was considered politically unfeasible, but now there are hardly any opponents. Multiple prison cells are becoming the regular norm in Dutch prisons. On all fronts, far-reaching experiments are conducted for the purpose of examining to what extent the multi-occupancy cells can achieve the objectives of detention. New prisons are only built with the possibility of multiple cells. There are now even experiments with six persons in one cell. The broad social debate on the introduction of multi-occupancy cells was held only to a limited degree. The prison sector and the government in particular felt that there were hardly any objections to this radical change among the population.

The programme Modernization Prisons has also as a starting point the close connection to the needs of society. This programme should lead to ensure that:

- a contribution to the safety of society is realized;
- the implementation of sanctions and measures will be more effective and efficient;
- a contribution is made to the achievement of the DJI imposed financial targets;
- better cooperation within the prison chain is realized.

“The need and desire for change remains high. Firstly the prison system is faced with more and more psychiatric and addiction problems in prison so the demand for adequate care increases. Secondly the cooperation in the prison chain needs improving. Thirdly it is necessary to respond effectively and efficiently quantitative and qualitative changes in the need for prison capacity. Flexibility of capacity management is required. Within the maximum capacity of a prison fluctuations in the supply of prisoners have to be coped without leading to new construction or abandonment of facilities. Finally, the prison system has to achieve cost reduction next to some new investments.”<sup>25</sup>

The history of detention in the Netherlands shows that this process did not start only in the past few years. In the past few centuries, the detention sector has adjusted to new societal developments time and time again. The form and

25 Brief staatssecretaris Justitie 12 November 2007.

substance of detention reflect the state of society. In other words, society receives the detention system that it deserves. It is to be expected that this will happen in the coming years as well. This will mean that we can expect further functionality and greater austerity in prison regimes.

### 5.3.2 CHANGING DEMANDS FOR DETENTION: NEED FOR FLEXIBILITY

Increase in capacity was a top priority for the Dutch Government in office. Deprivation of liberty in whatever form will exist in the future as well. Capacity deficits will always be a hotly debated issue in the future too.<sup>26</sup> The Netherlands has had a structural capacity deficit since 2001. By now, the punishment regime has lost its universally praised leniency. Calls in society for higher and longer sentences have proved persistent and undoubtedly affect the level and term of the sentences. The need for retaliation is considerable. People are striving ever more ambitiously for a safe, riskless society from which all offenders and bad guys should be removed. The government is expected to ensure that society will be safe. For this purpose, detention capacity had to be extended.

Until a few years ago convicted persons had to be released prematurely to make room for new convicted persons. Such premature releases (including conversions into electronic house arrest) affected the very core of the legitimacy of the detention policy. Political and public support for this kind of rear door policy could not be continued for a long time.

The last few years in the Netherlands there was a large extension of the capacity of prison cells. At the same time the total amount of prisoners declined. At this moment (2012) there are too many prison cells so a lot of prison cells are empty. Some prisons have to be closed now. The demand for detention capacity was reduced. The government identifies as a key cause the reduced insecurity and unsafety. The government provides in its plans to seek a 25% reduction in crime in 2010 compared to 2002 and a 10% decrease in recidivism. If these objectives are to be achieved, the necessary capacity of detention will continue to fall. Based on these objectives, the number of places in prisons will decrease even further in the coming years.

However the government chooses to continue and expand the use of multiple prisons cells, even the government says that these multiple prison cells are primarily a measure for capacity shortages. But it looks like a good possibility to reduce costs in prisons. The main objective of these multiple prison cells is a financial objective. It also provides the possibility to use detention capacity in a flexible way. With multiple and one persons cells the Netherlands can anticipate an increase or decrease in the need for detention. The predictability of prison

<sup>26</sup> And they were hotly debated in the past as well; see the special issue of *Justitiële Verkenningen*, 6, 1995.

capacity is not always very high, so the Prison Service is compelled to create a more flexible placement of prisoners.

### 5.3.3 DEFECTIVE KNOWLEDGE OF DETENTION

Citizens, but also many authorities and the media, have only limited knowledge of detention. They systematically fail to appreciate the standard distinction between prisons and detention centres. Information about detention is available only to a limited extent. It is hardly included in any scientific or other study programmes. It has increasingly become a subject for specialists and persons working in the sector. In view of the immense significance of the subject to society, this is undesirable.

Detention is not a high priority in the ordinary public and political perception. Detention is prioritized only if there are incidents, such as escapes or criminal offences committed by patients who have escaped from forensic institutions. Such cases are often discussed and assessed, however, without proper knowledge of the subject of detention. The basic assumption is that the detention sector should particularly ensure that incidents are prevented. The manner in which detention is regulated is not a subject of political or public debate. This means that there is diffuse societal support for the detention policy. As only few people are really knowledgeable about detention, it cannot be said that the detention policy is broadly supported by the population. In all likelihood, the majority of the Dutch population would favour an even more sober and stricter regime.

The citizens' and politicians' perception of detention is based largely on media reports on detention. In these reports, popular pictures prevail, which are hardly related to the reality of penal institutions. When there are incidents, politicians and the media frequently misuse the citizens' ignorance about detention. The detention sector is not very active either in providing information about the content and operation of the detention system, even if there are simple pictures and diagrams to clarify the system. The open days of the institutions are a positive exception. The future requires a more substantive and consistent policy, which will increase the knowledge and insight of the persons involved in the various sectors of society.

For the legitimacy of the detention policy it would be desirable to give politics, media and citizens more insight into the actual operation and organization of detention in the Netherlands. Managing public and political confidence are nowadays very regular in many government. In the field of detention, there is resistance to open and transparent display of the organization and functioning. For the long-term legitimacy of detention it is necessary that sufficient attention is available for managing the public and political confidence in the prison system.

#### 5.3.4 DETENTION IS A HIGHLY JURIDICAL POLICY AREA

Detention ultimately encroaches on the fundamental rights of citizens. The inmate is completely dependent on the government. This necessitates an extensive system of regulations and statutes that gives substance to the position of inmates. The basic legislative system has been valid for many years,<sup>27</sup> although it was found necessary to make adjustments relating to the inmate's position.

Generally, the rights of inmates have been reduced in the course of time because of the general security interest and the greater emphasis on the functional side of detention. This relationship should be balanced.

The large number of legal arrangements about nearly all aspects of living in detention particularly reflect the process of juridification. Everything is regulated or will be regulated in the near future. As the prison population has extensive experience in legal proceedings, inmates are not afraid to conduct these proceedings. This means that there must be proper rules. Recent case law shows, however, that measures will have to be taken in this area. In this respect, the authorities always seek the limits of what is possible in the context of international human rights legislation in particular.

A substantial amount of scientific literature about detention in the Netherlands has a primarily legal background as well. Even though a few behavioural scientists have concerned themselves with the sociological, psychological or other aspects of detention, they are a minority in Dutch scientific literature. In this context, an exception must naturally be made for the extensive literature about forensic science. Even so, it is useful and necessary that other sciences will focus more attention on detention on a long-term basis. In this way the primary focus on the legal aspects could be reduced.

#### 5.3.5 NEW ATTENTION TOWARDS RECIDIVISM

Over the years, resocialisation has received less and less attention. There is an emphasis on the repressive and functional nature of detention rather than on the inmate's return to society. First and foremost, detention is designed to execute a punishment as retaliation for the commission of specific criminal offences. The other function is to prevent the person concerned from recidivism. Much of the organisation and the type of detention has been made subordinate to these functions. Admittedly, the formal documents still and explicitly mention resocialisation, but in practice, it is less and less dominant. There are fewer and fewer possibilities for inmates to actually resocialise in the penal institutions.<sup>28</sup>

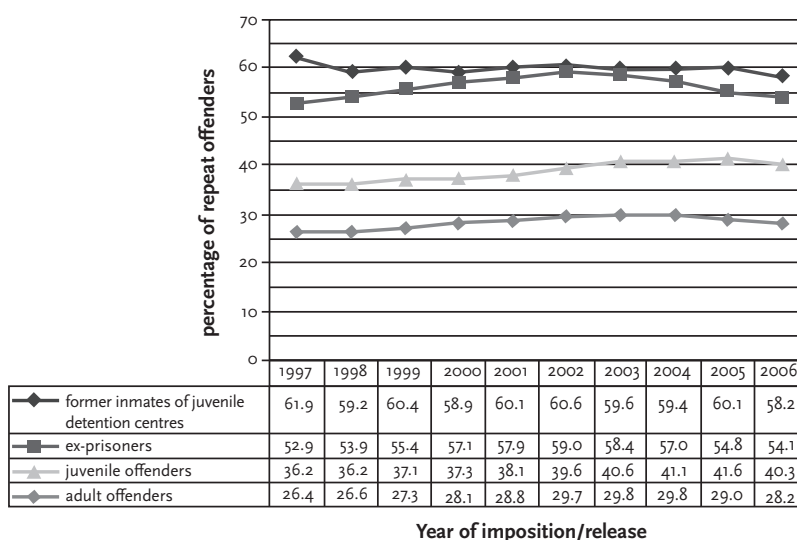
<sup>27</sup> Kelk, 2003.

<sup>28</sup> See also Schuyt and Kommer 1998.

Rehabilitation and recidivism had become increasingly unimportant in the Netherlands. One of the underlying causes was that it became more and more clear that types of resocialisation used earlier did not have the desired effects in terms of reducing recidivism. The greater emphasis on the repressive and functional aspects has made life in the penal institutions ever more uniform. The possibilities for inmates had become increasingly limited. The tasks for the employees in the detention sector had become increasingly uniform.<sup>29</sup>

The Dutch government has announced a major shift in this lack of attention for rehabilitation and recidivism. Government in Holland became worried about the numbers mentioned in this table.<sup>30</sup>

Figure 3 Adjusted percentages of general recidivism two years after imposing the sanction, or release from the institution, by year of imposition/release



The above figures, triggered the new Secretary of Justice to initiate a programme in 2008 to reduce the recidivism rate, making it one of her priorities. For each prisoner with a sentence or a sentence remainder of four months a re-integration programme by the prison system in cooperation with Probation is created. To realize this government has realized a specific programme, Reduction Recidivism. There have been specific agreements between DJI, municipalities and other partners to ensure that ex-prisoners get an identity, a house, work and income so

29 Compare Kommer 1991.

30 WODC Factsheet 2009-5a Recidivism report 1997-2006.

that they can fully participate in society. A crucial part of this new policy is more intensive after care of prisoners. The new government in the Netherlands, which came into office in 2010, continued this policy on reducing recidivism. It is gratifying to note that there is renewed attention for rehabilitation with the aim of reducing recidivism. The person-oriented approach to detainees could lead to many benefits. It offers the ability for tailor-made and concrete events per individual with all organizations involved. It will, however, create huge demands on the organization of detention, and particularly the cooperation with other organizations.

### 5.3.6 NEED FOR LONG TERM POLICY

In the past few years, differentiation was to become an important issue in detention policy in the Netherlands.<sup>31</sup> After the Minister of Justice's opinion letter called "Modernisation of the Application of Sanctions", the role of differentiation in forms, organisation, treatment and duration of sanctions has become crucial. More and more specific programmes for specific target groups have been developed, based on the argument that ever-changing circumstances require variation and differentiation. The government welcomed the resulting implication that multi-occupancy cells could be introduced at the same time. In this way, a substantive change in the application of sanctions could be effectively connected with the necessity of efficiency improvements.

Deprivation of liberty comes in an increasing number of varieties. In this context, the most effective sanction is formally preferred. The most effective sanction is a sanction that can best prevent an inmate from reoffending after his release. By now, it is clear that some kinds of sanctions are ineffective in some cases, but it is still not entirely clear which sanctions work well in specific cases. This will require a great deal of research in the future. But above all, it will be necessary to properly describe and evaluate the experiences with the various detention forms that are now being gained in order to establish whether these will result in improved recidivism figures. Increased attention for differentiation, including selection and counselling, is to be encouraged both from the inmate's perspective and the government's perspective. In this way, personal needs can be satisfied to the maximum extent possible.

Although the current preferred approach seems promising, it is necessary to examine the possibility of a longer term policy on detention in the Netherlands. Although social developments change frequently, it is necessary for a longer term to create clarity about the substantive and organizational aspects of detention in the Netherlands. The person-oriented approach is of crucial importance but to be effective it should be consequently implemented in the next ten years. This

<sup>31</sup> Compare Boin 1998.



implies that in the coming years no fundamental change in this person-oriented policy will take place. My plea is to achieve a long-term policy on the content and the organization of detention. Too many substantive and organizational changes will have a negative impact on the effectiveness of the detention policy as a whole.

#### 5.3.7 THE DETENTION SECTOR IS PRONE TO INCIDENTS

The detention sector is prone to incidents. Examples include escapes, unrest in institutions, offenders placed under an entrustment order who commit criminal offences on trial leave. The day-to-day work of penal institutions consists in preventing these incidents. But if these incidents occur, the media and politicians are often the first to comment on them. It requires the Minister of Security and Justice to hold emergency debates and to tighten the measures. In this context, it must be pointed out that the number of political and public incidents has dropped over the past ten years. The number of escapes has dropped. The number of suicides is increasing, but these are not considered incidents deserving public and political attention. These statistics are soon forgotten by politicians and the public alike if serious criminal offences are committed by entrustment order offenders who have escaped or who are on trial leave.

The detention sector being incident-prone has everything to do with the increased importance that citizens attach to security and the corresponding attention paid to security by politicians and the media. Incidents involving the detention sector take place under heavy and constant public and political scrutiny, as a result of which those involved do not always keep their distance, which is necessary to achieve practicable measures. Incidents are not expected to fall in the coming years. An increase in knowledge will ensure, however, that the response to specific incidents will be less hysterical and arbitrary.

Incidents may also be used to achieve fundamental changes in the detention policy. The “drug swallows affair” played an important part in the run-up to reforms within the regular prison system in two aspects. The political commotion caused by this affair functioned as a lightning rod for an insidious institutional crisis within the prison system. The release of drugs couriers was initially particularly associated with the culture of regulated toleration in this country, not with the structural shortage of cells and the inability of the current prison system to deal with peaks in the supply of inmates. Nevertheless, the drug swallows affair eventually functioned as a catalyst for policy reforms. The emergency act resulted in a breakthrough in the debate on “two-to-a-cell”, which meant that a number of political parties were prepared to discuss the introduction of multi-person cells in the regular system. Accordingly, the detention sector should be vigilant in the case of incidents and crises, not only because of the incidents and crises themselves but also because of the potentially far-reaching and long-term implications.

The fire in the Detention Complex Schiphol-Oost for illegal aliens in the night of October 27, 2005 in which eleven people died, increased within the detention sector the focus on (internal) security greatly. After a report of the National Research Board for the Safety of September 21, 2006 the cabinet announced a large quantity of measures to improve the (fire) safety in all detention facilities in the Netherlands. Within Correctional Institutions Agency a security programme is designed to ensure that Correctional Institutions Agency has full knowledge on the risks of physical security, to implement an effective policy to the physical safety and to respond to signals that can improve physical safety. There is a crisis structure established and crisis plans were made. Correctional Institutions Agency has made a specific vision on safety and security in prisons. Training and exercise are crucial part of improving safety and security in Dutch prisons.

“In recent years, tremendous efforts have been made to raise the standard to higher levels in all institutions. But when something does go wrong, human action remains the most important thing. That’s why it’s essential that employees know what they should do in such situations, and that their actions become ‘automatic behaviour’ as much as possible. As a result, drills dealing with crisis situations were regularly conducted in all institutions in 2007. One example is the multidisciplinary crisis drill in the Achterhoek penitentiary institution, which took place in September, following a year of preparations. Many Correctional Institutions Agency employees – not to mention the police, fire brigade, municipality, Medical Assistance in Accidents and Disasters, and the Public Prosecutor’s office – participated in the drill. With nearly five hundred participants, it was one of the largest drills ever held in the Netherlands. This part of the exercise in particular, i.e. drills and training, will be fine-tuned even further in years to come.”<sup>32</sup>

Safety and security in prisons is one of the main concerns of prison administration in the Netherlands nowadays. Politics and media are very keen on incidents concerning safety and security in prisons. At this moment the prison administration has re-earned political and public confidence concerning safety and security in prisons.

### 5.3.8 FUNCTIONALITY AND SAFEGUARDS

The concept of functionality occupies a central position in the current policy of the Ministry of Justice on detention.<sup>33</sup> Functionality is absolutely defensible, because

<sup>32</sup> DJI jaarbericht 2007.

<sup>33</sup> *Opinion Letter on the Modernisation of the Application of Sanctions*, Minister of Justice, 7 June 2004.

there is a need to work more effectively with more limited resources. In this context, the Ministry of Justice wants to give further substance to the concept of demand side management. For the foregoing reason, it is a good thing and logical to seek and find the best form of sanction for specific inmates. This functionality, however, can be achieved only to a limited extent in the light of ever changing frameworks and reduced financial resources. The functionality of the sanctions is conceivable and practicable only if more generous resources and facilities are provided for this purpose.<sup>34</sup>

Besides, it is crucial that the safeguard function under the criminal law should always continue to apply to inmates in the future as well. This function is supposed to safeguard the inmate against the sentence-executing government. In the past, too much attention was paid to the inmate's legal position. This is shown by the extensive possibilities of the right of complaint. This attention ran parallel to the attention that was focused on the defendant in criminal cases. The shift in emphasis from the safeguard function in the past to the functional aspect at present should not result in the former being pushed aside too much. Arbitrariness in the execution of sentences must be avoided, even if based on efficiency considerations.

Generally speaking, everybody will agree with efforts to achieve a responsible balance between functionality and safeguards. It is more complicated and controversial, however, as far as specific situations are concerned. In the detention world, new forms of detention are subject to many experiments: multi-occupancy cells and electronic detention are only a few examples.<sup>35</sup> In the case of these specific measures, this balance must be achieved as well.

### 5.3.9 DETENTION IS AN INTEGRAL PART OF MANY POLICY CHAINS

Detention is part of various chains. The detention sector depends on others very much. It determines the quantity and quality of the supply of inmates only to a limited extent. Others are primarily responsible for the investigation, prosecution and trial stages. This dependency may be reduced but a certain degree of dependency is inevitable. The police, the Public Prosecution Service and the courts will continue to determine the size and quality of the services to be supplied for the most part. This is all the more true since judges increasingly specify in their decisions how sentences are to be enforced.

The criminal justice chain constitutes the most crucial chain for the detention sector. The criminal justice chain starts with the police, followed by the Public Prosecution Service and the judiciary, and ends with the Custodial Institutions

<sup>34</sup> See also De Keijser 2001.

<sup>35</sup> This was also the case in the past. See the special issue of *Justitiële Verkenningen*, 1, 1999, *Sleutelen aan detentie*.

Service, which has to deal with partners such as the Probation and After-Care Service, the Salvation Army and the addiction care institutions. “The partners within a chain strongly depend on each other. The proper exchange of information and clarity about the possibilities and impossibilities are crucial. If the police, for example, decide to take action against bag snatchers, the police stations and detention centres must, of course, have sufficient capacity to detain the persons arrested. If necessary, the Custodial Institutions Service must be given the opportunity to take measures to provide the police with capacity for persons under arrest in a timely fashion, if this kind of action leads to a capacity problem.”<sup>36</sup>

The care chain is relevant in the case of entrustment orders with or without treatment. The limited number of places for entrustment patients necessitates coordination with the Public Prosecution Service, the judiciary, the Probation and After-Care Service and the Dutch Mental Health Care Association. For this purpose, coordinators for forensic psychiatric integration of treatment services were set up in 2004. Their activities have by now become part of the regular activities.

Within the juvenile chain, a distinction is made between the criminal chain and the civil chain. The type of chain a young person ends up in is determined largely by chance. As a result of the large number of partners in youth care and the large number of juvenile detention forms, the network of organisations involved is complex.

Finally, the aliens chain is distinguished. For the purposes of the execution of the aliens policy, capacity must be made available for the detention of aliens.

The above mentioned chains show that a well-functioning detention system requires many partners. The cooperation, coordination, information exchange and balancing between all these partners require a great deal of effort. By now, it is recognized that cooperation with the chain partners is of crucial importance. It is a key objective of the government’s policy. Improved cooperation between the chain partners in the detention network can be helpful in this context, but cannot solve the problem as such. The detention sector will be able to exert only limited influence as far as the extent and quality of its own problems are concerned. Experiences gained in other sectors with capacity and performance contracts may be highly relevant to the detention sector.

<sup>36</sup> Annual Report Correctional Institutions Agency 2004, p. 17.

The extent of the discretionary freedom of the parties involved is also of crucial importance to a properly functioning network of organisations in the detention sector. In various chapters, it has been pointed out that many persons affect the quantity and quality of the inmates. But how far does the discretionary power of the police, the Public Prosecution Office and the courts extend in this context? Do they have to take account of the limited capacity of the detention sector or are there other considerations? And do they have to take into account specific deficits and surpluses? It is highly questionable whether the capacity issue can be solved by practicable production arrangements in the various sectors. The “production” in respect of crime and security can be planned partly, but not entirely. The entire chain system is unpredictable to a certain extent.

#### 5.3.10 QUALITY OF DETENTION IS AN IMPORTANT INDICATOR FOR THE QUALITY OF SOCIETY

I began this chapter by describing the close relationship between society and detention. I want to end it by bringing them together again. The state of detention reflects the quality of society.<sup>37</sup> The manner in which detention is organised and implemented in a country is highly indicative of the quality of this country. This does not necessarily mean that inmates should be treated nicely and softly, but it is necessary that a detention system should satisfy some crucial criteria.

First, the type and execution of detention should be democratically legitimate. This means not only that the laws and regulations under which detention is organised and executed must be enacted in accordance with democratic and statutory rules but also that the type and execution of detention must – above all – be in line with the views of the majority of the population. And this especially means that the detention sector should be able and willing to adjust to changes in society time and again. Legitimacy of detention can be guaranteed in the long term only in this way. Actual and formal detention and the ideas society has about the foregoing may not be substantially different from each other.

Second, there should be a sound balance between the functionality and the safeguard function of detention. Inmates should be subject to the penalties or sanctions that best reduce the risk of recidivism. The sentence must be executed as effectively as possible. In addition, society has a right to expect the detention sector to spend its resources as efficiently as possible. This applies not only to the resources of the detention sector as a whole, but also, in particular, to the facilities for the inmates. In this context too, there should not be too great a difference between the level of facilities considered appropriate by citizens and the police on the one hand and the real level of facilities on the other. The detention sector must be effective, functional and efficient.

<sup>37</sup> Compare Franke 1990; Franke 1995; Franke 1996; Weringh 1993.

But it is also crucially important to the state of detention and the quality of society that the inmate's position is sufficiently safeguarded, both formally and in actual practice. Inmates are at the mercy of the government, which is responsible for administering fair punishment on them. Formal and actual safeguards should prevent the arbitrary execution of detention. Not only is this crucial in terms of the inmates and their rights, but it also crucial in terms of a functional, effective and efficient detention system. The unequivocal and clear definition of the inmate's rights and obligations as well as the latter's formal and actual possibilities for lodging complaints are essential to the safeguard function. There should be a possibility of measuring the state of detention. By now, many data and figures relating to the detention sector have been collected. The desirability and feasibility of a Detention Indicator for the purpose of assessing the quality of the state of detention should be considered.

In most international literature on Dutch detention in recent years authors have written with disappointment and horror that the Dutch prison policy has become so much worse. Sometimes very dramatic terms were used.<sup>38</sup> The past is in these articles wrongly glorified. The prison policy in the Netherlands has in my opinion been more grown-up in the last decade. Not only prevention and tolerance were used but at necessary moments repression and detention were possible. The better combination of these measures has also helped to improve security in the Netherlands. It has also contributed to the (temporary) surge in the number of people in Dutch prisons. The number of persons in Dutch prisons has decreased in the last five years. A more long-term perspective is sometimes necessary – for government, prison service and scientists – to see and to judge the ultimate effects.

## 5.4 Conclusion

Detention is a crucial part of the administration of justice in the Netherlands. The quality of society can even be measured in terms of the state of detention. This work shows a great diversity of detention forms. The work also makes it clear that detention is always subject to changes. Science, politics and detention practice should always be prepared to start the debate and dialogue about any changes that may be possible or desired within the detention sector. Changes in the detention sector will be necessary in the future as well for the purpose of integrating society's ever changing perception of detention.

<sup>38</sup> See for instance Pakes 2006; Downes and Van Swaaningen 2007.



## 6 Criminal investigation

The criminal investigation departments of the regional police forces and the national police force have to solve crimes. That is one of the most important tasks of the police. Solving crimes is not always an easy task. For those who watch too much television, it seems so easy. They will have a romanticized perception: one or two investigators go out with a superior talent search and within a one hour broadcast grasp the offender. The impression is that complex crimes can be easily solved with the right doses of experience, intuition and perseverance. And one gets the impression that a handful of people is sufficient to clarify the matter.

The reality of the criminal investigation is more prosaic. A large number of criminal investigators are necessary who are also assisted by special investigators, such as the technical criminal investigation department (TR) or the Dutch Forensic Institute (NFI). They are all concerned with the collection and processing of relevant information. What information is collected, at what time and what to do with it requires an effective and efficient working organization. The Public Prosecution Service has to control and lead the criminal investigation by the police.

Criminal investigation has an additional problem: a lot of information or traces is rapidly lost or witnesses quickly forget crucial information. This means that in many cases the most important information must be gathered in a short period after the discovery of the crime. Criminal investigation does not only mean a well functioning organization, but also an organization effective in a very a short time. It is also necessary that all organizations work together in an effective way and exchange relevant information.

This chapter is based on and cited from an extensive empirical research on criminal investigation in the Netherlands called *The criminal investigation process* by De Poot, Bokhorst, Van Koppen and Muller, 2004.<sup>1</sup> In this study three themes were researched: (1) how the criminal investigation process is organized, (2) the methods and powers used in the criminal investigation and (3) the way criminal investigators try to solve crime. This seems like three separate themes, but that they are not. Crime solving depends on how the criminal investigation is organized and which powers and methods are deployed.

<sup>1</sup> De Poot, Bokhorst, Van Koppen and Muller 2004. Compare Raine and Wilson 1993; McConville and Wilson 2002; Ashworth and Redmayne 2005; Newburn, Williamson and Wright 2007; Sanders and Young 2007.



More than one hundred criminal investigation processes were intensively and empirically researched. This research was performed in six Dutch police regions. The research focused on arson, theft with violence, abuse, kidnapping and hostage taking, assault and rape, murder and homicide and house burglary. The police organisations gave full information about the processes of the criminal investigation. With a comparable analytical framework the different criminal investigations were analysed. I have tried to aggregated from the typical Dutch situation and formulate the dilemmas in a way that can also be used in other countries. The reader can judge if these dilemmas are also applicable for his own organisation and country. When I mention the results of research in this chapter it is the above mentioned research on criminal investigation in the Netherlands.<sup>2</sup>

In this chapter I will sketch the dilemmas which occur in the criminal investigation process in the Netherlands. It concerns dilemmas which are primarily of importance for the management of the criminal investigation, but also concern ordinary investigating officers. When conducting a criminal investigation the pros and cons must always be weighed against each other and I present those usually in the form of a dilemma. The dilemmas are in fact always choices which must be made by the management of the criminal investigation and by the investigating officers. In this chapter I will focus on the dilemmas concerning investigation and evidence, concerning the organisation of the criminal investigation and concerning the methods used. These dilemmas are crucial for the way the criminal investigation takes form. But before that I will give a short overview of the organization of the criminal investigation in the Netherlands.<sup>3</sup>

## 6.1 Criminal investigation in the Netherlands

The criminal investigation organization in the Netherlands is in transition. For a good understanding of the criminal investigation process it is necessary to give a brief sketch of the wider criminal investigation organization in the Netherlands. The police are responsible for the enforcement of the law. The public prosecutor is the leader of the criminal investigation. Crucial decisions in the criminal investigation process and in particular the use of specific investigation methods and other powers require the consent of the prosecutor. The prosecutor is the link to the courts for the police. In larger cases, a specific public prosecutor in particular has the formal leadership of the criminal investigation.

In the Netherlands there are 25 regional police forces and one national police force. Each of these forces has its own criminal investigation departments (CID).

<sup>2</sup> See also Muller, Van der Leun, Moerings and Van Calster 2010.

<sup>3</sup> See for history Brantjes 2001.

In our study we concentrated on the CID of the individual regional forces. Within these regional police forces there are CID's on area teams, district teams and the regional level. Police forces in the Netherlands have a high degree of freedom to establish their CID organization in their own corps. There are significant differences between the regional forces in the way the CID functions are organized. When the national police force will be implemented this will change.

Besides these regional forces in recent years there was much discussion on inter-regional and national criminal investigation. Since a long time, there are so-called core teams on the inter-regional level which are mainly concerned with the criminal investigation and prosecution of serious organized crime. There are also now regional criminal investigation teams for the mid-crime, joint teams with foreign countries and inter-regional fraud teams. In addition, since 2005 a national CID for serious organized crime and counterterrorism has been established. The CID system in the Netherlands is thus a wide range of organizations which all in one way or another contribute to the criminal investigation and the prosecution of criminal offences. Cooperation, coordination and information exchange between these organizations is a constant concern. The debate about the proper structure, especially the inter regional and national CID is long, complex and politically sensitive. Nevertheless, it seems that in the Netherlands a growing centralization and concentration of the CID function occurs. This is attempted to connect with the changing nature and extent of organized crime. The centralization and nationalization of the police as a whole in the Netherlands is also happening to the criminal investigation departments.

The Dutch criminal investigation was faced in recent years with many developments. In the first place further professionalization of the criminal investigation and criminal organization was necessary for tackling the new and ever-changing forms of crime. Within the Dutch police there are many initiatives to improve the criminal organization and professionalism. A national programme (ABRIO) attempted, through the standardization of criminal investigation processes, to achieve more uniformity of criminal investigation processes in the Netherlands. In most police regions, detectives are increasingly working with intelligence led criminal investigation processes. The Institute for Crime Control and Criminal Science has fully reviewed its education. Today some Dutch journals on the topic have emerged. This development is partly motivated by the growing professionalization of the Criminal Intelligence Unit.

Crucial to the developments of the Dutch criminal investigation has been the IRT affair in the mid-nineties of the last century. Although this affair was primarily concentrated on the use of special investigative methods of organized crime, the affair had far reaching effects on the further professionalization of criminal investigation. The report of the Parliamentary Investigation Committee on

Policing Methods (better known as the Committee Van Traa, 1996) led to profound changes in both the formal rules and the organization of the criminal investigation. A subsequent Parliamentary Investigation Committee (better known as the Commission Kalsbeek, 1999) made it clear that the Dutch criminal investigation has learned very much from this affair. A new way of criminal investigation has now emerged.<sup>4</sup>

Within the criminal investigation organization various functions can be distinguished. The tactical CID is responsible for the content and organization of the criminal investigation. Tactical investigators determine what elements should be investigated and how the search process should be established. The tactical CID focuses on delivering the evidence for specific cases. In various forces within the tactical CID there are specialties, such as youth and vice. If a substantial or significant offence – mainly capital offences – occurs, a special investigation team is formed with tactical criminal investigators. The other services listed below often fulfil a key role.

The technical CID focuses on the technical elements of the criminal investigation of the offence. The technical CID identifies tracks on the crime scene and is doing further research into the background of these tracks. To this end, regional police forces have their own technical CID, but increasingly the technical CIDs are working together on inter-regional and national level. The Dutch Forensic Institute is also of great importance to this feature of the criminal investigation.

The Criminal Intelligence Unit (CIE) collects and processes all relevant information about crimes and suspects. For the collection of information it makes use of informants and other methods. In recent years, partly as a result of the IRT affair, a strong professionalization of the information function within the CID occurred. Most regional forces have a separate unit specifically focused on crime analysis.

An observation team (OT) can be used for observing people. If during an observation or at other times in the criminal investigation technical tools are used, aid can be invoked by a section of technical support (STO). If dangerous suspects are to be arrested the use of an arrest team (AT) is possible. Many regional police forces also have an agency that is primarily focused on the financial aspects of the evidence against specific suspects. The Recognition Service maintains the Service Recognition System (HKS) in which the records of crimes and suspicious persons are registered. Within various forces there are – to a greater or lesser extent – specialties: youth and vice, police infiltration, environmental police, fraud, drugs, firearms, robbery, car crime, burglary, money and securities, human trafficking and prostitution, hostage negotiators, and counter terrorism.

4 I was secretary of both these parliamentary inquiry committees.

## 6.2 Investigation and evidence<sup>5</sup>

If resources and time were unlimited, more criminal offences would be solved. That is more than just stating the obvious. It appeared in the research in the Netherlands that quite regularly the criminal investigation service makes choices which, with the limited resources and time, are also detrimental to the criminal investigation. The activities which the police undertake appear to depend especially on what they immediately learn about a case.

### 6.2.1 COMPLETING LINES OF INVESTIGATION

Many criminal offences which the police are aware of are not solved. This is partly because cases are not investigated and partly because the criminal investigation fails. There are a number of causes which all have to do with lines of investigation in a criminal investigation. Investigations quite often lead to areas which are difficult to investigate, e.g. because the area of investigation is extensive, because the investigation involves a lot of costs, or because the investigation is difficult to organise. This kind of areas is mostly not investigated. For instance, in a murder inquiry no investigation was carried out at the asylum seekers' centre which the victim often visited, since in order to question the inhabitants of this centre many different interpreters were needed. In another murder case an Eastern European group was not questioned for the same reason. In a third murder case the victim was found close to a big pond. In that investigation the murder weapon was searched for in the surroundings of the crime scene, but the pond was left out, since much time and money would be involved in searching that pond. So, by no means all possible chances of finding evidence and tracing the perpetrator are used. In general, in a criminal investigation the investigators try to weigh the chance that a search area will yield meaningful information against the investment which has to be made to explore that search area. If the costs are high, the search area is left unused.

#### *Search areas do not yield any information*

Often potential search areas do not yield any information. This sometimes happens since there is no information. In many cases though the information is (has been) present, but cannot (or can no longer) be retrieved or is overlooked. For instance, after a case has been solved there almost always appear to be witnesses who knew more about the case, but did not report to the police. Information that is searched for also appears quite often to have been destroyed when the police ask for it. This is for instance an issue with video tapes of security

<sup>5</sup> Based on and cited from De Poot, Bokhorst, Van Koppen and Muller 2004, paragraph 6.3.

cameras and with physical traces which were initially not considered. For instance, in a murder inquiry the technical investigation service only got the idea to search the victim's telephone for finger prints after the print list showed that a call had been made from the victim's house. In that inquiry the traces of the perpetrator were still found on the telephone, days after the crime and after the crime scene had already been cleaned. If no traces had been found, it would never have been possible to find out that they ever existed. In another investigation one wanted to find out, in order to verify the story of a witness, in which gear the car of the offenders was left when found. This question could no longer be answered, since this car, which caused quite a lot of smell and mess in the garage, had been ordered to be taken away. It also happens quite often that people cannot remember anything of the particular day or evening, since they are asked far too late about it. For instance, we followed a murder investigation in which the direct neighbours of a victim were questioned for the first time more than a month after the murder. Although these people were at home when their neighbour was killed in her own home, they could remember little of that evening.

*Search areas yield contradictory information*

Information which originates from different sources often appears not to be reconcilable. For instance, the one witness may allege that the perpetrator had a pistol in his hands, while the other asserts that he threatened with a knife. The descriptions of the same perpetrator are sometimes also irreconcilable. For instance, in an investigation the same person was characterised by one witness as a large dark man, and by the other as a somewhat stocky blond person. In an investigation in a missing person case it appeared afterwards that the lady in question had still been seen after her death by thirty witnesses at different places and in different clothes. Since in almost every somewhat larger investigation there is irreconcilable information, the police still attempt to continue the investigation in most cases on contradictory information. Various strategies are used for this. The most common strategy is to appraise the reliability of the various sources of information and subsequently to take the most reliable information as a starting point. The information which fits in best with the other information is in general judged as the most reliable. However, by this procedure relevant information which initially does not fit in with the reconstructed story is easily passed over. A second strategy is to look for similarities in the information and to subsequently continue the investigation on the basis of this more or less certain information. In that case the information is not considered unequivocally as unknown until new information is found which this information can be compared with. A third strategy is to search for some sort of average. The man who is called black by the one witness and blond by the other is then assumed to be dark blond.

*Possible clues or traces are overlooked or not followed up*

Tips which the police receive, or information which comes to light during the investigation, are by no means always rated at their true value. Sometimes the information cannot be reconciled with the story that is believed, sometimes the information itself is implausible and sometimes the acquired information is considered to be of little value for the investigation. The way in which the flow of information is regulated also often appears to be one of the causes that acquired information is overlooked. In large investigations much information is received at the same time. This information must be properly organised so that it can be used if needed. The value of the acquired information is not always immediately clear. Only in the course of an investigation will it become clear if acquired information agrees or is irreconcilable with other findings of the investigation. Often the acquired information is initially not used in the further investigation, but at a later stage of the investigation this information becomes especially meaningful as support of a story. Only when the information is properly organised and documented, can it be retrieved at the correct moment and be used in a meaningful way. However, in large investigations such information management fairly often turns out to be lacking.

*Lines of investigation lead to nothing*

In an investigation many potential investigation possibilities lead to nothing. For instance, witnesses have often observed the event so poorly that they cannot recognise the perpetrator, nice flawless traces are found which do not match with the traces in available files, or traces can indeed be identified, but turn out not to be unique. For instance, it may turn out that the tape used by the perpetrators is the best sold brand and is sold in many different store chains. It may also turn out that the shoe prints found at the crime scene originate from soles which are under almost all common sport shoes. It also often turns out that afterwards an investigated trace does not agree with the information looked for. It may for instance turn out that although a potential suspect possesses a pistol, the weapon found on him is not the weapon used in murdering the victim. Another example is that the watch sold by a receiver of stolen goods to a customer who had resold it again to another person is indeed traced, but turns out not to be the watch stolen from the victim.

*Lines of investigation stop prematurely*

The most important reason to stop a line of investigation is that the statement by a witness or the information found is seen as a confirmation or refutation of the story which is being reconstructed. When a potential suspect has for instance an airtight alibi, it is assumed that he has nothing to do with the crime. If he has an airtight alibi in respect of his presence in the surroundings of the crime scene, it is also quite often assumed that he has nothing to do with the crime. This first

decision seems legitimate, the second not at all. Earlier convictions of potential suspects for similar cases are in general seen as confirmation of their being the offender. If, from the information found, it turns out that these suspects do not occur in the files, it is often assumed that they have not committed a crime. The rules used to make a certain decision are in short quite often open to question. Lines of investigation often turn out to stop prematurely because of the belief in rules which have quite a number of exceptions. This also results in chances offered by the investigation – not being used.

#### 6.2.2 CLASSIFICATION OF CASES

The choice of the strategy which the criminal investigation service will use in solving a crime strongly depends on the knowledge and experience it has built up in the course of time. In that connection the necessity to make a meaningful classification plays an important role. Catching an offender red-handed will lead to another strategy than crimes whereby the perpetrator still has to be found.

The classification of events also depends on the way in which the police learn of the events. In case the police are immediately on site (more) information can be collected quickly than when they arrive later. However, in most cases the police arrived only later at the relevant spot which made them strongly dependent on the stories of witnesses. The police in fact only quickly arrive on the scene when assistance is needed. It is crucial that when providing assistance the police already take account of the various aspects of criminal investigation. In case of other crimes the police are less quickly on the scene. This choice is directly related to the way in which priorities are set. From the perspective of investigation a rapid response and presence is preferable in order to record and collect the relevant information as quickly as possible. The daily priorities in police forces often do not make this possible.

After a specific case has become known to the police, it will be necessary to come to a classification of the crime in question. Various factors play a role in this respect. In the first place it should be established whether it concerns a crime. Often not all circumstances are known and it cannot unequivocally be determined whether it in fact concerns a crime. In that case the method of interpretation of the available facts becomes most important. The knowledge and experience of the officers involved play an important role in this. Apart from this the officers involved mostly have an explicit wish for more information before they come to a definitive interpretation. The seriousness of the case is a second reason for going over to investigation. In a serious case a criminal investigation is mostly started before it has become completely clear that a crime has been committed. That is different in less serious cases. In the third place it is considered whether a criminal investigation serves the desired ultimate goal. In some cases welfare services or other forms of assistance may give a much more important contribution to solving

the underlying problem than setting up a criminal investigation. Finally the investigating officers will estimate how difficult or easy it will be to solve a specific crime. In our investigation there turned out to be a preference for crimes that are easy to solve. In these cases the distance between the measures to be deployed and the desired ultimate goal is smaller.

The way in which the police learn about the crime and the way in which they subsequently define and categorise the crime is of great importance for the method of investigation. At this preliminary stage of the actual investigation the officers already take the most crucial decisions. At this stage the actual definition of the problem, the crime and the directions of the solution are formulated. It is therefore important that the criminal investigation management and the investigating officers pay much attention to the process and content of this first crucial stage.

### 6.2.3 CHOICE OF INVESTIGATION CATEGORY

Cases of criminal investigation may be distinguished in cases whereby at the start there are both a story and a suspect who has allegedly played a role in it; cases in which there is a story, but no suspect; cases in which only a suspect is known, but no story and cases in which neither a story, nor a suspect is known. The choice of the necessary investigation strategy depends on the classification into one of these categories.

In the first case I speak of clear-cut cases in which the police catch someone red-handed or someone gives himself up and there is no discussion about the nature and background of the crime. Verification cases form the second category in which both a story about what has happened and the identity of the suspect are known at the start of the investigation. The criminal investigation service then only has to verify the story. In the third place I distinguish tracing cases in which there is a story but no suspect. In such a case the criminal investigation focuses on tracing a suspect of a known crime. Finally I distinguish so-called search cases in which it is both unclear what has precisely happened and who has done it. The police will have to search for both the story and the suspects and witnesses involved.

It will be clear that different forms of criminal investigation, different methods as well as different tactics and strategies should be used for the different categories. The police search cases are the most difficult ones but also the most challenging. Clear-cut cases hardly form a challenge but do rapidly lead to the desired result. It is up to the criminal investigation management to create a sensible combination of the various kinds of cases within its own organisation. The criminal investigation service will try to make a search case into a tracing case by creating a scenario for the crime. In the course of the investigation a tracing case is made into a verification case by completing the scenario with the identity of



a perpetrator. A verification case will become a clear-cut case if the story and the identity of the perpetrator can be established. Needless to say, in the daily practice of conducting criminal investigations things are mostly not that simple, nor follow such a process.

Whether an investigation is started in a case depends on the investigation category to which a case belongs. Clear-cut cases are all investigated while that is only true for half of the search cases. About 70% of the verification cases and tracing cases are investigated. There are various reasons why a large part of the search cases and part of the verification cases and tracing cases are not investigated. The policy of the Public Prosecution Service of deciding not to prosecute, the quality of the story and the evidence, the estimate of success by the police and public prosecutor, the absence of witnesses or other information may all contribute to the decision not to start an investigation. However, mostly it was not completely clear why it was decided not to investigate further.

#### 6.2.4 INVESTIGATION STRATEGY

The strategy to be used strongly depends on the category the case belongs to. In tracing cases and search cases the investigation first of all focuses on identifying the perpetrator. The information which is known at the start of the investigation strongly determines the result. The original story is then the most important guiding mechanism. The search process is guided by a story, constructed by the investigating officers or in another way, and the available information. The investigation is aimed at giving further shape and content to the story.

For this various lines of investigation are formulated at the beginning of the investigation. These lines of investigation give direction to the way in which the investigating officers subsequently carry out their work. Formulating the lines of investigation is therefore crucial. The activities of the criminal investigation service are directed at verifying or falsifying these lines of investigation. The key elements and details of a supposed story must be completed. Various investigation methods are used for this.

For the criminal investigation management it is of crucial importance that these lines of investigation are the correct lines based on the investigation. A good assessment of the available information is necessary for this. But it is also necessary to arrive at other and new lines of investigation if certain lines do not lead to the desired result. That makes it necessary to constantly redefine the situation and the information and the desired lines of investigation. And that requires from the criminal investigation management an especially open and creative way of directing a criminal investigation. A certain persistence is necessary, but it is necessary to keep an open mind for the possibility that the wrong lines of investigation were pursued earlier.

### 6.2.5 IDENTIFICATION STAGE AND EVIDENCE STAGE

The criminal investigation process can be divided into an identification stage which runs from the moment that the case is reported until a suspect is identified and an evidence stage which includes the next investigation period in which the legal proof for the actions of the suspects is found. In clear-cut cases and verification cases the emphasis is on the evidence stage while in tracing cases and search cases the identification stage takes central place. In the evidence stage methods are used for verifying the reconstructed story. In the identification stage they are sometimes used to reconstruct a crime and sometimes to trace a suspect and sometimes to provide evidence at a later stage of the investigation.

There is a close connection between the two stages. At the beginning of the investigation it is necessary to anticipate information which may later be used for the evidence stage. Some evidence can no longer be used if no specific investigative acts have been carried out in the identification stage. The interaction between the two stages is an important factor for the criminal investigation management. At each step in the identification stage they will have to consider what consequences this has for the later evidence stage.

## 6.3 Organisation of the criminal investigation process<sup>6</sup>

There are several moments in the organisation of the criminal investigation process at which choices must be made. The organisation of the criminal investigation determines the effectiveness of the investigation because crucial choices about management, means and staff have to be made.

### 6.3.1 CENTRALISED OR DECENTRALISED

Criminal investigations may be conducted at various levels within a police force: neighbourhood, district, region or even supra-regional and national. There are various criteria that can be used to choose the most desirable level of investigation. The distinction between petty crime, midlevel crime and serious, organised crime often played a role in this respect. However, in practice a flexible attitude was adopted as regards these criteria. The available capacity and the importance of a case are more decisive than the question whether a case fits into the definitions of the various levels. Because of the possibility to get better support, the choice was sometimes made to set up an ad hoc criminal investigation team. It is useful to explicitly formulate criteria for choosing the level at which criminal investigations

<sup>6</sup> Based on and cited from De Poot, Bokhorst, Van Koppen and Muller 2004, paragraph 6.2.

are conducted, but these criteria must be applied in a flexible way. In this connection it must always be avoided that an unclear definition causes some offences to fall between two stools.

It is important to organise criminal investigations in such a way that at a central point there is an overview of the criminal investigations and the information they handle. In that way it can be ensured that information in one investigation may possibly also be used in another investigation, whereby the applicable rules must of course be observed. In addition it should be possible to arrange the forms of support for the various investigations in an equal way, at any rate there should be clear criteria on which basis these support units may be deployed. The choice must not be made on the basis of differences in accessibility of support services. Finally it should always be examined to what extent the criminal investigation is connected with other forms of police care. The other police departments often have a lot of information on certain areas and people. The form of the organisation must be such that this information is optimally used.

If a new investigation must be started and the first actions on site have been carried out, almost immediately the question arises which part of the organisation must carry out the investigation. In general the answer to this question for the Netherlands is clear. Although police regions differ in the form of their organisation, three levels are in general distinguished. At regional and supra-regional level the criminal investigation service deals with organised crime. At district or supra-local level the so-called midlevel crime is dealt with. This includes robberies, rape, murder and manslaughter and serial crime. The focus at the local level is on petty crime. If it concerns a capital offence which exceeds the capacity of the district, support may be asked from all districts in the region. In such a case a Criminal Investigation Support Team is formed. In other countries similar structures are eminent.

However, not all cases fit neatly into this organisational division and it is therefore not possible for all cases to give an unequivocal answer to the question where and on whose responsibility the case must be dealt with. If a crime does not fit into the police organisation chosen, there often follows an inadequate reaction from the police and the investigation fails. Examples of this kind of cases are: (1) cases that are too big or too complicated to be investigated within the criminal investigation department of a district, (2) cases that are in fact too big for the region and should be dealt with in an interregional framework, and (3) forms of organised crime involving visible offences.

### 6.3.2 GENERAL OR SPECIALIST KNOWLEDGE

For the organisation of the criminal investigation service in a police force the choice between general and specialist knowledge about criminal investigations is important. In criminal investigations there exist a variety of specialities. Sometimes the specialities have to do with the use of special investigation methods, such as scent sorting tests, evidence investigation, ear prints or other technical knowledge. In other cases specialists know a lot about certain offences, such as youth and vice, child porno, container smuggling, financial economic crimes, thefts of certain goods or murders of homosexuals. The degree of specialisation strongly depends on the circumstances of a police force and the experience of the investigating officers involved. Sometimes more offences of a certain type are committed, at any rate the police carry out more investigations into these offences. Such a selection of cases makes it possible for a certain speciality to develop. The development of such a speciality has then in turn a direct influence on the selection of new cases.

The question is whether a police force must focus on the further development of general knowledge of criminal investigation or whether each police force should have a certain degree of specialisation? The choice must in any case be made explicit. If the competent authorities and the police choose to deal with certain offences over a long series of years, then there is also a case for specialising in them. But in that case the criminal investigation service must be assured of the longer term support by the competent authorities. It takes several years to develop and maintain specialities. The effectiveness of specialities can also only be established in the longer term.

### 6.3.3 PRIORITIES OR POSTERIORITIES

Time and again priorities must be set in each police force in order to be able to determine which investigation will be started and which will remain shelved. Criteria have been developed and committees have been set up which must determine how to decide on the priorities of the criminal investigation service. Rational scoring models were developed on which basis the value of a specific case was determined. Informal views also play an important role in the eventual selection. The attractiveness of a case, the chance of success, earlier experience with similar cases and such informal views play an important role in the assessment.

An important role in setting priorities is reserved for the method of *case screening*. With this method a selection of cases can be made that fit within the priorities of the force and have a great chance of success. An important part of the *case*

*screening* is the investigation assessment which indicates what the chance of a successful criminal investigation is.

It is very well conceivable and even desirable that, if criteria have been set for choosing certain cases for further investigation (priorities), it will also be indicated which cases will not be investigated (posteriorities). Making explicit which cases will not be investigated will strengthen the picture of the way in which cases are selected. That must be made as explicit as possible, certainly since time and again a certain arbitrariness can be seen in the selection of cases. The competent authorities, the citizens and also the victims are not only entitled to clarity about the priorities, but also about the posteriorities.

#### 6.3.4 THE REASON FOR AN INVESTIGATION

There are various reasons for starting a criminal investigation: being caught red-handed, report, notification, information, questioning, informers, witnesses and analysis. In some cases the criminal investigation service has in fact no choice. Certainly where the offender is caught red-handed or in case of some reports to the police the citizen expects the criminal investigation service to take immediate action. Also in case of serious offences the criminal investigation service should immediately start a criminal investigation, if only because otherwise traces and witnesses will be more difficult to find. In other cases the criminal investigation service has indeed a choice of how to handle the information. Information from questioning or from informers or based on analysis does not have to lead to a criminal investigation. In such cases the criminal investigation service has a choice whereby the priorities set and the available capacity will play an important role.

The criminal investigation service must try to find a balance between the cases that come up suddenly and the cases that can be systematically investigated. Murders, rape and kidnappings are difficult to plan. Although on the basis of information on these offences in previous years an estimate can be made of the necessary capacity, these offences mostly follow other patterns. There are always cases of organised crime, financial economic crime or drugs cases and they can better be dealt with in a systematic way than the cases mentioned above. So such cases can much better be planned for in the total criminal investigation process.

It is difficult to achieve a workable balance between the sudden and the systematic cases. Because of the pressure of the sudden cases, the systematic cases more than once had to make way. That pressure also comes from outside the criminal investigation service: the public, victims, media and politics. Such pressure is mostly absent in the case of crime which is permanently available.

This dilemma makes it necessary for the criminal investigation service to always keep a certain part of the capacity available for these sudden cases. This capacity may in outline be determined on the basis of historical data about the number and intensity of earlier criminal offences. The criminal investigation management should always be aware of the possibility that because of the sudden cases the more systematic cases must be set aside. The importance of the case and the outside pressure legitimise such setting aside. But here too it applies that the criminal investigation management must insist on such choices being made explicit.

#### 6.3.5 PREPARATION OR IMMEDIATE START

On the basis of a preliminary investigation a more substantiated decision may be taken on whether it is desirable and feasible to carry out a real criminal investigation. A preliminary investigation is in fact a continuation of *case screening* in which a case is only looked at in outline. The criminal activities, the offences and the group of offenders are analysed better insofar as possible. Although no specific investigation methods are used for a preliminary investigation, the available information in the police files is used.

In research in the Netherlands after a preliminary investigation in the great majority of cases a criminal investigation followed. The preliminary investigation mostly formed a substantiation of a choice made earlier to investigate a certain offence or a certain case. A preliminary investigation only seldom led to the decision not to investigate. So in most cases it was a first exploration for the later criminal investigation. The question is whether this is really meaningful.

If the decision to start an actual criminal investigation has in fact already been taken, it is better to immediately employ the available investigation methods, also because in the course of time information will become blurred. However if preliminary investigations are used as a selection method, they may have great extra value for setting priorities for the activities of the criminal investigation service. In that case the criminal investigation service must not be reluctant not to continue a preliminary investigation. Knowingly not choosing for an investigation may have great extra value and may prevent later disappointments for both the criminal investigation service and the competent authorities. The investment of the preliminary investigation will then not have been for nothing, but will have contributed to improving the selection of cases. In this respect it can always be examined to what extent the information from the preliminary investigation may still be used in other cases.

## 6.3.6 OBJECTIVES

A criminal investigation may serve several purposes. The criminal investigation may for instance be used to obtain more insight into the working methods of a criminal group, to track down offenders, to dismantle a criminal function, to stop criminal actions, for prevention, for repair of damage or to confiscate illegally obtained assets. The objectives can be named more explicitly. It is conceivable that if e.g. preventing or stopping criminal actions is the primary objective of the criminal investigation management and the competent authorities, other means must perhaps be employed than when offenders and evidence are searched for.

In line with the basic principles of responsible project management, I am therefore in favour of more explicitly stating the objectives in the case of large-scale criminal investigations which can be systematically planned. That must not be done to satisfy the competent authorities or to aim at a rational process, but in order to be able to specify which methods and resources can be deployed most effectively and efficiently and which forms of expertise are necessary. Methods, resources and expertise will vary according to the objectives which must be realised. But then it is important that not only the public prosecutor and the criminal investigation management use the objectives to guide their actions, but that much attention will be given to clarifying the objectives and their consequences to the investigating officers and the support services which must carry out the actual investigation. They must be aware that in different cases different objectives will be pursued and that they must give form and content to their investigation work in a different way.

Finally during the investigation process it should regularly be considered to what extent the objectives must be adjusted. It is not necessary to hold on to objectives when it becomes clear during the investigation on the basis of acquired information that the objectives can no longer, or may be difficult, to realise. It will then be prudent and sensible to arrive at an adjustment of the objectives in consultation with the competent authorities and the team members involved. But here too it applies that this should be done as explicitly as possible.

## 6.3.7 COMPOSITION OF THE TEAM

The choice of the composition of the criminal investigation team is one of the most essential choices to be made. In the first instance there is the question of the size of the team. A team consists in any case of a team leader, a tactical coordinator, a report coordinator and various investigating officers. Teams in the Netherlands vary from about six people to at most 80 people. In most cases a rough estimate is made for this by the team leaders and the public prosecutor. In

systematic cases more time is spent on this, in sudden cases the structure and size of a Criminal Investigation Support Team is followed. The estimate of the size of the team is especially based on the facts that are initially available, the knowledge about the offenders and the importance of the case. The differences in size also imply that these teams were organised in completely different ways. Apart for this it is always the question which kind of expertise and quality of investigating officers are needed.

The duration of an investigation varies greatly. Some teams exist for a week, other teams are active for months. Of course this also depends on the size and intensity of the crime under investigation. But it is more important whether there are indications on which a meaningful investigation can be conducted. If after a certain period there are no meaningful lines of investigation, it is rather soon decided to reduce a team. Only if information is available on which further investigation activities can be carried out, can the team continued.

#### 6.3.8 DIVISION OF TASKS

Tasks within a criminal investigation team may be divided in various ways. Team leaders and coordinators are in general responsible for keeping track of the situation and for formulating tasks. Investigating officers work in pairs whereby it is not always clear on which criteria these pairs are formed. Neither is it always clear why virtually all tasks must be carried out in pairs. Some tasks, especially checking data or visiting authorities in order to obtain information, can just as well be done by a single officer.

Considerable gains may be realised in the division of tasks in the teams. If the team management succeeds in actually having a complete overview of the available information and determines the lines of investigation in consultation with the investigating officers, a more effective and efficient criminal investigation can be given shape. In the cases in the Netherlands there were too often ad hoc decisions about lines which had to be further investigated. It seems to depend too strongly on the specific superiors to what extent structure is actually given to the internal division of tasks within a team.

When giving shape to the division of tasks, the question is whether the team management uses the insights from the project management. These insights may help to create a more structured working method and to make it clearer for everybody in which way which tasks must be carried out within which period and with which resources.



## 6.3.9 FORM OF MANAGEMENT

Within the criminal investigation management both strategic management and operational management should be given shape. Strategic management concerns questions such as the use of methods, the lines of investigation to be followed, the use of special investigation methods and “managing” the outside world. Strategic management also has an important role in coordination with the Public Prosecution Service as regards the content and scope of the criminal investigation. The operational management focuses on the day-to-day course of affairs, which has also already been discussed above.

There are various forms of leadership. The most common style of leadership is leadership whereby the individual officers are left a lot of room and freedom. That also fits in with the culture of the criminal investigation service, in which freedom and self-initiative are held in high esteem. However the consequence of this is that the overview is less than in the other leadership style, which is more hierarchical. In that style the superior tries to keep complete control of the information and the execution of tasks by the officers. That may lead to a more effective and efficient criminal investigation, but our investigation showed that this poorly fitted in with the wishes and perception of the officers. Not surprisingly, in some of the investigations quite strong resistance could be felt against hierarchical leadership. The choice of the form of leadership is strongly influenced by the personal preferences of the superiors. The experience of the superiors plays a role in this. More experienced superiors tend to choose a leadership style which leaves more room and flexibility to the individual officers. In their view optimum use is made in that way of the creativity of the experienced individual officers. This creativity and the sudden discovery are designated as crucial by these superiors.

## 6.3.10 INFORMATION TRANSFER

Information forms the heart of a criminal investigation. A criminal investigation is ultimately all about collecting and processing information. So for a team it is of great importance that a clear structure is chosen for information transfer. There are all kinds of forms of information distribution with the aim to providing all members of the team with the same level of information. Information was stored in files, reproduced in day reports, put in folders on reading tables and other forms. However it actually turned out all the time that not every officer was fully aware of the relevant information. In many teams there is a certain degree of freedom to take in information. It is done when there is time left. When there is no time, it is not an essential part of the work to get to know the other information. This causes some tasks to be done twice or not the maximum is gained from certain investigating actions.

Much information also turns out to be shared all the time at informal moments at which officers come together (coffee, breaks, meals). Although this seldom happens in a very structured way, it is for many officers an important source of information. The question is to what extent such forms of informal information transfer can better be utilised. The criminal investigation management may to a certain extent count on the informal information transfer, certainly if the operational management also has a task in this. But it is then important not to disturb the informality by new formal forms of consultation.

#### 6.3.11 SUPPORT AND ADMINISTRATIVE ORGANISATION

The criminal investigation service partly consists of support services: technical investigation, technical support, observation team, arrest teams, criminal intelligence service, information desk and others. Much use is made of these support services. For the criminal investigation management the question always arises to what extent the support services must have the information from the investigation at their disposal. In some cases the information will be necessary in order to be able to properly carry out a specific investigation. For instance, an arrest team will want to know whether the suspect is armed and dangerous. But for the same arrest team it is not necessary to know which informers have given which information or which specific lines of investigation there are.

The way in which the administrative organisation has been set up is important for the way in which the information can eventually be processed into official reports. A report coordinator and an administrative coordinator can be added to a team. Although the administrative tasks in a criminal investigation team have not a high status, they are of essential importance. Standard protocols and systems for recording information during criminal investigations are essential. The administrative organisation is responsible for drawing up a master official report.

#### 6.3.12 FORM OF DIRECTION AND CONTROL

In the investigation in the Netherlands various forms of direction by in particular the public prosecutor appeared. In most investigations there was an active public prosecutor who visited the team at various moments and who was intensively involved in the most crucial decisions. In some cases it was difficult to make a distinction between the members of the team and the public prosecutor. There is in general much oral and telephone consultation with the public prosecutor. The team frequently gets in touch with the prosecutor in order to assess the legal feasibility and desirability of certain steps in the investigation.

In general a public prosecutor is very well informed about what is going on in a team. But it is mostly the team leader who comes with proposals about lines of investigation or investigation methods, after which the public prosecutor must give permission for this. The prosecutors ask the team leaders and the investigating officers to give extensive reasons why a certain investigation method must be used. At various times a difference of opinion could also be discerned between the team leaders and the public prosecutors.

Public prosecutors can choose how to give shape to the direction and control of the separate criminal investigations. While doing so they must always navigate between keeping a certain distance and having sufficient information and involvement to be able to form a view. The authority which a public prosecutor has with the team, and in particular with the investigating officers, is reinforced if he or she gets thoroughly familiar with a case and thinks along with the investigators.

#### 6.3.13 MEDIA MANAGEMENT

The media play an increasingly large role in criminal investigations. It is striking in this respect that most team leaders in the Netherlands choose to adopt a reactive attitude towards the regular media. In general no information, or hardly any, was made public via the media. An exception to this rule is the programme *Opsporing Verzocht* (*Investigation Requested*) but in that connection the teams also have the feeling that it is in fact broadcasting time for the police. In that programme they can ask the public for tips in respect of an investigation. Other media are kept far from the individual criminal investigations. Attempts by journalists to get information and articles in newspapers about a case are seen as an infringement of a current investigation.

The question is whether the criminal investigation service cannot adopt a more proactive attitude towards the regular media. The media may be of use in supplying tips and other forms of support for an investigation. More than the police, and even more than *Opsporing Verzocht*, they form a window to the world which may help the police to get new relevant information about an investigation. On the other hand, many investigating officers know stories about journalists who disrupt the course of a criminal investigation on the basis of incomplete information. For many officers it meant that they had developed a certain fear of the media. With such a fear it is difficult to come to proactive media management.

## 6.4 Methods<sup>7</sup>

Investigation methods are an important part of the criminal investigation process. Most results can be achieved if the right combination of investigation methods is used. It is not possible to give the right combination of investigation methods on forehand. This highly depends on the specific crime, the underlying story and the background and characteristics of the possible perpetrators. For the management of the CID it is therefore of paramount importance to achieve a balanced and responsible combination of existing methods. Overall, we found in the Netherlands a wide and intensive use of investigation methods in extensive criminal investigations, while a limited range of methods were used in other major cases.

### 6.4.1 RESEARCH AT AND AROUND THE CRIME SCENE

Research at and around the crime scene focuses on the search for traces, such as finger traces, shoe traces, odor traces, blood and break traces. The technical investigation will take place by the technical CID or the Dutch Forensic Institute. This research at and around the crime scene creates the following dilemmas.

During the investigation at and around the crime scene as much information as possible should be collected. For the detectives and the CID management it is essential to choose what information is collected and what information is neglected. While endeavoring to collect all relevant information, choices have to be made in practice.

The first is to determine which crime scene must be examined. Is it just the place where the corpse is found, or also in and around his car, home and work? When should that happen and by whom? How the investigation at the crime scene is formed is largely determined by the initial assumptions of the investigators and CID management on the relevant case. The definition of the crime scene in the more figurative sense, is an important choice point for the CID management.

In the second place it is necessary to ensure that the traces at the crime scene remain intact as much as possible. Nothing can be changed, everything should be fixed. This assumption is easy to write down but in practice this is difficult to achieve. There are too many people present, there must be demolition of some sort to rescue victims or bystanders and is not always clear what should be recorded on photo and video. "Everything" is in criminal investigations to be a relative concept. In the hustle and bustle at the beginning of an investigation it is not always possible to identify how the crime scene was. This can result in the subsequent investigation to questions and sometimes difficult investigation problems.

<sup>7</sup> Based in and cited from De Poot, Bokhorst, Van Koppen and Muller 2004, paragraph 6.4.

In the third place it has to be determined if a search for fingerprints is necessary. The search for fingerprints is an absolute standard method of criminal investigations. In our study of all the cases in the Netherlands, fingerprints never led to finding a culprit. Fingerprints were used as supporting evidence (there was already a suspect and his fingerprint was found to correspond) or exculpatory evidence (there was no match between the arrested suspects and fingerprints found). The most problematic issue is whether a fingerprint which was found at the crime scene actually belongs to the offender. In many criminal investigations a lot of time is devoted to determining whether a match exists. But in most cases it was difficult to determine with any certainty whether a finger trail came from a perpetrator. For shoe traces a similar reasoning can be given.

In the researched cases DNA analysis was used frequently. DNA research is, in addition to fingerprints, now one of the standard investigation methods during the criminal investigation. DNA research does not automatically lead to the perpetrators. In the cases investigated by us this was not the case. In some cases this was due to the amount of time the DNA research took before the results could be used. For the CID management this means that DNA research is valuable, but that other investigation methods also have to be used for identification and to collect evidence.

#### 6.4.2 NEIGHBORHOOD SURVEY

The neighborhood survey is a standard method for more serious crimes. This investigation aims at determining whether there are witnesses and to create a picture of a victim. Especially if the victim is deceased a neighborhood survey can play an important role in mapping out the background and habits of the victim.

But a neighborhood survey must be done in a timely and thorough manner, otherwise it makes little sense. That means that at the beginning of the investigation it has to be decided almost immediately whether and how much use will be made of a neighborhood survey. The neighborhood survey is focused on information that people soon forget – a car present or a man walking – so timeliness is a crucial element. It is also important that careful coordination of the neighborhood survey takes place, otherwise there is a risk that unnecessary investigation will be conducted while some information has already been falsified. Such coordination is the responsibility of the CID management.

At the time that the survey is conducted it is not yet clear what information you are looking for. All information can be relevant. The investigators, however, need some clues to ask specific questions. CID management should. Not everything can be examined. There are specific choices to make in the priorities. The information from a neighborhood survey usually refers to the background of the victim, identification of potential perpetrators, names of other witnesses, the time of the crime and details of vehicles such as cars and scooters.

The neighborhood survey can be of great value for a criminal investigation. It is a very labour-intensive method, many officers and detectives should be deployed at short notice and the information from the survey should be investigated further. It is also difficult to assess the value of the information from the neighborhood survey. These surveys often provide a lot of different stories about an event.

The neighborhood survey provides a lot of work for the police. The question is to what extent the results of a neighborhood research outweigh the costs. The answer to this question can only be given in a specific situation with a specific crime. But for CIR management the question of the usefulness and necessity of a neighborhood survey at the beginning of each investigation always remains important.

#### 6.4.3 OBSERVATION AND POSTING

Observation is often used in more serious criminal investigation. The main objective is to investigate the possible courses of suspects and witnesses. Sometimes it is also used to determine criminal offences. Observation gives the CID a better picture of the behavior of a person and what he does. It offers the possibility to gather further information in addition to the information already collected using other methods. In this regard the observation should be interpreted as an additional investigation method. Observation is increasingly a specialized method primarily performed by a trained surveillance team. In some cases, even regular detectives were assigned to observation.

The risk exists that potential offenders notice that they are being observed and then adjust their behaviour. Increasingly, therefore, observation is done by technical means such as surveillance video and photo equipment. If carefully prepared, this will reduce the chance of discovery. Observation by the police themselves is labour intensive. Observation is mostly waiting until something actually happens. This requires the appropriate person to carry out the observations.

#### 6.4.4 COMPOSITION DRAWING AND CONFRONTATIONS

Composition drawings and photo confrontation are used less frequently during a criminal investigation than one would think. The use of composition drawings is only relevant if witnesses can remember someone who could have played a role in the offence. Also, these witnesses have to have a clear and consistent picture of this person to produce a good composition drawing. Before a good composition drawing can be made by the police a lot of work has to be done. Composition drawings are used to approach witnesses or to be submitted to suspects. It is unnecessary to say that the reactions of other witnesses and suspects do not necessarily match. Sometime this creates more confusion than clarity.

In mirror and photo confrontation a distinction should be made between investigation confrontation and evidence confrontation. An investigation confrontation aims to collect detailed information about the possible identity of the offender. An evidence confrontation (or Oslo confrontation) aims to identify the suspect as the perpetrator of the crime and contribute to the evidence. That is why this procedure has to comply with precise rules.

There is much attention in the Netherlands to the risk that memory bias in confrontations wrongly designated an offender. Our investigation revealed, however, often the opposite case. Witnesses doubted whether they recognize a particular person. These doubts, however, did not always lead to the rejection or exclusion of a particular suspect. Not resembling a composite sketch or not being recognized at a confrontation has a limited impact on the criminal investigation. A positive identification, however, is still hard evidence in criminal proceedings. The discussion about the value of testimonies works both ways. Drawings and confrontations can confirm but also invalidate the assumptions of the CID team. Both results have a similar value for the continuation of the criminal investigation and prosecution.

#### 6.4.5 TAPPING AND PRINTING

The tapping of telephones and printing of telephone numbers is a very commonly used detection method. In any case of serious crimes, but also for other forms of crime, it is often used. At the start of a criminal investigation it is important to gather as much information as possible about the victims, their friends and relationship network and the environment in which the victim was. A telephone tap is very appropriate. Phone taps provide information to create a more concrete picture of a specific criminal environment. Phone taps are particularly useful for the progress of the criminal investigation. Tapping supports observation because suspects can be located if they use their mobile phones. In addition, the information obtained by tapping plays an important role in the interrogation of suspects. In some cases the results of tapping structure the criminal investigation process. Only rarely does a phone tap leads to direct evidence against a suspect. Subjects are generally aware of the possibility that they may be bugged and adjust their behaviour accordingly. Information from the tap may be combined with other detection methods as an important contribution to the criminal investigation.

Tapping is a very labour-intensive method. Listening to the taps – both live and afterwards – takes a very long time and capacity to complete. In addition processing tap conversations involves many administrative acts. It is increasingly necessary to work with interpreters, which makes tapping even more difficult. Finally, there is not always the capacity for listening live to taps. Tapping is therefore a complex investigation method.

The same can be said for print data of phones. With print data the phone contacts of relatives of suspects and victims can be identified. Similar to tap data, print data are used to determine relationships. Also, depending on the print data from mobile phones, pole locations are determined that can create a picture of the presence of a particular person at a certain time at a certain place.

Tapping and printing are important investigation methods in the Netherlands, but actually only in conjunction with other investigation methods. In a preliminary investigation the interaction between the different investigation methods is of great importance. It is crucial that the investigators and the CID management are aware of this interaction.

#### 6.4.6 INTERROGATION

Several elements are of interest concerning interrogations. In the first place in criminal investigations much attention is given to the method of questioning. In major cases nowadays many interrogations are taped on video. In most cases interrogations are conducted by fixed couples of detectives who are supported by so-called shadow couples. These couples act as a sounding bar for each other. Many of the interrogations were characterized by building up pressure on the suspects. The investigators used different techniques such as confronting with lies or revealing what some other suspects have said. The use of interpreters during an interview is difficult because interrogation techniques do not work well if an interpreter has to translate them. Much attention is paid to the reporting of the interrogation. Obviously, not all elements of an interrogation can be written down. In fact, the investigators choose what is written. There are significant differences in the way an interrogation is documented. Although many investigators tend to write a formal report others tend to write a more factual story.

The second important element is the content of the interrogation. For this purpose, in larger criminal investigation cases, interrogation plans are made which indicated how to obtain certain information from the suspect. In criminal investigation processes on less serious crimes there is hardly an extended interrogation plan. The main method used is to slowly give more information to the suspect so that he becomes slowly aware of what the police know and what they do not. It is crucial that the interrogation couples know the facts of the case well so they can confront the suspects at any time during the interview with their knowledge.

Interrogation is an art. Within the applicable legal rules detectives have to try to get information in a responsible manner. They must always weigh the information they are able to give to the suspects. The information that the investigators have collected must be used strategically. Of course, an interrogation is aimed at finding the truth. In practice, investigators try to define this truth by using their own reconstruction of the event as a starting point and to verify this



story by the suspect. Holes and contradictions in the story can often be clarified during an interrogation. An interrogation is therefore the method of choice for a complete reconstruction of the crime story.

#### 6.4.7 HOUSE SEARCH

In most criminal investigations house searches are made at houses of victims and suspects. The search at a house of a dead person coincides with the crime scene investigation. Searches at houses of suspects is often combined with an arrest. In both cases, the time and intensity of the search are significant. What is being sought and how long a search takes? Especially when a search should be done at the beginning of an investigation, there is no clarity about how to find information.

In extensive investigations, accurate preparation of a search site is necessary. For this purpose, a plan is drawn up which indicates dates, times and people for the house search. This is necessary because often there has to be a search in different places simultaneously. In this preparation, data gathered on the suspect, a map of the object and the activities and business in the area are crucial. Especially in large scale investigations searches are preceded by an observation on the spot.

Only in rare cases do searches produce directly usable evidence. In general, house searches produce general background information on the suspect and his involvement in a crime. With this information the number of scenarios that the police use can be reduced or extended. House searches prove their value in combination with other investigation methods.

#### 6.4.8 INFORMATION, KNOWLEDGE AND EXPERIENCE

Besides the above mentioned investigation in a criminal investigation information is collected or processed in other ways. While this might not be appointed as a investigation method, the investigators themselves act as an important source of information for the interpretation of information and the reconstruction of a crime story. Knowledge and experience is not always inside ICT systems but is primarily in the minds of the investigators.

In the first place, the information from the Criminal Investigation Unit (CIE) plays an important role in criminal investigations. The CIE reviews if it has relevant information about suspects or circumstances which may be related to the case. The extent to which CIE information plays a role in investigations varies widely. Sometimes there was relevant information and this information could play a role in further filling in missing gaps in the story. In other cases there was discussion between the CID team and CIE on whether specific information could be used. Although we sometimes found examples of problems between CIE and

CID teams in many regions, an improvement occurred in the communication between CIE en CID. Meanwhile, the establishment of information desks in different regions created greater coordination of present CIE information.

In the second place, crime analysis plays an important role in investigations into serious crimes. The crime analyst performs different functions in a CID team. He or she creates a timeline of key events in the criminal investigation. In addition, a crime analyst creates relationship diagrams which indicated how the relations in a criminal network are. And finally, a crime analyst plays an important role in the supervision of the survey in respect of the investigation. To this end, a crime analyst draws a picture of the whole and tries to look for contradictions and slackness in the investigations. Crime analysts are an important sounding board for the investigation and CID management.

In the third place, the police have many files in which much computerized information on suspects, events, places and vehicles is present. The Recognition System and the Management and Processes System are the main sources for the police to create an initial picture of the background of a person or event.

Finally, as revealed in many studies, the local knowledge of police officers is very important. This knowledge is in the minds of the officers and is only partially defined in systems. But in several cases we have seen that the knowledge and experience of investigators were of great interest for the criminal investigation. The same is true for the relation network of investigators and CID management. Soft information appeared to be crucial in many criminal investigation cases in the Netherlands.

## 6.5 Conclusion

A criminal investigation process is a complex process to manage. There are several dilemmas which play a crucial role in the way the investigation process functions. All these dilemmas obliges the management of a criminal investigation process to make choices and decisions. When the management of a criminal investigation process consciously takes decisions concerning these dilemmas the chance of a more effective criminal investigation arises. Of course, it is necessary to translate the dilemmas which are based on research on criminal investigations in the Netherlands to the specific local aspects in other countries. I expect that the findings in the Netherlands are roughly also applicable to other countries in Western Europe.



## 7 Forensic investigation

Forensic investigation is – especially since the advent of DNA identification research – becoming an increasingly important part of the criminal investigation process in the Netherlands. Forensic investigation creates crucial information today that is increasingly important for the truth. While the tactical police investigation deals with gathering evidence, forensic investigation facilitates the tactical investigators. The role and significance of forensic investigation in the near future is increasing. It is no longer just only support for tactical processes, but more and more a crucial way of criminal investigation.

This growing influence of forensic expertise is mainly reflected in the growth of the number of research techniques, the investments made by the police and justice in this area and the importance of forensic investigation in policy plans. In the Netherlands we had some high profile cases like the Schiedam Park Murder and the Murder in Putten where the role of forensic expertise in the criminal investigation became crucial. These cases showed also the complexity of cooperation between the crucial stakeholders in forensic investigation: the police, the Public Prosecutor Service and the Netherlands Forensic Institute.

Forensic investigation is of crucial importance for criminal investigation. It is now a unique institution with complex cooperation. In this chapter I give an overview of that institutional framework within which forensic investigation is shaped. Because of this importance it is crucial in a book on security, safety and criminal justice in the Netherlands. The chapter is mainly based on the volume *Forensic Science: Studies on forensic knowledge and organization* (2008) edited by Broeders and Muller.

### 7.1 Facts, figures and organization

#### 7.1.1 NETHERLANDS FORENSIC INSTITUTE<sup>1</sup>

The Netherlands Forensic Institute (NFI) has in the Netherlands a virtual monopoly in the field of forensic investigation. There are some other forensic

<sup>1</sup> Based on and cited from Muller and Otto 2008, paragraph 19.3.

institutes (TMFI en IFS) but although these new services are established the NFI remains the most important forensic service in the Netherlands.

The NFI is a part of the Ministry of Security and Justice and conducts research in criminal and sometimes civil cases. The task order of the NFI mentions that this institute comes under the Directorate-General for Enforcement of the Ministry of Security and Justice and the head of the NFI is designated by the Minister of Security and Justice. In this task order it is made clear that the Director of the NFI not only derives his powers from the Minister of Security and Justice, but also has to act within the frameworks set by the Minister. For the majority of funding the NFI is dependent on the Ministry of Security and Justice.

The principal of the NFI is, formally speaking, always a judge or a public prosecutor, but in practice it is the police who use the services of the NFI. The NFI does not work in principle for private clients, such as lawyers or suspects, but they can apply to the public prosecutor or the examining judge to conduct an inquiry. The NFI does not provide information about ongoing research to third parties. It reports only to the applicant or client, mainly the police and the judiciary.

The task order of the NFI reflects the three core tasks of the NFI. First, to provide and report on independent case-related forensic research based on technical, medical and biological science. Second, to develop and implement new research methods and techniques for police, justice and for their own use. Third and last, is to become an international knowledge and expertise centre for forensic investigation.

The practice of criminal investigation can be divided into technical and tactical research. The assistance of the NFI to the police relied on the technical research, which contains search and investigation of traces. The police have also a specialized staff of their own to do forensic investigation. The police would often prefer to use their own people. But if they lack the capacity, the NFI is asked to assist. This happens often in difficult and complex cases. The experts of the NFI are required to visualize, interpret and assess the traces. “The core business of forensic investigation is to collect information from traces found at the crime scene, storing the information in trace files and analyze the information for the investigation.”

Traces found at the crime scene and which are safely collected by the technical investigation are sent for further investigation to the NFI. Fingerprints are made visible by the NFI. The visible fingerprints are assessed by the NFI for suitability for identification. Fingerprints are photographed and the pictures of the prints

are sent to the technical investigation of the regional police forces where they are compared with prints in a local fingerprint collection or with the national automated collection HAVANK. Also in case of blood or semen found at the crime scene the NFI is asked to conduct the forensic investigation. Samples of forensic material found at the crime scene are sent to the NFI for DNA research. In the future there will likely be an increase in digital forensic detection.

The forensic research of the NFI is very broad and has many scientific specialties. In total in 2011 more than 550 people worked at the NFI. The research opportunities of the NFI are divided into more than 40 forensic competence areas:

- (Waste) substances research
- Alcohol Determination
- Image Research and Biometrics
- Soil, water and fertilizer research
- Composition and emissions research
- Ecological, technical and human toxicology
- Fire accelerating research
- DNA Research
- DNA-affinity investigation
- Document Research
- Drug Analysis
- Eco- and human toxicology
- Explosions and explosives investigation
- Forensic Anthropology
- Forensic Archeology
- Forensic medicine
- Glass Investigation
- Hair Research
- Handwriting Research
- High volume Crime DNA research
- Scratch, feeling and form trace
- Machine and Biometry Research Micro trace
- Environmental analysis
- Environmental Sampling
- Research illegal drug manufacturing
- Research closed systems (ICT)
- Research industrial chemicals
- Research non-human biological trace
- Research open systems (ICT)
- Pathology
- Soil water Research
- Trace research

- Speech and audio analysis
- Toxicology
- Paint Research
- Traffic Study
- Fibers and Textiles Research
- Finger traces
- Vehicle Identification survey
- Arms and ammunition research.

The NFI staff responsible for conducting the investigations and reports, the so-called “forensic experts” have a scientific basis or a higher vocational training in one of the following disciplines (this list is not exhaustive): biochemistry, biology, soil science, chemistry, electronics, pharmacy, computer science, linguistics, materials science, environmental health, physics, psychology, statistics, traffic, mechanics or pathology.

The NFI is responsible for DNA and other forensic investigations, such as blood-alcohol provision. This is by law entrusted to the NFI. The NFI has three main directions of research: medical and biological research, chemical analysis and physical and electronic research. This shows that the NFI does much more forensic research than just produce DNA profiles. The DNA research is, however, an increasing proportion of the tasks of the NFI.

In 2001, new DNA legislation came in force in the Netherlands. This law regulates that anyone who is suspected of a crime, for which a sentence of four years or more is possible, is obligated to surrender DNA cell material to a national DNA databank. In 2003 a law came into force which made it possible to connect DNA material with this DNA databank. The public prosecutor or the judge can give the NFI an order to conduct this investigation.

#### 7.1.2 POLICE AND FORENSIC INVESTIGATION<sup>2</sup>

##### *Forensic investigators within the police*

The regional forces of the police have their own forensic investigators. The total strength of the technical investigation units within the 25 police forces includes 673 policemen, two-thirds of which is directly involved in the research at the crime scene. This part of the total police strength is relatively limited. The technical investigation units have a limited number of specialties related to forensic expertise.

<sup>2</sup> Based on and cited from Muller and Otto 2008, paragraph 19.4.

The forensic-technical examination in the Netherlands obtained an increasingly important role in the criminal investigation process. Especially the new DNA technology and related legislation have a strong momentum. The quality of the forensic-technical examination has been assessed as good by the Public Prosecution Service and the police. The quality – and hence the efficiency – of the forensic-technical examination can be further improved by better instructing the police officers who are often first at the crime scene. They need better education about securing a crime scene or specific tracks and how to support the technical police investigators in their work. Efficiency improvements are also possible by reducing the delivery terms of the NFI.

#### *Cooperation between police and the NFI*

Most police regional forces prefer working with their own people. If a specific police force has relevant forensic knowledge, other police forces preferably use this police knowledge rather than ask the NFI to conduct an investigation. Police forces work better with other forces rather than asking for the services of the NFI, because it saves time and money.

There were several attempts to improve communication between police and the NFI. All innovation is welcomed by the police because they hope that the research time could be made shorter. One of the main criticisms of the police is about the fact that the NFI often takes a long time for the studies. On this point the NFI and police differ structurally. The police are in need of rapid indications and the NFI wants to maintain its good reputation and wants to deliver only thorough investigations. Another reason for some irritation with the police is that police forces are asking for more research applications by the NFI than is strictly necessary.

The Council of Chief Commissioners has made a future vision on the role and organization of forensic investigation within the police for the coming years. It recognizes that strong maintenance is needed in forensic investigation. “The forensic investigation is insufficiently embedded in tactical and operational search processes, the skills of forensic investigation are no longer consistent with the competencies required in today’s technologically complex process, sometimes a hobby culture prevails over necessary specialization and the quality is sub-optimal and there is insufficient support and attention to forensic investigation by both management.”<sup>3</sup> A typical quote shows the importance that the police forensic expertise will be given in the future. The report describes many positive developments for the future. “The forensic investigation is an essential part of the criminal investigation process. Along with tactics and intelligence it is part of

3 Council of Chief Commissioners, Vision on Forensic Investigation 2004, p. 29.



the criminal investigation process. (...) The core of our vision is that the role and significance of forensic investigation in the near future will increase and that it is no longer only support to tactical processes, but more and more in control.”<sup>4</sup>

In order to improve this cooperation Centers for Cooperation in Forensic Investigation (FSO's) have been designed. The FSO should create better cooperation in the forensic investigation. In this FSO people from the police technical investigation unit and the NFI will work together. An NFI employee participating in the project has several advantages. He can quickly be at the crime scene, is well aware of the technical possibilities and of the NFI and can therefore quickly consult the appropriate experts. The purpose of the FSO is to prevent bureaucratic errors, but it is also expected to ensure efficiency by improving the cooperation between the police and the NFI. A non-negligible risk of the laudable efforts to effectively assure possible traces is that the NFI experts are too early and intensively involved in the investigation process so they lack the necessary distance. Measures that could be rendering this risk, such as the involvement of lawyers are missing so far.

## 7.2 Crucial forensic cases in the Netherlands<sup>5</sup>

In the Netherlands in recent years some key cases occurred which showed that forensic investigation in general and the cooperation between police, the Public Prosecution Service and the NFI was not optimal. It concerns the Schiedam Park Homicide and the Putten Homicide. I am fully aware of the fact that these cases do not give a representative picture of the relationship between police, the Public Prosecution Service and the NFI. In the vast majority of cases, the cooperation between the three organizations is fine. These cases show however the degree of complexity and fragility in the relationship between these different organizations. It can easily go wrong. In addition, the Schiedam Park Homicide led to a major programme for improving forensic investigation in the Netherlands.

### 7.2.1 SCHIEDAM PARK HOMICIDE

On June 22, 2000, the ten-year old Nienke Kleiss and her friend Maikel were in the Beatrix Park in Schiedam, They were forced by an unknown man in the bushes and he committed sexual acts with them. The girl was later found dead. Her friend barely survived and later described the offender. He described the

<sup>4</sup> Council of Chief Commissioners, Vision on Forensic Investigation 2004, p. 9.

<sup>5</sup> Based on and cited from Muller and Otto 2008, paragraph 19.2.

offender as a white man, between 25 and 35 years old, with a striking pockmarked face, dressed in a dark, possibly leather jacket and with a baseball cap on his head.

After a month the police suspected an initial witness, Kees B., of the murder of Nienke Kleiss. During a series of long interrogations Kees B. admitted he had committed the crime. A day later he withdrew this confession. The court in Rotterdam sentenced Kees B. on May 29, 2001 to eighteen years imprisonment plus TBS. This sentence was confirmed in appeal.

Some years later, another man, Wit H., confessed out of the blue that he had murdered Nienke. New DNA research confirmed this confession and he was sentenced for the murder on Nienke. Kees B. was released from prison after serving four years of his sentence. In retrospect it appears that serious errors in the criminal investigation and prosecution were made by the police and judiciary, in cooperation with the NFI. The Commission Posthumus, installed by the Public Prosecution itself, examined the case in detail.

At the crime scene and in and around the body of Nienke dozens of biological traces were secured. In seven cases of samples containing traces complex DNA-mixing profiles were obtained: from the dirt under Nienke's nails, from her left boot, from her left shoulder, from her belly and three from the ten samples of the lace which was around her neck. The samples of the soil from under her nail and the left boot both yielded a complex mixture of DNA profiles of Nienke and Maikel and a third person. These results are as such mentioned in the report of the NFI and in the courtroom. The sample from the belly resulted in a mixture of DNA profiles of Nienke and a second profile which could not be traced. Both aspects were mentioned in the report and in court. The three samples of the lace all showed a mixture of DNA profiles of Nienke and Maikel, as did Nienke's left boot.

The NFI researcher and the NFIexpert who were most involved in the DNA research had different opinions on the interpretation of the profiles that were obtained from the samples from the lacing and the shoulder. The researcher found that the characteristics all pointed essentially in the direction of the same unknown man. The expert was more cautious because the composite profiles were unclear and because he had to consider the interpretation of all possible errors. The profiles were not replicable and, therefore, in the opinion of the expert not reliable enough to be scientifically valid. Because the opinion of the expert was paramount, these profiles were disregarded in the NFI report.

However, the researcher and the expert agreed that these profiles did not only contain the profiles of Nienke and/or Maikel, but also contained additional DNA characteristics. Also, they agreed that the profile of Kees B. could not be found in the mixed profiles. This gave rise to major doubts concerning the involvement of

Kees B. in the offence. They shared their doubts in an interview with the then Director of the Division of Biology of the NFI, who submitted the case to the Chief Executive of the NFI. The two directors expressed their doubts to the Procurator-General, who was responsible for the forensic-technical investigation. He arranged a meeting between the public prosecutor in this case and the employees of the NFI, on July 10, 2001, almost two months after the court conviction of Kees B. This was the first time in the history of the NFI that such an event occurred.

During an earlier meeting at the NFI on January 19, 2001 (before the first court trial of Kees B.) the researcher stated that he considered that in all mixed profiles the profile of the same third person could be identified. The expert was more cautious, but suggested to decline DNA material from more acquaintances of Nienke. This was rejected by the public prosecutor, because: "it was unbelievable to continue to search because there was a suspect who had confessed".

The additional features in the three samples of the lace were ultimately not included in the report and debated in the courtroom. So not all information was known to the judges at first instance, the Appeal Judges and the defence. The existence of the traces on the lace was explicitly denied in court by the Advocate General in her indictment. But the Commission Posthumus concluded, after extensive research, that the attorney-general did not deliberately lie or withhold evidence. However, the committee concluded in its report as follows: "I think the prosecutor and the Advocate-General should have done more with what they had heard from the NFI-employees."

Prof. Van Koppen, who researched this case earlier, stated that in this case an incomplete and unilateral suspect leading file was presented to the judiciary. Such statements can also on reflection be found in the report of the Commission Posthumus and in the letter that the Minister of Justice wrote to parliament in response to the Posthumus report. The conclusions of the Posthumus report will be represented briefly here because of the relevance of the cooperation between the NFI, the police and the Public Prosecution Service.

The fact that Kees B. made a confession ensured that further criminal investigation was suspect led. The criminal investigation process was hardly structured and there was no contradiction organized. Therefore errors in the criminal investigation process did not come to light and a tunnel vision developed after the confession of Kees B.

There was also lack of consistency between the technical and tactical police investigation. There was insufficient guidance for the technical staff, which had, for example, the effect that micro tracing at the crime scene was a messy process. Possible important traces were lost by not properly dealing with evidence by the

technical police service and by not properly packing evidence (such as the body of Nienke) which was sent to the NFI. It was not strange for anyone that no traces were found of the offender. Too little attention was paid to the fact that the NFI noted that the traces that were found led to an unknown third man.

There was also, especially in the evidentiary phase of the criminal investigation, too little tactical leadership and too little room for contradiction. As a result, after the confession of Kees B. the research concentrated too little on the truth of his confession and the possibilities of other perpetrators. The police did not handle Nienke's friend, Maikel, with care. This could have also a negative impact on Kees B., since Maikel's statements were exculpatory for B.

Another point is that the public prosecutor was no longer critical after the confession of Kees B. The Advocate General was, although initially very critical, scared to free Kees B. This was mainly due to the seriousness of the facts, but unacceptable given the fact that they both were aware of the doubts of the NFI which were hidden from the court. Finally, the communication between the police, the Public Prosecution Services and the NFI was lacking.

#### 7.2.2 PUTTEN HOMICIDE CASE

Also in the Putten Homicide Case, the murder of Christel Ambrosius, mistakes were made in the criminal investigation and two men were wrongly convicted. On Sunday, January 9, 1994, the 23-year-old stewardess Christel Ambrosius was murdered. Herman du Bois and Wilco Viet were held as suspects in this case. But on April 24, 2002, after eight years in prison, they were both acquitted for lack of evidence by the court in Leeuwarden. In this case errors were also made regarding the interpretation of forensic reports.

##### *Trail Track*

On the upper right leg of Christel there was a drop of material that contained semen. The question was whether it was present there due to sexual intercourse during the crime, or due to an earlier voluntary sexual contact. A number of experts examined the possibility that the stain on the leg of Christel could have occurred by a process that was called "trailing". According to experts, the method of trailing of the semen cannot be excluded, but the absence of a drag trail track established the contrary. Moreover, the possibility of trailing decreases as time progresses. However, in the judicial process the existence of a trail track was adopted. This is partly due to the declaration of ad hoc expert Eskes, a gynaecologist.

During the retreatment of the case by the court in Leeuwarden, Eskes declared that he had been wrong. The semen found on Christel could not be anything other than a perpetrator track. "The trailing theory was unjustly addressed to me," he said. The use of an ad hoc expert such as Mr Eskes creates specific risks. The

Public Prosecution Services was guided by this expert, but did not give him full information. A trained forensic expert would be more aware of the importance of his statement for the Public Prosecution Service.

#### *Hair*

The sweater that was worn by Christel Ambrosius was seized and sent to the Forensic Laboratory (the predecessor of the NFI). The report of the Judicial Laboratory shows on the sweater there was a hair that did not fit in the palettes of hair of Christel and the suspects. This information was not used later in the judicial process. Also, there was a pubic hair found on the sweater that had great similarities with the pubic hair palette of Wilco Viets. An expert from the Forensic Laboratory for DNA Research in Leiden performed mitochondrial DNA research on this pubic hair. In his report, the expert concluded that the pubic hair could come from Wilco Vites but, in any case, from all in the female line to him related male and female family members and an unknown number of other people.

The expert told the Appeal Court that mitochondrial DNA is not specific to a particular person, but is basically unchanged passed along the female line. The court should take into account that the found mitochondrial DNA profile may occur in all persons who were related through the female line in any degree whatsoever. The evidence of such an match is very low. This conclusion is reinforced by the fact that the pubic hair was not found until the sweater was investigated for the second time by the Forensic Laboratory, while the sweater was not well-preserved in the intervening time.

#### *Fibers*

More than a month after Christel was killed, Herman du Bois was arrested in his home and the police seized two pairs of his trousers. On one of these pairs of trousers the Forensic Laboratory found a few microscopic fibers that could not be distinguished from the fibrous materials in a mat and a carpet that were found in the living room of the house where Christel has been found dead (her grandmother's house). According to the Forensic Laboratory it is "possible" that the trousers and the mat and/or carpet were in contact with each other. In the car of Gerrit Schuchard (a friend of the suspects and initially also suspected in this case) the same fibers were found. The Forensic Laboratory stated that they may have come from the mat and the carpet.

Important for this case is that materials incorporated in the mat and the carpet were popular and frequently sold in and around Putten. Therefore it cannot be excluded that these materials came from somewhere else. However, the public prosecutor in this case stated explicitly that the fibers must come from the grandmother's house.

### *Injuries*

The pathologist-anatomist found a strangle trace and stitch and cut wounds on Christel's neck. According to the Advocate-General Herman du Bois strangled Christel by pressing the arteries in her neck with his thumbs. This is not consistent with the findings of the pathologist-anatomist. The declaration does not match the facts, but nobody paid attention to this fact during the criminal investigation. The pathologist-anatomist writes later in the process to the Advocate General that Christel's injuries may have been inflicted with the knife found in Gerrit Schuchard's car. The Advocate General concluded that the injuries were inflicted with that knife. This was another erroneous interpretation, because the pathologist-anatomist used the lowest level of probability.

Another knife was found in bushes near a campsite, which makes it not unlikely that this knife is not case related, but was from one of the guests. The fact that the knife was covered with a layer of humus and was very difficult to find leads to the conclusion that there was no relation between this knife and the case. The mere fact that Gerrit Schuchard said that Herman du Bois had thrown something out of his car at this point, is not enough to believe that this was indeed the murder weapon.

After the suspects were arrested, the criminal investigation focused for the most part on proving the guilt of the two men. This is reflected in the technical journal, but also from the fact that the accused is told that the fiber track on the trousers of Herman du Bois actually proved that he had been at the crime scene. Also, the indictment of the Advocate General was incomplete. Although the experts have shown that some confessions could not be true, the Attorney-General does not mention this in his indictment. This is probably due to the thinking of the Attorney General, who assumes that the statements of the suspects are sound. Evidence to the contrary was ignored.

### 7.2.3 PROGRAMME TO IMPROVE FORENSIC INVESTIGATION AND PROSECUTION

The report on the Schiedam Park Homicide by the Commission Posthumus showed structural weaknesses in the forensics and criminal investigation. Following this evaluation, a programme to improve forensic investigation and prosecution was created by the Public Prosecutors Service, the police, the NFI and the departments of Justice and the Interior. In the programme five themes are crucial:

- General requirements for criminal and forensic investigation;
- The authority on the criminal and forensic investigation;
- Reinforcement of the skills of the police and forensic researchers;
- The importance of leadership for a good criminal and forensic investigation and prosecution;
- A culture of contradiction and reflection, and continuous quality development.

*Content of the programme*

The basis of the programme is that the police, the Public Prosecution Service and the NFI have to make extensive organizational and substantive changes in the criminal and forensic investigation. The quest for unity in terminology is a good example. In this context, a new term was born: forensic investigation. This includes both forensic-technical investigation and forensic information investigation: looking for tracks and the maintenance of forensic information. The Technical Research departments of the police and the NFI together are named forensic investigation.

Also, new agreements were made on the task division between the police and the Public Prosecution Service in specific investigations. The leading role of the public prosecutor remains prominent. He has to put both burdensome as exculpatory information in the files. In this way, the quality of the criminal and forensic investigation and the use of forensic expertise can further be improved.

The report revealed that detectives were often not optimally trained. The police, the NFI and the Public Prosecution Service wish for this to change by distinguishing different types of crime scenes. For each type of crime scene different forensic specialists will be used. Also, forensic prosecutors are employed with a deep expertise on forensics so they can act as fully fledged partners with the police and the NFI. Also, a National Forensic Investigation Team (LTFO) is established for the efficient handling of disasters and terrorist attacks.

To realize the advocated contradiction the NFI introduces a doubt procedure for cases where there is doubt on the interpretation of the NFI reports by police and the judiciary or on the involvement of suspects in a particular case. The above-mentioned forensic prosecutor gets a role as a contra speaker on a forensic technical investigation. Within the police and the Public Prosecution service contra procedures and review procedures are organized to prevent tunnel vision during the criminal investigation. The prosecutor's leadership and direction of the police forces will also include an explicit role in the contradiction so that their substantive involvement also increases.

The NFI has to report more clearly. The technical world of NFI should be linked in the right way to the legal practice of investigation and prosecution. Reports of the NFI have to be understood by those who read them. The filing of cases and evidence must be better addressed. In this filing additional exculpatory evidence has to get more attention. For the management and analysis of traces several people will be appointed as the forensic coordinator and track coordinators. The national database of tracks will be used. Already many forensic technical standards have been developed.

The programme provides a wide range of substantive and organizational measures to improve the forensic investigation. The scale and intensity of the needed improvement raises questions about the quality of the forensic investigation before these measures were actually introduced. Meanwhile, many of the recommendations from

the report of the Commission Posthumus have now been further developed into concrete plans. The actual implementation is a lengthy process involving many changes in the organization of the police, the Public Prosecution Service and the NFI. In 2010 all parties concluded that they have implemented these changes effectively.

#### *Review Commission*

After these and other miscarriages of justice a Review Commission was established in the Netherlands. This Review Commission started in March of 2006. It consists of Advocates-General, former police officers, (former) criminal lawyers and criminal law scientists. It aims to determine whether during the criminal investigation problems arose that would prevent a proper assessment of the facts by the court. This Review Commission has to investigate if a criminal case is suitable for a new criminal and forensic investigation.

It must involve serious criminal matters (i.e., rape, manslaughter, murder, robbery with victims, etc.) that are particularly susceptible to tunnel vision and the desire to obtain a (fast) solution of the case. The Review Commission responds to signals of problems during the criminal investigation in a specific criminal case. The signal must be submitted by (former) professionals (police officers, members of the PPS and the NFI) or scientists. The Review Commission gets access to all relevant persons and documents of the police and the public prosecutor. For constitutional reasons, judges are not included in the investigation by the Review Commission. The committee reports to the Board of Procurators-General. The results of investigations of the Review Commission are public. An investigation will generally lead to a recommendation to start a new investigation or a review by the Supreme Court. The Board of Procurator-General decides what to do with the recommendation of the Review Commission.

The Review Commission has dealt with a few more cases in the Netherlands. Some of these cases led to the release of prisoners. The procedure of the Review Commission will be altered. The Procurator-General at the Supreme Court will get the authority to render an investigation if signals arise on potential miscarriages of justice. In this way the possibility of reviewing criminal cases is more fundamentally institutionalized with the judiciary in the Netherlands. Also in the Netherlands it is necessary to have an independent procedure to investigate possible miscarriages of justice.

### **7.3 Trends in forensics<sup>6</sup>**

In this paragraph I sketch ten trends in forensic investigation in the Netherlands. These trends represent the major topics in policy and debate in the Netherlands.

<sup>6</sup> Based and cited from Muller 2008A.



## 7.3.1 FORENSIC EXPERTISE VERY DIVERSE

The forensic expertise is diverse and extensive in the Netherlands. Many different forms of knowledge are placed under the wider concept of forensics. It is actually all knowledge in one way or another used in a form of judicial investigation, including criminal investigation, litigation and mediation. Forensic expert is currently still not a title or a function that is legally protected in the Netherlands, virtually everyone can use the term. Sometimes it looks like alternative medicine.

It is highly questionable if it is effective and efficient for the further development of forensic expertise in the Netherlands if almost every day new forms of forensic expertise are added. In itself it is recommended that all relevant knowledge can be used in criminal investigations and litigation. But there should be clear requirements as to when an expert is legally a forensic expert and may be heard in a judicial trial. This means that a system of admission and assessment should be formed. If forensic expertise will continue to grow uncontrolled, the risk exists that the public and political confidence in forensic science and expertise will decrease. At this moment a new act will be implemented in the Netherlands where more regulations are made for determining who can call themselves forensic experts.

A uniform quality system has to be developed so that the police, the Public Prosecution Service and judges can know which forensic expert can actually make a valuable substantive contribution to the criminal investigation and who does not. In fact that means the provision of a specific label by an independent body. As in many other sectors in public administration it would be useful to have some form of accreditation of forensic experts. For the NFI there is already such a procedure, through the Council for Accreditation, but it would be desirable and useful if it would apply for all forensic experts.

## 7.3.2 FORENSIC EXPERTISE INDEPENDENT ROLE

In the Netherlands we had in recent years several incidents involving improper forensic investigation which led to miscarriages of justice. It became clear that the forensic expert should play an independent role in the criminal investigation and the judicial process. This will strengthen confidence in the forensic science in the long term. This independent role of the forensic experts should be legally defined.

This means that the relationship between the police and the OM on the one hand and the forensic experts on the other hand should not be one of client and contractor. The forensic experts should be independent of the person making the request and he should be able to assess their views independently. It should also be possible for lawyers to demand a forensic research on behalf of their clients. In

both cases, there is no hierarchic relationship between the forensic expert and the person requesting the forensic investigation. In fact, this will mean that a specific commission or agency assesses the requests of the police, the PPS, the court commissioners, the lawyers and the defendants on the ground of feasibility, desirability and finances.

The independence of the forensic expert is very important for the value of the opinions of the experts. If only the appearance of a bias is dominant, the value of the opinions of the forensic expert is reduced. This means that the independence of the forensic expert should be regulated in law. This legislation could include the criteria and procedure for accreditation of forensic experts, the requirements for requesting forensic expertise, the criteria for a forensic examination, the way of reporting and the method of financing.

The request must be made both by the police, the PPS and the court commissioner as well as the defendants and lawyers. The importance of the forensic investigation is widening. Technical evidence on the basis of forensic expertise is generally conceived as important by judges, even more than a testimony. This is an important reason to also allow lawyers the application of forensic research. The confidence in forensic science will increase if all parties can ask for an independent opinion of a forensic expert.

### 7.3.3 CLEAR STANDARDS FOR FORENSIC EXPERTS NEEDED

There are many different types of forensic experts. It is important that comparable standards are developed for these different forms of forensic expertise: standards on how to collect evidence, on how it should be transported, on how it should be assessed and on how it should be reported etc. For various forms of forensic expertise these standard exist. The NFI have developed some standards in consultation with the police for different areas of expertise within the NFI. It would be desirable if this could be realized for all approved areas of forensic expertise.

It is also important to involve the police and the PPS in the adoption of these standards. Both organizations have an important role in the first actions at the crime scene and the subsequent prosecution. The standards must not only apply to the forensic experts, but also to the police and the PPS. It should distinguish between different types of crime scenes. Only when these standards are developed jointly, will all parties commit to effective action conform these standards.

#### 7.3.4 MUCH ATTENTION HAS TO BE PAID TO EXPOUND AND EXPLAIN TECHNICAL FORENSIC KNOWLEDGE

Forensic expertise is first and foremost (technical) science. The forensics experts know a lot about an often relatively small subject. Forensic experts are experts in a specific scientific area. They speak and write in the language and style of that science. This is for the police, the PPS, the judge, lawyers and defendants often an incomprehensible language. Usually, these subjects are not trained with regard to the specific expertise of the forensic expert.

It is therefore important that the forensic experts pay much time and attention to the explanations of technical knowledge: not only in the courtroom, but also to police and the public prosecutor during the criminal investigation. This means that in training of police and PPS forensic science and forensic investigation should be integrated. Only in this way, can the possibilities and limitations of specific areas of forensic science become clear. In addition to the above standards, it is important to explicitly reflect on the translation of technical and specialist knowledge to the non experts in criminal investigation and the judicial process.

#### 7.3.5 ADVANCING KNOWLEDGE AND TECHNOLOGY SHOULD BE CAUSE FOR REVIEW

Recently there were several cases in the Netherlands where people were wrongly convicted. This has led to judicial revisions with public and political debate. In these cases it was obvious and imaginable. But it is also possible that by advancing knowledge and better technology better or more precise results can be achieved than in the past. With the current DNA technology you need much less material than in the past. It is expected that in the coming years the forensic technology will increasingly be developed and the possibilities of forensic expertise will increase.

This means that the possibility of a revision of a specific conviction should be made simpler. At this time it is a long and arduous process that only applies in a single case. This is because a review felt like a failure by the police, the public prosecutors and the judges. But if it is possible – of course under specific conditions – to review because there are new and better technical forensic resources that can contribute to a better law and no one is to blame.

#### 7.3.6 NEED FOR MORE KNOWLEDGE FOR POLICE, JUDGES AND LAWYERS ABOUT FORENSIC EXPERTISE

As forensic experts must do more to ensure that technical knowledge is translated for the persons involved in the criminal investigation, the police, the public prosecutors, the judges and lawyers should ensure better knowledge and understanding of the possibilities and limitations of forensic expertise. Only with such

knowledge can they meaningfully ask for specific forensic investigation, they can better assess the results and it may be useful in the courtroom debates. Police, public prosecution, judges lawyers do not have to have knowledge about a specific type of forensic expertise, but that they have to know what the specific opportunities and restrictions of forensic expertise are.

This implies that forensic expertise is a crucial part of the training of police officers, prosecutors, judges and lawyers. It is even the question whether it should not be a crucial part of the regular education in law partly because of the expected importance of forensic expertise in the future. But certainly it is an indispensable component in the training for policemen, judges, prosecutors and lawyers. The training and education should not only indicate the characteristics of specific kinds of forensic expertise, but also pay attention to domestic and foreign cases involving successful and unsuccessful use of a specific type of forensic expertise.

#### 7.3.7 MORE ATTENTION FOR PROCESSES, COOPERATION AND MANAGEMENT

The forensic investigation can only take place in cooperation between different organizations. In several cases – not only the incidents – it has become clear that with regard to cooperation between police, public prosecutors and the NFI there are specific problems. It would be useful to develop not only content standards for various forms of forensic expertise but also standards for forms of cooperation. It is also conceivable that, through joint exercises and simulations, opportunities for better cooperation in practice will arise.

It is clear that in the future forensic experts must not only consider the content of their expertise, but also pay attention to the process and management of forensic investigation. In the coming years a substantial improvement in the processes of the use of forensic expertise in criminal investigation has to be made or the risk exists that the substantive knowledge of the forensic experts will be less important. In the before mentioned programme many good measures are proposed and should become reality in the coming years. The significance of the forensic knowledge can be improved if the procedural and process aspects of the use of this knowledge are adequately protected. This is necessary to ensure and protect the legitimacy of forensic expertise in the future.

#### 7.3.8 CONTRA-ARGUMENTATION AND REVIEW AS STANDARD

Because of the incidents in the Netherlands there is rightly much attention for processes of contra-argumentation and review. To this end, specific procedures are developed so that a selection can be made of cases against where contra-argumentation and review are required. In a transition period that is desirable and

necessary, but it is necessary to include contra-argumentation and review regularly in criminal investigation and judicial trials. Ideally, any criminal investigation and criminal proceedings are organized in such a way that contra-argumentation and review are possible and present. It would be crucial for the effectiveness, efficiency and legality of the criminal investigation and judicial process.

That does not mean that there should be a devil's advocate for any form of criminal investigation or judicial process. Such structures have a limited extent for a short term. Chiefs of police and chief prosecutors and judges have to fully realize clearly that contra-argumentation is good and necessary. The chiefs of police have an important task in this respect. That implies an intensive substantive involvement of the chiefs of police in specific criminal investigations. For the prosecution it is vital that a structure for contra-argumentation is available. This contra-argumentation role should also be more appreciated. This is complicated in a time when policy performance targets have to be achieved. But maybe contra-argumentation can be incorporated in these policy performance targets.

#### 7.3.9 STRENGTHEN INTERNATIONAL EXCHANGE OF FORENSIC EXPERTISE

The international cooperation in the field of forensic expertise is complex. It is not expected that in the coming years this will be reduced rather it will increase. The forensic experts, but also the police, for the judges and lawyers need some knowledge on how specific forensic knowledge abroad can be obtained. It is also conceivable that they use forensic knowledge abroad more often. It is not necessary that all possible forensic knowledge is available in the Netherlands. Some forms of forensic knowledge are so specific that it is only necessary in very rare cases. It would be recommended to come to an international agreement on a certain degree of specialization of certain types of forensic knowledge in specific countries. It allows countries to specialize in specific kinds of forensic expertise. It is therefore necessary that there is strong international agreement on mutual use of each other's forensic knowledge.

#### 7.3.10 FORENSIC SCIENCE HAS TO WORK TOGETHER MORE INTENSIVELY

Forensic science is fragmented among a large number of different sciences. Forensic experts are mainly active in their base science. There is little or no coordination of the expertise of forensic scientists themselves in the Netherlands, perhaps with the exception of the NFI. But as already mentioned, the NFI does not have the monopoly on forensic expertise in the Netherlands. It would be desirable if the forensic scientists would work more together from the concept of forensic investigation. In this way, the experiences of those involved in the use of their

specific knowledge in criminal investigation can be exchanged. This would also encourage making standards for forensic investigation. The way in which education and training of police, prosecutors, judges and lawyers is realized can be coordinated by forensic scientist working together. If forensic scientist in the Netherlands would work more together forensic science will flourish. At this moment there is emerging competition between forensic experts and forensic institutions in the Netherlands. Hopefully this will lead to a higher quality of forensic science in total in the Netherlands.

## **7.4 Closure**

Forensic expertise is increasingly important in the criminal investigation and judicial process in the Netherlands. To ensure long term sufficient confidence in the forensic expertise it is necessary to pay more attention to improvements of the processes and procedures using forensic expertise. It is imperative that the forensic expertise itself imposes high quality standards and realizes accreditation of those who may actually call themselves forensic experts. The key is an independent role in the criminal investigation and judicial trial for the forensic expert. Only with this independence can confidence in the forensic expertise in the long term be secured.



## PART B SECURITY AND SAFETY





## 8 Intelligence and security services

### 8.1 Introduction

Intelligence services play an increasingly important role in society. The emerging terrorism is a main cause for the rising importance of intelligence services. Intelligence services can use far-reaching powers. It is therefore of great importance that the democratic control of intelligence services is well organized. Intelligence services play a significant role in counter terrorism but also in intelligence gathering regarding organized crime and large-scale public disturbances.<sup>1</sup> Intelligence services are a crucial part of the safety and security organizations in the Netherlands.

In this chapter I describe the General Intelligence and Security Service (Algemene Inlichtingen en Veiligheidsdienst (AIVD))<sup>2</sup> and the Regional Intelligence Services in the Netherlands. Shortly I will go into the Criminal Intelligence Services and the relationship with the Public Prosecution Service. The Military Intelligence and Security Service is dealt with in the chapter on the armed forces.

This chapter relies in part on the report *The AIVD in transformation* from the Administrative Review Commission AIVD (2004) and the *Defence Intelligence and Security Report: Quality, capacity and cooperation* of the Research Committee Defence Intelligence and Security (2006). I was secretary and member of these committees. These reports are the first full public reports of external committees on the two secret services in the Netherlands. For a complete picture of the intelligence and security services I can refer to these reports. The Cabinet endorsed the conclusions of both committees – with a few exceptions. In addition, I use recent scientific literature and documents of the AIVD, the Review Committee on the Intelligence and Security Services, the Lower House and the Ministry of Interior Affairs and Kingdom Relations. This chapter is also based on the volume *Intelligence and Security Services* (2010) edited by De Graaf, Muller and Van Reijn, which is one of the volumes in the series on criminal justice, security and safety in the Netherlands.<sup>3</sup>

<sup>1</sup> Compare Andrews, Aldrich and Wark 2009; Gill, Marinn and Phytian 2009; Harfield, Macvean, Grieve and Philips 2008; Johnson 2009.

<sup>2</sup> See for history De Graaff 1992; Engelen 1995; De Graaff and Wiebes 1998.

<sup>3</sup> See for Dutch and other literature on the Dutch Intelligence and Security Services De Graaf, Muller and Van Reijn, 2010. See also the English part of the website of the AIVD [www.aivd.nl](http://www.aivd.nl).

## 8.2 The General Intelligence and Security Service (AIVD)

### 8.2.1 FUNCTIONS AND TASKS

An intelligence and security service protects a democratic state against threats to national security. The function of the AIVD is to provide information for other government bodies and/or individuals to enable them to take measures to remove a certain threat to their security. This function has been pursued in five specific tasks. The AIVD has formulated its mission as follows. “The AIVD is responsible for national security by timely identifying threats and risks that are not immediately visible. For this purpose the AIVD conducts investigations both within and outside the Netherlands. The AIVD shares specific knowledge and information enabling partners and interested parties to take appropriate measures. The AIVD identifies threats and risks, advises and mobilises other parties and actively reduces risks itself. By doing so the AIVD fulfils its own role within the network of government organizations involved in the protection of national and international security.”<sup>4</sup>

The AIVD functions on the basis of the Intelligence and Security Services Act 2002 (ISSA 2002) and the Security Investigations Act. In the Intelligence and Security Services Act five statutory tasks for the AIVD are named in Article 6 paragraph 2. In the interest of national security the General Intelligence and Security Service has the following tasks:

- A. conducting investigations regarding organizations that, and persons who, because of the objectives they pursue, or through their activities give cause for serious suspicion that they are a danger to the continued existence of the democratic legal system, or to the security or other vital interests of the state;
- B. conducting security clearance investigations as referred to in the Security Investigations Act;
- C. promoting measures for the protection of the interests referred to under a, including measures for the protection of information that is to remain secret for reasons of national security, and information pertaining to those parts of the public service and business community that in the opinion of the relevant Ministers are of vital importance for the continued existence of the social order;
- D. conducting investigations regarding other countries concerning subjects designated by the Prime Minister, Minister of General Affairs, in accordance with the relevant Ministers;

4 Website AIVD.

- E. drawing up threat and risk assessments at the joint request of the Minister of the Interior and Kingdom Relations and the Minister of Justice for the benefit of the protection of the persons referred to in Article 6, third paragraph under b, and Article 38, first paragraph under c of the Police Act 1993 and the guarding and security of property and services that have been designated pursuant to Article 15a of this act.

With the introduction of the Intelligence and Security Services Act in 2002, the AIVD obtained a new task: the intelligence mission abroad. Therefore, the original name of Internal Security Service (BVD) was changed to General Intelligence and Security Service. The AIVD has, since mid-2002, a combined intelligence and security task. This means that the AIVD may collect information to protect national security (defensive) but also is allowed to collect information abroad (offensive).

#### 8.2.2 POWERS AND INTELLIGENCE

The acquisition of information by intelligence agencies is performed in a number of ways. Traditionally a distinction is made in the way information is collected. Humint (human intelligence), Sigint (signal intelligence) and Osint (open sources intelligence) are the main means of acquisition.

Humint or human intelligence is the oldest form of information and was traditionally the most important, until in the twentieth century because of technical progress other forms of information became available. Humint involves information obtained from human sources. Humint can openly be obtained (the acquirer is identified as a member of the AIVD) but also in a non-public way (e.g. through agents). Humint is considered high-quality information. It requires building a network and is therefore labour intensive.

Sigint is signals intelligence and covers the interception and localization of electronic signals from various types of information collected for a particular purpose. Sigint can be listening to radio broadcasts, the interception of radio frequency, satellite interception, interception of telephones et cetera. Sigint distinguishes itself from other methods of acquisition by the possibility of collecting international information without the need to be in another country.

Osint is all information obtained from open sources (open source intelligence). It is all the information that legally can be acquired. This can be commercial online databases but also Internet and print sources. The strength of Osint is that it is available and relatively cheap. Technical progress makes it possible to collect Osint easier and cheaper than ever before. Osint experts estimate that Osint can provide 80% of the information needed by the intelligence services. Intelligence information is not necessarily related to secrets and espionage.

The AIVD has extensive powers to perform its tasks. The ISSA 2002 (Articles 17 to 33) gives an exhaustive list of these powers. Analogous to the Special Investigation Powers Act the legislature has chosen, in the ISSA, to give a precise overview of the powers of the AIVD, which indicates under what conditions and with whose consent the powers of the AIVD can be used. To show this I will give some examples.

#### Article 17

1. In performing their tasks, or in order to support a proper performance of their duties, the services, in order to collect information, are authorised to apply to:
  - a. administrative bodies, public servants and furthermore any persons deemed capable of providing the necessary information;
  - b. the person responsible for processing specific information.
2. In the case referred to in the first paragraph, opening words and under b, the public servant charged with the matter is obliged to prove his identity to the person responsible for the processing of information in a specific case, on the basis of an identity card provided by the relevant head of a service.
3. The provisions in force for the person responsible for processing information in a specific case regarding the furnishing of such information do not apply if such information is furnished pursuant to a request as referred to in the first paragraph, opening words and under b.

#### Article 20

1. The services are authorised to:
  - a. conduct surveillance and within this context record information relating to the actions of natural persons or information relating to objects, whether or not with the aid of observation and registration instruments;
  - b. trace and within this context record information relating to natural persons or information relating to objects, whether or not with the aid of tracing instruments, location positioning equipment and registration instruments.
2. Using observation and registration instruments as referred to in the first paragraph, under a, and installing tracing instruments, location positioning equipment and registration instruments as referred to in the first paragraph under b by the Defence Intelligence and Security Service is only permitted, in so far as this concerns the use or installation of such instruments or equipment in enclosed spaces not in use by the Ministry of Defence, if permission therefore is granted in accordance with the Minister of the Interior and Kingdom Relations or, in so far as applicable, the head of the General Intelligence and Security Service.
3. Using observation and registration instruments as referred to in the first paragraph, under a within dwellings is permitted only if the relevant Minister has given the head of the service written permission to do so. In the case referred to in the second paragraph permission is granted, in so far as dwellings are concerned, by the Minister of the Interior and Kingdom Relations.

4. The request for permission as referred to in the third paragraph is made by the head of the service and contains at least:
  - a. the address of the dwelling in which the instrument is to be used;
  - b. a description of the type of instrument to be used;
  - c. the reason why the use of the relevant instrument is deemed necessary.

#### Article 21

1. The services are authorised to:
  - a. deploy natural persons, whether or not under cover of an assumed identity or capacity, who, under the responsibility and on the instruction of a service, are charged with:
    - 1°. collecting in a directed way information relating to persons and organisations that can be relevant to the performance of the tasks of a service;
    - 2°. promoting or taking measures to protect the interests attended to by a service.
  - b. setting up and using legal entities in support of operational activities.
2. The relevant Minister can instruct in writing the relevant administrative bodies to co-operate in so far as necessary to provide a natural person as referred to in the first paragraph, under a with an assumed identity. The statutory provisions in force for the administrative body relating to the activities requested, will not apply in so far as these provisions are in conflict with the execution of such activities.
3. The natural person referred to in the first paragraph under a can receive instructions from the service to perform activities that may result in rendering assistance in the committing of an offence or in committing an offence. An instruction as referred to in the first sentence is only issued if a proper performance of the duties of the service or the safety of the relevant natural person so require.
4. The natural person referred to in the first paragraph, under a, in carrying out the instruction is not permitted to get someone, due to the first person's actions, to carry out other actions regarding the devising or committing of offences than those actions the second person was intending to carry out already.
5. On issuing the instruction referred to in the third paragraph, the person in question will be instructed:
  - a. under which circumstances it is permitted to carry out activities pursuant to the instruction that may result in rendering assistance in the committing of an offence or in committing an offence;
  - b. how the instruction is to be executed, including the nature of the activities that will be carried out by the person in question, in so far as these activities can be foreseen on issuing the instruction.
6. The instruction to a natural person as referred to in the first paragraph, under a, is recorded in writing.

**Article 22**

1. The services are authorised, with or without the aid of a technical instrument:
  - a. to conduct a search of enclosed spaces;
  - b. to search closed objects;
  - c. conduct an investigation of objects aimed at establishing a person's identity.
2. The execution of the power referred to in the first paragraph by the Defence Intelligence and Security Service outside of places in use by the Ministry of Defence, is only permitted if permission therefore is granted in accordance with the Minister of the Interior and Kingdom Relations or, in so far as applicable, the head of the General Intelligence and Security Service.
3. If required for an investigation carried out by a service, an object found in the course of the execution of the power referred to in the first paragraph can be removed for a limited time by the service in question, in so far as examination of the relevant object at the site of the search is impossible and the intended collection of information cannot be accomplished in any other, less intrusive manner. The object in question will be replaced as soon as possible, unless this conflicts with a proper performance of the duties of the service or no reasonable interest is served by replacing the object.
4. The power referred to in the first paragraph, under a, may only be exercised, in so far as it concerns dwellings, if the relevant Minister has given the head of the service written permission to do so. The execution of the power referred to in the first paragraph, under a, by the Defence Intelligence and Security Service relating to dwellings outside of places in use by the Ministry of Defence, is only permitted if permission therefore is granted in accordance with the Minister of the Interior and Kingdom Relations.
5. The permission referred to in the fourth paragraph is granted for a maximum period of three days. The General Extension of Time-limits Act does not apply.
6. The request for permission as referred to in the fourth paragraph is made by the head of the service and contains at least:
  - a. the address of the dwelling that is to be searched, and
  - b. the reason why the dwelling is to be searched.

The AIVD can obtain, process and disseminate almost all available information. Article 17 of the ISSA – general information powers – gives the AIVD the power to collect information from governing bodies, civil servants and anyone who is deemed to provide the necessary data. This article includes the power to ask for information in “data holders” without hinderence by the Personal Data Protection Act. In addition, the AIVD has a large number of special powers, known as special information resources. The AIVD may observe and follow people, run agents (natural persons who collect information for the AIVD), deployment of infiltrators (both employees of the AIVD and citizens), search property, open letters, enter an automated work, use all forms of call interception, non-cable based telecommunications at home and abroad, and record information from providers of telecommunications networks. The AIVD has access to any place where it is reasonably necessary.

For each of these powers it is precisely defined when the power may be used and who must give permission. For more intense powers the approval of the Minister of Internal Affairs is required, for other powers the authorization by the Head of the AIVD or by mandate of others within the AIVD is enough. The requirements of proportionality and subsidiarity are fully applicable for the use of certain powers of the AIVD. The ISSA obliges the AIVD to report the use of special powers to the persons concerned, unless there are important interests that makes it impossible to inform these persons. The special powers may only be used for the A and D task of the AIVD.

The special powers are mostly focused on gathering information. This may be waived with the possibility of giving a natural person (“agent”) a special responsibility to promote or take measures to protect the national security. The AIVD can disturb certain actions of individuals or organizations that endanger national security. These are situations in which the democratic legal order, national security or other important interests of the state are likely to be harmed. The conditions that determine if the AIVD can disturb a certain action are numerous: time shortage, source protection, insufficient evidence or unclear responsibility of third parties. The disruptive actions by the secret service can be a nuisance to subjects, talking to subjects to let them know that they are under surveillance, spreading disinformation or frustrate planned violent actions. The AIVD uses this power regular. Small forms of disturbance are quite frequently used, while radical measures are used only sporadically.

The AIVD is not a criminal investigation agency. The employees of the AIVD have no criminal investigative powers like police officers do. In the Netherlands, a strict separation exists between the intelligence and security services on the one hand and criminal investigation services on the other hand. If the AIVD has information relevant to a criminal investigation process this information could be made available for the Public Prosecution Service through the National Public Prosecutor for the AIVD. A recent act on shielded witnesses makes it now possible, under specific conditions, to use AIVD information in a criminal proceeding.

### 8.2.3 ORGANIZATION AIVD

The AIVD is a part of the Ministry of the Interior and Kingdom Relations. Within the AIVD there are now different units organizations:

“National Security: This unit is responsible for protecting the democratic legal order, for state security and for promoting security measures. This means managing the risks associated with counterterrorism, radicalisation, counterintelligence, political extremism, animal-rights extremism and security promotion.



**Service Centre:** The Service Centre is responsible for all generic standard services within the AIVD. These include personnel and financial information, human resources, records and archives, procurement, premises, internal security, transport, catering and office supplies.

**Information Management:** This unit supplies and manages permanent ICT facilities and services as required by the organisation.

**Foreign Intelligence:** This is an offensive intelligence unit, which contributes to the formulation of foreign policy by producing relevant reports. It operates in accordance with the Foreign Intelligence Guidelines.

**Knowledge Centre for Development and Innovation:** This unit contributes to the AIVD's development as an outstanding organisation by:

- Identifying and promoting opportunities for improvement and innovation
- Advising on the potential for improvement and innovation
- Overseeing improvement and change processes
- Support 'process owners' in optimising those processes

**Operational Expertise and Support:** This unit performs and supports the implementation of a wide range of intelligence resources for other teams and departments, provides training and is responsible for operational relationship management.

**Coordination:** This unit promotes greater internal cohesion and better co-operation in order to improve the results of the intelligence process.

**Strategy and Policy:** This unit ensures that the AIVD management team receives sound advice and support in determining the organisation's direction (through frameworks and policy), in guiding and managing all its primary processes (through control) and in representing the service.

**Trend Analysis and Research:** This unit identifies, highlights, analyses and explains phenomena within the AIVD's areas of interest which are beyond the scope of any one team or unit. The knowledge and insights thus gained are passed on to other interested parties, both internal and external, in a variety of forms.

**National Communications Security Agency:** The National Communications Security Agency (NBV) safeguards the security of critical information for which the government is responsible. As a partner and guide to the government, it thus plays an active and visible role in national security. It possesses unique skills in the field of information security.

**Security Screening:** Responsible for an effective process of clearing candidates for positions involving confidentiality, this unit conducts security screenings in an authoritative manner.”<sup>5</sup>

The AIVD does not perform its tasks in a vacuum. There are intensive steering and controlling relations which I will describe further on in this chapter. The AIVD cooperates with a large number of national and international organizations. These national and international organizations are different arenas in which the AIVD operates.

The AIVD functions in the social sphere of citizens, community organizations and businesses. The relationship between the AIVD and citizens, community organizations and businesses is reciprocal. The AIVD information informs citizens, businesses and other civil society organizations on relevant developments and threats, while conversely they can alert the AIVD to potential threats to national security. The cooperation between the AIVD and businesses is concentrated on particular companies that have vital functions for the Dutch society.

The government (both the national and the local administration) is responsible for ensuring safety and security in the Netherlands. The AIVD is one of the services within the Dutch context that contributes to ensuring safety and security. The AIVD is at the beginning of the investigation chain in which the PPS, the police, the Immigration Authority and the special investigation services conduct their research. The AIVD can provide information to the PPS or encourage others to research and investigate. In addition, the AIVD works closely with a large number of Intelligence and Security Services abroad. Most relationships with foreign services are organized in broader NATO and EU context.

This multiplicity of relationships makes demands on how the partners will be served. This requires a large capacity for differentiation in the products that the AIVD supplies, as well as how the AIVD communicates with the various partners.<sup>6</sup>

#### 8.2.4 INTELLIGENCE AND CRIMINAL INVESTIGATION

The AIVD has no criminal investigation powers. If the AIVD considers that, on the basis of available information, a criminal investigation can be started, the AIVD formulates a formal notice for the PPS. The PPS has national prosecutors engaged in combating terrorism and in the AIVD. These officers have very frequent contact with the AIVD and are aware of all ongoing operational cases. They have an office in the building of the AIVD. These prosecutors can get formal notices which can be forwarded to prosecutors to request a criminal investigation. With a formal notice the AIVD sets a criminal investigation in motion.

Information which may be important for the criminal investigation or prosecution can be communicated by the Minister of Internal Affairs, or by the Head of the AIVD to these prosecutors. The PPS should be able to assess the reliability of the data. So the AIVD cannot give information directly to the police. It

<sup>6</sup> See Valk 2005.

is always necessary to do that through interference of the prosecutor. It may be noted that the AIVD and the PPS can both render investigations to the same individuals or groups because the AIVD and the PPS serve different purposes. There has been discussion about whether parallel investigation by the AIVD and the police is possible, but the Hague Court saw no objections.

The criminal intelligence units and tactical teams from the regional criminal police investigation can instigate a criminal investigation into people who may be involved in preparing criminal acts, conspiracy, or participation in a terrorist organization. The AIVD and the criminal intelligence units can investigate the same persons or groups. They do this, however, from a different perspective. The AIVD investigates to ensure national security and therefore in particular with a view to prevent harm to national security. The criminal intelligence units and the police act in order to collect evidence for a trial. Intelligence and security services have primarily a future-oriented task, while criminal investigators focus primarily on events that have already occurred. The police are not equipped to estimate the likelihood of future serious events. The AIVD is not primarily aimed at collecting evidence. National security is not always best served by prosecution of perceived offences.

### 8.3 Regional Intelligence Services

Each regional police force in the Netherlands has a Regional Intelligence Service (RID). The RID can be seen as an extension of the AIVD in the region. Through the RID, the AIVD has the possibility to access “the capillaries of society”.

Members of the RID are so called Article 60 ISSA officials and in that sense can be regarded as AIVD members at a distance. In the ISSA it is not stated how many Article 60 officials there should be in a regional corps. The size of the RID therefore varies significantly (from 1 to 20 employees). In general it can be argued that the RID in the four major cities are relatively large and that in the rest of the country there are relatively small RID.

The RID has several tasks: the AIVD task and a public order task. RID formally derives its right to exist from the AIVD. In addition, the RID works on gathering information in the field of public order under the authority of the mayor. These intelligence activities are intelligence gathering on football hooliganism, problems with youth, and short-term activities to ensure predictable major policy issues.

The intelligence networks of the RID for the AIVD and for the public policy task reinforce each other. This double task can also lead to complicated situations, since the public order task and the AIVD task are not always sharply divided from each other. For instance when disturbances are expected during political events it is possible that both interests must be served simultaneously.

The work of the RID for the AIVD is not restricted to the information needs arising from team orders from the AIVD. Since 2001 a number of RID executes investigation on the basis of the Security Investigations Act. In addition, the RID has a role in the system of guarding and protecting threatened persons. For the purpose of this system the regional information coordination (RIC) was established. This structure is also used at large-scale events such as football matches.

The tasks of the RID for the AIVD are implemented under the responsibility, direction and authority of the AIVD. The RID is then part of the information process of the AIVD, the AIVD is responsible for the sources and the derived data. AIVD information (collected by the RID) can be authorized by the AIVD to be made available to the regional information coordination. AIVD information obtained by the RID can sometimes be traced back to the police forces which provided it if it is non-personal information and has no legal effect.

The work done by the RID in the field of public order is carried out under the authority of the mayor. The RID is, by executing this task, part of the information process in the police region. In carrying out this task the RID runs informants, does short observations and contacts informants. In this way, the RID contributes to a regional picture regarding public order. The AIVD contributes through the RID where possible to improve that image of public order, unless laws and regulations require otherwise.

## 8.4 Control and supervision

### 8.4.1 CONTROL

The AIVD carries out its duties in accordance with the law and in subordination to the Minister of the Interior. The Minister of the Interior is responsible not only for management but also for task performing of the AIVD. The Minister of the Interior is responsible for the exercise of special powers. Furthermore, for the implementation of foreign tasks a responsibility for the Prime Minister exists. The Prime Minister drafts, in accordance with the Ministers of the Interior and Defence and in consultation with the Minister of Foreign Affairs, the designation that indicates which countries and subjects are to be investigated by the AIVD in relation to the foreign task.

Meanwhile a complex administrative and management plan cycle is formed to ensure that all stakeholders have sufficient opportunities to influence the work of the AIVD. In the Council for National Security (RNV), the ministers come together who have a responsibility in respect of the intelligence and security services. In the Committee Combined Intelligence Services Netherlands

(CVIN) the decisions of this Council are prepared. There is also a Coordinator for the Intelligence and Security services, in the person of the Secretary-General of the Prime Minister who should coordinate the implementation of the tasks of the AIVD and the Military Intelligence and Security Service (MIVD). Also, since March 2004 a National Terrorism Coordinator (NCTb) has been appointed to coordinate the counter terrorism activities. In this complex arena the AIVD must function effectively and efficiently.

#### 8.4.2 SUPERVISION<sup>7</sup>

The AIVD is supervised in several ways:

- A. by the service itself through internal rules, guidelines and procedures and external publications such as reports and annual reports;
- B. by the ministers concerned in particular the Minister of the Interior;
- C. by the Lower House in the form of the Commission on the Intelligence and Security and the Standing Committee for the Interior;
- D. by independent external audit organizations such as the Review Committee on the Intelligence and Security Services, the National Audit Chamber Court (in particular the secret spending), the National Ombudsman (specific complaints about the AIVD) and the court (whether administrative, civil or criminal).
- E. by the media, scientists, and citizens groups.

In the remainder of this paragraph, I focus on the supervision by Parliament and the Review Committee. These forms of supervision are in practice the most intensive and structural.

##### **Parliament**

In the confidential parliamentary committee on Intelligence and Security Services the Cabinet presents the Lower House with the work of the AIVD. Until mid 2003, this committee consisted of the leaders of the largest political parties in parliament. Meanwhile, all political parties in the Lower House sit on this committee with the exception of the Socialist Party. Annually, this committee publish a short report of its work.

The Cabinet expressed the importance of this confidential parliamentary committee as follows: "In the Committee on Intelligence and Security Services it is possible to account confidentially for the more operational aspects and the functioning and organization of a secret service. To the committee the AIVD sends nowadays the quarterly reports on the investigations of the AIVD."<sup>8</sup> The Admin-

<sup>7</sup> See also CTIVD, Accountability of Intelligence and Security Agencies, Den Haag: 2007.

<sup>8</sup> Letter Minister of Interior and Kingdom Relations, Aanbieding onderzoeksrapport democratische controle inlichtingen- en veiligheidsdiensten, 14 December 2005, p. 4.

istrative Review Commission AIVD came at the end of 2004 to the following conclusion on this confidential committee: “The Commission finds that the CIVD is of great value for both the Lower House as for the Minister of Internal Affairs and the AIVD. It is an instrument by which can be ensured that confidential statements about the functioning and organization of the AIVD can be made. The Commission concludes that the committee is generously informed by the Minister and the AIVD. The number and depth of debates on specific issues is low.”<sup>9</sup>

In addition, the Standing Committee on the Interior of the Lower House discusses the public parts of the functioning of the AIVD, including the annual reports. Also, the reports of the confidential parliamentary committee on Intelligence and Security Services and Security discussed with the Standing Committee on Home Affairs. The leaders of the political parties are held accountable by their own MPs about how the confidential control of the intelligence and security services have developed

In recent years, the amount of information from the AIVD through the Minister of Internal Affairs to the Lower House rose exponentially. In the annual reports and website of the AIVD there is a large quantity of documents to parliament about the organization and functioning of the AIVD. Especially the extensive annual reports of the AIVD offer a broad and public image on the functioning of the Dutch secret service. It is no exaggeration to say that there is intensive information to parliament. In the next quotation the main aspects of the annual report of 2010 of the AIVD are presented:

“In its 2010 annual report, the General Intelligence and Security Service (AIVD) states that there is a serious risk of digital attacks on electronic networks in our country and that these attacks are expected to increase in number. It is therefore important that essential systems are adequately protected and that espionage and large-scale system failure can be prevented. In 2010 the service has identified a number of cyber espionage attacks and has informed relevant parties accordingly. The AIVD has developed an analysis method to help boost the resilience of companies and governments against this threat.

The service’s annual report also states that there is a wide-spread lack of understanding of the value of information and how to assess what interests it may serve. People overestimate the safety and security of technical devices, such as the laptops and smartphones they use in their everyday work. Exchanging sensitive information over the telephone or by email always constitutes a risk, because such communications can pass through foreign communication hubs. And sometimes email messages sent from aforementioned portable devices are temporarily stored on foreign servers. Foreign intelligence services are eager to take advantage of such opportunities. The AIVD works together with the government and trade & industry, within the framework of the National Cyber Security Strategy, for example, to safeguard the Netherlands against this risk.

9 Commissie Bestuurlijke Evaluatie AIVD, *De AIVD in verandering*, Den Haag, 2004, p. 90 and 216.

In 2010 the AIVD has established that foreign intelligence officers – from China, among others – are demonstrating an interest in Dutch (high-tech) companies. The service has also observed various kinds of Russian intelligence activities. Whenever possible, the service has warned the companies in question and disrupted espionage activities. A joint programme set up together with the Ministry of Security and Justice has been launched to warn the sectors involved.

The service has observed that foreign services have demonstrated undiminished interest in the various migrant communities in our country in 2010. This attention has not only manifested itself in overt influence activities, but also in clandestine attempts made by foreign governments to map and influence these communities. The service informs as many parties and partners as possible to prevent the fundamental rights of Dutch residents from being infringed upon.

The AIVD gathers foreign intelligence to provide the Dutch government with information. The recent developments in North Africa and the Middle East are of great interest to the Dutch government and have led the AIVD to intensify its focus on this task.

Early identification of the jihadist-terrorist threat posed by terrorist groups operating internationally has been a top priority for the service in 2010. This threat particularly emanates from the border area between Afghanistan and Pakistan. There are various indications to suggest that the threat against Europe as a whole has increased in 2010. This also applies to the threat against our country, even though it is still less acute than in some of our European neighbours.

The internet plays an important role in the threat manifesting against the West, the AIVD concludes in its annual report. This role consists not only of disseminating jihadist propaganda, but also of forming networks and recruiting militants, facilitating Jihad, and plotting attacks.

In 2010 the AIVD has also focused attention on radical and ultra-orthodox Islamic movements that may pose a threat to the democratic legal order. Examples include the Muslim Brotherhood, the Tablighi Jamaat, Hizb ut-Tahrir and the Salafi movement. It has been established that even though these movements may potentially pose a threat to the democratic legal order in the long term, they are still relatively small and the Dutch (Muslim) population is quite resilient to radicalisation.

Animal rights extremists exchange information, announce (protest) actions and publish particulars of 'bad' companies on the internet, among other things. The AIVD has, however, observed a decrease in the intensity and the number of activities undertaken by animal rights extremists, partly as a result of tougher government policy. Prevention and international co-operation have contributed greatly towards countering this phenomenon in 2010. This form of extremism continues to have a strong international dimension.

The latter also applies to extremists involved in opposition to the Dutch asylum and aliens policy. Last year once again saw a rise in violent actions, such as arson and vandalism. The AIVD has also observed that Dutch pro-asylum activists increasingly take part in actions abroad, particularly in Belgium."<sup>10</sup>

<sup>10</sup> [www.aivd.nl](http://www.aivd.nl), see here also for the full and latest annual report of the AIVD.

### **Review Committee**

In the ISSA 2002 a new monitoring body was introduced in the form of the Review Committee on the Intelligence and Security Services. The main task of this committee is to monitor the legality of the AIVD (and MIVD). The Review Committee is not allowed to conduct an effectiveness study or organizational study of the secret services, but can comment on efficiency, effectiveness or organization if necessary during their legal investigations. The committee can give advice to the AIVD and MIVD and has a role in the complaints handling of the services. The Review Committee consists of three independent members appointed by the Council of Ministers on the recommendation of the Lower House and are appointed by Royal Decree for a period of six years. The Review Committee is independent and has been given far-reaching statutory powers to perform its task. For example, the Committee has access to all relevant information of the services and may hear all the staff of the services. Furthermore the Committee has the right to hear witnesses (under oath) or experts. Finally, it may access all places which it deems necessary in the context of its task, with the exception of dwellings. The main articles in the ISSA 2002 on the powers of the Review Committee are mentioned below.

#### **Article 73**

1. The relevant Ministers, the heads of the services, the coordinator and furthermore everyone involved in the implementation of this act and the Security Investigations Act will, if requested, furnish all information to the supervisory committee and will render all other assistance the supervisory committee deems necessary for a proper performance of its duties. The supervisory committee will have, upon its request, immediate access to the information processed in the context of the implementation of this act or of the Security Investigations Act.
2. When furnishing information as referred to in the first paragraph, when there is reason for this, it will be indicated which information in the interest of the national security is to be brought to the knowledge of the supervisory committee exclusively.

#### **Article 74**

1. If deemed necessary for the proper execution of its tasks, the supervisory committee may request the persons referred to in Article 73, first paragraph, as well as other persons to furnish information as a witness or as an expert and may summon these persons to appear before the supervisory committee.
2. The request will be made in writing and will state as far as possible the facts regarding which the witness or expert is to provide information. If the witness or the expert has been summoned to appear before the supervisory committee, the request will also state the place where and time at which this person will be heard and the consequences of non-appearing. The summons to appear will be made by registered letter or by recorded delivery.



3. The witness or the expert is obliged to provide all the information the supervisory committee deems necessary for a proper execution of its tasks and to this end the witness or expert, if the supervisory committee has indicated this in its request, must appear in person. The person appearing may be represented by a lawyer.
4. The obligation to appear before the committee does not apply to the relevant Ministers. If a Minister does not appear himself, he will appear by representation.
5. If a functionary involved in the implementation of this act appears as a witness or as an expert pursuant to this article, Article 86, second paragraph is not applicable.
6. The supervisory committee may order that persons who, despite being summoned to appear in accordance with the law, do not appear, are brought before the public authorities in order to comply with their obligations.
7. The witness or expert may claim exemption from giving information on account of his professional secrecy but only in so far as this concerns information that has been entrusted to him as such.

#### Article 75

1. The supervisory committee may order that witnesses will not be heard before taking the oath or making a solemn affirmation. In this case the witness will take the oath or make a solemn affirmation before the supervisory committee's chairperson stating that he will state the truth and nothing but the truth.
2. The experts are obliged to perform their task impartially and to the best of their knowledge.

#### Article 76

1. The supervisory committee is entitled if a proper performance of its tasks so requires, to assign certain activities to experts.
2. The expert who has accepted his assignment, is obliged to perform his task impartially and to the best of his knowledge.

#### Article 77

The supervisory committee or a member it has appointed to this end is entitled to enter all places with the exception of a residence without the permission of its occupant, in so far as this is reasonably necessary for the fulfilment of its task. The committee or the appointed member can have himself accompanied by persons of the secretariat appointed by the chairperson as referred to in Article 69.

The Review Committee will publish in principle a public report of its monitoring research. They may also choose to publish a (partly) a confidential report. A selection of the reports of the Review Committee which are available in English is mentioned below:

The official messages issued by GISS in the period October 2005 up to and including May 2010 (CTIVD no. 29, 2011)

The use of Sigint by DISS (CTIVD no. 28, 2011)

The performance by GISS of the foreign intelligence task (CTIVD no. 26, 2011)  
 The performance by the AIVD of the obligation to notify (CTIVD no. 24, 2010)  
 The cooperation of the AIVD with foreign intelligence and/or security services (CTIVD no. 22A, 2009)  
 The application by the AIVD of wiretapping and selection of undirected intercepted non-cable bound telecommunications (CTIVD no. 19, 2008)  
 The investigation by the AIVD into the leaking of state secrets (CTIVD no. 10, 2006)  
 The official messages issued by the MIVD in the period from January 2004 – January 2006 (CTIVD no. 9b, 2006)  
 The official messages issued by the AIVD in the period from January 2004 – October 2005 (CTIVD no. 9a, 2006)  
 The deployment by the AIVD of informers and agents, more in particular abroad (CTIVD no. 8b, 2006)  
 The deployment by the MIVD of informers and agents, more in particular abroad (CTIVD no. 8a, 2006)  
 A counter-terrorism operation by the AIVD (CTIVD no. 7, 2006)  
 The AIVD's investigation into radical animal rights activism and left-wing extremism (CTIVD no. 6, 2006)  
 Investigation by the AIVD into the proliferation of weapons of mass destruction and means of delivery (CTIVD no. 5b, 2005)  
 Investigation by the MIVD into the proliferation of weapons of mass destruction and their means of delivery (CTIVD no. 5a, 2005)<sup>11</sup>

A major report of the Review Committee was on the assessment processes of the AIVD with respect of Mohammed B., the political murderer of moviemaker Theo Van Gogh in 2004, one of the major terroristic political murders in the Netherlands. The central question was if the AIVD should have paid more attention to Mohammed B. so possibly the murder of Van Gogh could have been prevented. To give an impression of the work of the Review Committee the answer of the Committee to this question is cited:

“The Committee is of the opinion that attention from the AIVD for Mohammed B. was desirable because of his active and important role in the group and because of his violent personality. The Committee has established that the team that conducted an investigation into the Hofstad group (only) had the capacity to closely follow a few people from the Hofstad group (in particular by deploying special powers). As a result, priorities had to be made within the investigation. In the Committee's opinion, the AIVD could reasonably have decided to closely follow those persons with regard to whom there existed the serious suspicion that they were directly involved in the preparation of possible attacks. Mohammed B. did not belong to these persons in this context. In the Committee's opinion, the AIVD, compelled by the available capacity, could reasonably have decided

<sup>11</sup> See the website of the Review Committee [www.ctivd.nl](http://www.ctivd.nl)

that Mohammed B. was not among the persons to be closely watched (in particular by deploying special powers) by the AIVD.

However, this does not imply that Mohammed B. did not need to be given any attention at all. In the Committee's opinion, the attention actually given to Mohammed B. from the spring of 2004 onwards, was too meagre, considering his active and important role in the Hofstad group and his violent character. The information that became available on Mohammed B., in the Committee's opinion, should have been analysed periodically, in order that his activities and development in the group could be monitored. Such an analysis can only be performed in a proper way if all information available on him is considered in close connection with one another (personal file) and his role in the network, just as the roles other persons in the network had, is charted periodically (network analysis). By analysing his activities and development periodically, it would have been possible to review whether more attention for him was necessary and whether reprioritisation in the investigation into the Hofstad group was, consequently, required. Limited capacity should not and need not stand in the way of keeping a dossier on persons in respect of whom this is necessary. For this is not about collecting extra information, but only about bringing information together in an organised and orderly way, information which is collected anyway. When the arrangement of information is in order, this will only add to the efficiency and effectiveness of the intelligence work. The Committee observes that if the AIVD had created a personal file on Mohammed B., as the Committee has done by charting all the information available to the AIVD before 2 November 2004, there still would have been no picture of a person in respect of whom there was a serious suspicion that he had any direct involvement in the preparation of any attacks. However, the data available do show an increased importance to pay attention to Mohammed B.

The Committee is also of the opinion that the AIVD could have made use of the manpower and operational resources that the RID Amsterdam-Amstelland had to offer in this period. The deployment of the RID would in particular have had an added value because the AIVD, due to its limited capacity, was able to closely monitor only a limited number of people. The AIVD could have called in the RID Amsterdam-Amstelland to monitor several persons from the Hofstad group, including Mohammed B. For example, the AIVD could have asked the RID Amsterdam-Amstelland to periodically trace Mohammed B. in the police registers or to periodically inquire about Mohammed B. with the contacts of the RID. By calling in the RID Amsterdam-Amstelland, the mutation in the police register of 3 May 2004 that Mohammed B. had threatened a staff member of the Social Services, could have reached the AIVD. Furthermore, the Committee finds it incomprehensible that the AIVD has dismissed the offer by the RID Amsterdam-Amstelland to conduct an investigation into the documents that Mohammed B. was carrying when he was arrested, considering the AIVD itself had insufficient capacity to study these documents in depth. Furthermore, based on the information the AIVD possessed on Mohammed B. before 2 November 2004, he would have been a suitable candidate to be included in the Analytical Cell/CT-Infobox. The Committee does observe in that respect that this instrument was still being developed before 2 November 2004 and placing Mohammed B. in the Analytical Cell/CT-Infobox would therefore in practice have made little difference."<sup>12</sup>

<sup>12</sup> Annual report CTIVD 2007, pp. 129-130.

The Minister concerned has to indicate how he will deal with the conclusions and recommendations of the Review Committee. The public report and the response from the Minister are sent to the Lower House. Any confidential part of the monitoring report is sent to the confidential parliamentary Commission on Intelligence and Security Services of the Lower House. The Review Committee also publishes an annual report of its activities including all surveillance reports. The conclusions and recommendations of the Review Committee are generally followed by the Minister of the Interior and the AIVD itself as the following quote shows. "It turns out that by far most of the recommendations of the Committee have been adopted by the two Ministers concerned and meanwhile (over the period investigated) have been implemented by the AIVD and the MIVD. For the most part, this took place by means of adjusting the internal rules within the services. This is of course important, but the Committee considers it even more important that the recommendations are implemented in practice and that this also receives the necessary attention internally. Within both services a system has been put in place that is to ensure that the recommendations of the Committee are given the necessary attention and that activities are conducted in accordance with these recommendations. The Committee has greeted with approval several important adjustments within or with respect to the services that are (partially) based on recommendations of the Committee. For example, a joint proliferation team of the AIVD and the MIVD has been set up, the Designation Order of the Prime Minister for the foreign task has undergone a major adjustment, there is more clarity on and supervision over several collaboration arrangements of the AIVD with a foreign service, important – restrictive – rules have been created within the AIVD as to the exercise of powers against holders of the right of nondisclosure and the Committee's recommendations have resulted in several proposals to amend the WIV 2002."<sup>13</sup>

### Discussions

The Minister of the Interior has concluded that the democratic control of intelligence and security services is comprehensive and that there is no need for an extra supervisory body. The supervision of the intelligence and security services and in particular the AIVD has in recent years indeed greatly improved. The Review Committee has the most important part in this growth. The establishment of this committee with the introduction of the new law on the intelligence and security services in 2002 was a valuable addition. Furthermore, within the intelligence and security services a deep awareness exists that operating within the law and democratic principles and rules is crucial. The internal control within the AIVD itself also increased significantly. This awareness within the secret service is crucial for its functioning and organization.

<sup>13</sup> Annual report CTIVD, 31 March 2008, pp. 19-20.

But within the current range of supervision there can still be some improvements made. There is no need in the Netherlands for an extensive addition to existing controls. But some changes would improve the supervision substantially.

It would be desirable if the Review Committee could not only supervise the legality of the work of the AIVD but could also supervise the effectiveness, efficiency and organization. This requires not only legal powers for the Review Committee but also necessary personnel and finance. In this way the entire secret services as a whole can be inspected and monitored. It is then possible to monitor and supervise intelligence and security services more comprehensive.

The Review Committee could cooperate more frequently with the General Audit Chamber and the National Ombudsman. Both High Colleges of State have already a role in supervision of the intelligence and security services. It would also be conceivable that the committee would cooperate with, for example, the Inspectorate for Public Order and Security and Safety Research, for example with regard to cooperation between intelligence and security services and police, judiciary, administration and others in different types of situations. These forms of cooperation in the field of control and supervision will create a broader and integrated monitoring and control of the intelligence and security services. In fact they may form a structural and regular monitoring and supervision, like the Commission Administrative Review AIVD and the Research and Information Security Defense have once implemented. Obviously it is necessary to look into the powers that are necessary for this more comprehensive supervision.

The confidential Committee for Intelligence and Security Services in the Lower House consists of leaders of political parties who have no specific knowledge in the field of national security, intelligence and security forces. Because of their political position they are supposed to be able to deal properly with confidential data. The supervision of this committee would be provided if the political party leaders would be accompanied by an MP who specializes in this subject and is also bound to confidentiality. In this way, the necessary confidentiality and opportunity for full parliamentary supervision are better linked.

## 8.5 Trends in intelligence services

In this last paragraph I give a sketch of the most important trends in intelligence and security services in the Netherlands.<sup>14</sup>

<sup>14</sup> See in more depth Muller 2011.

## 8.5.1 PRINCIPLES FOR INTELLIGENCE AND SECURITY SERVICES IN THE NETHERLANDS

In the Netherlands some substantive and organizational principles regarding the intelligence and security services are formulated. The unique feature of an intelligence and security service is the using of special powers to gather intelligence and to promote measures which are necessary for the survival of the democratic legal order, or for the prevention of threats to national security. The following principles should be seen as guidance for the future direction of the intelligence and security services in the Netherlands. They can be seen as targets to be achieved.

*A. Legitimacy:* An intelligence and security service in the Netherlands enjoys legitimacy among citizens, businesses and government. There is confidence that an intelligence and security service performs the maximum feasible in order to protect national security. Confidence in the organization and in the operation of an intelligence and security service is essential for the degree effectiveness of the intelligence and security function in a democratic state.

*B. Legality:* The operation of an intelligence and security service is legitimate. Only on the basis of explicitly defined powers in the act may an intelligence and security service act. An intelligence and security service does have wide powers to perform its tasks. These powers are granted only if the exercise of those powers is lawfully executed. The legality of the operation of an intelligence and security service is under strict supervision.

*C. Effectiveness:* An intelligence and security service functions effectively. Primarily this presupposes that an intelligence and security service tries to gather maximum information, and uses an ideal combination of intelligence resources. Effectiveness also means that the maximum is done to exploit the information and that here is a policy or operational follow-up to the collected information. An intelligence and security service is designed to use the information effectively to achieve a specific goal. The objective can be diverse (tracking suspects, disruption, change policies, exchange information etc). Effective action by an intelligence and security service means a strong focus on their stakeholders.

*D. Ministerial control:* An intelligence and security service is uniquely controlled by a political-administrative authority under strict ministerial responsibility. The political-administrative authority support structures and channels the expectations of the functioning of the intelligence and security service so that for an intelligence and security service it is clear which priority tasks must be implemented. An intelligence and security service can only posteriorize with the consent of the Minister.

*E. Clear positioning:* An intelligence and security service, in terms of powers and responsibilities, is clearly positioned in relation to clients, regulators and partners in the security chain. This concerns in particular the ministries, the police, the PPS and the MIVD.

*F. Intensive supervision:* An intelligence and security service is intensively supervised. The supervision should cover all parts of the organization and functioning of the Intelligence and Security Service. Due to the nature of the work of an intelligence and security service there can not be full disclosure. For the various forms of supervision (parliamentary, legal, functional, etc.), specific supervision control agencies are designated which function under confidentiality. An intelligence and security services provide full cooperation with requests of a supervision agency. This is essential for the effectiveness of monitoring and the legitimacy of an intelligence and security service.

*G. Good national cooperation:* The protection of national security and other important interests in a democratic society is the work of many different parties. Cooperation is therefore crucial. An intelligence and security service shall, where possible, contribute to a good cooperation within national security chain. Information exchange and focus on the exploitation of information are central themes in this cooperation.

*H. Strong international intelligence position:* An intelligence and security service can only operate within an international context. Collaboration takes place on an international intelligence market where the “quid pro quo” principle is applied. To be able to operate in this intelligence market, an intelligence and security service acquires intelligence that is relevant to others. A national intelligence and security service enjoys a good reputation with other countries. An intelligence and security service has close collaborations with fellow services. An intelligence and security service participates actively in international dialogues.

*I. Separate intelligence and investigation services:* An intelligence and security service is not a criminal investigation agency. Gathering and providing information obtained by means of special intelligence means is separated from the activities which are taken on the basis of this information. There are legal options to use information from an intelligence and security service, under clear conditions, in a criminal investigation. An intelligence and security service is obliged to provide information relevant to specific interests of stakeholders to prevent threats to materialize.

*J. Disturbance procedure:* An intelligence and security service can take certain actions to disturb individuals and organizations if the survival of the democratic

legal system and national security is acutely threatened. To this end, an intelligence and security service has a specific procedure.

*K. No full disclosure:* An intelligence and security service functions in a democratic society and can never act on full disclosure. The operation of an intelligence and security service benefits from a degree of confidentiality. There should be an optimal balance between openness and confidentiality. Disclosure and openness would be preferable if no interests of the intelligence and security function are affected.

*L. Coherent organization:* The internal organization of an intelligence and security service ensures the proper collection and processing of information. Also, the exchange of information is optimally designed. The quality and quantity of personnel, equipment and finances are in accordance with the duties and expectations. The administrative organization is designed so that planning, procurement and implementation are optimally matched. The culture of the organization must be based on the assumptions made here of an intelligence and security service in a democratic state. The management of the intelligence and security service should ensure that coherent internal organization.

*M. Balance short and long term:* An intelligence and security service aims at both short-term threats and long-term trends and potential threats. Because creating a long time intelligence position information takes a lot of time, the (long term) potential threats must be recognized in an early stage so that effective measures can be taken. The extent to which attention is paid to short-term and long-term threat is the subject of the prioritization process. An intelligence and security service monitors a balance between short-term and long-term reflection.

*N. Adaptive capacity:* An intelligence and security service is in a position to adequately respond to a changing national and international environment. This assumes an intelligence and security service with a high adaptive capacity.

#### 8.5.2 ENVIRONMENT

The environment of the intelligence and security services has changed dramatically in the recent years. For the AIVD terrorism – both in the Netherlands and internationally – has become an increasingly important part of the investigations which they must perform. For the RID this has also a major impact as they can be less concerned with public order threats, but first and foremost must focus on the threat of terrorism.

For all the intelligence and security services the expectations have increased significantly. The threat is greater and more intensive. The politics, the media and the public expect that intelligence and security services are actually able to collect



the information needed to prevent these threats. The expectations are high, in some cases too high. It is the question if these expectations are real, partly because of the complexity and magnitude of current threats. That means, however, that intelligence and security services in the Netherlands much pay more attention to the management of expectations and clarify the possibilities, but also the limitations of their work.

### 8.5.3 POWERS

The intelligence and security services have many powers to gather information. With these powers they are able to effectively collect the necessary information. To date, the intelligence and security services do not need extra powers. The existing powers are sufficient for the task of the intelligence and security services. Within the intelligence and security services the use of special intelligence powers is handled carefully. The legality perspective is firmly rooted in the intelligence and security services.

Part of the work of the intelligence and security service is to perform disturbing actions which are a threat to national security. This disturbance is not regulated in a law. The intelligence and security services are not criminal investigation agencies which can arrest, so the intelligence and security services have no formal possibility to intervene directly. Formally, they must transfer the relevant information through the PPS to the police who then can perform criminal investigation operations such as an arrest. In practice intelligence and security services disrupt acts of certain persons which they monitor. It would be desirable if there is a comprehensive statutory arrangement for this disturbance power.

### 8.5.4 MUCH INTELLIGENCE AVAILABLE BUT SHARING IS DIFFICULT

The intelligence and security services have many powers to collect information. The information gives a clear and concrete picture of specific threats. The annual reports of the AIVD and the MIVD give an outline of the available information. The intelligence and security services know more than they publish or share with others. The confidentiality of information is for intelligence and security services of great importance. The main product of the intelligence and security service is information. If this information is transferred too quickly to others, the risk exists that no additional information can be obtained because others may start a criminal investigation or other activities are undertaken which disturb the information gathering.

The committee which investigated the AIVD in 2004 came to the conclusion that the AIVD should share more. Especially regarding the AIVD, the committee concluded that the AIVD shared little information. This can affect the legitimacy and the trust of the other organizations in the AIVD. This is not just about providing information through the PPS to the police, but also under specific terms to, mayors, ministers and others. In both cases, it would be desirable for the Dutch

intelligence and security services to share the relevant information as much as possible. Ultimately, the information is collected in order to avoid certain threats. The impression is that both intelligence and security services in the Netherlands are now more actively sharing information.

#### 8.5.5 NATIONAL COOPERATION

The cooperation between the AIVD and other organizations within the Dutch security chain was not optimal. The before mentioned committee expressed particular concern about the cooperation with the police, especially regarding the exchange of information. Meanwhile, various initiatives, including the Counter-Terrorism Infobox created a more intensive cooperation. The cooperation between the AIVD and MIVD has to improve, especially with regard to cooperation in combined teams.

Cooperation is a crucial precondition for the functioning of intelligence and security services. Without cooperation they may never realize full information. Only with close cooperation, there is a chance that all relevant information is gathered at the right time and at the right place. The expectation is that because of the continuing and growing threat of terrorism, the need for increasing cooperation will be even more important.

#### 8.5.6 INTERNATIONAL COOPERATION

Perhaps even more important than national cooperation is the international cooperation between the intelligence and security services. Both the AIVD and the MIVD have intensive operational collaborations with colleagues abroad. This has led to a major international administrative bustle. There are agreements with many countries to exchange information. This has repeatedly led to successful operations. These are increasing not only in bilateral relations, but also in multilateral exchange relationships. The EU and NATO play an increasingly important role.

Crucial to the international cooperation between intelligence and security services is the so-called quid pro quo balance. Intelligence and security services want information back for the information they provide. In fact, there is in the field of international information-sharing by intelligence and security services a certain trade in information. It is important that a country has specific information that may be of interest to other countries so that new information from other countries can be obtained.

#### 8.5.7 CONTROL AND SUPERVISION

An important aspect of intelligence and security services is the way the control and supervision is organized. The priorities of the work of the intelligence and security services must be decided on by politically accountable ministers. The

AIVD research committee criticized the control of the AIVD and called it fragmented and unclear. The recommendation was to give the Minister of Interior Affairs and Kingdom Relations a more prominent management competence, which will now become reality.

Supervision of the AIVD is difficult because of the inherently confidential nature of the work of the intelligence and security services. The Review Committee has published some thorough public and confidential reports on specific investigations of the intelligence and security services. The Commission on the Intelligence and Security Services in the Lower House will ensure parliamentary control. Ultimately, the confidence of politics, administration, media and citizens in the secret services is the main control method. That confidence can only exist if the services behave in accordance with the applicable laws.

#### 8.5.8 ORGANIZATION AND CAPACITY

Finally, how the intelligence and security services have shaped their internal organization is important for the way they can carry out their tasks. The quality of the products and employees are crucial. In the Netherlands the intelligence and security services have launched extensive programmes to improve the quality of processes, products and employees.

The AIVD research committees came to conclusion that the capacity of the AIVD was too small to carry out their tasks. It made recommendations for an intensive growth of the services. Meanwhile, the government accepted these proposals. This results in the coming years in a strong expansion of the Dutch intelligence and security services. The growth of these services takes place within tight conditions in terms of safety and quality. Growth can only take place steadily.

### 8.6 Closure

Intelligence and security services play an increasing role in security and safety policy in the Netherlands. This role is reflected in much information on specific national and international threats. Cooperation with other organizations, in particular the police, is a major concern. Only if the intelligence and security services are capable of effective and substantive cooperation with the police, and other organizations in the security chain it can be realized that the right information is gathered at the right time in the right place. Within the intelligence and security services everyone is aware of the impossibility of total security and complete information.

## 9 Public order maintenance

Public disturbances and public order maintenance are an important part of security in the Netherlands. In this chapter I pay explicit attention to these topics. I use the following definition of public order. Public order concerns the normal course of business in the public space. This is a prevailing organization of social life that objectively (by the public) is known. It is not possible to give an overview of all possible forms of public disturbances. There is always a degree of freedom for interpretation by the authorities.

In the first section I give an outline of the formal powers in respect of public order enforcement. In the second section, the historical development of public order is described, and in the third section the public order policy is analyzed. The chapter concludes with a section on trends in public order and public order enforcement. I will use several Dutch studies in particular in which I participated: *Public order* (Van der Torre, Muller, et al, 2002), *Governance, law and security* (Muller, Rogier, Kummeling, et al, 2008), *Text and commentary public order, security and safety* (Muller, Brainich, Rogier and De Roos (eds), 2011) and *Public order and group violence during public events* (Muller, Ferwerda, Adang, Zannoni, et al, 2011). Together they give an overview on public order and public order enforcement in the Netherlands.<sup>1</sup>

### 9.1 Powers of public order maintenance

The authorities in the Netherlands can use a colourful collection of powers concerning public order maintenance. The mayor has the authority over the police when it comes to public order maintenance. In the tripartite consultation between the mayor, the prosecutor and the police chief, the different interests – maintaining public order and enforcing the law – are balanced. In this section, I give a general overview of the major powers and their operation in the Netherlands to make clear the diverse legal possibilities a Dutch mayor has to maintain public order.<sup>2</sup>

<sup>1</sup> Compare Waddington 2007.

<sup>2</sup> Based on Muller, Brainich, Rogier and De Roos, 2011 and based on and cited from Muller, Rogier, Kummeling, et al, 2008.

*Public order maintenance mayor (art 172 Act on Municipalities (Gemeentewet))*

The mayor is given in this article the general mandate in relation to public order maintenance. In the third paragraph of this article, the so-called light order power of the mayor is described which gives the mayor the power to give orders necessary for enforcement of an imminent or actual disruption of public order. This provision may be used when no other power is available. The light order power is primarily used for residence and area disqualifications of people who are disrupting the public order. In some municipalities, this is specified in the General Local Act but not in all municipalities. Each municipality has its own General Local Act in which the specific local powers and regulations are described. This power is only a warrant for incidental residence and area disqualifications and it remains unclear how long that may take. The new Act on Instructions for Serious Inconvenience allows a combination of an area denial and a behavioural instruction. These are a combination of powers of the mayor and of the prosecutor.

The light order power is now regularly used for area disqualifications of some hours or days, especially with regard to drugs. This power is effective in the area upon which the disqualification is aimed, but in practice there is always a displacement effect to be seen. For youths standing on the street or at corners who are not a nuisance this power is not effective. The new Act on Instructions for Serious Inconvenience is expected to further improve the practice.

*Public Events Act*

Powers concerning public demonstrations, marches and events are described in the Public Events Act (Wet Openbare Manifestaties). On the basis of this law notification and other requirements are imposed on the organizers of events. In special cases it is also possible to prohibit an event. The absence of a notice may be grounds for the prohibition of an event. Usually the powers concerning events are regulated in more detail in the individual General Local Acts of the municipalities.

In practice, there are little or no problems using these powers. In some cases there were problems around demonstrations of the extreme right and the subsequent demonstrations against them. Then the more fundamental question is at issue between the interests of the public order versus the right to demonstrate. This fundamental question has no relation to the powers in the Public Events Act. There are no problems by imposing regulating conditions or prohibiting public events. In case of acute problems the mayor can still use emergency powers which I describe further on.

*Supervision of public entertainment and public places (Article 174 Act on Municipalities (Gemeentewet))*

This article empowers the mayor to supervise fairs, football matches but also shops, hotels and cafes. This supervision can also mean that the mayor gives an order to close a public place if conditions are not met in accordance with

regulations. On the basis of this article the mayor gives orders to halt the practice of entertainment, or closes a facility. For frequent entertainment events, such as football matches, there are further measures described in specific regulations. There are no practical legal problems in the implementation of these powers. This article is more detailed in the General Local Act in each of the municipalities.

*Closing houses (Article 174a Act on Municipalities (Gemeentewet))*

This article gives the mayor the power to close homes in case of disturbance of the public order or fear for it. The disturbance of public order or the fear for it must be precisely explained. The disturbance must be demonstrated. This article is frequently used in major cities and some border towns in general especially for drugs law enforcement. It is also used for other forms of nuisance such as prostitution or inconvenience to neighbours.

The use of this power creates moral and practical objections for some mayors in the Netherlands. The mayor has a duty to care for the citizens. Closing houses can cause problems for partners and children. It may also lead to homelessness for the people involved, bivouacking in a caravan or living in with relatives. In particular for problem families deportation is not a real solution.

*Administrative detention (Articles 154a and 176a Act on Municipalities (Gemeentewet))*

These articles give the mayor the power to detain a group of people for up to twelve hours by the police in a temporary place. This group is temporarily deprived of their liberty. This can be done for different kinds of situations and with and without the permission of the City Council. There are several procedural and substantive conditions before administrative detention can be imposed.

In practice the organizational and legal conditions for administrative detention are too complex so this power is actually rarely used. In particular, the organizational conditions such as designated place, shelter, sanitation, communication organization, etc., appear in practice to be reasons why no mayor uses these powers. There is a need for a different form of administrative detention but with fewer legal and organizational conditions. In (impending) public disturbances (such as risk football matches) mayors rather use a combination of other powers such as emergency powers and identification requirements rather than having to meet the complex organizational and legal conditions of administrative detention. Mayors are asking for a simplification of the necessary conditions to impose administrative detention.

*Emergency orders and emergency regulations (Articles 175 and 176 Act on Municipalities (Gemeentewet))*

These powers give the mayor the possibility to impose emergency orders and regulations. Emergency orders and emergency regulations have a long history in the Netherlands. They refer not only to actual breaches of public order but also to

the threat of a breach of public order. The proportionality and subsidiarity principle is explicitly applied. The distinction between light order power and an emergency order is not always clear. With an emergency order a more intensive infringement on fundamental rights can be made, but in practice, the scope of the light order power is usually enough.

In practice, the emergency orders and emergency regulations are not often used in the Netherlands. Especially since the introduction of the light order power, mayors are quite reluctant to impose emergency orders. Practice shows that the emergency orders and emergency regulations can only be used in exceptional situations. During the implementation of emergency orders and emergency regulations there are no significant legal or organizational problems.

#### *General Local Act*

Provisions in the area of maintaining public order are very much governed by the individual municipalities in their General Local Acts. In these acts many of the powers described above and below are embodied. But the General Local Acts also provide additional powers such as prohibition, cannabis prohibition and other forms of nuisance. Municipalities use the APV to realize the powers they need to maintain public order. In this way, the power is precisely tailored to the problems of the municipalities. It is in the practice of public order that this is an important and effective tool.

#### *Police Act*

The Police Act provides various articles that form the basis for the mayor to control public order maintenance in the municipality. Several times Article 2 of the Police Act, which describes the tasks of the police, was used as a peg article to the use of a specific power for which no legal ground was available. This led to legal criticism that I endorse. In practice mayors and the police have no objection to the use of Article 2 of the Police Act in this way.

#### *Administrative duress*

Administrative duress gives the mayor or the mayor and Board of Aldermen the power to actually act to end a violation or preventing its recurrence. This power can also be used preventively. During the maintenance of public order administrative duress is used only to a limited extent. It is frequently used at cannabis plantations on the basis of the risk of fire. A special form of administrative duress is the so-called Rotterdam Act which regulates that under specific conditions a building or an area can be closed if a threat to life or risk to safety or health exists. In general it can be used as an additional administrative power to maintain public order.

*Charge penalties*

This power is an alternative to the administrative duress. By charging penalties they are trying to reverse a violation or recurrence of a violation by conditional forfeiture of a sum of money. Charge penalties are actually used in several cases to maintain public order e.g. owners or users of houses from which drugs are sold, or preventing a massive house party where no authorization is given or prostitute visitors who in breach of the General Local Act try to contact prostitutes on a public road. Charge penalties are an important means used in the daily practice of public order maintenance.

*Withdrawal and denial of licences*

Licensing offers the municipality the ability to enforce specific conditions to certain establishments or individuals. If they do not meet these conditions, the licences can be revoked or denied. Denying or revoking a licence must be well motivated and that is not always the case. Denial and revocation of licences takes place frequently and has a direct impact on the state of public order maintenance in a municipality.

*Administrative fines*

Administrative fines are not intended to restore, but to be punitive. An administrative penalty cannot be imposed conditionally. That is why this power is less suitable for the maintenance of public order. The administrative fine is rarely imposed in the context of maintaining public order. However, the administrative fine is the keystone of the administrative enforcement route, including areas of public order. The new acts Administrative Fines for Public Areas and Administrative Fines for Illegal Parking play, in this respect, an important complementary role, since they make a more direct response possible if public order is actually disturbed.

*Closing drug establishments (Article 13b Opium Act)*

This article makes it possible for the mayor to close down drug establishments with administrative force. The power was created because of drugs being sold, delivered, issued or present. It is not a specific power for public order maintenance but rather a form of action against crimes on the basis of the Opium Act. However it should concern local public places and associated areas. Municipalities use judicial tolerance concerning coffee shops. Because of a change in this article closing homes where drugs are sold, delivered, issued or present is possible. The use of administrative power for criminal investigation purposes is hereby expanded.

This power to close drug establishments is applied in various ways. Some municipalities make frequent use of this power, some do not. The degree of disturbance influences the use of the power. The caution time limit for the use of this power sometimes creates, in practice, problems. The new article appears to be a solution for municipalities where there is a substantial drug problem. For



municipalities that do not have such problems, or to a much less extent, this legislative amendment is not necessary.

*Designation security risk area and preventive searches (Article 151b Act on Municipalities (Gemeentewet))*

The mayor can use these powers to designate a security risk area because of (imminent) disturbance of public order by the presence of weapons. Based on this evidence, the prosecutor may order the police to search everyone for weapons and search baggage and cars for weapons, the so-called preventive searches. This power is not only aimed at maintaining public order but also on the investigation of crimes. Meanwhile, on the basis of case law, the operation and the reasons for the designation of the security risk zone have improved.

Many municipalities have in their General Local Act a provision that gives the mayor the power to indicate a security risk area. That does not mean that this power has to be used all the time. In the municipalities where the security risk area is designated and effective preventive searches are performed, one is satisfied with the degree of effectiveness. Some suggest that it would be good if this power could be extended to other laws than the Arms and Ammunition Act.

Sometimes the discovery of weapons is subordinate to other yields. Sometimes the side catch (drugs, money) is more important. Citizens seem very satisfied with the preventive searches and therefore feel safer. Although a small amount of weapons may be found, this power increases the sense of security of citizens.

*CCTV (Article 151c Act on Municipalities)*

On basis of this Article, the mayor – if the council has authorized him by regulation – can decide to place permanent cameras for surveillance in a public place. The presence of cameras should be clearly seen by everyone. There are several conditions to be met before the cameras can be put in place. Also, it has to be regulated in what way the public prosecutor may make use of the images from these cameras.

Meanwhile, many municipalities use CCTV, mainly as a prevention but also for criminal investigation. Citizens feel safer because of the presence of cameras. Whether it actually contributes to the improvement of security is not clear. Capacity and expertise to look at or investigate the appropriate images is not always present. Camera surveillance – both for preventive purposes and criminal investigation – is completely accepted in the Netherlands.

*Integrity Public Administration Supervision Act (BIBOB)*

The BIBOB Act gives administrative authorities the power to refuse licences or to withdraw them if there is serious danger that offences are being committed with these licences. The Bibob Act applies to various sectors and to specific institutions and individuals. Governing bodies do not receive all information to decide on an

application. The National Bureau Bibob gives advice to the relevant governing body. In practice the Bibob Act is important although it has not been in existence for long. The first experiences are positive but there are some bottlenecks. Municipalities are not allowed to exchange Bibob information with each other (there is no national database) which creates the risk of a new application in another town by someone whom the Bibob Bureau has not accepted. The Bibob Bureau cannot directly use information from the Public Prosecution Service and the police. The police cannot give unsolicited information, there has to be an explicit request first. The procedure is complex and bureaucratic. By only using these procedures the risk exists that an applicant is seen as a criminal.

#### *Act Temporary House Ban*

This act makes it possible for the mayor to ban a person from his house when somebody in the house is attacked or molested. It is a new law that is aimed at reducing domestic violence. There is discussion in the Netherlands if this is a power for the mayor. Some believe that the mayor is unable to assess whether a person has committed domestic violence and must therefore be banned from his house. The mayor cannot make this assessment, but is responsible for the decision. For some mayors that this is a reason to say that they are not inclined to use this power. Others believe that nowadays the legislature is too reluctant in granting powers to protect civilians. They weigh protecting citizens heavier than privacy protection. Who has the power is not really important, but the problem has to be tackled. Yet others believe this really is a power for the mayor because then he can start an aid programme for the family in which various parties are involved. In that way the mayor can organize safety and security in his municipality more effectively.

This overview of the most important powers for public order maintenance implies that in the Netherlands the mayor and the public prosecutor have sufficient powers to handle all kinds of public order disturbances. At this moment in time there is no need for expansion of the powers to maintain the public order in the Netherlands.

## **9.2 Policing public disorder**

The Netherlands was regularly confronted with public disorder in the last century. In this section I give an overview of the most important police developments concerning policing public disorder.<sup>3</sup>

<sup>3</sup> Based on and cited from Van der Torre, Muller, et al 2002.

## 9.2.1 BREAKING POINT 1966

Some serious disturbances in the mid-sixties in the Netherlands show that the practices of the authorities, police and existing concepts were not sufficient for the nature and severity of high-profile disorders. The riots in Amsterdam in 1966 were a breaking point. The police did not know what to do with the, at that time, unprecedented harsh and collective use of force. It was the time of the major provo riots in Amsterdam. The police responded unwisely to provocations of left (provolone) demonstrators or activists. The police action was used by the other party to place the police in a bad light.

The police learned, under greater political and administrative interest than they was accustomed to, lessons from their mistakes. Even before the events in 1966 – in January 1965 – chief constables ordered the modernization of police training, arms, clothing and connection equipment. After 1966 this modernization was intensified, particularly in the hardest hit town: Amsterdam. The municipality of Amsterdam police formed mobile riot units, and they spent more time and money in training for large-scale police action than it used to do.

The Amsterdam mobile riot units are also deployed in peace time. This is a fundamental choice. The idea is that mobile riot units that can handle fairly orderly situations are more able to keep their self-control in hectic situations and frequent violence. The mobile riot units in the Netherlands are for similar reasons no standing organization within the police. Only a small part of the police is working full time on large-scale police action. The vast majority of police officers in mobile riot units spend most of their service in mainstream policing. This regular police work should prevent potential perverse effects of mobile riot unit work. This is a safeguard that the police will comply with the minimal force principles.

In 1972, the first so-called preparedness circular was written. This circular emphasized that the mobile riot units can be deployed in various situations, provided there is a need for tightly organized police. The mobile riots units are deployed in addition to disturbances and public disorder for example in search and deposits. The mobile units are rather a defensive tool than as a punitive weapon. They are primarily for restoring public order in the first instance. The idea is that a crowd more or less will disintegrate as the mobile riot unit act. The mobile riot unit has supremacy over the contesters. During this period there is little attention to the judicial component of the large-scale police action. The same applies to the prevention of serious disturbances of public order.

## 9.2.2 HARD CONFRONTATIONS: NEW BREAKPOINTS

In the period from 1970 to 1985 a new series of severe disturbances ask a lot of the mobile riot units. These crises exposed the fact that the police were not ready for new patterns of disorder.

### *City Wars*

The evacuations of residential buildings which were to be demolished for the construction of a metro line in Amsterdam Nieuwmarkt Area (March 1975), and of squatted houses on the Pierson Street in Nijmegen created violent confrontations between mobile riot units and rioters. In both cases, the mobile units first sought to penetrate an area and then drive out many smaller groups of rioters and squatters. The counterparty persisted in its opposition longer and harder than was expected. The resistance was systematic and long-lasting. The mobile riot units needed to do more than barricade or charge. It looked like an “urban guerrilla” or an “urban war”.

The opposition of left-wing activists (squatters, autonomes) had an ideological basis and was rooted partly in the belief that the government was an illegitimate power group. Moreover, leftist activists and residents who were evicted from their homes were working closely together, especially in the Amsterdam Nieuwmarkt Area. Police violence against local residents who wanted to commit non violent resistance was contrary to the idea that the mobile riot unit was a defensive concept. The existing police concepts seemed to offer little room to distinguish between rioters and non-violent opponents.

### *The supremacy concept*

Partly because of the long-cherished idea of supremacy – the mobile riot unit always win – the events of the Vondelstraat in Amsterdam left deep traces, especially in the Amsterdam police corps. On February 29, 1980 hundreds of squatters again took over, by surprise, a building on the Vondelstraat in South Amsterdam. The building had already been squatted and evacuated on February 25. Hastily called mobile riot units were defeated in a rain of stones and other projectiles for the first time in the history of the mobile riot units. The squatters barricaded the crossing and found a temporary alternative state: the Vondel Free State. It was painful for the police and the authorities painful that the squatters had the necessary public support. For recapturing the street military armored vehicles had to be used.

The mayor and the police were completely surprised. There was a direct shock within the police because of the violence that the activists displayed. The mobile riot units were not used to it: squatters had up to that time often only offered passive resistance when the police came into action. With hindsight it is acknowledged that the police corps was in total demoralized. The experience in the Vondelstraat led to reflection on the process and equipment of the police. It also had an influence on the culture of the mobile riot units and had a mental effect on some individuals and groups within the Amsterdam police.

*Public order and arrests*

For Amsterdam, the events in the Vondelstraat were already a breakpoint. For the rest of the Netherlands the coronation riots on April 30, 1980 were. It was the day that Queen Beatrix was installed. On that day, the hitherto most fierce confrontation between the police and rioters took place. There were fierce fights from early morning until late at night. The police could hardly avoid rioters trying to reach the Great Church, and so disrupt the inauguration ceremony. Throughout the day, police action was seriously hampered by an unclear command structure, by continuously bad connections and lack of assistance platoons with knowledge of the city, the structure and policy. On this day, a number of organizational shortcomings became painfully obvious. For the (political) outside world, this was shortly after the riots not yet visible. The criticism was then focused on the fact that hardly any rioters were arrested. Although serious crimes were committed, there are hardly any arrests.

Socially and politically, the Vondelstraat and the coronation riots were advantageous for police and authorities, because the squatters' movement and wider left activism lost a lot of credit with the public. The events were a stimulus for the professionalisation of large-scale police action. Learning from public order crises proved to be a two-edged sword. The police and judicial authorities actions, shortly after the riots in the Vondelstraat and coronation riots, resulted in hard and fast new criticisms arising in a number of public disorder cases.

On October 11, 1982, the Amsterdam police raided a squatted building on the Jan Luijkenstraat 5. This property was called Lucky Luyk. The so-called squatters' alarm was activated. Two days of the worst riots since for the coronation riots followed. In order to deal with the riots, the police used containment measures. On October 11, 124 arrests were made, and on October 12, 43 arrests were made. A total of 149 persons were detained under an emergency regulation which stipulated that those who were planning to disrupt public order, could be extracted. The police used a lot of violence during the arrests, sometimes excessively. The criticism afterwards focused on the legal basis of the detentions, the escalating promotional nature of the containment actions and the sometimes excessive police violence.

Judicial intervention in a tense situation or during disturbances appears to be an art in itself. This became clear a year earlier. In September 1981 in Dodewaard, there was a demonstration against the use of nuclear energy. Members of arrest teams of the National Police used extreme violence and made no more than 22 arrests. Moreover, they used an unprecedented amount of tear gas grenades. The Lower House criticized the excessive use of tear gas and the ineffective arrest strategy.

### 9.2.3 LEARNING FROM CRISES

Shortly after the two deep public order crises in 1980, the report, *Large scale police action after 1980*, was published. A few years later the Ministers of the Interior and Justice published a report, *Large scale police action*. Political, administrative and police authorities rethought, in particular, the organization, equipment, strategy, mental resilience and the required scale and uniformity of large-scale police action.

#### *Organization*

A standard organization was developed that most police forces still use today. There is separation between the chief constable, as a member of the triangular consultation between the mayor, the public prosecutor and the chief constable, and the General Commander, who is a prominent police chief. The triangle is the policy center. The General Commander shall ensure that the policies are implemented and inform the policy center on relevant developments. Under the General Commander comes a chief of staff, who is assisted by a number of staff officers with specific duties, depending on the nature and extent of the action.

In 1984 it was determined that the so-called basic units of the mobile units should be formed by groups (a group commandant, nine members and a driver), sections (a section commander, two groups) and platoons (one platoon commander, two sections and a driver). If several platoons will be deployed, a company commander commands. There are also special units set up. Important special units are police on horseback, motorcycle police, canine police units, water pitchers, fire and tear gas units (the BRATRA), reconnaissance units and arrest units.

At the political level, the detention units received the most attention. The political aversion to the sharp violence of the activists had been an aid to the police and authorities, but there was also – less visible – political criticism, because during some large-scale events serious crimes were committed and few arrests were made. The television images of these crimes made it extra painful. Shortly after the coronation riots the two most relevant ministers wrote in a letter about the events of April 30, 1980 that the judicial component should receive more attention.

#### *New strategies: de-escalation*

In the first half of the eighties, more and more police officers became aware of the usefulness of and need for riot prevention. In the report on large scale police action, it was concluded that the police operation and the police strategy now should be better adapted to the stage of a conflict or confrontation. It emphasized that regular police officers (the so-called flat caps) can in some situations remove stress and that the mobile riot units should ensure opportunities for riot prevention.

The idea of preventive measures was not initially welcomed within the prevailing police culture, certainly not in the corps who suffered during the riots. Nevertheless, the police steadily gave more value to riot prevention. Police and authorities in the eighties try to avoid an (aggressive) confrontation where possible. The de-escalation strategy in large-scale police action was really effectively in the eighties. Where possible, prior to a large scale police action the police and “the other side” conferred. There were contacts identified and an agreement reached on specific conditions, in particular tolerances. If the risk made it possible, the flat caps were the face of the police. Mobile riot units operated preferably in peace dress and in the first instance they did not take prominent positions. If disturbances occurred, the aim of the police was to restore order as soon as possible. Execution of detention was in the hands of specialists arrest units.

From 1983, the Revised Primary Education provided an impetus for preventive strategies. Police were socially-psychologically trained from the very beginning of their career to solve conflicts without or with a minimum of violence. This had a major influence on the police culture and so on the large scale police action. The review of education was based on a new vision of the police function that was rapidly gaining more ground among prominent police chiefs: community policing. This movement stressed the need for administrative and social integration. This resulted in the police consulting more and negotiating with activist leaders and demonstrators. This forms, even today, an important feature of the “Dutch approach”.

#### *Mental resilience*

Several strong public order crises at the beginning of the eighties showed that large scale police action had a great mental influence on individual police officers. The coronation riots were the most severe and violent riots. After long battles, many police officers, on April 30, 1980 went home exhausted. After the riots, several studies showed that good mental relief and stress counseling was required. The police officers were not only under pressure from the violence and tension that they would endure. The switch from regular police to riot prevention and riot management was also difficult. This period was the birthplace of a more or less systematic internal guidance in police forces, which began with an internal review immediately after the events. Police officers could directly exchange experiences. This internal guidance has, by now, been professionalized in the Dutch police force.

#### *Centralization and standardization*

In the eighties, scaling up and standardization took place. The various training schemes, both at operational and strategic level, were more or less unified. The equipment of the mobile riot units of the different forces was unified. Training centers merged. Experiences were more intensively exchanged. Similar command structures were designed. The formation of the regional police forces in 1993

meant that police units could be deployed more effectively. This was closely related to the creeping centralization of the police in the Netherlands. National consultations increased the quality of cooperation and information exchange in the context of large-scale police action.

#### 9.2.4 OPTIMIZING AND ANTICIPATING THE UNFORESEEN

In the nineties and the beginning of the 21<sup>st</sup> century there were no massive, large-scale disturbances. Police, governance and justice focussed on optimizing existing routines, instructions and regulations. The public order on the streets, however, was increasingly of interest to police and politicians. Small incidents and senseless violence dominated the image. Yet in this period there were some major order disturbances: cross riots in New York in 1996, Beverwijk football riots in 1997, the riots in the Groningen District Oosterpark in the year 1997/1998, Eurotop 1998, European Football Championship in Holland and Belgium 2000, riots in Den Bosch in 2000 and 2005, multi-racial riot in Amsterdam-west in 2001, riots in a district of Utrecht in 2007 and increased riots during New Year's Eve in many municipalities. Next to these riots there was an increase in rioting and order problems around football matches. In recent years public order disturbances during public events were a main concern for all parties involved. During severe riots at the beach in Hoek van Holland during a dance event in 2009 police officers had to shoot many times because they were attacked by hooligans. One hooligan died and five were severely injured. These circumstances created a major political and public discussion on the way public order disturbances during public events should be organized.

The need for the police and authorities to anticipate unforeseen disorder is paralleled by a further decline of the traditional large-scale disturbances. This raises questions about the usefulness and necessity of the mobile riot unit in the Netherlands. However, the increased risk of unforeseen serious disorders makes the continuous readiness of mobile riot units even more necessary. Largely independently of these policy developments, in large-scale police action there is an increased use of modern technology. For a large police action, for example, regular video surveillance is used which can be viewed in the command center. Some general and operational commanders find that these images provide welcome additional information, while others are somewhat apprehensive that they are too much guided by images. For public order maintenance during public events another way and form of policing is necessary.

There are major differences in preparedness between forces. Smaller forces with a relatively large rural area cannot react quickly to unforeseen disturbances. The differences are not limited to preparedness. Some forces show experience with large-scale police actions, while others do not. Some forces systematically



collect public order information, while others only have ad hoc information. For this reason, a Reference Guide Conflict and Crisis Management Police has been established in which all references are mentioned to which a police region must apply. These include references such as an agency conflict and crisis management in a corps, a general scheme and plan for large-scale police action, an events calendar, a communication plan, training, etc. The Public Order and Safety Inspectorate regularly reviews whether the corps complies with references.

### 9.3 Trends in public order

The quality of public policy, the intensity of public order problems and the possibilities and limitations of public order maintenance in the Netherlands are largely determined by relevant social developments. In this section I give an outline of the key social trends and their impact on public order policy in the Netherlands.<sup>4</sup>

#### 9.3.1 INDIVIDUALIZATION

Individualization is the most important social development of the last twenty-five years. Increasingly, individual values and interests are at stake during group protests. Citizens are increasingly being individually liable for certain problems and solutions. Increasingly the government, citizens and businesses are held accountable for all forms of nuisance. Citizens find it increasingly obvious that individuals that cause problems are held individually liable. Individualization has resulted in the Netherlands that, in addition to large-scale disturbances, increasingly small-scale order conflicts arise, both in the public and private sphere. The administration, justice and police have to prepare for smaller but more intensive order disputes between citizens, and not only for large-scale order disturbances. The tendency of more public disturbances during public events is an example of this development. In the future, apart from collisions with large groups of demonstrators and activists, there will be small, often hard incidents involving citizens vigorously defending values and interests that affect them personally. This requires a redefinition of how the police, for example (in large groups), deal with public order issues. The public order policies, in addition to large-scale disturbances, have to take into account small, often hard incidents.

#### 9.3.2 DIFFERENTIATION

The differentiation of society occurs on many fronts. The distinction between immigrants and natives and between “poor” and “rich” are the most mentioned in the context of law enforcement and public disorder. Disorder will not occur along

4 Based on and cited from Van der Torre, Muller et al 2002.

such simple lines. The increasing individualization causes a further differentiation between and within populations. Moreover, the cultural and physical separation of certain groups is in some cases so explicit, that a conflict between groups can hardly occur. More and more there is a concentration of specific groups and categories in the Netherlands. Public order conflicts will occur within individual categories such as drug scenes, scenes of young people, problem areas. Each category of public disorder has its own forms. In the urban life, disadvantaged youth spends more time in the public domain (the street) than young people who have access to “mass private property”. This separation is similar to a differentiation in the way young people can potentially be disruptive: from traditional and visible crime and nuisance on the streets and all kinds of private civil disturbances to the spread of disorder by digital information.

The administration, justice and police in the Netherlands face the question to what extent and in what form appropriate intervention strategies have to be developed for each category. That question also concerns the intervention strategies with regard to public order. In public order policy, conflicts within groups and categories should be considered, in addition to possible conflicts between different and latent antagonistic groups.

### 9.3.3 INTENSIFICATION

The individualization and differentiation go hand in hand with the strengthening of individual and group expressions and behaviour. This intensification is manifested in the increased emotionality of individual and social activities and events. It is striking how quickly individual experiences, in particular shocking peak experiences, can become collective. It is obvious that the media contribute significantly.

The mediatization of society contributes to new forms of harmful imitation and mobilization. It has an increasing effect on the frequency and range of potential disturbances. Rumors are no longer spread by the interpersonal transfer of bad data, but through media and new communication tools with a massive range. It can go so far that some people elsewhere create imitation behaviour: immediate or in a calibrated occasion. Order disturbances may be more than before developed in this way to express moral panic. Sometimes a hype arises in a short time in different places and sometimes it lasts for a longer time, also under the influence of mass media.

Administration, justice and police, but also other organizations with a public function, are increasingly confronted with the meaning of the non-cognitive aspects of social order and of the related role of mass media. Their relationships with the media should be extended. Efforts should focus on developing a long-term view of the intensification and emotionalization of individuals and groups in society. This has major implications for public order policy and the role of the (social) media.

## 9.3.4 PROVISION OF INFORMATION

In the knowledge society, information is one of the most important resources, but also a possible obstacle to a functioning society and for ensuring public order. The use of new forms of information and communication technology – the Internet is just one example – raises questions about the future contours of the public and private domain, and by extension about the effect on public and private order maintenance. The current and future information and communication technology offers individuals, groups, organizations and institutions extensive opportunities within the privacy legislation to perform activities that are a veiled threat to the public order. The emerging role of social media, before and during public disturbances, is a new development which has to be taken into account. This implies questions about the role of government. What information can and should the government collect? Who manages this information? What measures are permitted on the basis of what information? What information can and must be provided by the government? In what way can the government influence the content of the social media before and during disorders?

Further professionalization of intelligence services in administration, justice and the police involved in the collection and analysis of the public order information is necessary. The professionalization of criminal intelligence is largely ignored in other police intelligence services in the Netherlands. Police gathering of public order information must be improved. This requires a clear division of responsibilities between the various intelligence agencies. The distinction between imminent breaches of public order and other offences will be increasingly difficult to use in organizing the information function of the government.

## 9.3.5 TRANSNATIONALIZATION

Transnationalization changes public order and public order maintenance dramatically. The public order and policing was, for centuries, an eminent subject of attention, legislation and policies within nations, and within the Netherlands also largely a local matter. Gradually it seems that transnationalization is a reality in the field of public order. In many countries, the authorities have headaches regarding public order threats because of international developments and events.

The police, administration and judiciary will increasingly have to deal with foreign citizens they have little or no information on, including any information relevant to public order maintenance. Foreigners will be more involved in activities and disturbances which are initiated by persons residing in the Netherlands. Some action groups have intensive international cooperation. This requires the national government to redefine the “opponent”. The era in which the police mainly act in local public disorder is long gone.

Of major importance for the police, administration and justice are the different forms of international cooperation. In the first place, this is the operational cooperation in the border areas. Current agreements between border countries usually relate to the investigation of criminal offences. It is important that these agreements are also applicable for public order maintenance. The international gathering, processing and dissemination of intelligence in the field of public order maintenance are still developing.

#### 9.3.6 PERMISSIVE CULTURE

The permissive, consensual social and political culture in the Netherlands has a large influence on the extent and frequency of public disturbances. The Dutch social and political system is based on four C's: consensus, coalition, collegiality and cooptation. The entire Dutch decision-making system is aimed at achieving consensus among social and political groups. No group will have the opportunity for majority power. This is why they need to make coalitions with each other. The collegiality principle manifests itself in many governance bodies, councils and committees. Coopting – neutralizing resistance – occurs in many forms. In the Netherlands, antagonists have relatively easy access to the authorities and action groups may even rely on government subsidy. There is no need for action groups to use large disturbances to make their point.

The public order in the Netherlands has to be considered with the dominant presence of the four C's in mind. They influence the flexible attitude of the government to small disturbances and reluctance to take repressive measures and use of violence. The emphasis in public order maintenance is on prevention and minimal use of force. The use of violence, and in particular firearms by the police is subject to severe restrictions. The use of firearms remained a major exception.

#### 9.3.7 REPRESSIVE TENDENCIES

The traditional permissive response to public disorder is under pressure in the Netherlands. The social and political climate has hardened. Confidence in the exclusive effectiveness of prevention is decreasing. The law and policies have created more powers and measures for the effective repression of civil disturbances. This can be seen, for instance, in powers such as administrative duress and preventive searches.

This development poses new questions for the administration, justice and the police. How can a traditionally permissive culture be combined with repressive elements? Is a responsible combination possible? Despite the hardening of the social and political climate there is still doubt about a more repressive approach to public policy problems. The limited public disorder in the Netherlands is caused partly because of the permissive culture. The extension of powers and repressive

measures in the Netherlands invariably encounter constitutional concerns. Moreover, proposals aimed at repression sometimes contradict the in Dutch culturally rooted need for freedom. Despite this, in recent years the police, justice and administration gained new powers to maintain the public order. The repressive tendencies are also continually developing in the Netherlands.

#### 9.3.8 PRIVATE AND PUBLIC ORDER

In the future, public order maintenance will not only be street and public domain-oriented, but will also concentrate on events and developments in a formal private context. There are many new private structures that place the maintenance of public order increasingly under pressure. The privatization of the public domain and the emergence of “mass private property” such as shopping centers, event halls, sports facilities, recreational and leisure centers – may cause private order maintenance. In this context, the equipment of private security and surveillance deserves the necessary attention.

Public order becomes increasingly influenced by developments and events in the private domain. The image of an exclusive territorial domain in which public order problems occur, does not exist anymore. Public order issues are no longer limited to squares, parks and streets. They hide themselves increasingly behind the walls of the “mass private property” and the displays of personal computers. The public order issues will leave the streets.

The artificial separation between public and private policy is increasingly difficult to maintain in the Netherlands. There will increasingly be an overlap between public and private order. This implies a completely different way of thinking and legal framework than before. Indeed, it implies a break with a historical development in which the separation between public and private domain became ever more refined. The overlap between private and public order is nowadays in the Netherlands an undeniable fact.

#### 9.3.9 FROM EVENTS TO CONSTELLATIONS

In conjunction with important social developments, there is a trend towards more complex, less easy to identify, order disturbances in the Netherlands. The isolated riot is replaced by a series of incidents and structural forms of nuisance. Many hybrid riots can often only be posted in specific categories afterwards. This makes the maintenance of public order and combating disturbances more difficult. The maintenance of public order shifts from clearly demarcated events in time and place to the influencing of constellations of facts and perceptions and of feelings of discomfort and unease. There are some sudden terrifying events that effect the population and the public as a whole.

The concept of “structural incidentalism” refers to a more or less constant pattern of incidents which can effect the public perception of order in large groups of the population. Senseless violence, drugs and persistent crime, hooliganism and local protests still provide the administration, justice and police with identifiable targets to act on. If they can detect the structure behind the seemingly isolated incidents, the authorities can try to intervene. More difficult are the shifting constellations of facts and perceptions that only after a period of time are associated with public order and the maintenance of it. These are fundamental issues concerning the existing social and political order that sooner or later affect the public order. Disturbances are then just a momentary manifestation of tensions within society.

### 9.3.10 VARIATION IN PUBLIC DISORDER

There are clear trends and fluctuations in the frequency and intensity of different categories of public disorder in the Netherlands. The patterns and trends can be determined by a historical analysis of public disturbances in the Netherlands.

#### *Less ideological public disorder disturbances*

Because of the de-ideologicalization in the Netherlands there has been a decline in public order disturbances with a clear ideological character. In the fifties, public disturbances were limited to demonstrations, marches, riots and sometimes riots with a political-ideological commitment. In the sixties demonstrations and other disturbances were mainly aimed at the foreign policy of the national government and the authorities as exponents of an old system. The new emancipation strategy was associated with public order disturbances. In the seventies the focus moved to new areas of social protest: environmental, nuclear. The eighties were dominated by squatter riots. In the nineties, this type of disturbances became less frequent. The focus has shifted to public disorder as a secondary product to developments and events in different domains: disturbances in margins of the drug scene in large and medium-sized cities, violence at mass events, collective violence as a result of global or political events, violence as incidental to serious congestion on public transport nodes, violence both outside and inside restaurants. Football hooliganism and violence has remained from the seventies on constantly important.

#### *Not only interests but also values*

Behind social trends such as differentiation and intensifying, a strong involvement of members of social groups coexists. The existence of different social groups and their future orientation is not only based on the defence of their material interests but also their shared values. These values are reflected in the history of a cherished lifestyle and in a strong bond with a particular territory or location. These groups also have their own way of looking at the inner and outer

world and have an almost self-evident willingness to defend their lifestyle against well-meaning attempts from outside the group to innovate and reform.

If the government with well-intentioned policies try to persuade such groups to enlighten themselves, this can lead to conflicts in which communication is very difficult. Such conflicts can best be characterized as value conflicts. They do not lend themselves to a cool, rational approach in which the contradictions are resolved through a compromise: averaging between that which is requested and that which is offered. Value conflicts may be much more difficult because the government and the group in question do not understand each other well. The government does a real bid, the group feels threatened in its existence. In the past this has occurred in the Netherlands during confrontations with caravan dwellers, barge masters, fishermen and some categories of farmers.

#### *From collective disturbances to nuisance*

For a long time the maintenance of public order consisted of prevention, preparation and reactions towards more or less large-scale disturbances. The prototype of the average disorder was whether or not it was prepared as a collective action, where the use of violence against the government could not be excluded. The significance of such disturbances was related to criteria such as the number of participants, the number of injuries and possibly the number of detainees. Gradually alongside this picture of the public order another perspective emerges: the progressive effect of more or less anomic micro situations in the public domain. Nuisance, the visible presence of beggars and the public use of drugs in corridors, porches and doorways in the public domain disrupt public order in a creeping, diffuse way. Maintaining public order here requires other strategies and resources than the approaches used in the concentrated, time-defined disorder.

#### *Transnationalization of disturbances*

So far mainly transnationalization of serious and organized crime occurred. It is time the transnationalization of public order issues receives more attention in the Netherlands. We note a number of developments in this respect:

- \* demonstrations and disturbances in the context of long-distance nationalism, for example on the part of Kurds, Turks, Iraqis and Iranians;
- \* increased pressure on social order and public order problems caused by the concentrated presence of asylum seekers and other immigrants;
- \* international events where the demonstrators are not familiar with the typical Dutch permissive context;
- \* controversial international conferences involving a fixed pattern of protest manifests
- \* disturbances focused on the presence and activities of international organizations in the Netherlands. Special importance is given to a number of international law institutions in The Hague.

*Relocation of the arena*

In the Netherlands we have less traditional public disturbances such as squatters' riots, large-scale demonstrations or football riots. The arena of public disorder moves to other arenas. Large-scale events such as pop concerts, dance festivals and others are more and more the terrain of possible disturbances. But the weekly entertainment spots are increasingly becoming a place where public order disturbances are likely. This does not mean that in the future the old forms of public disorder will no longer occur but it does mean that all concerned should take into account a shift in the arena of possible public disorders.

**9.4 Closure**

Public order and public order enforcement in the Netherlands has changed dramatically in recent years. There are now other forms of public disorder, so other forms of public order maintenance become necessary. This dynamic character of the development of public order will continue to occur in the future. This means that the police, municipality, Public Prosecutor Services and others will have to adjust to constant changes in public order.





## 10 Terrorism and counter-terrorism

### 10.1 Introduction

“Terrorism is an anxiety-inspiring method of repeated violent action, applied by clandestine or semi-clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby – in contrast to assassination – the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat- and violence-based communication processes between terrorist (organisation), (imperiled) victims, and main targets are used to manipulate the main target (audience(s)), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion or propaganda is primarily sought.”<sup>1</sup>

This long definition reflects the complexity of terrorism. In this chapter I will give an overview of the most important patterns in terrorism and combating terrorism in general, and in particular with regard to the Netherlands. This chapter is mainly based on the Dutch volume *Terrorism* edited by Muller, Rosenthal and De Wijk (2008) and other personal publications such as Muller, Spaaij and Ruitenberg (2004), Rosenthal, Muller and Ruitenberg (2005 and 2006), Rosenthal and Muller (2007) and Muller (2011C).<sup>2</sup>

### 10.2 Modern terrorism

In addition to traditional terrorism, a modern form of terrorism can be distinguished also in the Netherlands. The question arises whether this concerns a really modern form or a new stage in the development of traditional terrorism. To make the distinction, I use the term “modern terrorism” in order to emphasize that some of the characteristics of present-day terrorism are different from those of the traditional kind of terrorism that we have grown used to. By now, several examples of modern terrorism may be given:

- the World Trade Center Bombing in 1993

<sup>1</sup> Schmid and Jongman 1988, p. 28.

<sup>2</sup> An earlier version of this chapter is published as Muller 2011C.

- the Oklahoma City Bombing in 1995 (Michel and Herbeck 2001)
- Attacks and violence in Algeria, starting in 1992
- Attacks on the Paris underground, 1995-1996
- Car bomb at US military headquarters, Dahrhan, Saudi Arabia, 1996
- the Sarin attacks by the Aum sect, Japan, 1995
- Attacks on US embassies in Africa, Nairobi and Dar es Salaam, 1998
- Attacks on the World Trade Center and the Pentagon, 2001
- Attack on USS Cole, 2002
- Attack in Bali, Indonesia, 2002
- Attacks in Iraq, 2003-2005
- Attack in Casablanca, 2003
- Attacks on synagogues and English targets in Istanbul, 2003
- Attack on trains in Madrid, 2004
- The murder of van Gogh, Amsterdam, 2004
- Attacks on the underground and a bus, London, 2005
- Terroristic attack in Sharm el-Sheikh, 2005
- Attacks Mumbai, 2008
- Attack metro Moscow, 2010.

The terrorist organisations behind these attacks are for the most part inspired by religious extremism (Muslim fundamentalism and sects, *inter alia*). It concerns terrorist organisations such as Al Qaida the Algerian GIA and the Aum sect. The distinction between old and new terrorism is based on a broad range of modern scientific literature, but by now there are some people who wonder how new modern terrorism really is. It is striking that most of this literature was written before the 2001 attacks. Modern terrorism has the following crucial characteristics.<sup>3</sup>

#### A. Diffuse purposes

First, the underlying purposes of these modern terrorists are diffuse. Modern terrorists do not aim to release specific prisoners or target their actions at a specific country. Modern terrorists hardly ever make specific demands; instead, they concentrate on general demands.

In any case, they do not have a specific purpose that can be defined in geographical terms. Usually, it is not about economic or social deprivation either. The underlying motives for these modern terrorists are based on a fundamentalist attitude towards life, which involves the pursuit of living and letting live according to the strict regimes of mostly religious laws and rules. According to these terrorists, this kind of fundamentalism – some call it extremism – should

<sup>3</sup> See in more depth Muller 2011 C. See also Bjorgo and Horgan 2009; Crelinsten 2009; Lynch, Macdonald and Williams 2007; Posner 2007; Wilkinson 2007A; Wilkinson 2007B.

dominate not only the private lives of citizens but should also constitute the basis for the manner in which the government and the state are organised. According to this kind of fundamentalism, there should be hardly any separation of religion and state. Their main ambition is to abolish this separation and achieve integration to the maximum extent possible. The reasoning behind their actions is that if the leaders in Western democracies are found to be unable to safeguard the security of their own citizens, these citizens will be more sensitive to alternative forms of government.

#### *B. Worldwide fear*

The primary purpose of modern terrorists is to arouse worldwide fear for the purpose of creating room for fundamental changes within states. Modern terrorists interpret the word terror as literally as possible. By means of far-reaching actions, these modern terrorists attempt to instil fear among the population, all over the world if possible. Fear arises where attacks are launched at unexpected moments, in unexpected places and against unsuspecting persons, involving significant loss of life and injuries. This means that everybody may fall victim to this kind of terror. Arousing fear is also one of the characteristics of traditional terrorism. The arousal of fear was targeted mainly at a specific population group or authorities, however, or at specific moments. Not everybody needed to be afraid.

Unmistakably, modern terrorists have succeeded in doing so by means of the attacks on 11 September for a substantial period of time. Many citizens adjusted their behaviour to the potential threat posed by modern terrorism, certainly in the first few months after the attacks. Viewed from the terrorists' perspective, the attacks were tremendously successful.

Repeating terrorist actions several times is crucially important to the arousal of fear. If the terrorist organisation succeeds in carrying out awe-inspiring attacks several times in a row, the population will become aware that the state is no longer able to safeguard its security. Repeating terrorist actions is conducive to the escalation of fear.

#### *C. As many victims as possible*

Third, these modern terrorists are not afraid, apparently, to arbitrarily kill as many people as possible. The sarin in Japan's subway and the attacks on the WTC show that the terrorists' primary purpose was to create as many victims as possible. The earlier scientific literature was based on a rationalist approach of the terrorists. It was argued that terrorists did not seek to create more victims than they considered necessary for achieving their political purposes. That was inspired by the idea that the "old" terrorists acted on the basis of a logical end-means plan that could be interpreted from the perspective of Western rational thinking. Such Western rational arguments do not seem to apply to modern terrorism to the same degree.

The fact that it concerns mainly religiously inspired groups is an important factor in this.

Modern terrorists deliberately seek their own deaths. Modern terrorists do not attach any value to their own lives in carrying out terrorist attacks. Martyrdom constitutes the highest honour for modern terrorists. This is reinforced by a deep belief in a better life after death. This kind of terrorism was hardly ever taken into consideration until recently. Below, I will deal with the possibility and willingness to use biological, chemical and nuclear weapons. The methods used by modern terrorists are also targeted at a large number of victims. The execution of a major attack satisfies this criterion. Hostage-takings, kidnappings, ICT disruptions and other terrorist methods are less frequently used by modern terrorists.

#### *D. Arbitrary victims*

Fourth, there is hardly any relationship between the victims and the political purpose pursued. The old terrorist organizations preferred to target their actions primarily at representatives of the country at which the terrorist actions were aimed. For example, the IRA targeted its actions mainly at British soldiers. In modern terrorism, there is no such relationship most of the time. Indeed, it cannot even be ruled out that the terrorists will spread death and destruction among their own population and people of their own kind.

As is shown by the terrorist “detour” defined above, terrorism does not entail a relationship between the victims and the purpose of the terrorists. Even so, terrorism analyses in recent years show that the existence of this relationship was preferred, because it had two advantages for the terrorist organisations. First, it could be used to indicate in unmistakable terms that the actions related to a specific purpose and were usually targeted at representatives – soldiers and politicians most of the time – of a specific country or region. Second, it could be used to allay the fears among the population, as there was an action targeted at specific persons having a specific background. Others did not need to worry in principle, unless they happened to be in the wrong place at the time the attack was carried out. In this way, these terrorist organisations tried to legitimise their actions and mobilise support among the population as well.

#### *E. Religious fundamentalism*

Fifth, modern terrorism seems to be rooted in religious fundamentalism. Even though many concentrate on Muslim fundamentalism, it is quite conceivable that other forms of religious fundamentalism, such as sects, may play a role in terrorism. For those used to combating rationally oriented terrorism, it is hard to readjust their minds to terrorism rooted on values, such as religious fundamentalism or extremism. There is a certain logic in the preparations and actions of religious zealots that is not always recognised in the Western world. Even so, religious fundamentalists perceive their own rationality in their actions.

In addition, modern terrorists are made to feel that they are fighting for religious honour, where the sacrifice of their own lives constitutes the highest honour. Consequently, modern terrorists are much less afraid of being killed during a terrorist action, which greatly enhances the terrorists' possibilities and means. As far as "old" terrorism was concerned, both the terrorists and the anti-terrorist operatives assumed that the terrorists wanted to do everything possible to prevent being killed during the actions. This assumption is one of the foundations underlying the negotiations during terrorist incidents. If this basic assumption is disputed because terrorists seek to sacrifice their own lives, the police, the judicial authorities and the intelligence services are forced to change the various forms of anti-terrorist activity fundamentally.

#### *F. International*

Modern terrorism is primarily internationally oriented. There is no terrorism that is linked with a specific country. The sphere of activity of modern terrorism is the whole world. In this context, modern terrorists use the freedoms that have by now become customary in international traffic. They travel a great deal and there are close ties between cells in various countries. There is intensive communication, through the Internet or otherwise, between the representatives of the modern terrorists in the various countries. Modern terrorists set up home as law-abiding citizens in several countries. They live and work according to the relevant country's traditions and culture. They are hardly recognisable by the police, the judicial authorities and the intelligence and security services.

The foregoing applies even to the traditional forms of terrorism, even if the latter generally had a home base in a country. This is no longer true of modern terrorism, even if an exception must be made for the countries sponsoring terrorism. Countries such as Afghanistan (during the Taliban regime) and Iran are known countries that support terrorist organisations. Even so, specific terrorist groups are also active in other countries.

#### *G. Fluid network*

In modern terrorism, there is usually no strictly managed organisation where all the orders are given from a single centre. Even though this was not true of the more traditional forms of terrorism, it is even less so in the case of modern terrorism. Sometimes modern terrorists are hardly aware that they are part of a larger organisation. There is a fluid network where many core groups take decisions on the execution of terrorist actions. There are hardly any specific organisation cells. A broad range of people and resources available in several countries are deployed. Many of them are instructed to perform only a part of the entire terrorist action.

In addition, it is impossible to define an unambiguous profile of the modern terrorist. The perpetrators of the attacks mentioned above differ from each other according to every conceivable criterion, except that they share a certain degree of

religious extremism. This is why the literature refers to amateur terrorists who have not received any specific training but who are deployed for the purpose of performing a terrorist action. Due to the extended international communication possibilities, it is easier to find and have access to supporters than in the past.

#### *H. Fluid financing*

Terrorist financing is also fluid. It is very difficult to pinpoint and sort out the manner in which terrorism is financed. Certainly in the case of complex fluid networks, it is hardly possible to identify the person or persons financing terrorist actions and the manner in which these are financed. Moreover, modern terrorism is increasingly interwoven with organised crime. In that case, modern terrorism is financed by committing criminal offences in an organized setting (drug trafficking, women trafficking, raids, counterfeiting etc.).

Traditional terrorism received state assistance more often, as a result of which it was easier to tackle specific states. The financing of modern forms of terrorism is based on individuals and non-transparent financial constructions to a far greater extent. This means that it is much more difficult for those involved in counter-terrorism to concentrate on specific states or groups.

#### *I. Time*

The final characteristic feature of modern terrorism is time. The time horizon of modern terrorists is nothing like the one customarily used in the Western world. Modern terrorists have time on their side, whereas the anti-terrorist forces always feel the pressure of time. A terrorist attack that takes years to prepare does not pose a problem for modern terrorists. They infiltrate into regular societies without anybody noticing and function as ordinary citizens within these societies. They are hardly recognisable by the police and the intelligence services.

The long-term perspective of modern terrorists creates a problem for the anti-terrorist effort. The fight against terrorism focuses on results in the short term. The practice of tapping and observing people without any concrete suspicion for years is not in line with the legal systems in the Western world. Being aware of an ever present threat for years is dysfunctional.

### **10.3 Terrorism in the Netherlands**

Compared with the intensity and structure of terrorist problems in neighbouring countries, the Netherlands has known little terrorism over the past twenty-five years.<sup>4</sup> As a consequence, academic research on terrorism and counter-terrorism in the Netherlands has been rare, and only a few Dutch scholars have written on

4 See Muller 1994; Eikelenboom 2007; De Graaf 2009.

this topic, although the Dutch Intelligence and Security Service (*Algemene Inlichtingen en Veiligheidsdienst*, AIVD) has written extensively about terrorism and counter-terrorism in its published annual reports. Only after the establishment of the National Coordinator Counter-terrorism in 2004 did the public and scientific attention for terrorism and counterterrorism increase. The Dutch lack of experience with massive terrorist attacks has brought with it one disadvantage: terrorism and counter-terrorism have been low on the political and judicial agenda. However, the terrorist attacks on the United States of 11 September 2001 – an even more the attacks in London and Madrid – have caused a major change in counter-terrorism policy. The murders of Forutyn and Van Gogh in the Netherlands in 2002 and 2004 contributed to the rising attention of terrorism and counter-terrorism.

In the Netherlands, several indigenous groups have committed acts of terrorism: the *Rode Jeugd*, South Moluccan youngsters and RARA. The intensity of such attacks has been mild compared with other European countries, although the attacks by South Moluccan activists were serious enough.

A number of terrorist incidents have occurred in the last 25 years and some of these have had a major impact on the decision-making process. The unprecedented hijacking of trains in the 1970s by South Moluccan activists was crucial in this respect and a few remarks about the position of people of South Moluccan descent in the Netherlands are in order here. In colonial times, many male South Moluccans, the vast majority of them Christians, served in the Dutch Indian army. During the Japanese occupation of the Dutch East Indies at the time of the Second World War, they remained loyal to the defeated colonial power. After the Japanese were defeated and the Dutch East Indies gained independence to become Indonesia, many South Moluccans longed for an independent state of their own. The Dutch government sympathized but was unable to lend a helping hand. Over 10,000 South Moluccans immigrated to the Netherlands in the early 1950s, without giving up their hopes of a return. Partially as a consequence of this hope, they did not, as a community, integrate easily into Dutch society. At various intervals, South Moluccan activists have reminded a number of governments of their nationalist ambitions. More recently, they have also demanded (diplomatic) interventions to quell violence between Christians and radical Muslims in their homeland. Sometimes their actions took a violent character, as was notably the case with the hijacking of trains in the 1970s.

The Dutch government was utterly taken by surprise by the hijackings. It needed several years to develop a consistent policy on counter-terrorism. In addition to repressive methods to counter terrorism by South Moluccan activists, the Dutch government also developed a preventive and social strategy to integrate the South Moluccans in Dutch society. The mix of repressive methods and preventive and social measures succeeded in ending serious terrorist attacks,



but in the meantime the South Moluccan actions came closest to any form of structural terrorism that the Netherlands has known.

Incidental terrorist actions have occurred in the Netherlands relatively frequently, which means that anti-terrorist forces have been faced with ever-changing opponents. Preventing and controlling incidents calls for a different approach than countering a more structural threat. Dutch policies have so far largely been adapted to incident control. The following overview reflects Dutch experiences with terrorism.

#### *Dutch Political Terrorism*

- *Occupation of the Indonesian residence in Wassenaar by 33 South Moluccans, 1970.* The perpetrators, second-generation South Moluccans, wanted an independent state and blamed the Dutch government for not living up to earlier promises of help in that endeavour. Impatient with the “polite” way of their elders, they turned to terrorism. A police officer died during the hostage-taking in Wassenaar. The crisis ended when the occupiers surrendered.
- *Hijacking of a train at Wijster and hostage-taking in the Indonesian embassy in Amsterdam by South Moluccans 1975.* South Moluccans captured and held a train and the Indonesian embassy. The Dutch government was again fully taken by surprise. The terrorists killed three hostages. The government started intensive negotiations and used South Moluccan mediators. After two weeks the hostage-takers surrendered. This form of negotiation became known as the “Dutch approach”. The goal of this long negotiation was to exhaust the hostage-takers.
- *Hijacking of a train at De Punt and hostage-taking in a school in Bovensmilde by South Moluccans, 1977.* South Moluccan terrorists again hijacked a train. At the same time they occupied a primary school. The hostage-taking of such young children particularly upset the Dutch government and public. The government tried again, but in vain, to end these crises through negotiations. After three weeks, it ordered a massive attack on the train and the school. Six terrorists and two hostages died in the process. The children had been freed some weeks earlier because of the outbreak of a contagious disease among them.
- *Hostage-taking in the Provincial Government in Assen by South Moluccans, 1978.* The last major terrorist attack by South Moluccans was directed against the Provincial Government Building in Assen, in the province of Drente. One hostage died. The newly installed government refused to negotiate, and after only 36 hours, it sent in the Marines. Another hostage died a month later because of wounds inflicted by the terrorists. No more major terrorist attacks were subsequently mounted by South Moluccans, although every few years there are riots concerning young South Moluccans. At Christmas 2000 South Moluccans were responsible for some smaller bomb attacks in the

Netherlands. Dutch intelligence is still watching potential activists within the Moluccan community.

- *Bomb attack by RARA, 1987 and 1991.* RARA (*Radikale Antiracistische Aktie*; RARA is also Dutch for “guess who?”) was a small group that attacked multinationals with bombs. They wanted to protest against apartheid in South Africa. The attacks in 1985-1987 were concentrated on the Dutch multinational Makro, which owns a number of supermarkets in the Netherlands and in South Africa. Although there was substantial material damage, no casualties were involved in the bomb attacks. In 1991, RARA attacked the house of the State Secretary of Justice and the Ministry of the Interior to influence Dutch policy on refugees and asylum-seekers. Although some persons were arrested, no one was convicted, and after 1991 there were no more attacks.
- *Assassination of Pim Fortuyn*  
On 6 May 2002, the populist politician Pim Fortuyn was killed at the Media Park in Hilversum. Fortuyn was a successful leader of a new political party that was expected to gain a major victory at the Dutch national elections on 13 May 2002 (and in effect did gain such a victory). In some polls, Fortuyn was mentioned as the next Prime Minister of the Netherlands.
- *Assassination of Theo van Gogh*  
On 2 November 2004, Mohammed Bouyeri murdered filmmaker Theo Van Gogh in Amsterdam. Van Gogh made controversial films in which he did not back off from far reaching criticism on the Islam. Mohammad Bouyeri pinned a letter to the chest of Van Gogh in which he announced further death threats to other Dutch politicians, most importantly Ayaan Hirschi Ali. It was the first politically motivated murder in centuries in the Netherlands. There was still major political and public turmoil months after the assassination. Islam fundamentalists terrorism had reached Holland. A young Moroccan man could be so radicalized that he was able to commit such a horrifying murder.

#### International Terrorism in the Netherlands

- *Hostage-taking in the French embassy in The Hague by the Japanese Red Army, 1974.* This was the first time that the Netherlands faced major international terrorism. Almost all the demands of the terrorists were met, including the freeing of a member of the Japanese Red Army detained in France. The terrorists fled with their friend and a substantial sum of money, but they did free their hostages unharmed. Still, this is a case of flawed counter-terrorism because no one was arrested and the government, which was taken utterly by surprise, complied with all the demands.

- *Killing of the British ambassador by the IRA, 1979.* The IRA killed the British ambassador, Sir Richard Sykes, in The Hague. This killing led to more sophisticated security concerning diplomats, and was the first time after the Second World War that a politically motivated killing of a specific prominent foreign individual had occurred in the Netherlands.
- *Bomb attacks on British soldiers carried out by the IRA, 1988.* The IRA attacked six British soldiers in two separate attacks. Three soldiers were killed; the others seriously wounded. The IRA claimed the attacks one day later. They demanded that the British leave Northern Ireland. There was no explanation of why they attacked in the Netherlands. There were no arrests.
- *Killing of two Australian tourists by the IRA, 1990.* In 1990 the IRA shot two Australian tourists in the marketplace in Roermond, mistaking them for British soldiers. The IRA later acknowledged responsibility and apologized. No arrests were made.
- *Bomb attacks on Spanish buildings by the ETA, 1989-1990.* The ETA bombed Spanish buildings and authorities in the Netherlands. There were no casualties but material damage was considerable. The bombing of the residence of the Spanish ambassador in The Hague forced the Dutch government to intensify security measures. There were no arrests.
- *Hostage-taking in the Greek residence by Kurdish separatists, The Hague, 1999.* In reaction to the capture of the Kurdish leader Öcalan, Kurdish activists occupied the Greek residence and some people in it were taken hostage. Occupations and demonstrations simultaneously occurred all over Europe. The action in The Hague was spontaneous. The authorities were once more taken by surprise. Most of the hostage-takers were arrested and convicted.
- *Bomb threat on tunnels in Amsterdam and Rotterdam, 2001.* Two weeks after the 11 September 2001 attacks in the United States, authorities received a sophisticated looking threatening note indicating that some tunnels in Amsterdam and Rotterdam would be bombed. Although none of the authorities thought that the threat would be implemented, all possible security measures were taken. Dutch citizens were confronted with a massive military force. No attack occurred. Nobody was arrested.

Some patterns can be discerned in this overview. Until the late 1960s, the Netherlands was spared any terrorist acts, but in the 1970s, various hostage situations and occupations occurred. In many cases, terrorists tried to pressurize the authorities by threatening human lives. In the 1980s, criminal kidnappings replaced politically motivated hostage-taking, and during that period no prominent terrorist movements were active in the Netherlands. The end of the 1980s and the early 1990s saw mostly bomb scares and bombings, raids on army barracks, arson and other types of violence, focused on objects rather than on persons. Those hit-and-run actions called for different measures from the

authorities than hostage situations, in which the location of the terrorist was known and remained fixed: only when the terrorist could be arrested at the crime scene were some convictions proved possible; in all other cases, the Dutch police and Public Prosecutors were not successful.

In the new century terrorism in the Netherlands was motivated by fundamentalist Muslim groups. The murder of Theo van Gogh was the most prominent fundamentalist Muslim terrorist attack in the Netherlands. The murder of Van Gogh was associated with a group of young radical Islam fundamentalists which the AIVD named the Hofstad group. The following description of the Hofstad Group is cited from a study of the EU Research Group Transnational Terrorism, Security and the Rule of Law.<sup>5</sup>

“The Hofstadgroep is an Islamist terrorist organization of nine young Muslims in the Netherlands. The name ‘Hofstad’ was originally the codename the Dutch General Intelligence and Security Service (Algemene Inlichtingen en Veiligheidsdienst, hereafter: AIVD) used for the group, which leaked to the media in 2003. The name refers to a popular name for the city of The Hague, where some members had been active. The group was influenced by the ideology of Takfir wal Hijra, a violent Islamist organization.

One of the Hofstadgroep’s key members is Mohammed Bouyeri, the man responsible for the murder of the controversial Dutch writer and filmmaker Theo van Gogh in November 2004. On the morning of Tuesday November 2, 2004, he was brutally assassinated while biking to work unsuspectingly. Bouyeri was convicted in July 2005 for planning and carrying out the attack. Thirteen other suspects were taken into custody on various charges in connection with the murder. Nine of the fourteen suspects were convicted for membership of a terrorist organization and are currently serving various sentences ranging from one year to life imprisonment.

As a diffuse and self generated autonomous network, the Hofstadgroep was not organized in a ‘top down’ command structure although they did have spiritual support and guidance from outside the country. It did, however, not appear to come from any international groups. The methods and tactics of the Hofstadgroep are difficult to distinguish because the ‘group’ lacked a coherent strategy and most of the crimes were committed by individual members. The murder of Van Gogh was deliberately aimed at one specific individual whom the perpetrator – but also his sympathizing friends – regarded as an ‘enemy of Islam’. Samir Azzouz, who had participated in the network of the Hofstadgroep but who himself was never convicted for membership, is believed to have made plans to attack several institutions. Nonetheless, in general one could argue that the main aim was that of a classical terrorist organization: to take lives, or threaten to do so, with the aim of bringing about social change or influencing political decision making. Despite its rowdy operations and inability to gather the right ingredients for making explosives, the Hofstadgroep was initially always regarded as a terrorist

<sup>5</sup> I was chairman of the consortium of research institutes which conducted this research, [www.transnationalterrorism.eu](http://www.transnationalterrorism.eu), see here for notes and literature on the Hofstadgroup.

organization. It was also labeled as such by the court that convicted nine individuals for their membership. However, these persons were cleared of these charges in 2008 when the high court (Dutch: *Gerechtshof*) argued that the Hofstadgroep could not be regarded as a terrorist organization. (high court verdict, 2008). In February 2008, the public prosecutor appealed to the supreme court (Dutch: *Hoge Raad*) to revoke this verdict.”<sup>6</sup>

#### 10.4 Counter-terrorism in the Netherlands

In this paragraph I will make a distinction between the period before 9-11 and the period afterwards. The authorities in the Netherlands tried to maintain the abovementioned Dutch approach: a balanced combination between preventive and repressive counter terrorism measures. It is not surprising that during and after terrorist attacks in Europe or in Holland a call for a more repressive counter-terrorism in the Netherlands increased.<sup>7</sup>

##### 10.4.1 BEFORE 9-11

In the period before 9-11 the Netherlands was hardly confronted with terrorism in comparison with neighbouring countries. To understand the actual counter terrorism in the Netherlands it is important to look into the history of counter-terrorism. Discussions about counter-terrorism policy before 9-11 were concentrated on a few topics.

##### *Legal order versus public order*

The central question in the discussion of powers before, during and after terrorist incidents is the relationship between the administrative and the judicial authorities (the Minister of Justice, the Procurator General and the Public Prosecutor versus the Minister of the Interior, the Queen’s Commissioner and the Mayor). In the Proceedings of Parliament this choice is defended with the following argumentation: “Since these are completed (and still continuing) criminal offences, the Minister of Justice is the first responsible authority in such cases. He must decide in close consultation with the Prime Minister, also Minister of General Affairs, and the Ministers of Foreign Affairs and Defence, and possibly with other officials involved. If a terrorist act occurs, however, interests related to public order are also at stake, and other measures of an administrative nature will also be required. It is important that judicial measures and measures related to public order are carefully harmonized.”<sup>8</sup>

<sup>6</sup> <http://www.transnationalterrorism.eu/tekst/publications/Hofstadgroep.pdf>

<sup>7</sup> See also Oosterom Staples 2008.

<sup>8</sup> *Bijlagen Handelingen Tweede Kamer 1972-1973, 12000, VI, no. 11* [author’s translation].

In the early 1970s, the government primarily defined terrorism as a violation of legal order. That placed the responsibility for response to a terrorist act with the judicial authorities. The then Minister of Foreign Affairs wholeheartedly agreed with that construction, which made it possible to apply the hierarchical power structure of the Public Prosecution Service. Combating terrorism primarily became a matter for the national government, in particular the judicial bodies, and in 2002 this was still the basic structure for counter-terrorism in the Netherlands. To date, the responsibility for combating terrorism in the Netherlands has primarily been vested in the Minister of Justice. Over the years, however, it has become customary for judicial and administrative authorities to consult on the measures to be taken. The interaction between maintaining public and legal order during terrorist incidents was acknowledged. In the case of a terrorist attack, the Chief Prosecutor of the region has the lead. All his/her decisions have to be coordinated with the Mayor and Chief of Police involved. The coordination of security measures rests with the Department of the Interior. The *National Handbook of Crisis Management* is the main procedure for decisions.

#### *Legislation and regulations*

There were no specific Acts in the Netherlands that govern procedures during terrorist incidents. There were merely (confidential) ministerial circulars and policy rules. Policy in the Netherlands was based on a 1972 letter from the then Prime Minister Biesheuvel to the Dutch Second Chamber.

Separate circulars and scenarios have been developed for various types of terrorist incidents. In 1976, a more general scheme for combating terrorism was drawn up: the Order on the Investigation of Organized Crime of a Terrorist Nature. In 1981 the Cooperation Scheme for the Control of Terrorist Crimes replaced that Order, and introduced the National Public Prosecutor for the Combat of Terrorism, who is in charge of coordinating investigations in the event of an imminent terrorist incident. The scheme is an attempt at regulating the exchange of information between the police, the Public Prosecution Department and the administrative bodies. The Special Investigation Department of the Central Criminal Investigation Department plays a pivotal part in this. In the 1990s a national structure for crisis management was formed, but it is not certain whether all forms of terrorism have been included in this structure.

The Netherlands has no special emergency legislation for terrorist incidents. The Civil Authorities Extraordinary Powers Act or the War Act, both of which grant far-reaching powers to political/administrative persons in authority, do not apply to terrorist acts (Schmid 1992). The action taken during terrorist incidents is usually based on powers that exist in regular criminal law. Special (criminal) legislation for terrorist incidents was set aside as a form of “overacting”.

The use of force in terrorist situations must meet the same conditions as the use of force in more regular situations. The police and the military must be extremely reticent, and instructions to use force must be described as accurately as possible. Even during terrorist incidents, operational units must observe the applicable instructions on the use of force. Subsidiarity and proportionality requirements are essential here.

*Anti-terrorist units*

In the Netherlands, combating terrorism is primarily a police task. The Dutch government has acknowledged the risk of an entirely separate anti-terrorist organization becoming isolated from the rest of society, and it has set up various Special Support Teams, in which the police and the military are handed specialist anti-terrorist tasks in addition to their regular work. These units can assist in the handling of terrorist incidents and they operate under the responsibility of the judicial authorities during a terrorist incident.

*Figure: Anti-terrorist Support Teams*

|        |                                                                         |
|--------|-------------------------------------------------------------------------|
| BBE-K  | Armed Forces Special Support Team: marksmen                             |
| BBE-RP | National Police Force Special Support Team: marksmen                    |
| BBE-M  | Marine Special Support Team: close combat fighting                      |
| BSB    | Military Police Special Security Assignments Brigade: personal security |
| AEKL   | Royal Army Cordoning Unit: cordoning the place of the incident          |

There is a thin line between the use of regular police services and these special units. The special (BBE) units can be engaged only with the approval of the Minister of Justice. Arrest Squads of the municipal and national police forces can be engaged with the approval of the Chief Public Prosecutor. In urgent cases, the authorities in charge can be informed of the use of Arrest Squads afterwards.

10.4.2 AFTER 9-11

Many measures were taken in the Netherlands after 11 September 2001 to intensify the combat of terrorism. It must be noted again that combating terrorism had little priority in the Netherlands before that date. Due to the infrequent occurrence of terrorist acts in the Netherlands, it had become the work of a few specialists. Executives and officers paid more attention to contingencies and breaches of the peace than to the threat of terrorism. This changed immediately after 11 September 2001, both with the authorities and with the general public. In late 2001, the Dutch considered international terrorism to be the most important threat.

In response to the assaults of 11 September 2001, the Dutch government formulated a detailed Anti-terrorist and Safety Plan of Action.<sup>9</sup> The Plan of Action comprises a wide range of measures to be taken by almost all of the relevant organizations in the Netherlands. The Dutch parliament is kept informed of the progress of these activities by means of regular progress reports. The government has concentrated on the combination of measures after the attacks in the United States. The Dutch government has formulated policy targets on a wide range of subjects such as combating radicalization, international collaboration, the creation of effective tools and structures, the implementation of security measures, preparations for (the consequences of) a possible attack, and communication and information.

#### *Threat assessment*

In early 2001, the Dutch Security Service published a report containing a risk assessment of terrorist threats to the Netherlands for the early twenty-first century. It is the first substantiated terrorist threat assessment to be published by the secret service, for whom assessing these risks is a professional priority.<sup>10</sup> “The threat of terrorism to the Netherlands is largely a derivative of the international threat”, the Service stated, naming American, British and Turkish interests or properties as examples for potential terrorism targets. “The internationalization of terrorism has meant that violent political attacks may in principle take place anywhere in the world, including the Netherlands.” Still, the Service pointed at various relevant factors that may arguably draw special attention to the Netherlands from terrorists looking for targets: the Netherlands’ strategic geographical position, with major nodes of international traffic (Rotterdam harbour; Schiphol airport); its position as host to a number of international courts (e.g. the Lockerbie trials; the Yugoslav tribunal) and offices charged with the verification of international agreements (such as the Organization for the Prohibition of Chemical Weapons, OPCW); and its role as host country to large groups of immigrants from various parts of the world. These immigrants may import violent conflicts from their homelands into their new country of residence (such as conflicts between Turks and Kurds, or among Afghans of opposite persuasions, etc). Finally, the Service mentioned the reputation of the Netherlands as a tolerant society, where many religious and political opinions, even outlandish ones, are generally respected and the judicial system is known for its mild punishments. In some cases it is likely that terrorists have deliberately opted to come to the Netherlands – either illegally or through the asylum policy – to hide here and to support their home organizations.

<sup>9</sup> *Bijlagen Handelingen Tweede Kamer 2001-2002*, no. 27925.

<sup>10</sup> National Security Service, *Terrorism at the Start of the Twenty-first Century: Current Threat and Positioning of the Netherlands National Security Service (BVD)* (Leidschendam: Binnenlandse Veiligheidsdienst, 2001), p. 15 and 16.



The secret service continued by noting that, unlike the situation in most neighbouring countries, homegrown terrorism did not presently play a significant role in the Netherlands. It did not exclude the risk of “a certain continuum between failed integration, increased segregation, growing polarization and violent confrontation”, but concluded that there were no indications that such a process would result in terrorism. In conclusion, the report stated: “there is no great risk that society will be confronted with terrorist attacks on Dutch territory in the near future. Nevertheless, there are many risk factors that require that the country be on its guard”. It also noted that the Netherlands arguably is attractive to terrorists as a place to stay unnoticed and prepare attacks elsewhere.

This was a threat assessment in 2001 before the attacks in the United States. Nowadays the Dutch government makes regular threat assessments which give an overview of the terrorist threat to the Netherlands. To give an impression of the current threat I cite the threat perception by the National Coordinator Counter-terrorism of March 2012:

“The threat level in the Netherlands remains ‘limited’. This means that the risk of a terrorist attack is currently low, but that it cannot be eliminated altogether. This is written in the Terrorist Threat Assessment Netherlands that Minister Opstelten of Security and Justice sent to the Lower House of Parliament today. The limited threat is posed in particular by the manifestation of international jihadism. It is a cause for concern that young persons in Western countries travel to jihadist areas of conflict in order to train there or take part in the struggle. They may constitute a threat after their return. The recent attacks in Southern France against soldiers and a Jewish school, perpetrated after DTN28 was drawn up, demonstrate this.

*Jihadists weakened but not beaten*

The strength of the core of al-Qaeda has been mitigated since the death of several of its leaders. The various regional organisations affiliated with the core of al-Qaeda seem currently primarily focused on both the armed and political struggle in parts of Africa and Asia, but the outcome of this struggle is still extremely uncertain. It is possible that, in some countries, jihadist will take advantage of the political and military developments. This may pose a higher threat to Western countries in the short to medium term. As evidenced by an additional number of arrests in Europe and North America, the jihadist ideology has proved to be still able to inspire individuals and groups to come into action in and against Western countries.

*The Netherlands still a prominent target of jihadists*

The Netherlands and its citizens are still legitimate targets for jihadists as a result of alleged discrimination of Muslims and perceived blasphemy against Islam and the Prophet Muhammad in our country, and Dutch participation in military or civil missions in Islamic countries. In December 2011, threats were placed on the Internet against Amsterdam and against Dutch diplomatic representations. Dutch citizens and

Dutch interests abroad run a higher risk of being confronted with terrorism than persons and objects in the Netherlands itself. This was evident just recently, for instance, from two Dutch tourists in Mali and the Philippines.

*Concerns about jihad travellers*

Jihadist networks in the Netherlands have focused more on the jihad abroad than in the Netherlands. It is worrisome that the number of jihadists travelling abroad to a jihadist conflict area has increased in the past few years, and that they succeeded in reaching their destination more often. They have the knowledge and contacts required to organise new jihad trips from the Netherlands. Upon return to the Netherlands, they are able to enthusiastically urge others to make jihad trips and to assist them in this respect. They are also able to use their acquired battle experience for an attack in the Netherlands. There is currently no concrete evidence of plans for such an attack.

*Vigilance demanded for other forms of terrorist violence*

It is necessary to stay alert to other forms of ideologically motivated violence. After the violent acts committed by Breivik in Norway, other European incidents also showed that this threat is more than a theoretical assumption. In Florence, a sympathiser of neo-fascism shot five Senegalese citizens, of whom two were killed. In Germany, it became known that ten unsolved murders, in particular on Turkish migrants in the period 2000-2006, had been committed by the Nationalsozialistischer Untergrund, a far-right group. An anarchist group – this time from Italy – sent letter bombs again to targets in Rome, Frankfurt, and Paris.

*Radical groups in the Netherlands usually remain within the limits of the law; resistance continues to be high*

Radical groups In the Netherlands continued to act mainly within the limits of the law. In the last quarter of 2011, various incidents were reported involving Islamist radicals and left-wing, right-wing, animal rights and asylum rights extremists, but those incidents were not very grave in nature. The authorities did find weapons in the possession of members of a North Holland right-wing extremist group. The weapons had probably been meant for sale, not for an attack. The resistance against violence based on ideological motives remains as high as ever in the Netherlands.”<sup>11</sup>

*Legislation*<sup>12</sup>

Even though the Dutch had some experience with terrorism in the form of bombings, train hostage takings and other activities listed as terrorism, the Dutch government in that period deliberately chose not to adopt specific terrorist

<sup>11</sup> www.nctv.nl

<sup>12</sup> This paragraph is cited from the before mentioned project Transnational Terrorism, Security and the Rule of Law, The ethical justness of European counterterrorism measures, <http://www.transnationalterrorism.eu/tekst/publications/WP2%20Del%202.pdf>. See also Van der Woude 2010; Hirsch Ballin 2012.

legislation. The current position of the Dutch government is that the present terrorist threat is substantially different from the old form of terrorism and thus calls for a definition, or at least a classification, of terrorism and terrorist crimes in the Dutch Penal Code. The manner in which the Dutch government has engaged in this is by introducing four notions related to the concept of terrorism: namely terrorist offences, terrorist intent, cooperation and preparation. The category of terrorist consists of three sorts of offences:

- grave criminal offences committed with terrorist intent;
- other criminal offences that when committed with terrorist intent call for a higher penalty;
- newly introduced offences committed with terrorist intent.

The category of terrorist intent also consists of three sub-categories, mentioned in Article 83a of the Dutch Penal Code:

- to cause serious fear amongst the population (or part thereof);
- to force a certain action by a government or international organization;
- to destroy or disrupt the political, constitutional, economic, or social structures of a country or international organization.

All of these articles were incorporated in the Dutch Penal Code on the 10th of August, 2004 and have already led to jurisprudence on various occasions, for example through the trial of the murderer of Theo van Gogh, but also through the trying of other suspected terrorists and organizations. Much discussion has taken place since on whether the definition as adopted now is not broader than intended in the Framework Decision, or whether the difference between motive and intent has been sufficiently defined. Most of the trials executed have led to disputable outcomes, such as court rulings mostly citing problems concerning the evidence. Lastly, despite certain actions by animal rights activists “forcing” certain businesses to establish offices elsewhere (the businesses themselves cited that they were forced to move!) the government has quite explicitly ruled that such actions would not constitute terrorism.

Noted, the backbone of Dutch policy towards terrorism was that of negotiation, which came to be known as the “Dutch Approach”. However, the violent endings of the train and school hijackings in 1977, and the occupation of the Provincial Government Office in 1979, marked the end of the famous Dutch approach. This approach did lead to a great area of expertise concerning hostage negotiation, the experiences of the negotiators were used by Scotland Yard to devise their famous hostage negotiation course.

After the attacks of 9/11 Dutch lawmakers contemplated about the possibility of anti terrorist legislation. The *Wet terroristische misdrijven*, the first example of Dutch counter-terrorism legislation ever, was implemented in the summer of 2004. One of the highly debated issues between Dutch members of parliament

was that of using information gathered by the AIVD in a court of law. As noted, the AIVD expanded and was forced to adapt to a new role, but many opposed the secret nature of evidence provided by the AIVD in a court of law. The new law permits the prosecutor to use information gathered by the AIVD, but the Judges must be able to verify that the evidence has been gathered in a proper fashion. Additionally, a decree by the AIVD can serve as evidence in an eviction case of a terror suspect.

The Dutch government has initiated a number of measures, created to confront the entirety of the terrorist threat. The first of these measures is Criminal Law, Art 83 WvSr, which outlines the criteria of the *terrorist objective*. Related to this are Articles 80 and 96 WvSr, in which the *motive* is established. Other Dutch counter-terrorism measures include preliminary investigation regarding data retention measures, control orders, intentional disturbance measures, custody guidelines for terrorist suspects, witness guidelines, and anti-terrorist financing measures.

In a self-assessment of the Dutch government on the coun-terrorism police in the years 2001-2010 the following conclusions were drawn about the legislation.

“In the context of this evaluation, researchers from Radboud University Nijmegen looked at six counterterrorism measures specifically from the perspective of fundamental rights. These measures concern the Crimes of Terrorism Act (*Wet terroristische misdrijven*), Training for Terrorism Act (*Wet training voor terrorisme*), the Investigation and Prosecution of Crimes of Terrorism Act (*Wet opsporing en vervolging terroristische misdrijven*), the Protected Witnesses Act (*Wet afgeschermd getuigen*), the National Security (Administrative Measures) Bill (*Wetsvoorstel bestuurlijke maatregelen nationale veiligheid*), and the person-specific approach. So far, for a variety of reasons, the Dutch courts have barely, if at all, examined these measures for compatibility with fundamental rights. None of the measures have yet been examined for compatibility with any of the provisions of the European Convention on Human Rights (ECHR), or the additional protocols to the European Court of Human Rights. The first conclusion that can be drawn from an analysis of the measures based on the general case law of the European Court of Human Rights is that none of the Acts or other types of measures that were analysed, when considered as a whole, are actually in violation of the ECHR. That said, elements of such measures could be considered insufficiently foreseeable if they were examined by the European Court of Human Rights. The European Court of Human Rights would very likely regard the application of the aforementioned measures as serving a legitimate purpose. At the same time, there is a risk that the application of these measures in certain circumstances might be in violation of the Convention, as their application in individual cases could be deemed not to be ‘necessary in a democratic society’ within the meaning of the ECHR. The analysis based on the case law of the European Court of Human Rights does not lead to the conclusion that the legal basis, the provisions or the application of any of the measures definitely implies the

violation of fundamental rights. However, with respect to some measures, it was argued that there is a latent risk of the convention being violated, particularly as regards specific elements of measures, and depending on the application of the measures and the relevant circumstances in individual cases.”<sup>13</sup>

#### *National Coordinator Counter-terrorism*

Apart from laws, the Dutch government created an interdepartmental entity. The Ministry of Justice and the Ministry of the Interior provided the infrastructure for the National Coordinator Counter-terrorism (NCTb) in 2004. The growing call for more cooperation between national and regional bodies in the struggle to prevent a terrorist attack on Dutch soil pressed the government to seek coordination in this complicated mission. The NCTb is there to coordinate the approximately twenty organizations that are involved in counter-terrorism. The main tasks for the NCTb are described in the Order of the Minister of Justice and the Minister of the Interior and Kingdom Relations in June 2005:

- “The NCTb collates, analyses and integrates the information provided by intelligence services, the scientific community, government and other sources so that integrated analyses, threat assessments and other knowledge products pertaining to terrorism and radicalisation can be generated and used as resources for developing policy.
- The NCTb develops clear, cohesive and unambiguous counterterrorism policy, including a strategic and international policy.
- The NCTb coordinates the collaborative efforts of the organisations involved in counter-terrorism. This applies to both systematic and incidental cooperation.
- The NCTb is responsible for managing the communication strategy, which includes providing information about terrorism to the public and the media.
- The NCTb is responsible for maintaining, implementing and modernising the national surveillance and protection system.
- The NCTb is responsible for the civil aviation security.
- The NCTb monitors the civil aviation security. Civil aviation security and the surveillance and protection system are not concerned exclusively with terrorist threats but also with other sources of danger such as violent demonstrators and confused individuals.

The NCTb operates in an administratively and politically complex environment. Political coordination is primarily the domain of the Cabinet Committee on National Security (RNV), under the direction of the prime minister. The ministers most closely involved in matters relating to counterterrorism and the intelligence

<sup>13</sup> NCTB, Counterterrorism measures in the Netherlands in the First Decade of the 21st Century, 2011, [www.nctv.nl](http://www.nctv.nl), p. 9-10.

and security services consult in this committee. RNV meetings are prepared by the Joint Counterterrorism Committee (GCT), whose members represent the ministries and government agencies involved in combating terrorism.”<sup>14</sup> By the establishment of the NCTb the Minister of Justice was made responsible for counter-terrorism. This was in line with the historical division of power between the Ministry of Justice and the Ministry of the Interior. In case of an actual terrorist attack both ministers have to work closely together because the Minister of the Interior is politically responsible for disaster and crisis management. This division of authority can create a conflict of responsibilities.

The NCTB organises a Counter-terrorism Alert System. “The Counter-terrorism Alert System is an alert system for the government and economic sectors. It warns the operational services and economic sectors in the event of a heightened threat. This enables prior measures to be taken quickly in order to minimise the risk of terrorist attacks in the Netherlands and to limit the potential impact of terrorist acts. The system is aimed solely at professionals who may have to deal with a terrorist threat. Fourteen economic sectors are currently connected to the Counter-terrorism Alert System. The National Coordinator Counter-terrorism is responsible for the implementation, operation and overall management of the system. The Counter-terrorism Alert System has four levels of alert: the standard level and three levels of ascending threat (low, moderate and high). Each level comes with its own set of security measures in each economic sector. As the level of alert rises, the security measures become more stringent and more far-reaching. The agencies concerned are free to vary their measures according to the nature of the threat. They can take additional measures if necessary. The basic principle is to specifically tailor the measures to meet the threat at hand.”<sup>15</sup>

The NCTB organized a self assessment of the counter-terrorism policy in the Netherlands in the period 2001-2010. The NCTB, Cabinet and Parliament did not feel the need for an independent evaluation of the anti-terrorism policies. They concluded as follows:

The attacks of 11 September 2001 and the subsequent threat of global terrorism have had major consequences for the whole world in many areas. Terrorism was one of the greatest threats to our internal and external security in the first decade of the new millennium. It is therefore encouraging that the number of radicals in our country who are prepared to use violence to achieve political or religious goals has gradually decreased.

This evaluation – a self-reflection on the part of the government – takes a look at the measures that have been taken to counter terrorism. With regard to the counter-terrorism measures that are available, the conclusion of this evaluation is that probable

<sup>14</sup> Website NCTV.

<sup>15</sup> Website NCTV.

cause existed whenever a measure was introduced or amended, and that the measures were developed and applied in a consistent manner. To a significant extent, this is due to the fact that the Netherlands has a strong wish to learn how this phenomenon, which is relatively new in this country, can be tackled in the best way, i.e. with the emphasis on preventing terrorism by means of taking proportionate, effective action and making use of legitimate means. Based on the large number of studies and evaluations conducted in the past nine years, and the way in which the lessons learned have been adopted, it is evident that there is an ability to learn in the area of counterterrorism. Both central and local authorities and executive agencies have learned from various individual evaluations and legal opinions, and have applied these lessons.

Counter-terrorism measures in the Netherlands are characterised by the fact that they are tailor-made, in terms of both their development and their application. There are still only a limited number of specific measures that were taken exclusively in the context of counter-terrorism. The system of measures has been specifically tailored to the goal that needs to be achieved, giving due consideration to the safeguarding of fundamental rights. It should be noted in this context that such consideration should be given on an ongoing basis to individual measures as well as to the system of measures as a whole.”<sup>16</sup>

In 2011 the Dutch government published a new counter-terrorism strategy for the coming years 2011-2015:

“When formulating and executing the counter-terrorism policy, the Dutch government uses the following points of departure:

- *The policy must be oriented towards preventing deliberate infringements of our state organisations, the democratic legal order and our vital infrastructure.*
- *Counter-terrorism and security measures must have a legal basis to safeguard the legal protection of the citizen.*
- *Counter-terrorism measures must be proportional, and as much as possible in balance with the free exercise of basic rights.*
- *The cross-border nature of terrorism makes international cooperation essential.*
- *The nature of the threat determines the approach. This applies at strategic, tactical and operational level.*
- *The unpredictable and changeable nature of the threat and the large number of parties involved mean a central coordination structure is essential.*
- *The procurement of information and intelligence forms the foundation for the ability to prevent (support for) terrorism.*
- *Effective counter-terrorism demands a rapid and coordinated translation of intelligence into policy and implementation.*
- *An optimal link is necessary between the international, national and local levels.*

<sup>16</sup> NCTB, Counterterrorism measures in the Netherlands in the First Decade of the 21st Century, 2011, [www.nctv.nl](http://www.nctv.nl), p. 8.

The Dutch commitment in the field of counter-terrorism has been developed on the basis of these points of departure into the following five components:

#### *1. Procure*

The collection of information and intelligence in the Netherlands and abroad forms the basis for making thorough threat analyses. The more concrete information is available, the more insight there is into the nature and extent of the threat and the more possibilities there are for specific intervention to prevent terrorism and identify processes of radicalisation in time. The increasing unpredictability and changeability of the threat, in combination with an increasingly strong international, national and local interrelation, mean that good information and intelligence gathering is essential. This has been the focus of significant investment in recent years. The focus in the coming years will primarily be on promoting and facilitating the timely exchange of relevant information between the multitude of organisations and bodies which each have their own pieces of information. These facets need to be improved in order to ensure the timely identification and response to new security risks which result from modern technology, the dramatic increase in travel movements and the risks represented by radicalising individuals. The importance of the proactive procurement of intelligence in and about foreign countries is increasing due to such security risks and this will be encouraged.

#### *2. Prevent*

In line with international developments, the focus of the Dutch government is increasingly on the prevention of violent extremism. Non-violent forms of extremism and orthodoxy are not by definition worrisome from the security point of view. In order to prevent violent extremism among individuals or groups and (ultimately) to counteract terrorist crimes, intervention will have to take place as soon as possible. The current terrorist threat comes primarily from jihadists. The strategy is aimed at measures designed to hinder the carrying out of an attack (terrorism as a deed) and measures intended to prevent or avert violent extremism (terrorism as a phenomenon). In order to tackle violent extremism (and ultimately terrorism) effectively, the Dutch government is also going to work simultaneously on increasing the resilience on the demand side of certain groups in society, on undermining the supply of the terrorists' narrative, reducing the breeding ground for terrorism and investing in deradicalisation. International cooperation is essential in these areas as well.

#### *3. Protect*

The state, the legal order and the (vital elements of) Dutch society must be optimally protected against concrete and virtual terrorist threats or attacks. This demands thorough and realistic preparation. The point of departure is that it has to be possible for the threatened person, the object, the sector or the event to function with as little interference as possible. The degree and the extent of the protection are aimed at making threats and risks manageable, rather than eliminating them completely. This implies the protection of people, objects, events and services which make up the core of our state and legal order. Examples are the Royal Family, politicians, members of the judiciary, government buildings, embassies and international organisations. Steps also need to be



taken to prevent vital sectors such as the energy sector, the financial sector, the telecommunications sector and the civil aviation sector from being negatively affected. Lastly, attention is being paid to the protection of the national harbours and airports. The strategy as regards this element is aimed primarily at the optimal combination of technological protection resources, the timely identification of the security risks of new technological developments and the realisation of the importance of the human factor as regards encouraging security ('security awareness'). The strategy is also aimed at reducing the possibilities of illegally acquiring or manufacturing chemical substances and homemade explosives, and the timely identification of radicalised individuals.

#### *4. Prepare*

Dutch society must be aware of the possibility of an attack and must be prepared for the (possible) consequences. Thorough crisis decision-making after an attack, effective assistance, practice sessions with crisis situation simulation training, and optimal communication with the general public are therefore essential as well. Public and crisis communication will have to be aimed at specific target groups in the international and national arena to prevent or reduce any new discrepancies. In addition, the coordination structure must be organised in such a way that intelligence, policy, implementation and assistance can be linked rapidly and effectively.

#### *5. Prosecute*

The detection, prosecution and sentencing of people who are suspected of committing terrorist crimes, or of preparing them, are essential elements of counter-terrorism. National legislation – criminal, administrative and civil – has been expanded in recent years as a result. Given the sometimes quite considerable violations of the privacy of citizens in particular, these specific measures are to be monitored and evaluated periodically. The increased international dimension of the terrorist threat means international cooperation between the police and judiciary is of crucial importance. Bilateral and multilateral cooperation with other countries and multilateral organisations will be encouraged.”<sup>17</sup>

#### *Radicalization and deradicalization*

The Committee of Experts on Terrorism from the Council of Europe gives a clear overview of the Dutch counteracting radicalism and radicalisation. “Dutch policy on radicalisation aims at counteracting and containing tendencies towards violent radicalisation and the recruitment of people for terrorist ends. This policy consists of two pillars: preventive measures and repressive measures. First and foremost, the Dutch approach to radicalisation seeks to eliminate potential breeding grounds, so as to stop people from coming into contact with radical ideas. The package of measures designed to achieve this is meant to give people a greater stake in Dutch society and increase social cohesion. The goal is to create the conditions for social participation and ensure that even vulnerable groups enjoy society's benefits. (...) The most virulent expressions of radicalism can be combated through

<sup>17</sup> National Counter Terrorism Strategy 2011, p. 8-1, [www.nctv.nl](http://www.nctv.nl).

criminal law. They include acts of violence, threats of violence, incitement to violence, hate speech, as well as a number of other acts committed with the intent of bringing about social upheaval. Once people are convicted, additional penalties can also be imposed that will hinder them from carrying on with their activities. One such penalty is stripping them of the right to vote or be elected. The effectiveness of using criminal law against radicalism depends to a great extent on mastering the grey area between behaviour that would constitute a criminal offence and behaviour that is merely socially unacceptable. In the Netherlands two strategies can be put to work in this grey area: tackling hotbeds of radicalisation and conducting person-specific interventions.”<sup>18</sup>

#### *Special Units*<sup>19</sup>

In the Netherlands, it is possible to deploy special police and military units in certain cases, for instance to bring an end to lifethreatening situations or arrest armed and dangerous suspects or persons suspected of terrorism or serious violence. The old system of special units is reorganised. One aspect of the review of the system is the establishment of the new Special Intervention Service (DSI), a coordinating unit at the National Police Services Agency (KLPD). This service has general operational responsibility for deployment of special units in cases of terrorism or serious violence and other special circumstances, with the exception of cases in which the Arrest and Support Units (see below) operate independently. Such deployment takes place under the authority of the Public Prosecution Service. The new system consists of four types of special unit:

- *Arrest and Support Units* (AOEs) within the regional police forces or the Koninklijke Marechaussee (KMar). The task of these units is to bring an end to ordinary criminal situations by arresting armed and dangerous persons, regardless of any links with terrorist activities. These units deal with situations that, in view of their nature and scale, are not expected to escalate to the level of violence dealt with by the Intervention Unit or the Marine Intervention Unit.
- *Intervention Unit (formerly the Special Support Team/Rapid Intervention Unit)*. The Intervention Unit specialises in smallscale, high-risk operations involving explosives or heavy firearms, suspects prepared to sacrifice themselves and CBRN threats. The Intervention Unit is composed of personnel from the military (2/3 of the unit) and the police (1/3). This enables it to operate flexibly.
- *Marine Intervention Unit (formerly the Marine Special Support Team)*. The specialisations of the Marine Intervention Unit include offensives and large-scale or complex operations, as well as situations in which the Intervention Unit has insufficient capacity.

<sup>18</sup> Council of Europe, Committee of Experts on Terrorism, Profiles on Counter Terrorist Capacity, November 2008.

<sup>19</sup> Website NCTV.

- *Expertise & Operational Support Unit (UE&OO)*. This DSI unit includes sharpshooters specialised in long-distance precision shooting. It replaces the part-time police and military Special Support Units (BBE-Politie and BEE-Krijgsmacht), which consisted of sharpshooters. The unit includes equal numbers of military and police sharpshooters.

## 10.5 Trends in terrorism and counter-terrorism

To end this chapter I give an overview of the trends in terrorism and counter-terrorism in the Netherlands.<sup>20</sup>

### A. *Terrorism is here to stay*

Terrorism is of ancient origin and not just of our day, even if many authors create the impression that the 2001 attacks signalled a new stage: terrorism has been around for a very long time. There is not a single indication that terrorism will ever fully disappear. Modern societies such as The Netherlands should learn to live with the fact that terrorism exists and will continue to exist. The underlying causes of terrorism are so diverse and numerous that it is an illusion to expect that terrorism could disappear. There will always be reasons for terrorism. Not all conflicts between and within population groups in the world will be solved. Some groups may feel forced or called upon to draw attention to their cause by means of terrorism. Further, the recruitment of young people or specific population groups or religions for the terrorists' cause shows that the terrorism risk will be here to stay. The future terrorists are now being recruited and trained.

A certain degree of control of terrorism is the best we can achieve. We must prevent terrorists from holding society in the grip of terror. In all likelihood, terrorism will come in waves, as a result of which it will seem quiet in certain periods, while in other periods terrorist actions will be intensified. These waves may create the impression that some parts of terrorism have been solved; history shows, however, that new forms of terrorism will continue to emerge.

Open democratic societies such as The Netherlands create freedoms for citizens and organisations, but terrorists can use these freedoms as well. These freedoms allow terrorists to prepare their actions in the best possible manner without being disturbed by legal or other restrictions. The obvious response – curtailing these freedoms – will be practicable only to a limited extent, as the curtailment of these freedoms will also curtail the freedoms of the regular citizens. In a totalitarian state there will not be a great deal of terrorism, but only few people will consider that to be an attractive prospect. One of the costs of a democratic society is that a certain degree of terrorism will be inevitable.

<sup>20</sup> Based on and cited from Muller 2008B.

### *B. Greater NBC risk*

Many writers concentrate on the NBC risk relating to terrorism. The relevant literature warns against the risk that terrorists will use NBC weapons in terrorist attacks in the coming years. Until now there has never been any successful major nuclear, biological or chemical attack anywhere in the world. In many instances, preparations for such attacks were made and some failed attacks were carried out. There is a rich diversity of literature on the risk of NBC weapons. Some authors are confirmed believers: they are convinced that terrorists will use NBC weapons before long. Others take a more cautious and balanced position and point out the problems and difficulties surrounding the use of NBC weapons – which equally apply to terrorist organisations.

It is difficult to assess to what extent there is a realistic risk. It is clear that if a properly organised terrorist group has a certain level of expertise and sufficient financial resources and is also able to avoid being traced by the police and the judicial authorities for a substantial period, it may be in a position to develop NBC weapons. It should be borne in mind, however, that it is by no means as easy to produce these weapons as is often claimed. A terrorist cannot just put together an atomic bomb. The production of chemical and biological weapons is less complicated but a certain level of expertise and organisation is essential for that as well.

The fight against NBC terrorism is focussed on the preliminary stages, and aims to prevent terrorists from being able to acquire such weapons in the first place. In the United States in particular – but in Europe, too, by now – preparations have been made for such NBC attacks. These preparations are limited by definition. Democratic societies cannot really be protected against such attacks and there are no adequate response strategies for cushioning any NBC attack. Moreover, at the end of the day, many people cannot imagine the consequences of any NBC attack for a society. Present-day administrators are not used to dealing with a threat of this magnitude.

### *C. Terrorists use both new and old weapons*

The relevant scientific literature has paid a great deal of attention, relatively speaking, to new weapons such as cyber terrorism, net wars and NBC weapons. There seems to be numberless possibilities of terrorist disruptions of computer networks and the Internet. In view of the current security measures, it is difficult, however, to achieve disruptions serious enough to cause long-term damage or long-term disruption to society. With these weapons, it is far more difficult to kindle fear than with the older category of weapons. For the most part, modern terrorism methods based on complex information technology are still in their infancy. As with NBC weapons, these forms of terrorism require a certain degree of organisation and expertise that many terrorist groups do not have.

In the relevant literature, it is rightly pointed out that modern weapons are not the only ones that deserve attention, because the creative use of old weapons can cause as much damage and fear. For a long time, hijacking of aircraft seemed a weapon that the anti-terrorist campaign was able to tackle adequately. The use of hijacked aircraft as bombs is a new variant. Similarly, there are many other possible uses of the old weapons (hijacking of aircraft or other means of transport, hostage-takings, bombings, suicide attacks, kidnappings, and liquidations). The anti-terrorist operatives will be forced to prepare for the various combinations that are conceivable.

In this context, too, the dominant trend is that attention will have to be paid to the risk of modern forms of terrorism, where the disruption of information technology is of crucial importance, but that the old weapons should not be forgotten. After the attacks in the United States, it was found that the relevant agencies had primarily prepared for the worst case scenarios of large-scale NBC attacks or information technology disruptions. Few had considered the possibility of the attacks that actually took place.

#### *D. Closer ties between crime and terrorism*

There are ever-closer ties between terrorism and organised crime. In recent years, research has shown that nearly all larger terrorist groups use organised crime for raising funds that are necessary to carry out terrorist actions. Terrorist groups use all conceivable forms of organised crime, but drug trafficking is their favourite activity. Terrorist groups are forced to raise funds in this way, because state sponsorship for terrorism is steadily declining, among other reasons. Even population groups that were prepared to support specific terrorist groups in the past are apparently becoming more and more risk-averse. Terrorist groups are increasingly facing financial problems. Only once in a blue moon are they able to find a sponsor wealthy enough to allow a terrorist group to be operated without the need to resort to criminal activities for a longer period.

Even though there are also definition problems in relation to organised crime, the actions of the police, the judicial authorities and the intelligence services are much better regulated. In many countries, the extent and intensity of organised crime is greater than the threat of terrorism. Since terrorism and organised crime are becoming ever more closely connected, the powers and investigation methods applicable to organised crime can be used more and more frequently. Accordingly, the interdependence of terrorism and crime means that anti-terrorist operators have a broader range of instruments at their disposal. For example, terrorists may be tracked down through investigations into organised crime and vice versa. Even so, very different people and motives are involved and this is why it necessary to keep making a distinction between terrorism and organised crime.

At the same time, the fight against terrorism is becoming more complex, because all kinds of new organisations, which usually do not play any part, are involved in the anti-terrorism campaign on the side of the police, the judicial authorities and intelligence services. This may lead to miscellaneous bureaucratic conflicts and discussions about the possibilities and limitations in respect of the exchange of information and information ownership. In the future, the various anti-terrorist operatives and organised crime fighters will have to collaborate more closely, which will entail some organisational adjustments and, perhaps, some problems, because the fight against terrorism and the fight against organised crime are not regulated by the same persons and organisations. It is also expected that there will be problems in relation to the uniformisation of the anti-terrorist measures to be adopted by the various countries.

#### *E. No real solution*

There is not one right solution for terrorism. Even though many books and articles claim that they have found the right solution, it is an illusion to think that there is such a thing as a perfect remedy. Terrorism is too complex for simple solutions. Anti-terrorist experts are under immense pressure by politicians and the media to define a good solution, however, which is apt to result in new anti-terrorist methods being presented during debates as the universal remedy against the form of terrorism prevailing at that time. A comprehensive remedy does not exist, however, and it is not very sensible to try and find it. A complex and ancient problem such as terrorism can be solved only by means of complex and long-term measures.

Accordingly, administrators must be cautioned against consultants and professionals propagating one or just a few solutions. The scientific literature also reveals quite clearly that the advocates of specific solutions to certain problems are often guided by an interest other than the solution of the problem. The political context of both the definition of terrorism and the solution of terrorism is complex. There are but few interest-free solutions in this world. In this context, administrators and scientists alike should always be aware of questions such as the following: Who perceives and defines the threat and in what manner? What kind of threat relating to what kind of terrorism is meant?

What is useful and necessary to achieve a responsible combination of different measures against terrorism? Every country should examine what combination of preventive and repressive measures is desirable and possible considering the specific terrorist threat and the existing form of government and security system. Some measures may work well in a specific context, whereas others will not work well. It is important to provide tailor-made anti-terrorist arrangements for each individual country and sometimes even for each individual region. In that context, the administrators may choose from among a wide range of options, whereby scientists could make a contribution to answering the question of when a specific

measure is useful on the basis of solid comparative country studies. This will necessitate administrators to develop an integral strategy on the basis of a solid risk analysis in relation to the terrorist threat in their own country, which defines the measures relevant to that country and that specific terrorist threat that are to be taken.

*F. Increasing role of the intelligence*

Time and again, intelligence is mentioned as one of the most important methods and instruments against terrorism. Good intelligence can prevent a great deal of terrorism. A good information position means not only that terrorist actions can be prevented but also that adequate repressive measures can be taken. If anti-terrorist operatives possess adequate information, they are better able to track down and prosecute terrorists. The advantages of a good information position are clear and are endorsed by everybody. Time and time again, it is found, however, that the gathering, processing and exchange of information is so complicated that it is exceedingly difficult to actually achieve this information position. We expect that these intelligence function problems will only increase in the years ahead. The quantity of data is steadily increasing and relevant information is more and more difficult to amass. In addition, it will be more and more difficult to gather information in view of the diffuse nature of modern terrorist organisations. This means that reinforcing the intelligence function should not be expected to work miracles.

The amount of intelligence will only increase in the coming years. Intelligence services, but also all kinds of police services and private security organisations, are being given more and more powers to gather and process information. It will be difficult to select the relevant information from the immense flow of data that results from this process. It will be more and more difficult to make sound threat and risk analyses on the basis of this jumble of data. In addition, the exchange of information between the relevant organisations will become increasingly difficult as a result of the intensification of the powers. Not only the formal privacy rules are responsible for that, but also the well-known problems organisations have in exchanging their information. Time and time again, it will be found after a terrorist action that there was a warning somewhere in one of the relevant organisations but that the warning was not acted upon as a result of the overload of information or as a result of the late or absent exchange of information. Finally, the problems relating to the cooperation between intelligence services are a factor. Even though this cooperation has been intensified – certainly after 11 September 2001 – an intelligence service will by definition exercise restraint in exchanging information. For this reason, it is important to strike a sound balance between national interests and the corresponding restraint in the exchange of information and international (and national) interests that, by contrast, require the exchange of information. In order to achieve this, not only changes in structure and powers but also cultural changes are needed within the intelligence services.

*G. The advantages of the financial strategy against terrorism should not be exaggerated*

Politicians and anti-terrorist operatives alike have pinned their hopes on the financial side of the fight against terrorism. "Follow the money" is a well-known expression in the counter-terrorism world. Many of the measures taken after 11 September 2001 are intended to trace and seize the assets of terrorist organisations. New acts aimed at better monitoring of financial transactions were introduced. Any person who carries out financial transactions with a potentially terrorist organisation is suspect. The underlying idea behind the "follow the money" strategy is that, if terrorist organisations are actually hit in the heart of their financial dealings, they will not be able to launch new attacks. New initiatives have been taken not only at the national but also at the international level.

However, experiences gained in the fight against organised crime show that combating the financial side of terrorism is not as successful as was previously thought. These measures did not turn out to be very effective. The anti-terrorist operatives managed to gain an insight into terrorist financing operations and intervene therein only to a limited degree. The complexity of the current financial structures and possibilities is such that adequate tracing and disruption will become increasingly difficult. In tackling this problem, the anti-terrorist operatives can learn important lessons from the tracing and disruption of financial dealings in the case of organised crime.

This does not mean that tackling terrorists and terrorist organisations financially is not a good idea. But for the foregoing reason, it seems to be sensible only if it is incorporated into a broader and comprehensive strategy. In combination with other preventive and repressive measures, interfering in the financial dealings of terrorist organisations can certainly be highly important in a specific context.

*H. The increasing role of the media and communication*

The role of the media in relation to both terrorism and terrorist combating is becoming more and more important. For the media, terrorist actions constitute a very important subject – "Breaking News". Partly because of the current complexity, diversity and competition among the media, reports on terrorist actions are among the highlights. All media want to be on the spot. All media want to have their own approach. All aspects of a terrorist attack are highlighted 24 hours a day. This is exactly what the terrorists want. The media constitute the most important instrument for voicing their message. This is why terrorists use the media intensively to communicate their message and pictures and to achieve the changes they desire. In the end, media management and communication are a crucial part of every terrorist attack.

Attempts to restrict the freedom of the media during or after terrorist actions by requesting or demanding that they should refrain from broadcasting certain pictures or information are effective to a limited extent only. In view of the current international nature of the media, it is difficult to make such arrangements.



Anti-terrorist operatives are increasingly aware that they can also use the media for combating terrorism. The media may show terrorists as freedom fighters or as intruders who take away the freedom of ordinary citizens. If a government and/or the anti-terrorist operatives succeed in portraying terrorists as enemies, they will create more room for their own measures. This is why an adequate anti-terrorist strategy also focuses on a good and well-thought-out communication strategy, not only vis-à-vis the terrorists but also vis-à-vis the citizens and other countries. The manner in which this communication strategy is to be shaped highly depends on the specific type of terrorism involved and a country's customs and practices. Here too, it is important to differentiate according to country, type of terrorism and constitutional and security system.

#### *1. Problems of internationalisation*

Both terrorism and combating terrorism are becoming more and more international. This sounds easy but it is in fact quite complicated. Terrorist groups are less and less concerned with the borders between countries. Several terrorist groups increasingly cooperate with each other in all kinds of manners, both within and outside the borders of countries. But countries still observe these rules in terms of powers and responsibilities in relation to the fight against terrorism. Even though the possibilities of international counter-terrorism are gradually increasing, the international flexibility of modern terrorists is greater than the flexibility of international cooperation between the countries. This means that the anti-terrorist operatives are lagging behind the terrorists in this respect.

As a result of the endless debate on the different definitions of terrorism, it is still difficult to enact international anti-terrorist legislation. Even though the number of treaties is on the increase, it continues to be difficult to arrive at an unequivocal division of powers and responsibilities. This is certainly the case with respect to the exchange and use of information. The laborious efforts in the EU and, above all, the UN show how difficult it is to make sensible and effective arrangements on the international fight against terrorism.

The international problems are not just of a legal nature. Many borders must also be opened when it comes to international organisational cooperation. In every country, several organisations are involved in one way or another in combating terrorism, and from an international perspective, there is an even greater number of organisations. Each of these organisations has its own "borders". These borders should disappear for the purpose of cooperating in the exchange of information. As things stand, many anti-terrorist operatives are wasting time "crossing" these organisational borders. Even though terrorism and anti-terrorist activity are becoming increasingly international, the fight against terrorism continues to be beset by border problems.

## 10.6 Final remarks

The Netherlands has had its own experience with terrorism. While in the Netherlands no large mass terror attacks have occurred, the political murders of Fortuyn and Van Gogh increased the terrorism awareness of the public. The attacks on September 11, 2001 and the attacks in the Netherlands have created a fully-fledged counter-terrorism policy in the Netherlands. The trends in terrorism and counter-terrorism show that in the coming years the Netherlands will need this counterterrorism policy.



## II Defence and armed forces

### 11.1 Introduction

The armed forces in the Netherlands constitute the government's ultimate "power to use the sword" and the state's instrument for retaining its power. This power to use the sword means that the armed forces have a wide range of instruments at their disposal to protect state interests. Article 98 of the Dutch Constitution mentions this task explicitly: "To protect its interests, the State shall maintain Armed Forces..." It is not the police but the army, the air force and the navy that hold the true monopoly on violence in the fundamental sense of the word. The police have far-reaching powers with respect to the citizens' freedoms. Apart from the influence they may exert on the state's citizens or the citizens of other states, the armed forces have the personnel and equipment to protect the state itself. Primarily, the armed forces are designed to protect the independence and the territorial integrity of the Netherlands. Even though this aspect receded into the background after 1989, this is and continues to be the core element of the institute of the armed forces.

The government shall have supreme authority over the armed forces. In the Dutch context, it is inconceivable that the military will somehow attempt to use force for the purpose of changing the organization of the Dutch state. In other countries this idea is not as farfetched. The primacy of politics is firmly established in the Netherlands. Nevertheless, the Dutch armed forces have a wide range of instruments and manpower at their disposal, which allow them to exert considerable influence on the functioning of the state. In this chapter, I will show the crucial aspects of the armed forces as a power to use the sword on the basis of a few propositions. This chapter will not seek to define the task and operation of the armed forces in a specifically legal sense, but to give a descriptive analysis of these aspects. The armed forces are a determining part of the state. The operation of the armed forces and the manner in which the state and the government of the day deal with the armed forces reveal a great deal about the level of democracy in a country. The message of the propositions is that a mature democratic state under the rule of law continues to need strong and well-embedded armed forces.<sup>1</sup>

1 See also Collins 2007; Williams 2008.

In this chapter I describe the organization and functioning of the armed forces in the Netherlands. This chapter is mainly based on the volume *Armed Forces* edited by Muller, Straink, Bosch and De Jong (2004).

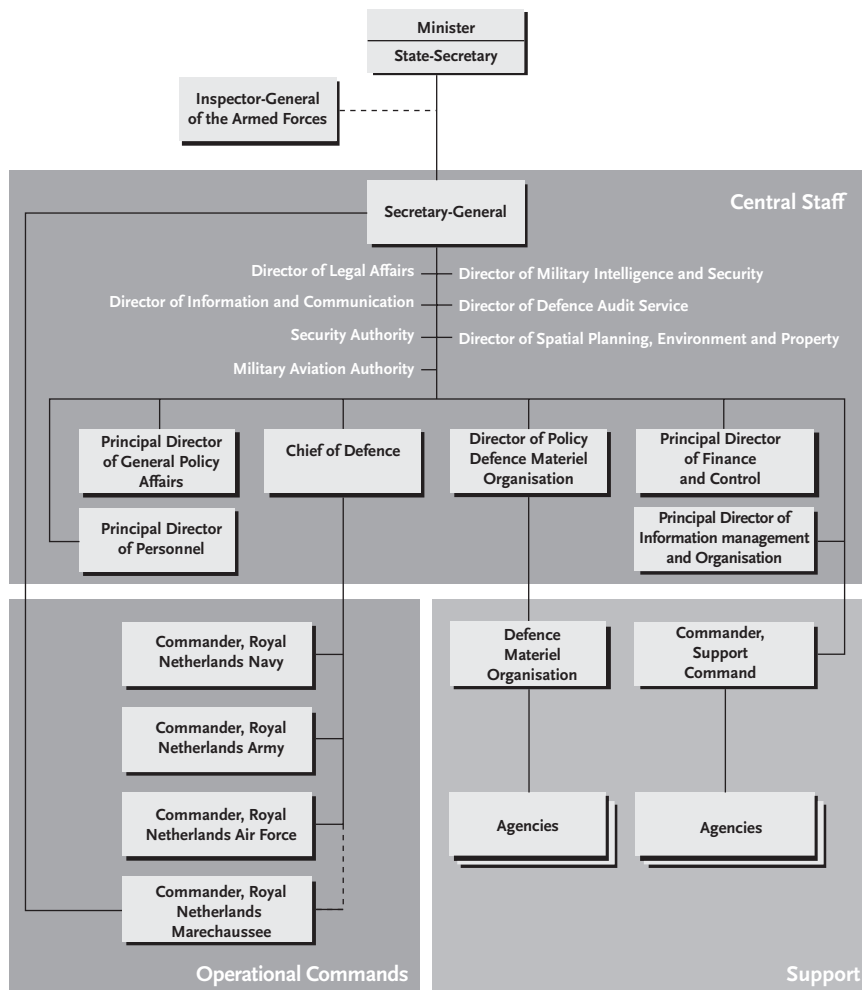
## 11.2 Organization of armed forces in the Netherlands

The Dutch armed forces have a long and heroic history. Once upon a time the Netherlands were a colonial power where the armed forces and especially the Dutch navy played an important and crucial role. The Dutch armed forces are still impressive considering the size of the Netherlands. The Dutch armed forces are still one of the major employers in the Netherlands. The Dutch armed forces are militarily active all over the world. In this paragraph I will give a short overview of the most important aspects of the organization of the Dutch armed forces.<sup>2</sup>

### 11.2.1 ORGANIZATION

The Ministry of Defence consists of the Central staff (the department), the Royal Navy, the Royal Army, the Royal Air Force, the Royal Marechaussee, Defence Material Organisation and the Support Command. In total more than 60,000 people are working for the Ministry of Defence.

<sup>2</sup> Mainly based on the website of the Dutch Ministry of Defence and the brochure Facts and figures about the armed forces 2007.

*Organisation diagram*

The Dutch armed forces have three main tasks:

- protecting the integrity of national and Alliance territory, including the Netherlands Antilles and Aruba;
- promoting the international rule of law and international stability;
- supporting civil authorities in upholding the law, providing disaster relief and humanitarian assistance, both nationally and internationally.

| Military operations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                         | Military assistance                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Aid to the Civil Authorities                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <i>Upholding the rule of law</i>                                                                                                                                                                        | <i>Support</i>                                                                                                                                                                                                                                                                                                                                                                          |
| <ul style="list-style-type: none"> <li>• Command of land and sea territory as well as airspace</li> <li>• Engaging sea, land and air forces</li> <li>• Securing sea and land territory, as well as airspace</li> <li>• Protection at sea, on land and in the air</li> <li>• Command &amp; control</li> <li>• Evacuation</li> <li>• Extraction</li> <li>• Prevention, forward deployment</li> <li>• Special operations</li> <li>• Engaging strategic targets</li> <li>• Strategic Transport</li> <li>• Hydrography</li> <li>• Geography</li> <li>• Strategic Military Intelligence Gathering</li> </ul> | <ul style="list-style-type: none"> <li>• Separating parties</li> <li>• Stabilisation</li> <li>• Military support</li> <li>• Coastguard</li> <li>• Marechaussee tasks</li> <li>• Verification</li> </ul> | <ul style="list-style-type: none"> <li>• Personal security</li> <li>• Ceremonial duties</li> <li>• Explosives clearance</li> <li>• Host-nation support</li> <li>• Coastguard</li> <li>• Military support</li> <li>• Emergency assistance</li> <li>• Instruction &amp; training of foreign units</li> <li>• Disaster response</li> <li>• (Hydrography)</li> <li>• (Geography)</li> </ul> |

The Dutch Defence Organization has developed a Future Policy Survey Project in which crucial questions are researched on the future organization and development of the armed forces in the Netherlands. In this project five crucial questions for Dutch politics were mentioned to be able to formulate a comprehensive strategy:

1. What military contribution does the Netherlands want to make in an international context and vis-à-vis other countries? What do we want to mean in the world? What interests and values do we stand for? Who are we?

2. What defence effort is required or desirable in the light of the future security analysis of the Future Policy Survey? How do we deal with the fundamental uncertainty concerning future developments?
3. What balance must be struck between the protection and, if necessary, defence of national and Allied territory, on the one hand, and engaging threats to our security at a distance?
4. What contribution should the Armed Forces make within the national borders to the security of our society in the light of the growing vulnerability?
5. In what areas is the Netherlands willing to accept dependence on other countries with respect to security and defence? To what degree do we want to retain our autonomy?

The findings of this project are now implemented but are confronted with the need for new financial cuts on the armed forces and the defence organization.

#### 11.2.2 INTERNATIONAL OPERATIONS

Military personnel carry out these national and NATO tasks at home and abroad every day. Every year, thousands of Dutch military personnel and civilians – both men and women – are deployed for peace missions abroad. In 2009 the Dutch armed forces had 2,067 people deployed abroad for missions in other countries:

- Afghanistan – ISAF: The International Security Assistance Force (ISAF) helps the Afghan government in maintaining security. In addition, the military are in various ways involved in the reconstruction of the country.
- Bosnia-Herzegovina – EUFOR: The main task of EUFOR is to stop the conflict between the former warring parties and to ensure that the Dayton agreements are respected.
- Iraq – NTM-I: NATO NTM-I training mission (NATO Training Mission – Iraq) trains Iraqi soldiers and security officers.
- Sudan – UNMIS: The main role of UNMIS is to monitor compliance with the peace agreement Comprehensive Peace Agreement (CPA) 2005
- Bahrain nlo CTF 150/Bahrain CIFC: CTF 150 focuses on a stable and secure region where international terrorist organizations (ITO's) reports

In 2012 the contribution of the Dutch armed forces to international missions was reduced. The Netherlands had then 877 personnel on missions abroad. The Dutch Defence organisation is in 2012 currently involved in the following missions:

- Afghanistan – ISAF: The International Security Assistance Force (ISAF) supports the Afghan government in maintaining security. In addition, the military personnel are involved in various ways in the reconstruction of the country.



- Bosnia-Herzegovina – EUFOR: The main task of European Union Force (EUFOR) is to prevent the formerly warring parties from engaging in conflict again, and to monitor the observance of the Dayton agreements.
- Somalia – Ocean Shield and Atalanta: Various ships of the Royal Netherlands Navy are being deployed for anti-piracy missions off the coast of East Africa until mid-June 2011. The missions are Operation Atalanta (European Union) and Operation Ocean Shield (NATO). The naval ships are to increase security on the shipping routes near Somalia and discourage and disrupt acts of piracy.

### 11.2.3 NETHERLANDS DEFENCE DOCTRINE

The Dutch armed forces made a Netherlands Defence Doctrine which gives strategic and operational direction. I cite some main points to give an overview of the most important aspects of the deployment of the armed forces.<sup>3</sup> These are the national legal framework, the foreign, security and defence policy, the international context and the decision making.

#### **“National legal framework**

Stipulations concerning the existence, the direction and the deployment of the armed forces can be found in the Dutch Constitution:

#### Article 90

The government will promote the development of international law.

#### Article 97

1. The armed forces exist for the defence and protection of the interests of the Kingdom, and in order to maintain and promote the international legal order.
2. The government has supreme authority over the armed forces.

#### Article 100

1. The government will supply the States General with advance information on the intended use of the armed forces for the purposes of maintaining or promoting the international legal order. This also includes the supply of advance information on the intended use of the armed forces for the provision of humanitarian relief in the event of armed conflict.
2. The first paragraph will not apply if there are compelling reasons for withholding the supply of advance information. In that case, information will be provided at the earliest possible opportunity.

<sup>3</sup> Netherlands Defence Doctrine 2005.

Article 90 defines the promotion of the international rule of law as a Dutch interest. According to Article 97(2) of the Constitution, the government has supreme authority over the armed forces. The meaning of the provision on the supreme authority is that the use of the armed forces is an exclusive power of the government: the primacy of politics. The government has a political responsibility towards parliament. If the government assigns troops to an international organisation, it does not surrender supreme authority. Deployment for the purpose of defence takes place on the basis of an international support obligation 18. Deployment for the purpose of defence could also occur as a response to a threat, acute or latent, to national territory (in Europe or the Caribbean region), including the airspace above it and territorial waters. In such cases, parliament does not have to be informed in advance. Advance information is required, however, in the event of deployment for the purpose of maintaining or promoting the international legal order (Article 100).

#### **Foreign, security and defence policy**

The main aim of Dutch foreign and security policy is to ensure the independence, integrity, stability and welfare of the home nation. The Netherlands also sets great store by the promotion of the international rule of law and has long demonstrated a deep involvement in cases of human suffering and actions against human rights violations. Our market economy, which is one of the larger economies in the world, benefits from the unrestricted movement of goods and free access to trade areas and raw materials. Dutch defence policy has an objective that is derived from this: to form, maintain and deploy a military force in the context of the government's security policy. Dutch security policy distinguishes between an internally and an externally oriented component. The armed forces can be deployed in the context of both components. Internal and external security have become increasingly interwoven in the security situation in recent years.

The defence activities of the Netherlands are focused on a combination of security interests, the protection of values and foreign affairs objectives. Our country sets great store by a stable and peaceful international environment, for it is dependent to a large degree on good international relations and security institutions that function properly. The Netherlands pursues an active peace and security policy. In practice, that means that our country wants to help to resolve security problems within and outside Europe, even those that are a considerable distance away. Experiences in Afghanistan have shown that our security and other interests can be threatened by developments that take place a long way from home. An active security policy also involves, therefore, the willingness to respond swiftly to crisis situations elsewhere in the world, obviously in an international context. It is important in this respect to apply the various policy instruments that the Netherlands has at its disposal – diplomatic, economic, financial, humanitarian and military cohesively. Foreign policy, development cooperation and defence issues are increasingly becoming extensions of each other 21.

#### **Armed forces in an international context**

The Dutch armed forces now have a much firmer footing on the international stage. Bilateral and multinational military cooperation with Allies and partners have been

further strengthened over the past few years. NATO and the EU form the main institutional frameworks for military cooperation. Because of the recent expansion of both the EU and NATO, especially as a result of the accession of East European states, the politico-strategic environment has changed radically. Both organisations now share borders with potentially unstable regions.

NATO is the most important pillar of Dutch security policy and epitomises the transatlantic connection. Good transatlantic relations will continue to be essential for our security in the future. Thanks to NATO, previous threats have been consigned to the past. The Alliance is the most important asset we possess to ensure our security and to nip in the bud any threat that may arise. NATO is also an important forum for political consultation and for harmonisation of the defence plans of the member states. Since the end of the Cold War, NATO has adapted to the new international relations and has successfully sought cooperation with Russia, Ukraine and other countries. It has conducted crisis management operations in the Balkans and in Afghanistan and has proved itself capable of providing effective leadership in complex operations. This has once again demonstrated the value of the integrated military structures of the treaty organisation. A rapid reaction force, the NATO Response Force, has also been established. This reaction force of some 25,000 military personnel from land, air and naval forces, to which the Netherlands also contributes, has to be deployable at extremely short notice for the most demanding operations at the upper end of the spectrum of force. The military aspects of combating terrorism and the risks of the proliferation of weapons of mass destruction and their delivery systems have been placed high on the Alliance's agenda.

The Netherlands attaches great value to the further development of the European Security and Defence Policy (ESDP), including civil crisis management tasks. Within the ESDP, the EU member states have agreed to counter threats such as terrorism, the proliferation of weapons of mass destruction, regional conflicts and failing states. The EU is thus able to make a significant contribution to global security and stability. The EU has sufficient structures to be able to take decisions with military implications and to undertake the implementation of those decisions by calling upon the member states. For example, with its 'Headline Goal 2010', the EU has taken on a capabilities objective which aims to improve the quality of the units supplied. The emphasis in this respect is on deployability, sustainability and the capacity for mounting combined operations (interoperability). The Netherlands wants to contribute to the EU high-readiness capability in the form of the EU battle groups, which are to be operational by 2007. These formations of over 1,500 military personnel are to be capable of deployment in crisis management operations outside EU territory, notably at the request of the United Nations, at very short notice. The development of the ESDP has strengthened the European input into NATO, which will help to ensure that the burden is shared more evenly and will benefit transatlantic cooperation. The EU-NATO arrangements provide for the necessary dialogue and cohesion between the two organisations.

### National decision making

The national political decision making in respect of a contribution of Dutch units or personnel to a military operation is closely connected to that in an international context, but always exists in its own right. There is, after all, no obligation to participate in a crisis management operation. In the context of national political decision making about and military planning for participation in a military operation, three instruments are particularly crucial:

- a. The risk and threat analysis by the Military Intelligence and Security Service (MIVD in Dutch);
- b. The 2001 Frame of Reference for Decision-making for the Deployment of Military Units Abroad (the '*Toetsingskader*', hereinafter the 2001 Frame of Reference)<sup>29</sup>;
- c. The CDS planning process for operations.

A decision is made at grand strategy level as to which countries or regions should be monitored by the MIVD as a matter of priority. In this context, the MIVD performs a warning function. In its risk and threat analysis, the MIVD gives a rundown of all the risks associated with the operation as a result of, for example, the state of the terrain, the climate and whether the parties involved in the conflict have consented to the operation. The outcome of this analysis is used in the application of the parliamentary criteria as well as in the operational planning for the mission. The set of parliamentary criteria (the 2001 Frame of Reference) is used by the government and the House of Representatives and consists of a number of points to aid the decision in respect of participation by units of the Dutch armed forces in a crisis management operation<sup>30</sup>. At the same time as the evaluation of the objectives, risks and other features of the operation is conducted, the Defence Staff will consider, in the event of a positive decision on participation, what form the Dutch contribution should take. The result of the CDS planning process for operations is a recommendation from the CDS regarding Dutch participation in the operation: the units, personnel and equipment which can be supplied for deployment. Once a positive political decision has been made regarding participation, the CDS will issue what is known as a CDS operational directive stating the national guidelines, assignments, tasks and responsibilities in connection with the deployment, as well as the arrangements that have been made for the transfer of authority (TOA) to the operational troop commander of the crisis management force. The TOA to an international commander only ever concerns the operational element of the authority. The government (or the CDS on its behalf) will retain ultimate control (full command). The decision to approve Dutch participation in an operation may be linked to national caveats in respect of deployment. The government or parliament can (and often does) attach conditions to the deployment of the armed forces. The CDS will ensure that the multinational force commander will take account of the stated caveats.

After consultation with the national and international authorities, the Dutch government will establish the military-strategic objective(s) and preconditions for the deployment of its contingent. The national military-strategic authority, the CDS, is responsible for the

use of military means in a particular area of operations. He is also responsible for directing the operational units of the RNLN, the RNLA and the RNLAf.”<sup>4</sup>

#### 11.2.4 NATIONAL OPERATIONS

The armed forces makes all of its capabilities available to civil authorities to provide support in the event of emergency. Military personnel and material can be placed under civil command to, for example, evacuate people, support the fire brigade in the event of large and complex fires, and to provide support in the event of imminent or actual, especially violent, situations. Civil-military cooperation makes optimum use of assets available in the Netherlands to provide as much security as possible to civilians. The contribution of the Defence organisation to national tasks falls into four groups.

1. Normal contribution to civil tasks by the Royal Netherlands Marechaussee based on the Police Act 1993:
  - Protection of the Royal House
  - Civil-aviation security
  - Guarding security transports for the Central Bank of the Netherlands
  - Border control
  - Mobile Monitoring of Aliens
  - Police tasks at Schiphol and other airports
  - Riot Squads
  - Special Security Missions Brigade
  - Special Assistance Units
2. Permanent tasks in support of civil authorities arising from legislation and formal agreements:
  - Netherlands Coastguard
  - The Netherlands Antillean and Aruban Coastguard
  - Explosive ordnance disposal
  - Disaster-response hospital
  - Airspace security (Air policing/Renegade)
  - Search-and-Rescue Capability
  - Participation in the Urban Search and Rescue Team
3. On-call capacity based on ICMS agreements
  - Battalion for guarding and securing locations, routes, and objects
  - Two duty vessels to intercept and board sea-going vessels and detect/clear sea mines
  - Staff capacity for operational command of major evacuations
  - Transportation capability: maximum of 350 tracked and wheeled vehicles for the evacuation of civilians from disaster areas;

4 Netherlands Defence Doctrine, 2005.

- Ribbon-bridge platoon for emergency bridges and rafts
- Construction company, including advisory capacity for setting up emergency services facilities
- Three thousand military personnel
- One military reception site per province for disaster response
- Six medical aid stations
- Mobile emergency hospital
- Ambulance platoon
- 4. As-available capacity
  - NBC-response unit
  - NBC decontamination capability
  - Air transport
  - Specialised diving and explosive ordnance disposal group
  - Firefighting helicopters
  - Fire-brigade units
  - Casualty air transport
  - Engineer units

#### 11.2.5 MILITARY SECURITY AND INTELLIGENCE SERVICE

##### *Tasks and organization*

Within the armed forces in the Netherlands there is a Military Security and Intelligence Service (MIVD).<sup>5</sup> The MIVD is subjected to the Intelligence and Security Service Act 2002 (just as the General Intelligence and Security Service is). In this Act the tasks of the MIVD are described as follows:

- A. to investigate and assess:
  - 1. the operational capability of foreign militaries, so that we can build up and effectively deploy our own armed forces as needed;
  - 2. factors that influence the promotion and enforcement of the international rule of law where these involve our armed forces.
- B. to carry out security vetting, as laid down by the Security Screening Act.
- C. to investigate and assess developments in order to:
  - 1. prevent and counter activities aimed at threatening the security or operational readiness of our armed forces;
  - 2. promote the effective mobilisation and concentration of our armed forces;
  - 3. ensure the uninterrupted preparation and deployment of our armed forces as referred to under A (2).

<sup>5</sup> See for history Engelen 2000.

- D. to promote measures for the protection of the operational interests of our armed forces as referred to under C, including the protection of classified military information.
- E. to investigate and assess, on behalf of other countries, matters of military relevance designated by the Prime Minister.
- F. to produce threat assessments for the purpose of protecting persons and securing property and services that belong to or are relevant to the military.

The MIVD has the same powers as the AIVD, which I described in Chapter 8. To produce timely and data-based intelligence, the MIVD collects information from various sources, including open sources (e.g. free or paid publicly available information) and imagery (e.g. aerial or satellite photos). The MIVD also obtains information through liaison with its national and international partners and with the NATO and EU intelligence communities. Finally, the MIVD is able to draw upon secret intelligence and technically intercepted communications or signals intelligence (SIGINT). These activities are subject to the legal constraints within which the MIVD operates and the scrutiny of the Intelligence and Security Services Supervisory Committee. The MIVD is part of the Central Staff of the Ministry of Defence.<sup>6</sup>

“MIVD’s planning is dictated on the one hand by the annual Defence Intelligence and Security Requirement (*Inlichtingen- en Veiligheidsbehoefte Defensie – IVD*) issued by the Minister of Defence and on the other hand by the Prime Minister’s Directions designating subjects as defined under the Intelligence and Security Services Act (Foreign Directions) governing MIVD and the General Intelligence and Security Service (AIVD). The annual plan sets out the areas that MIVD will focus on in the coming year, detailing the amount of time and capabilities MIVD will devote to a particular area. The focus areas include countries and regions, as well as specific themes and subjects.

The Minister of Defence bears responsibility for the manner in which the MIVD performs its tasks. The minister defines NLD DISS’s tasks and priorities and must account for these to the Parliament of the Netherlands. The minister also submits the MIVD annual plan to the Cabinet Committee on National Security for approval. The director of the MIVD reports to the minister by means of the annual plan and other instruments. The Prime Minister coordinates tasks relating to the fight against terrorism and in the fields of intelligence and security. These tasks interface with those of the MIVD and AIVD. Each year the Prime Minister designates areas of investigation for both services. The order to perform the investigations is laid out in a public directive that is published in the Government Gazette. A detailed version of the order is included in a classified appendix to the

6 See Wiebes 2002; Van Reijn 2009.

directive. The MIVD is accountable to the Minister of Defence for the investigations ordered by the Prime Minister in connection with missions abroad. The Minister of Defence periodically reports to the Prime Minister on how NLD DISS is handling the investigations and the progress being made. NLD DISS, GISS, the Foreign Ministry and the Coordinator of the Intelligence and Security Services periodically submit joint reports to the Prime Minister.”<sup>7</sup>

#### *Defence Intelligence and Security Research Group*

In 2006 the Defence Intelligence and Security Research Group published an independent report on the organization and functioning of the MIVD. It was the first integral organization research of the MIVD.<sup>8</sup> Here are some of the main conclusions. It should be noted that this research group not only looked into the MIVD but also at some other intelligence services of Defence. That is why the research group always speaks of the Defence Intelligence and Security chain. Meanwhile, the Minister of Defence has accorded the conclusions and recommendations of the research group, and the recommendations will be implemented in the coming years.

#### *“Changing environment*

The changing environment increases the need for timely and proper security and (contra-) information for decision making on the deployment of the armed forces and the functioning of the armed forces during deployments. Within the military, the relative importance of the intelligence and security chain will increase. Intelligence will become even more a crucial part of military operations. Not only by the nature of the operations, but also because the physical and technical capacity to collect and edit intelligence will further increase. There may also be more information to be collected. The expectations on the quality and quantity of the products of the information and security chain will thus increase further. The tolerance for incorrect or missing information will decrease. The distinction between strategic, operational and tactical intelligence will blur, in the sense that local (tactical) events can be of great importance for political and military (strategic) decision-making.

#### *Independent military intelligence and security service*

The intelligence and security organizations of Defence provide crucial tasks for the national security, in particular with regard to the interests of the armed forces, both in the Netherlands and in the NATO treaty area, and for the preservation or restoration of international law. The Research Group considers these tasks crucial to the functioning of a full army in a democratic state. The Research Group believes that it is and remains desirable and necessary to have a standard sensible military intelligence and security service for these tasks and interests. The duties and powers are so specific that they are

<sup>7</sup> Annual report MIVD 2007.

<sup>8</sup> I was a member and author of this Defence Intelligence and Security Research Group (Onderzoeksgroep Inlichtingen en Veiligheid Defensie 2006).



the reason for continued support of the existence of the MIVD. It is not feasible because of the specific tasks, organization and culture of the armed forces that the intelligence and security task can be provided by a civilian intelligence and security service. Especially not since most other countries have also a separation between civilian and military intelligence and security services, as well as in international cooperation intelligence exchange is crucial. The other side of the co-existence of a military and civilian intelligence and security service is that both of them have a costly obligation to a close co-operation.

*Cooperation is crucial*

The need for internal and external, national and international co-operation is in the changing environment further increased. The intelligence and security organizations of Defence are unable to gather the information for the (inter) national security alone. Increasingly they will need others to perform their tasks, both inside and outside Defence. Operational co-operation and information exchange both nationally and internationally are the arteries of the work of the MIVD. This involves cooperation along three tracks. In the first place there is a need for intensive cooperation with partner services abroad. In addition intensive cooperation and information exchange with civil intelligence and security in the Netherlands is crucial. Finally, because of the blurred distinction between strategic, operational and tactical intelligence, a seamless interaction and communication between different levels of information gathering and analysis should arise.

*Independent threat analysis*

The strategic quality of the MIVD threat analysis is good. The operational quality of the supplied threat analysis can be further improved. The Research Group believes that the MIVD should continue to make an independent threat analysis the Minister and the Chief of Staff. This threat analysis is for the CDS the basis for decisions on the planning of operations and current operations. The threat analysis of the MIVD is for the CDS a proven fact with regard to further decision making.

*Sufficient powers and sufficient assurance legality*

The MIVD has sufficient powers to carry out their tasks. To date, the MIVD does not need more powers. The Research Group has not established that the MIVD is hindered in the exercise of his duties by a lack of powers. Partners and customers of the MIVD have not the impression that the MIVD need more powers. Not all the powers are intensively exploited (e.g. HUMINT). Other powers such as SIGINT are used very extensively. The legality of the use of special powers is properly secured within the MIVD. There is a clear process and procedure design. The Judicial department of the MIVD and the Ministry of Defence play an important role. If necessary, the Secretary-General and the Minister are asked for permission. The Research Group has noted, both in interviews and in concrete cases, the precise way in which the MIVD deals with the use of special powers. Within the MIVD, there is a culture of lawfulness concerning the exercise of special powers. This culture is encouraged by managers within the MIVD.

*Control*

The intelligence and security Defence organizations are all under the ministerial responsibility of the Minister of Defence. The MIVD is organizationally placed within the Administrative Staff of Defence and is hierarchically placed directly under the Secretary-General. There is a close relationship between the Secretary-General and the MIVD. There is a clear structure to identify the demands of the customers of the MIVD through the Direction Decision of the Prime Minister and the document Intelligence and Security Demands Defence. These both provide the opportunity and structure to achieve an informed prioritization.

The relationship between the departmental and interdepartmental demand setting of the MIVD tasks is not always parallel. The Ministry of Defence and especially the Chief of Staff plays an important role in setting the departmental demands. Experiences with the preparation and implementation of deployments have contributed to a more explicit role of the Chief of Staff to the demand setting of the MIVD. The role of Prime Minister's Department and Foreign Affairs in the inter-departmental demand setting increases. The Direction Decision has become more specific and more concrete in the last years. The Prime Minister proposes it. It would be desirable if the Direction Decision could be more specific, so the actual the tasks of the AIVD and MIVD abroad become brighter and practical cooperation on this basis can be effectively designed and duplication be avoided.

There is increasing use of ad hoc demand setting, both nationally and internationally through the questions received from partner services and international organizations. These questions are often unexpected, requiring deployment of people and resources should be aligned with the planned demands. These ad hoc priorities intervene deeply in the planned production process. The MIVD is there – despite the fact that this takes place over many years – still insufficiently equipped for.

*Quality*

The implementation of the tasks of the intelligence and security organizations of Defence deserves special attention. The Research Group has found that customers are generally satisfied with their products. Only in isolated cases there were complaints about the quality and timeliness of products. The Research Group also notes that the MIVD is a strong product-focused organization.

*Intelligence*

The MIVD focuses largely on SIGINT information. There is an extensive organization for SIGINT designed. The SIGINT organization is the largest part of the MIVD. SIGINT information is important for the quid-pro-quo principle between intelligence services. The Netherlands has a good reputation abroad regarding SIGINT information. SIGINT needs high and long-term investment. The Research Group has noted that not all investment requests actually are met and that the decision-making and implementation take too much time. The effectiveness of SIGINT for specific operations and deployments is not entirely clear. It is highly dependent on the quality of the search profiles if useful strategic and operational information becomes available.

HUMINT is a major information resource within the intelligence and security organizations of Defence. HUMINT can, in the opinion of the Research Group, be deployed for the intelligence task as well as the security task. HUMINT acquisition costs much time and effort, including training. There may be made more use of informers and agents. HUMINT is a tool that can not quickly be deployed because it has a long preparation time. During deployments HUMINT will therefore be only useful if the deployment will take some time.

OSINT is also a very important for the MIVD. Cooperation and exchanges with universities and other (scientific) institutions can still be improved. The actual use of OSINT for analysis can also be improved. The current capacity for OSINT is relatively low, especially given the importance to the products of the MIVD.

#### *Collaboration with the AIVD*

The Research Group concludes that the cooperation between the two services is improving. A covenant concerning the collaboration is a step forward and there is growth in efficient and effective collaboration between departments. At management level there is regularly consultation between the administrative departments and the implementation of the Covenant is consistently been realized. The management of both services are therefore positive about the cooperation and say to pursue greater cooperation.

At operational level, however, there is a mixed picture. The cooperation is not sufficient in the capillaries of the services available and not yet fully internalized. Some suggest that there is hardly concrete cooperation, while others emphasize improvement in the cooperation. This seems highly depend on the type of activity being discussed.

The Research Group has the opinion that the cooperation between the AIVD and MIVD can still be further strengthened and intensified and that some actually existing duplication can be avoided. The Research Group calls for the establishment of integrated teams by the AIVD and the MIVD in proliferation and other parts of the international tasks of both services.”<sup>9</sup>

### **11.3 Armed forces in the Dutch state<sup>10</sup>**

#### **11.3.1 THE ARMED FORCES’ CRUCIAL BUT CHANGING ROLE IN THE STATE**

Since time immemorial, the armed forces have played a crucial role in the state. Initially, the armed forces were crucially important to the formation of states and nations. In this period, defence was not the only primary function of the armed forces, but so were attacks aimed at expanding or consolidating power. Over the

<sup>9</sup> Defence Intelligence and Security Research Group, *Intelligence and Security Defence*, Den Haag: June 2006, chapter 8.

<sup>10</sup> Based on and cited from Van Eekelen and Muller 2004.

centuries, the defence of the states and nations that had been shaped by then became the most salient element of the armed forces.

In this day and age, this defence task is still one of the most characteristic functions of the armed forces. For this reason, the present changes in the armed forces are to a great extent attributable to the shift from a defence organization to an organization that can be deployed in several conflicts at the same time. The defence function is deeply rooted both within the armed forces and within society. The crucial function was that the state's right to exist could be enforced at the end of the day by means of military force. External threats faced by the state could be neutralised by deploying the services of the army, the air force and the navy, and in special cases by the *marechaussee* (i.e. the military constabulary).

In recent years, the functions of the armed forces have changed unmistakably. The traditional threat has disappeared and has been replaced by a more diffuse threat. At present, crisis management operations are of primary importance to the Dutch armed forces. These are not aimed at defending the Netherlands' own territory or the territory of the Alliance but at contributing in an international context to the resolution of violent conflicts throughout the world. In such operations, the traditional defence task mentioned above is much less important.

A separate state without its own armed forces remains an exception, although a few countries could be mentioned. This was true for a long time. By now, the European and international organizations (EU, UN, NATO) have developed to such an extent, however, that even though separate armed forces are still considered essential, there are very intensive links in practice between the various countries' military forces. Treaties have created an obligation to assist and support all kinds of other countries and organizations. By now, the function of the Dutch armed forces is much broader and above all much more international than the mere defence of Dutch territory. Current thinking about the armed forces hardly ever focuses on this traditional military task.

Are the armed forces still important to the Dutch state? We believe that this question must be answered in the affirmative for various reasons. First, separate armed forces continue to be a distinctive feature of a strong state. It is still difficult to imagine a state that wishes to fully participate in the international scene without its own armed forces. The Netherlands will not be able to play any role in the international scene if it does not have its own military capability. Second, the Netherlands should contribute to the management and resolution of violent conflicts in the world, not only for moral reasons but also because stability and development are in the interests of our open economy and worldwide orientation. A separate military contribution is a prerequisite for that. If the Netherlands is to

make this contribution, high-quality armed forces within its borders and in the Kingdom continue to be of crucial importance.<sup>11</sup>

Finally, the traditional reason for the armed forces – defence – continues to be relevant, not as a deterrent against an enemy from the East but against new threats such as terrorism, with or without weapons of mass destruction, organised crime, drug trafficking and illegal immigration. The police, the fire brigade and other emergency services are able to face up to these new threats only to a limited extent. The armed forces may play an important part in preventing and defending against these new threats facing the Netherlands and its allies. In addition, the armed forces can also make a significant contribution to maintaining law and order and disaster relief in the form of assistance to the regular emergency services. This means that the new-style armed forces also have a role to play in the field of national security.

For the foregoing reason, some countries regard terrorism as a first step towards or even a continuation of a war. On 12 September 2001, NATO declared that Article V on collective self-defence was applicable to the attacks that had been perpetrated by Al-Qaida the day before. Both in the literature and in practice, there is a tendency in favour of deploying the military more intensively for the purpose of combating terrorism. In discussions about the definitions of terrorism and war, the differences appear to be smaller than the similarities. The use of military force is sometimes defended by invoking a country's right of self-defence if it is attacked by terrorists. In addition, the fight against terrorism focuses to a great extent on tackling the "failed states", currently better known as President Bush's Axis of Evil.

Since traditional warfare is less prominent at this juncture, the military seems to have found a modern function in the form of combating terrorism not only within the states themselves but also in other countries.<sup>9</sup> In this context, we cannot ignore the role of the armed forces in peace-supporting activities both in terms of peace-keeping (with the parties' consent in a situation where a truce has been agreed on) and in terms of peace enforcement (the imposition of a truce for the purpose of ending armed conflicts). These activities may have an important preventive effect in relation to future terrorism. If, however, these are not carried out properly, they may also encourage terrorism.

This modern role of the armed forces has both possibilities and limitations. Traditionally, Wilkinson points to the risks associated with the deployment of the military for the purposes of democratic freedoms and rights. The specific role of an army in international conflicts is clear and explicit, but the military is increasingly used in the context of national protection against terrorism. In recent years, the United States in particular has been trying to launch anti-terrorist

11 See Van der Meulen and Soeters 2004.

actions involving a great deal of air force activity, in Libya, Afghanistan and Iraq, among other countries.

Various military units appear to be highly suitable for specific anti-terrorist activity. Usually, anti-terror units are, wholly or partly, part of a branch of the armed forces. These units seem to be perfectly trained. On the other hand, combating terrorism constitutes a modern task for the armed forces, which confronts them with the core of social conflicts to a greater extent than in the past. This will require both an organizational and a substantive adjustment of the military machinery.

Interesting questions to be addressed include the extent to which military intelligence services can be used in combating terrorism and the manner in which collaboration between the regular intelligence services and the military intelligence services is shaped. Due to the shift in the military's tasks, it is likely that military intelligence services also regard combating national and international terrorism as a part of their tasks. In this context, it should be borne in mind that the regular intelligence services are generally subject to greater and more intensive control and administrative openness than military intelligence services.

Military actions in other countries are reserved to only a few large countries or coalitions of countries. They are the only ones able to achieve this kind of potential. Naturally, it is especially the United States that possesses the weaponry and methods to combat terrorists with a great deal of military force in all of kind of forms and capacities. By contrast, Lesser describes how the UK, for example, is committed to the basic principle that a minimum amount of force should be used in combating terrorism and there should be cooperation with the local authorities as much as possible.

#### 11.3.2 INVIOABILITY OF THE PRIMACY OF POLITICS OVER THE ARMED FORCES

The primacy of politics (in particular, the government) over the armed forces is essential for the armed forces in a democratic state under the rule of law. In the Netherlands, this primacy is written down in the Constitution. The fact that there is no discussion at all in the armed forces and in society about the desirability and necessity of this military subordination is at least equally important as its inclusion in the Constitution. As far as the police are concerned, it was considered necessary to shape the subordination to the competent authority such that the police fall partly under the mayor and partly under the public prosecutor. As far as the armed forces are concerned, there is no such separation of authority. The armed forces are subordinate to the government and the government is accountable to the House of Representatives (the Lower House of the Dutch Parliament). As far as this issue is concerned, there is no room for debate on the question of who is politically responsible for the organisation and performance of the armed forces.

An exception should be made for the Royal Marechaussee. This branch of the armed forces is organisationally subordinate to the Minister of Defence, but as far as their policing tasks are concerned, it is subject to another authority regime, which depends on the specific tasks concerned. In addition, it is worth mentioning that if branches of the armed forces are deployed for the purposes of maintaining public order or disaster relief, they formally fall under the authority of the competent mayor.

Deploying the armed forces is a political decision. War and crisis management are a matter of politics. Decisions must be taken about scarce public resources, which involves great interests. The purpose of the deployment of the armed forces is crucial, rather than a means in itself. This means that the political decision-makers should bear and assume ultimate responsibility for deploying the armed forces. If the armed forces themselves were to have a decisive vote on their own deployment, this would involve the risk of a military dictatorship.

Born and Metselaar mention six ways in which political leaders can realise this primacy. In the first place, they may determine the shape and content of the various branches of the armed forces by allocating financial resources. In the second place, they can shape these organisational and substantive parameters for the armed forces by means of legislation. In the third place, political leaders have the formal power to concern themselves with the details of specific military operations. Born and Metselaar use the term “micro-management” in this context. In the fourth place, political leaders may achieve the primacy of politics by appointing specific military officers to crucial positions within the armed forces. In the fifth place, attempts may be made to monitor the armed forces constantly by means of inquiries. Finally, attempts may be made to achieve the primacy of politics by means of the civil and military counterbalance. The military officer’s oath (“I swear allegiance to the Queen, obedience to the laws and submission to military discipline”) may also be interpreted as one of the crucial instruments for institutionalising the primacy of politics and the loyalty of the military.<sup>12</sup>

The primacy of politics is not a subject of debate in the Dutch context. Even if the degree of loyalty that may be required from the military is discussed with some regularity, the basic principle of subordination to the political system is taken for granted, both inside and outside the armed forces. As far as this aspect is concerned, the primacy of politics can be said to be inviolable indeed.

### 11.3.3 THE DEEPLY EMBEDDED LOYALTY OF THE ARMED FORCES TO THE STATE

There can be no misunderstanding that the Dutch armed forces’ loyalty to the state is deeply embedded. There are deep ties between the armed forces and the

<sup>12</sup> Born and Metselaar 2003.

Dutch Royal House, which can be traced to the remote past. To this very day, there are close connections between the military and members of the Royal House. The large number of rituals surrounding the armed forces and the Royal House are indicative of these close ties.

But the loyalty of the armed forces is deeper than these ties. Within the armed forces, there is a deep-rooted conviction that great loyalty to the government and, in particular, the Minister of Defence constitutes a crucial element of the armed forces. Decisions taken by the Minister of Defence are decisive. Decisions are carried out in accordance with a hierarchical model that has become exceptional in the other segments of public administration in the Netherlands. This applies not only to decisions favourable to the members of the armed forces but also to decisions, such as far-reaching spending cuts, that have a deep impact on the organisation. There are various examples of top military officers expressing their displeasure, both internally and externally, about specific plans and decisions, and there is even one example of a commander-in-chief leaving in connection with specific decisions. These exceptions resulted in heated debates in the media and among politicians and in unjustified doubts about the military's loyalty, for in general, the Minister of Defence's decisions are carried out with strong loyalty. Serious protest or even actions are hardly ever seen, quite apart from the strike ban for military personnel. The cuts of 2003 and even the abolition of commander positions have not triggered any major actions.

The question arises to what extent the armed forces short-change themselves by demonstrating such deep loyalty, whereas other parts of public administration are increasingly trying to create a distinct profile for themselves, both internally and externally, partly for the purpose of preventing far-reaching cuts. The loyalty of the armed forces to politics and in particular the Minister of Defence with respect to the actual performance of military tasks is beyond doubt. It is the politicians who have to decide to what extent it is desirable and necessary that the Netherlands should make a military contribution to controlling a specific conflict.

But we believe that as far as decisions concerning the organisation of the armed forces are concerned, the "voice option" of the military should be more explicitly manifest. As a result, it is inevitable that top military officers will participate in the public debate on the desirability of cuts and the necessity of full-fledged armed forces. This cannot and should not be conducted only by the Minister of Defence. In this context, the Minister and the top military officers should make precise arrangements about the subjects about which there can be discussions in the media and in other fora. But it is in the interests of the democratic decision-making about the tasks and the operation of the armed forces that the public and the politicians should be able to gain an insight into the wishes and backgrounds of top military officers. The present complexity of the military system is such that the strict hierarchical decision-making model will no longer be sufficient as far as the organisation of the armed forces is concerned. If the armed



forces do not want to be the natural victims of cuts, it is necessary that they should take a more active part in the political and public debate on military matters.

#### 11.3.4 THE STATE'S DUTY OF CARE FOR THE ARMED FORCES

Loyalty and subordination are not a matter of course. The state cannot impose only obligations on the military. There should also be a certain degree of reciprocity in a hierarchical relationship such as the one between the government and the armed forces. The crucial point is how both the government – and in particular the Minister of Defence – and the armed forces themselves give substance to this reciprocity.

The state asks the armed forces and their staff to make great sacrifices. In the end, the state requires military personnel to be willing to die in the performance of their work. Elsewhere in Dutch public administration, there are hardly any organisations or jobs that require staff to make such sacrifices. This means that military personnel are different from regular public servants and this also means in particular that the state has a more far-reaching duty of care vis-a-vis the military than vis-a-vis other public servants. In addition, conscription was abolished years ago and military personnel are now deliberately choosing a profession as a soldier. This means that the relevant soldiers have made a free choice and the government's duty of care weighs even more heavily as a result.

This duty of care is related not only to the terms and conditions of employment but also to the state of the armed forces. Soldiers must be convinced that they have been provided with sufficient resources and equipment to enable them to execute their missions without taking unjustified risks. The state of the armed forces must be such that the military's self-evident loyalty will continue to exist in the longer term as well.

The question arises to what extent politicians in The Hague are aware of this duty of care. Too often we hear statements like "soldiers have to carry out our decisions and they should not go on about it." For decades now, the armed forces have constituted an automatic "instrument" for cuts. These signals are not indicative of clear reciprocity in the relationship between the armed forces and the government. In this context, the duty of care is hardly ever mentioned. There is not a single indication that the Dutch armed forces have been stretched to their limits, but it would be a good thing if, in considering the current reorganisation of the armed forces, the government defined more explicitly how it will give substance to this duty of care in practice.

#### 11.3.5 LEGAL ASPECTS

The Dutch Constitution explicitly mentions the armed forces and outlines their tasks and organisation. The Netherlands has not enacted a special Armed Forces

Act or Defence Act along the lines of the Police Act or the Fire Services Act. The manner of deployment and the decision-making thereon are derived from the relevant constitutional provisions. The Assessment Framework for Deployments plays an important part in the parliamentary decision to support or reject any deployment. In addition, the international Rules of Engagement specify when specific forms of force may be used. The international legal framework within which the Dutch armed forces must function is becoming increasingly important. Besides, the military personnel's legal position and military criminal law and military disciplinary rules are separately and accurately defined.

This means that – even if they are not governed by their own special act – the Dutch armed forces are actually and formally governed by various national and international statutory regulations. Over the years, these have accurately defined the use of force in particular. Usually, Parliament precisely defines the circumstances under which the use of force is permitted and the military is dispatched before an actual deployment is decided on. It is crucially important that in performing their tasks, Dutch soldiers increasingly come within the competence and are under the command of other countries as a result of the ever increasing internationalisation of military operations. Formally, the Netherlands continues to have supreme authority, but the actual decisions on the execution of tasks are taken by others outside the Netherlands.

#### 11.3.6 THE MILITARY'S OWN DECISION-MAKING POWER RELATING TO OPERATIONAL ASSESSMENTS

The military's subordination to the government is inviolable and its loyalty is beyond dispute. Even so, it cannot be denied that the military has its own decision-making power, in particular in relation to operational assessments. Naturally, the crucial question is what is to be regarded as operational and what as strategic or policy-related. The parameters guiding any deployment or the determination in advance of the type of force that will be permitted are strategic and policy matters that have to be defined by the political leaders and in particular the Minister of Defence. The same is true of crucial decisions during a deployment, for example, about withdrawal or any changes in tasks. Naturally, the military is not an agency responsible for automatically implementing all decisions taken by the Minister or the State Secretary.

There are numberless implementation decisions and organisational decisions that are formally taken by the Minister but actually by military officers. It is up to these officers to judge to what extent they consider it necessary to submit a specific implementation decision to top-ranking politicians or civil servants. The criterion to be used in this context is that the politicians in authority had better decide too much than too little. This means that the politicians in authority at the Ministry of Defence – *i.e.* the Minister or the State Secretary – are faced with many decisions

that have hardly any strategic significance as a matter of fact, but that have to be formally taken by a politician in authority. This formal ministerial responsibility means that the politicians in authority are responsible for all decisions taken. But that does not mean that all decisions really have to be taken by the politicians in authority themselves, but the prevailing culture at the Ministry of Defence is to submit as many decisions as possible to the politicians in authority. The persons involved believe that earlier incidents and a strict hierarchy necessitate this kind of strategy.

The advantage of this strategy is that the factual and the formal political responsibility of the politicians in authority are “closer together”. The decisions for which the Minister is politically responsible are for the most part his or her own decisions. The disadvantage is that it is an illusion to think that a politician in authority can take all decisions in large bureaucratic organisations such as the Ministry of Defence and the armed forces. In addition, there is the risk that politicians in authority could concern themselves with operational details about which others within the armed forces have more knowledge. It is essential for politicians in charge of the Ministry of Defence to find a responsible decision-making balance between the important strategic decisions and the crucial operational details,

#### 11.3.7 INTENSIVE MONITORING OF THE ARMED FORCES

The armed forces have far-reaching powers and extensive resources. For this reason, it is essential to a well functioning democratic state under the rule of law that there should be intensive internal and external monitoring of the organisation and the operation of the armed forces. Various control mechanisms have been created: military hierarchy, quality control, internal audits, the Inspector-General of the Armed Forces, the Netherlands Court of Audit, Parliament, the media, international inspection etc. Many of these control mechanisms are indirect and are used for specific incidents. In a few cases, there is more detailed and structured monitoring.<sup>20</sup>

There is no such thing as a Defence Inspectorate or an Inspectorate for the Armed Forces. The Inspector General acts as a kind of ombudsman within the armed forces. Consequently, we can gain only an occasional picture of how the armed forces function, with the possible exception of the many audits performed by the Netherlands Court of Audit. Specific elements of the operation of the armed forces are highlighted in particular, mainly in the wake of specific incidents. It is of crucial importance to the development and the continued existence of the armed forces that a survey of the performance of their tasks and the development of the organisation should be provided and requested on a regular basis. Like the other state inspectorates, a Defence Inspectorate or an Armed Forces Inspectorate

may be able to make a contribution to achieving broader monitoring of the defence system and the armed forces.

#### 11.3.8 THE CRUCIAL IMPORTANCE OF DEMOCRATIC ACCOUNTABILITY

Parliament constitutes the control centre for the armed forces and the defence system. Parliament focuses intensive attention on the armed forces to an increasing extent. In this process, Parliament is also fed by the media, which have been increasingly preoccupied with the defence system and the armed forces. This democratic accountability through the media and Parliament is highly important to a sound development of the organisation and the operation of the armed forces. Over the years, the attention focused by Parliament on the organisation and operation of the defence system has increased sharply. All the discussions and debate surrounding Srebrenica and the committee of inquiry set up have played an important role in this respect.

But there is a tension between Parliament and the media on the one hand and the armed forces on the other. The armed forces do not always feel that Parliament and the media show a sufficient insight into the specific problems on which decisions are taken. Usually, specific incidents induce the media and Parliament to raise fundamental issues. The armed forces are not always involved in defining such problems. On the other hand, the military is hardly prepared at all to participate in the public debate on the role of the armed forces. It is experts from Clingendael or retired military officers who engage in discussions about the armed forces. This is why politicians and the media do not always feel that they are properly served by the armed forces.

This ongoing tension between the armed forces and the Ministry of Defence on the one hand and Parliament and the media on the other hand may be healthy and useful if it results in better decision-making and more effective, efficient, legitimate and democratic armed forces. It is questionable, however, whether this tension has this effect at this juncture. The debates that are currently held especially in the media are strongly focused on incidents, which results in a distorted picture of the armed forces. To be sure, Parliament discusses not only incidents but also addresses general aspects of the organisation and operation of the armed forces quite extensively, but these more general debates are covered only indirectly in the media.

### 11.3.9 INTERNATIONALISATION OF MANAGEMENT AND CONTROL OF THE ARMED FORCES

In the context of several propositions, the increasing internationalisation of both the organisation and the operation of the armed forces has been pinpointed. Formally, the Netherlands still has its own armed forces but in actual fact, the armed forces are tied to many international organisations and the rules developed for these organisations. NATO and the UN, and usually the US, too, determine to a large extent the scope of operations of Dutch soldiers and how they are to be deployed. As far as that aspect is concerned, the Dutch armed forces are actually part of much broader and more international armed forces.

In spite of this process of internationalisation, the Dutch Government formally has and will continue to have supreme authority over deployments. Even though command over specific troops is actually transferred to an international coalition, the Dutch Government formally continues to be in a position to issue different instructions, but this is exceptional in practice. This adds an ever-increasing international dimension to the management and control of these troops, which involves not only the Dutch Government, the Dutch Parliament and the Dutch media but also a large number of other forums in other countries and the international media. This means that the Dutch armed forces are part of international armed forces.

The Dutch state's sovereignty is limited because some of its powers over its armed forces pass to an international coalition. The Dutch state also loses sovereignty in other policy areas. There are hardly any subjects over which the Netherlands still has full sovereignty. In nearly all cases, international organisations or other countries have an influence. It is to be expected that the Netherlands' sovereignty over its armed forces will be reduced even further in favour of international organisations in the years ahead. This does not need to be a problem as long as the majority of the Dutch Government and Parliament support the policies and the execution of these international organisations. If, however, there are fundamental discussions about the extent to which trust or information is abused within such organisations, as seems to be the case in the war in Iraq, countries may retreat back to their own independent sovereign positions. But due to current national and international security developments, it is no longer a realistic option to retreat to the former position of full sovereignty over the Dutch armed forces.

## 11.4 Trends in military and armed forces in the Netherlands<sup>13</sup>

### 11.4.1 THE ARMED FORCES AS PART OF A BROADER SECURITY POLICY

Security is a concept that is broader than only external or international security. It is more than international or regional conflicts, civil wars and terrorism. For many citizens, it also includes issues such as crime and nuisance. Most citizens are more directly concerned with the nuisance they experience in their neighbourhoods on a daily basis than the larger-scale problems in the rest of the world. After major disasters, safety in relation to risks in society is also a subject that receives a great deal of attention. Such disasters and serious accidents affect a totally different part of public administration. Within the armed forces, those involved focus on international and external security. In his article in this book, de Wijk deals with this aspect in great detail. In it, he reveals the shifting perspectives in respect of this form of international security.

We are of the opinion that it is time to achieve a broader and more comprehensive security policy in the Netherlands. This should involve not only the traditional international and military security issues but it should also incorporate the other types of security. It is increasingly becoming clear that the various kinds of security are closely related. Certain kinds of security are closely related with terrorism. Partly as a result of migration flows, international security issues are also connected with crime figures. For this reason, it would be sensible to avoid a situation where the various governmental organisations that are somehow engaged in security issues work and function separately, and to examine the extent to which the integration of security policy and security organisations can be achieved.

Does this mean that the armed forces, the police and fire brigade will be integrated in the Netherlands? For the time being, this seems to go too far but we do recognise the possibility of the armed forces being more closely involved in all kinds of security issues in the future. Parts of the armed forces may play a part in surveillance and security. Soldiers may help to solve crime by making expertise, manpower and resources available. Soldiers may also play a part in the reintegration of juvenile delinquents. With some special training, soldiers could be deployed as police officers or fire fighters. Cooperation between the military and the civilian authorities in the field of security may be intensified. If this results in further integration of the relevant services in the future, we would welcome this, but more intensive collaboration is the best thing that can be achieved for the time being. Naturally, it will be necessary to create a well-defined legal framework for the foregoing, but this necessity does not mean that it is futile to make more far-reaching attempts to improve the quality of cooperation.

<sup>13</sup> Based on and cited from Muller, Starink, Bosch and De Jong, 2004, chapter 30.

## 11.4.2 THE EVER CHANGING ARMED FORCES

The history of the armed forces reveal constantly changing armed forces. One reorganisation follows another directly; one round of spending cuts has not yet been completed and a new round is announced already. It is especially the large-scale changes following the Fall of the Berlin Wall that have had a major impact on the organisation and the operation of the armed forces. This event resulted in sweeping changes, both in terms of substance and in terms of organisation and culture. The armed forces of 2012 are fundamentally different from the armed forces of 1989. A period of 25 years has seen changes that could not have been anticipated. These changes have contributed to armed forces that are up to their new tasks in a new security spectrum.

We cannot help feeling, however, that the armed forces have been confronted with too many changes in recent years. It goes without saying that the armed forces will have to adjust to the ever-changing environment. But in addition, it is necessary to preserve a certain degree of consistency. Those involved within and outside the armed forces feel a need for long-term transparency about the organisation and the content of the armed forces. This cannot and should not change every four years. This cannot and should not happen not only because of the necessity of long-term personnel planning but also because of the necessity of achieving support and legitimacy for the armed forces. In compiling this book, we found that structures and processes already described had often changed again after a period of 18 months.

The armed forces are also the automatic victim when it comes to spending cuts. Successive governments have implemented very drastic spending cuts. Naturally, it is still possible to cut the defence budget even further, but this will have an effect on the tasks the Dutch armed forces are able to perform. It is all right to take this decision, but then it must be clear to politicians and citizens alike that this decision has been taken. This means that the armed forces should not be the *automatic* victim of spending cuts, but their size and structure may be adjusted on the basis of a clear choice with respect to the role of the armed forces.

Changes within the armed forces are a good thing and necessary. Many chapters show, however, that there are too many changes. The military personnel and organisation are able to cushion only a specified quantity of changes without these having an impact on the operation of the armed forces.

## 11.4.3 FRAGMENTED MANAGEMENT AND CONTROL OF THE ARMED FORCES

The armed forces are subject to management and control by many organisations. If we compare the armed forces to many other public administration organisations, it seems clear that the Minister of Defence is responsible for managing and controlling the armed forces. This is actually the case in practice as well. This

ministerial responsibility is exercised with great care and precision, as is shown by various chapters in this book. It sometimes seems as if every decision and every detail can and should fall under the ministerial responsibility. In this context, we consider it sensible to allow the various branches of the armed forces and their leaders more scope to participate in the political and sometimes even the political debate on national and international security issues in the future. Naturally, close coordination with the Minister will be necessary for this purpose. A broader interpretation of ministerial responsibility under which the Minister bears primary responsibility for the main policy features and the leaders of the branches of the armed forces may fill in the details could contribute to more flexible armed forces. In that case, the Minister can be held to account for the main policy features, whereas the military leaders are accountable for the details. Control of the armed forces is effected internally for the most part. Except for parliamentary control and the Netherlands Court of Audit, there is no permanent external control over the armed forces. Parliamentary control is necessarily limited to the basic outlines and usually too much dependent on incidents. The Netherlands Court of Audit has a long history of auditing branches of the armed forces. In our opinion, this auditing has the greatest long-term impact on the operation and organisation of the armed forces. At this juncture, there is no such thing as a Defence Inspectorate, which could complement the defence control system. As things stand, the Inspector General primarily plays the role of an ombudsman within the armed forces. Possibly, this institute could be extended into a more modern inspectorate. Media attention for the armed forces is strongly focused on incidents and spending cuts. In this way, the media's control function is only occasionally fulfilled. Even so, whenever the media devote attention to the armed forces, this stirs many people within the military into action. The image surrounding the armed forces and the Ministry of Defence is of crucial importance.

#### 11.4.4 MANAGING THE ARMED FORCES: AN ART TOO

Many chapters in this book show that the management of the armed forces has to satisfy specific requirements. By now, the planning, staff policy, equipment, logistics, technology, infrastructure, spatial planning and funding of the armed forces have become genuine specialist policy areas. Managing the armed forces is an art too. This means that the military leaders of the future will have to be trained not only in substantive tactics and strategies but they should also increasingly focus their attention on integral management in a specific context. The knowledge and experiences gained in the private and public sectors cannot be simply translated on a one-by-one basis to the armed forces. These chapters show that it is necessary to opt for a translation that takes the special qualities of the armed forces into consideration.



Does this mean that the armed forces are not comparable to other organisations? The armed forces are faced with many elements that are also relevant to other public and private organisations. Within the armed forces, there is a great need for borrowing expertise from the private sector. Management models from this sector are very popular in the armed forces. There is less enthusiasm for the knowledge and insights from the public sector. There are quite a few misconceptions about the role of politics in the area of public administration. The government's supreme authority over the armed forces is never in dispute, but there is a yawning gap between politicians and the armed forces. Politicians should devote more attention to the profession of a soldier both in terms of substance and in terms of organisation, whereas the armed forces should be more open to the processes and backgrounds of politics.

Indisputably, the culture of the armed forces has its distinct characteristics, but the same applies to many other organisations. In particular organisations that are somehow concerned with the monopoly on violence or work that involves danger to life usually have a very specific organisational culture. The special emphasis on traditions in the armed forces differs from what is customary in many other organisations. The value of these traditions in the military system is, however, unmistakable. It is a good thing that these traditions are highlighted in a book about the armed forces.

#### 11.4.5 INCREASINGLY PROFESSIONAL PERFORMANCE OF THE ARMED FORCES

The armed forces has specific doctrines tailored to the many aspects of its tasks. Attempts are made to structure and standardise the actions within the armed forces as much as possible. Evaluations of deployments are used to further refine the structures and processes. The strategic framework constitutes the basis for taking explicit decisions. There is a strong tendency within the armed forces to shape all processes on the basis of a rational-synoptic model. If soldiers are confronted with processes that are not unambiguous, there is a risk that they will have an insufficient insight into the possibilities of handling these. The armed forces are becoming increasingly aware that taking decisions in a state of uncertainty constitutes one of the key elements of military operations.

This increasing professionalism applies not only to the structure and substance of military operations but also to the culture of the armed forces. Compared to many other organisations in public administration, the armed forces pay much and well-structured attention to the education and training of their personnel. Management development had been invented within the armed forces before it was referred to by that name. In addition, the ethical aspects of military operations have been receiving more and more attention in recent years, as a result of which complicated and often personal assessments in relation to a soldier's performance

can be defined. In this way, the armed forces attempt to address the full range of elements of enhanced professionalism,

#### 11.4.6 DESIRABILITY AND INEVITABILITY OF THE INTEGRATION OF THE ORGANISATION AND OPERATIONS OF THE BRANCHES OF THE ARMED FORCES

There are differences between the various branches of the armed forces, but this book also shows that the similarities are predominant. In many fields, the branches of the armed forces cooperate, even though they are still formally and effectively separate. In the coming years, there will be far-reaching integration at the top. It is important to find out to what extent all kinds of other parts of these branches can be integrated in a comparable manner, not so much for the purpose of achieving new spending cuts but for the purpose of ensuring that the tasks of the armed forces are performed as effectively and efficiently as possible.

We are of the opinion that the organisational and substantive integration of the branches of the armed forces is both desirable and inevitable. It is desirable because the *raison-d'être* of the separation of the branches of the armed forces is based only on historical arguments. It is inevitable because nearly everybody recognises that the integration of the organisation will result in better and more cost-efficient armed forces. In other countries, similar transformation processes are taking place, even though the actual integration of the various branches of the armed forces has nowhere materialised as yet. Even so, it would be a good thing if the Netherlands were able to be a trendsetter as far as this issue is concerned. With the reorganisation of the top of the armed forces, a valuable first step towards actual integration has been taken.

#### 11.4.7 CONSTANT REVALUATION OF THE RELATIONSHIP BETWEEN THE ARMED FORCES AND SOCIETY

Several chapters have addressed the relationship between the armed forces and society. The editorial staff has found it striking in particular that there has been hardly any relationship apparently in the past few years. Society's relationship with the armed forces has been limited. People are not very interested in the organisation and operation of the armed forces, except for the actions surrounding the spending cuts and specific incidents relating to Srebrenica or the JSF purchase. The armed forces themselves seem to have focused their attention on society in an international context rather than society in a national context, barring the occasional flood. Even though it goes too far to say that the armed forces and society have drifted apart, they certainly have not come any closer together in recent years.

The tasks and functions of the armed forces have changed and the emphasis has shifted to international peace issues and terrorism. Society has also changed

and has seen processes towards greater individualism and globalisation. It is unclear how these partly conflicting and partly parallel developments relate to each other. In our opinion, it is important, however, to redefine the relationship between the armed forces and society. Both have changed and now the relationship should be changed as well. In this context, society should become aware of the necessity of fully-fledged armed forces in order to be able to continue achieving the desired development towards greater individualism and globalization.

## 12 Emergency services and crisis management

In this chapter, I focus on the emergency services in the Netherlands. In particular, I will concentrate on the fire brigades and the medical emergency services including the ambulances services. These organizations operate within a new institutional structure in the Netherlands, the so-called safety regions. Given that this institutional development is crucial to the Dutch security system, I will pay some attention to these safety regions. They play, during critical incidents in the Netherlands, an important role. In this chapter I use the volume *Fire Brigades: Studies on organization, function and environments* (Helsloot, Muller and Berghuijs (eds.), 2007), the volume *Crisis: Studies on crisis and crisis management* (Muller, Rosenthal, and Helsloot and Van Dijkman (eds.), 2009) the volume *Crises in the Netherlands: Disasters, riots, hostage-takings and other crises* (Muller (ed), 2011B).

### 12.1 Safety regions

“The Netherlands is not yet well prepared for major disasters and crises” is the first entry of the national TV Journal on Friday, May 30, 2008. The Ministry of Interior Affairs and Kingdom Relations published on that day a report on the state of national security. One of the methods of the Netherlands to make it well prepared is shaping safety regions. The new Act on Safety Regions came into force in 2010. This is remarkable since this is one of the most wide-ranging institutional changes in the security system in the Netherlands for many years. After the regionalization of the police in 1994, the safety region is a new major system change. For the future of the organization of security in the Netherlands, the establishment of the safety region is important.

In this section I briefly outline the contents of the Act and I will formulate some criticisms. The safety region is now a reality in the Netherlands but the question is whether this should stay in the way it is now organized. What is needed is a safety region that can be developed further in the coming years. The current safety region is hopefully a starting point to a broader safety and security region.

#### 12.1.1 ACT ON SAFETY REGIONS

The proposal for the Act on Safety Regions, which was sent to the Lower House in July 2007, has a long history. The desire to achieve an integration of tasks,

organization, powers and responsibilities in the field of security exists for a long time. The concept of safety region is an idea that arose at the beginning of this century. The new Act on Safety Regions came into effect in 2011.

Evaluations of large-scale disasters and crises such as the firework disaster in Enschede, the cafe fire in Volendam, the prison fire at Schiphol Airport and many smaller disasters and accidents in the Netherlands have shown that cooperation between the various organizations such as fire brigades, medical emergency services, police, municipalities and others did not work well before, during and after such disasters and crises. There was often little cross-disciplinary practice, there was uncertainty about powers and responsibilities, there was no unified command structure, there was uncertainty about the scale, there was uncertainty about the information and communication and the quality of task performance was also not optimal. The establishment of the safety region should prevent these problems occurring in the future.

A safety region is a public entity based on a common regulation by municipalities, where the regional fire services and medical emergency services are integrated to improve crisis management and emergency response. The tasks and the organization of the fire brigades and the emergency services are secured in the safety regions. The police are not part of the safety region but there is intensive cooperation between the safety regions and the police regions. In the Netherlands 25 safety regions were established on the same scale as the police regions. These police regions will be reorganized into a national police force in 2012. From that moment on there will be 25 separate safety regions and one national police force.

A disaster is a major accident or other event in which the lives and health of many people, the environment or large material interests are seriously harmed or threatened, involving a coordinated deployment of organizations to eliminate the threat or reduce the harmful effects. Crisis is in the act defined as a situation where vital interests of society are affected or are likely to be affected.

The safety region has the following tasks:

- a. identify the risks of fires, disasters and crises;
- b. to advise the authority on the risks of fires, disasters and crises;
- c. advising the board of mayor and aldermen on the fire service;
- d. preparing to fight fires and organizing the disaster relief and crisis management;
- e. establish and maintain a fire service;
- f. establish and maintain a medical emergency service;
- g. providing the dispatching function;
- h. purchasing and management of common material;
- i. organizing and maintaining information.

The general board of the safety region consists of the mayors of the participating municipalities. The Chairman is the person who in the Police Act 1993 is appointed as Police Force Manager. This is most often the mayor of the largest city in the region. The Chief Public Prosecutor and the President of the Water Board may be invited to participate in the meetings of the board. Other authorities can be asked to participate in the meetings. They have no voting rights.

Based on a risk profile every region develops a policy plan which determines the operational performance. In a crisis plan, the organization, responsibilities, duties and powers during the emergency and crisis management are described. In a national regulation the requirements for fire services, medical emergency services, the emergency room as well as for the organization of disaster relief, crisis management and medical care are imposed.

In the Act it is included that during disasters and crisis that a have larger effect than on one municipality the chairman of the safety region will act as the competent authority. In the Netherlands, the mayor is the competent authority during crises and disasters. If there is a large scale disaster the mayors have to work together. Up until this act there was no other mayor who had competent authority over other mayors. In that case the mayors voluntarily appointed one of them as coordinating mayor or the Queen's Commissioner became the competent authority. The authority of the Chairman of the safety region now includes not only the emergency services, such as fire brigades, the medical emergency services and the police but also the other mayors in the region. In the note following the report the government summarizes this as follows. "During a disaster or crisis of more than local significance, the chairman of the safety region is the competent authority. He exercises the authority powers after consultation with the mayors of the affected municipalities and the Chief Public Prosecutor in the RBT (Regional policy team), unless emergency does not allow this."<sup>1</sup>

The Chairman of the safety region has exclusive jurisdiction to apply the supreme command in case of disasters and accidents. This means that a mayor may have to deal with a decision of the Chairman of the safety region regarding his own town with which he does not agree. In that case, the mayor can submit a written objection but there are no other ways to undo the decision. The Chairman of the safety region has to present a written report to the councils of the affected municipalities. If a written objection by the actual mayor has been given the Chairman of the safety region orally gives information to the council of that municipality about that decision.

Much political and even public discussion arose about this new legal option. This was in the view of the government necessary to realize speed and perseverance

1 TK 2007-2008, 31117 nr 6 p. 29.

power during a crisis. The criticism focused on the possibility that one mayor could give orders to another mayor which would not fit into Dutch constitutional government as the Commissioner of the Queen would then have a role to play. The government was not impressed with the criticism and did not fundamentally change the proposal of the act. The Commissioner of the Queen got the task to ensure that collaboration between the members of the regional policy centre was working well. If this is not the case the Commissioner of the Queen could address both the Chairman of the safety region as the mayors. But the Commissioner may not intervene in the policy decisions taken by the President, but has to focus on the relations between the mayors and the chairman of the safety region. In addition, the Commissioner of the Queen gets a greater role in overseeing disaster relief and crisis management and in the administrative settlement afterwards. The position of the chairman of the safety region remained as previously proposed by the Cabinet in the Act.

#### 12.1.2 ATTENTION FACTORS FOR SAFETY REGIONS

The Safety Region Act is a product of intensive administrative and management negotiations with all stakeholders. In the Netherlands, major institutional changes are rare and they occur only with small steps. This bill is a perfect example. I've tried to formulate the major critical issues on this act.

##### *Scope*

Actually, it's not safety regions which are established on the basis of this act but crisis regions. The name safety regions is confusing since it implies more than it actually is. The task of the safety regions focuses first and foremost on the organization and working of the fire brigades and the medical emergency services and on the preparation and implementation part of the decision-making in disasters and crises. The broader safety and security is not at issue. This is demonstrated by the fact that the police and the PPS are not fully part of the safety region. There remains still a separate police region and a separate regional council until there will be a national police force. The police and the PPS are somewhat reluctant towards the emerging safety region. In sum, it is now only a small part of their duties. The safety region is now mainly an organization of the fire brigades and the medical emergency services.

It is reasonable that the safety regions are established. It offers finally the opportunity for a better organizational integration of the various tasks, powers and responsibilities in the field of safety. It is good to start with this integration in terms of crisis management and disaster relief. These are two areas where further integration before, during and after disasters and crises has to be achieved.

However, it is a missed opportunity that in the law no possibility was created to integrate other forms of safety and security in the safety region. The act is now

limited only to crisis management and disaster relief. It is conceivable and desirable that other forms of social and physical safety and security could be part of the safety region. Why not also forms of crime control, assistance, nuisance control, public order enforcement, combating terrorism, physical security and other security and law enforcement included in the safety region? In that way they will become full safety and security regions.

In many ways, these forms of security have intensive relations with each other if only because the same organizations carry out these tasks. If these forms of security become part of the safety region a full substantive and organizational integration of different security issues can be realized. Now it is expected that the safety regions will handle parts of crisis management and emergency response, that the police region and the PPS are responsible for the criminal investigation, that municipalities handle nuisance, that municipalities and provinces are responsible for physical security, that the mayor has the authority on public order enforcement and the Ministry of Security and Justice and the National Terrorism Coordinator on Terrorism are responsible for counter-terrorism. This act could have created the opportunity to integrate these different forms of security policies.

It is unclear how the safety regions will develop. Is the safety region the first step towards a full safety and security region or will it remain just a safety region? Should therefore at national level the functions, powers and responsibilities in the field of safety and security be clustered? The public and political debate should focus on these questions. This means that a decision will be made on the safety and security system in the coming years, a politically sensitive area in the Netherlands.

The original proposal of the act contained such a broad safety and security region. It is unfortunate that in the current act this is not realized. The explanation can only lie in competing interests of all stakeholders. To realize effectively integrated security it is necessary to integrate the Ministries of the Interior, Justice, Housing, local municipalities, police, OM, fire services and medical emergency services and other organizations. Institutional interests are currently preventing such an integrated approach. It would be harsh if the Netherlands should have new safety and security incidents before this integrated security approach can be realized.

#### *Super Mayor*

In the public debates on the act, the construction which makes it possible that the chairman of the safety region imposes a decision on another mayor is known as the super mayor. This introduces a new element in Dutch public administration. One mayor is in specific circumstances placed hierarchically above another mayor. The question is if this is a desirable development in Dutch domestic governance. In my opinion, this conflict-generating structure is neither necessary, nor desirable.



It is true that in some crises and disasters it is necessary to take direct operational decisions. These operational decisions should be taken by trained operational emergency services. In specific situations such as evacuations or the allocation of scarce resources, it is necessary that an administrative decision follows. In the Act the chairman of the regional force has the supreme command during disasters on a larger scale than one municipality, and all decision-making is then made by him, of course, after consultation with the other mayors. If the mayor of a municipality disagrees there is nothing he can do to prevent the decision.

Such a structure can lead to perverse effects. The Chairman of the safety region is not only chairman of the safety region but also mayor of the largest town in the region which can create difficulties in balancing the interests with the other municipalities. The chairman of the safety region will be in a hierarchical relationship to the other mayors which is not in accordance with the equality of the municipalities themselves. The accountability of the decision-making takes place indirectly by the mayor of another municipality to the councils where the disaster or crisis occurs. The position of the mayor who has made a note against the chairman of the safety region is politically in danger and in some cases becomes untenable. The administrative situation in the region after a mayor has used his endorsement will be disturbed for a long time, while the need for cooperation still exists.

If the chairman of a safety region has a conflict with another mayor during a crisis (for example to evacuate an area or to declare an emergency), the chairman may decide if the other mayors in the regional policy team (RBT) have been consulted. The Commissioner of the Queen should ensure cooperation in the RBT. Should such a conflict arise, the Commissioner can address the chairman of the safety region and the mayor as a part of the National Government. It is unclear what this response means now. Can he annul or modify the decision of the chairman? Or is it just asking all participants to be nice to each other? Or should the Commissioner, as the conflict continues, ask the minister to give an instruction? Can he, in such cases give an instruction himself? In reality this situation is rare, but it is good to know exactly who is competent to do what. This is not clear at this moment.

## 12.2 Fire brigades

### 12.2.1 ORGANIZATION FIRE BRIGADES

“In 2007, 163 thousand fire reports were received by the fire brigade, a slight increase compared with the previous year. From these reports 41 percent was a false fire alarm or rumor. The number of fires has decreased slightly from 50 thousand in 2006 to 47 thousand in 2007. This is mainly due to a decrease in the number of outside fires and chimney fires. The total fire damage was 864

million euros. The damage of internal burning was 778 million euros, of which 82 million in house fires. The average loss during a house fire was 21.5 thousand euro. (...) On January 1, 2008 the Netherlands had 443 municipalities, the same as a year earlier. There were 409 municipalities that have their own or a joint fire brigade. In 8 municipalities, the fire services is implemented by neighboring forces. Further there were 26 municipalities where the fire services were hosted by the regional fire brigade. In total, these forces employ 27 thousand firefighters both professionals as volunteers. In addition, 3.3 thousand people perform tasks for the fire brigade. (...) The municipal cost for fire and disaster relief in 2007 compared to the previous year increased by 6 percent to 913 million euros. This corresponds to an average of 56 euros per capita.”<sup>2</sup>

This quote from the fire service statistics of the Dutch Central Bureau for Statistics shows the contours of the fire services in the Netherlands. The fire brigades in the Netherlands are primarily locally organized, now within the emerging safety regions. The mayor serves as the competent authority on fire brigades. The mayor also has the supreme command during fire and other accidents where the fire brigade is functioning. A large part of the fire brigades in the Netherlands consists of volunteers. Only a small proportion is employed full time by the fire services. The tasks of the fire brigades were regulated in the Fire Service Act 1985 but are now regulated in the new Safety Region Act.

In addition to the municipal organization of the fire brigades the fire services in the Netherlands are organized in regional fire brigades. The municipalities are obliged to cooperate in this regional fire brigade. The region borders correspond with the borders of the police and the medical emergency regions. The regional fire brigade is responsible for the regional tasks of the local fire services and emergency response. The separate municipal forces were too small. The extent to which functions are transferred to the regions varies widely. Under the Disasters and Heavy Casualties Act, the fire brigade plays a major role in the preparation and implementation of disaster management in the Netherlands. The fire brigade is, in principle, the operational leader during the disaster. This remains unchanged under the new Safety Region Act.

#### 12.2.2 TRENDS IN FIRE SERVICES AND ORGANIZATION OF FIRE BRIGADES

There is currently much to be done about the fire services in the Netherlands. It is not difficult to predict that in the near future the organization and functioning of the fire brigades will be much discussed. Even without new incidents and disasters occurring, the internal and external organization and operation of the fire brigades is still the subject of much discussion and debate. The fire services in

<sup>2</sup> CBS 2008.

the Netherlands are still changing. In this section I outline some key trends in the current debate about the fire brigades in the Netherlands.

*The fire brigade must be a visible part of society*

For many citizens, the fire brigade is distant. Most people will not, or hardly ever during their lives, be faced with the fire brigade. The probability that citizens have direct contact with a fire brigade is low. Most people in their lives will not be faced with a fire or a disaster. People have thus only a limited knowledge and image of the fire brigades. Their image is determined by television and stories, rarely through direct experiences of citizens with fire services. This is a big difference with other emergency services, especially the police. In ancient times the fire brigades were much more a part of society than today. The degree of specialization of the fire brigades is so high that the fire brigade is now remote from citizens and society. Few – even within politics and government – have a good and complete picture of the activities, organization and needs of the fire services. We do not know what the fire brigade does. We do not know what exactly is required regarding money and equipment. And we do not know how the fire department is organized internally and how complex alliances are formed. The fire brigade is for many in society a blind spot.

The legitimacy of each service calls for regular social weighing. The role and organization of the fire services should deserve more attention. The fire services should be a integral part of society. That means that the contacts with citizens, government and politics have to be intensified. Everyone should ideally have experience with the fire services, whether specific preventive advice, extinguishing fire, information in schools or an explanation in the City Council. This will force the fire brigades to a more external orientation on society. This external orientation should not only be from the management of the fire brigades, but also from the operational parts of the fire services. The primary question is and should be how the fire brigade with its organization, resources and people can contribute to a safer society.

*The fire brigade is not Calimero*

The Dutch fire brigades have sometimes a tendency to act as a Calimero in the political-administrative force. They soon feel less important than other services such as, for example, or perhaps especially, the police. In public debates on security and safety fire commanders have very limited input. In formations and budget discussions, the fire brigade is only to be heard in the background. The political-administrative lobby of the fire brigade is therefore limited. There is limited contact between the fire organizations and representatives of national politics. At the local level (in towns) it is only slightly better. A locally more active attitude of the fire brigade in the political-administrative sphere can improve the position of the fire brigade. In the media the work of the fire brigade is regularly

published, but that is mostly limited to reporting on fires and incidents. A fully integrated media and a national public relations strategy from the fire brigades does not exist. The fire brigade is a mature and full physical security organization, which therefore must ensure full participation in the political-administrative environment. A safety organization as vital as fire brigades cannot take a subordinate position and are sometimes even cherished. For their own interests and the interests of safety, it is necessary that the fire brigades gain a more activist role in the political establishment. This means that political arguments and methods can be used to protect the interests of the fire brigades and the interests of safety more explicitly. That means, for example, a much more active and intelligent media approach, where appointments could be made on the substantive messages of the fire services in the Netherlands. This requires also a stronger organizational integration of the fire brigades at national level.

*The Dutch fire service does not yet exist and it should*

The current fire service organizations is still mainly formed by local and regional forces, but especially in and around some major cities regionalization is far advanced. The fire services as a one group and one organization does not yet exist in the Netherlands. Rarely, the fire brigades have their own opinions on specific issues or policy issues. The resistance of both governments and fire commanders to a more national fire service remains high.

The police are now a few steps further. The regionalization is not a discussion point (after years of debate on merging the municipal police and gendarmerie). The debate is now about the extent of a national police force. The fire services are still debating about the regionalization. It is necessary, as quickly and as firmly as possible, to form an integrated fire service (and not only disaster relief) in fully-fledged regional organizations. These regional organizations should have all the powers and resources to perform all tasks of a fire service in a complete and full manner. The safety region is a first step. Everyone understands and knows in his heart in which way the organizational development will go. Professionalism and efficiency call for regional scale and sometimes national scale.

This evolution towards full regional forces should immediately be accompanied by the establishment of a national institution of regional fire commanders which makes extensive arrangements on management aspects of the fire services in the Netherlands. If the act concerning the reorganization of the police system and the establishment of a national police force becomes reality, then it is necessary to shape a similar structure for the fire services. It is useful to organize the political-administrative and management control of the police and fire brigade in a similar way. Management is totally separate from the daily duties, which continues to be under the municipal formal authority of the mayor. There is no need or even possibility for a central point in the region or country to control the local fire or rescue services.

Crucial to implementation of these proposals is that there is complete clarity about the financing of the fire services. The current hybrid municipal and government financing does not create that clarity. A new funding system should be made in a manner designed that the quality and quantity of fire services can be designed at the same level everywhere in the country, emphatically in relation to the risks of a specific area. The quality and quantity of the basic fire service should not depend on the extent to which municipalities are able to donate finances. These measures do not require comprehensive legislative changes. This can be achieved through agreements and understandings between the parties concerned. In this way a first step towards the fire brigade as a national organization can be taken.

#### *Volunteers an asset and a risk*

Voluntariness is one of the key features of the Dutch fire brigade. It has an important asset because through voluntary fire fighters a close relationship with parts of society is created. Citizens are in this way – through strict requirements and also training – themselves directly responsible for part of their security. In addition, there are important advantages with respect to the financing of the fire services in the Netherlands; they are much cheaper than full-time professional fire fighters. The volunteers within the Dutch fire brigade have a long tradition, which we do not find in other emergence services.

After this praise a nuance has to be made. In fact the Dutch fire services do not employ volunteers in the pure sense of the word. They are really first and foremost part-time employees with a special scheme. In the big cities, the fire brigade consists completely of professionals. There is a misunderstanding about the level of professionalism within the voluntary fire brigade. In our picture the volunteers within the fire service are professional staff. They have followed the same required courses, diplomas and exercises as their professional full-time colleagues. They also have often broad experience with various forms of assistance. Voluntary fire brigade staff are therefore professional, versatile fire fighters. Many citizens, administrators and politicians do not realize this.

The risk of the current system is the limited possibility for further development and broadening of the task of the fire brigades. The limits of the volunteers have been reached, though it is now increasingly clear that professional execution of the current fire services asks for extra tasks (training) effort. It is the question if the concept of voluntary can be matched with these developments. For employers of the volunteers it will mean in the future that the volunteers will have to be more available for the work of the fire brigade. The willingness of employers is not expected to increase. But for the volunteers themselves the increasing quantitative and qualitative requirements of the relative gravity of their contribution to the fire brigade will grow. If the ambition to realize a broader concept of fire services and integration with other emergence services becomes a priority, the current manner in which volunteers are treated should be thoroughly reviewed.

*Improving professionalism and culture*

The professionalism and culture within the fire service can be improved. Mainly the knowledge about fire fighting should be organized. The risk remains that fire knowledge is primarily provided through oral transmission, while it is necessary that it is (also) in writing and otherwise explained. In recent years much has been done on the development and refinement of protocols and other forms of behaviour instructions. This creates on skill level a good description of the repressive fire fighting. It would be desirable and necessary to realize also on analytical and abstract level their own theories to reflect on the wider fire service and safety in general. This presupposes not only training and development of management but also of the operational fire fighters. It may well be connected to initiatives already designed in other emergency services.

The same can be stated regarding the organizational culture within the fire service. Although over the last few years significant changes have occurred, a few cultural features still can be improved. The primary masculine culture of the fire brigade has a negative impact on attracting and retaining women and immigrants. The professionalism and the culture of the fire department could improve if a more differentiated inflow can be realized. The latter refers to an optimal combination of different criteria on which fire fighters and their management can be selected. Not only employees with a technical background are necessary but also with a social scientific or legal background. Not only Dutch men but also women and immigrants have to be employed by the fire services. Not only experienced people but also young people with new ideas are useful. Not only managers but also people with specialized knowledge of a specific part can contribute to the fire services. This means that management of the brigade must consider the ideal mix of knowledge and people within the organization. Also, in cooperation with the other joint emergency services more progress can be achieved.

But there is another element of the fire service culture that we want to highlight. Above and below, we have made it clear that we believe that the fire services can and should be deployed more intensively in security. That means that the fire brigade should not only pay attention to its own sector and its own work, but increasingly attention is needed for other organizations, for society and for the wider contribution that the fire services may provide the security. This implies a strong external orientation of both the managers and the operational framework within the fire services. The culture of the fire brigades has traditionally been internally focused. The fire fighter culture should always and ever more adapt to developments in society. Such an adjustment – which should take place continuously – is only possible if the perception of the fire brigade is turned to the environment.

*Better repression, and more prevention is needed*

The emphasis of the work of the fire service is traditionally on repression. That is important and crucial for the fire brigade. With regard to repression, improvements

can be achieved, especially regarding the refinement of specific procedures. Improving repression requires more systematic evaluation and lessons of various forms of commitment in different types of fires and incidents. If the fire brigade, both regionally and nationally, can arrange that evaluation and review are well organized, it can actually learn from both successes and failures in enforcement efforts by the fire brigade.

More crucial, however, is to pay more attention to the left of the security chain. That left side contains elements such as education, licensing and enforcement. The role of the fire services in assessing applications for use permits, building permits, environmental permits for chemical companies, etc. has still little attention within the fire brigade itself. This role and its affect are increasingly important in today's society precaution. The fire brigade will also have to invest to ensure that the review and issuance of permits is well organized. Recent disasters such as Enschede, Volendam and the Schiphol fire show that with regard to the authorization of permits improvements are necessary. In addition, information to citizens and businesses on fire safety should be more creative. The fire brigade should play a more active role towards citizens and businesses in providing information and support with regard to fire safety. Only a few people in society care about fire safety. The fire department should ensure that the responsibilities of citizens in relation to fire safety receive more attention. But to achieve this it is essential that people have sufficient knowledge and understanding of the various aspects of fire services.

In the third place, we consider it necessary to that the fire brigade has a more active role in the enforcement of fire regulations. Enforcement is still a relatively weak task in the fire brigade. But prevention through specific authorization is only meaningful if a full enforcement follows. The major disasters in the Netherlands have not yet led to full improvement of enforcement. The fire service should create adequate space and resources necessary to actually give form to the enforcement of the issued permits. Only then will there be a full cycle of fire service. If there is a lack in enforcement specific authorization has limited sense. The lack of enforcement is caused by a lack of capacity but also by a lack of expertise. Not every town and not every fire brigade may have all the information and knowledge to fully maintain it. Inter municipal and regional cooperation is therefore required to maintain an acceptable level of knowledge and enforcement.

*To a fire brigade with a broad mission, on the way to an integrated emergency service*

The separation between the emergency services, in particular between the police, medical aid and fire brigade, is a historical one. The rationale for this is lacking. This appears both from the fact that in other countries the dividing lines between the organizations are sometimes quite different and from the fact that more and more it become clear that the during incidents intensive operational cooperation is necessary. The fire brigades cannot perform their tasks in "splendid isolation".

Virtually all functions of fire brigades require cooperation with other organizations such as the municipality, police and medical services. This is true even for the simplest daily duties for the citizens. The task of the government does not end when the fire is put out. Integrated care means that good care and aftercare have to be scheduled immediately.

The fire brigades in the Netherlands should have a broad mission. Not only fire and disaster but also crisis management. Not only prevention but also repression. Not only licensing but also enforcement. Not just actually acting but also informing. This broadness can in our view only be realized if the organizations are sufficiently large and robust. Only then is it possible that this broad mandate is contributed fully. This underlines the need for regionalization of the fire brigades and even for nationalization of management issues of the Dutch fire services.

The fire brigade should continue to play a central role in disaster response and crisis management. The fire brigade should have a coordinating role in the preparation for physical security incidents. For some types of incidents outside the physical security domain other organizations than the fire brigade are more obvious coordinating organizations, such as in civil disturbances, terrorist attacks, epidemics and so on. In such cases, either the police or the medical emergency services would be the organization which has the operational lead. The generic preparation that is coordinated by the fire brigade has also meaning in these cases.

The broad mission includes a culture within the fire department that pays attention to this broad mission. That means that within the fire brigade in both management and executive ranks, generalists are actually working alongside the necessary specialists. The fire brigade has not only a need for specialists, but also for people who are capable to value and implement the wider role and responsibility of the fire brigade in the Dutch context.

#### *Further cooperation and integration with the police*

Further cooperation between the emergency services as the police, the fire brigade and medical assistance has, in recent years in the Netherlands, mainly been realized due to the pressure to improve disaster management. A lot has been achieved over the years, both at local and regional level, to make such cooperation deeper and more extensive. Sometimes in the form of arrangements and agreements, sometimes in joint buildings and sometimes in common emergency rooms. Cooperation in the field of disaster response is on a reasonable level. The establishment of safety regions currently contributes to the further intensification of cooperation between different organizations, especially with regard to this aspect of safety. Of course it is good to note that cooperation between stakeholders in specific areas is still further improving. We see good examples, both in terms of operational performance of the duties of the various emergency services but also at the level of management and boards.



In the Netherlands a discussion is held to which extent it is possible, effective, efficient and sensible to integrate fire brigade, police and medical assistance in one organization. A first step is visible in the sense that in different regions fire brigades and medical emergency services form a joint emergency service. Actually this cooperation is mainly on management issues. The operational divisions between fire and medical aid still exist. It would be valuable if it is examined how the integration of the three characteristic emergency services could contribute to an effective, efficient, democratic and integrated safety and security. Our assessment is that – after a period of reorganization and habituation – both operational and management benefits will be achieved. With such an organizational and institutional integration a fully integrated emergency service for both social and physical security is established.

### 12.3 Medical Emergency Services

In this paragraph I briefly discuss another emergency service, the medical emergency services. Police – and to a much lesser extent the fire brigades – are welcome topics of scientific research. Regarding the medical emergency services, this is hardly the case. There is only very limited data and analyses available on the organization and functioning of the medical emergency services. Nevertheless they play an important role in disaster management in the Netherlands.

The medical emergency services assume responsibility for medical coordination during disasters and major accidents. “The Medical emergency services got at the end of 1999 the responsibility on the somatic health care, preventive public health and psychosocial health care. Medical emergency services was the organization responsible for coordinating the medical and health aspects of disasters and was in the same way administrative and geographically embedded as the fire disaster and the police. Fire brigades and police forces were organized in 2 matching regions. Setting up a new post of a regional medical process for health care was a basic requirement. This became the 25 Regional Medical Officers (RGF) who had to be appointed within two years. In preparing disaster management the RGF has a role in bringing together the various parties of the health services. During a disaster, the RGF has the operational leadership of the medical care.”<sup>3</sup>

The medical emergency services operated on the basis of the Medical Emergency Services Act. But also other laws were of interest such as the Ambulance Act, the Disasters and Serious Accidents Act, the Law on Professions in Individual Health Care, the Law on Quality Health Services and the Law on Collective Preventive

3 Bierens 2009.

Health Care. The medical emergency services is now the responsibility of all the mayors in a safety region on the basis of the Safety Regions Act.

The Regional Medical Officer leads the medical emergency services. In the Safety Regions Act he is called director of medical emergency services. Sometimes this is a side task for a director of the Local Health Service, sometimes it is the superior of medical emergency services agency, sometimes it is the management of an integrated health care service. The Regional Medical Officer has often a difficult position because he does not have hierarchical powers in respect of the partners in the medical chain. This is complicated because he is deemed to have the operational direction on medical care during a disaster. The medical chain in the Netherlands is complex and includes municipal health services, GPs, regional ambulance services, ambulance care Netherlands, trauma centres, hospitals, the National Institute of Public Health and Environment, the Dutch Red Cross, mental healthcare and social work. Within the medical chain there are not only public but also private parties which play an important role. For example, the ambulances in the Netherlands are for a large part privatized. The Regional Medical Officer can make agreements with other organizations in the health chain but he has, during disasters, no authority over hospitals, trauma centres etc. He does not have his own operational organization which he can use directly, like the chief of the fire brigade or the police commander. At different times pleas have been made to grant such powers to the Regional Medical Officer. So far this has not been realized. The new Safety Regions Act offers a little improvement in the position of the Regional Medical Officer. Bierens provided some examples of the institutional difficulties for the medical emergency services.

“– The medical emergency services-domain has to handle two ministries: BZK for structure and VWS for the content, with sometimes conflicting interests, but ultimately the same goal. Because the core of the medical emergency services tasks are in the border area between these ministries, small changes in policy of the ministry or new agreements between the ministries often lead to fundamental changes for the medical emergency services.

– Many aspects of medical emergency services have everything to do with public health. The legal responsibility for public health lies with the Municipal Health Service (GGD). There are many opinions how the relationship between the Medical emergency services and the GGD should be regulated and various interested parties try to influence it. The possible development to make the Municipal Health Service regions congruent with the police, fire and medical emergency services regions is regarded by some as a threat to medical emergency services, by others as the next improvement of the development of the medical emergency services. (...)

– Within the health care increasing efficiency is needed. This also leads to less capacity and less redundancy in the capacity of health. There will be less scope for individual emergency patients to be slide in between. Over time this can lead to a separate, and

probably expensive, organization of acute care that would be paid largely on the basis of readiness, not based on performance. Some care institutions will decide not to provide acute care. Together with the expected development of the privatization, and competition between hospitals and ambulance services in the long term this means that the additional capacity available in case of a disaster will significantly decrease. (...) All in all, there is more of a structural trend in health care to pay less attention to the Medical emergency services than to devote more attention.”<sup>4</sup>

The medical emergency services has to operate in a highly complex institutional environment and without having sufficient power, finance, organization and resources. It is no exaggeration to say that the risk of errors and problems in this way has become very large. Possibly, the new Law on safety regions and the earlier in this chapter mentioned recommendations could create some improvements. But what is really needed is a stronger institutional embedding of the medical emergency services within the medical health services and chain in the Netherlands.

## 12.4 Crisis en crisis management in the Netherlands

In this paragraph I pay attention to the following topics. In the first place I give a brief overview of the major crises in the Netherlands in recent years. Then I give a formal outline of the current system of crisis management in the Netherlands. Then I explain the current institutional crisis system in the Netherlands and the possible institutional improvements. These improvements are also related to other security and safety aspects in Holland. I finish the paragraph with a few trends on crisis management in the Netherlands. The basis for this paragraph is formed by the volume *Crisis: Crisis and crisis management in the Netherlands* (Muller, Rosenthal, Helsloot en Van Dijkman, 2009) and *Crises in the Netherlands: Disasters, riots, hostage takings and other crises* (Muller 2011).

### 12.4.1 CRISES IN HOLLAND

The Netherlands has experienced different crises in recent years. A complete list of all crises is not feasible for this chapter. Below the main crisis are mentioned. These are the crises which led to a high degree of collective stress and/or far-reaching changes in policy and organization of crisis management in the Netherlands. In addition, I focus on the crises after 1990 unless they had a crucial role in the contemporary crisis management.<sup>5</sup>

<sup>4</sup> Bierens 2009.

<sup>5</sup> See also Rosenthal 1984.

**Disasters and major accidents**

- Flood Disaster 1953
- Train disaster Harmelen 1962
- Chemical explosion DSM Geleen 1975
- Cindu disaster explosion chemical factory 1992
- Disaster Bijlmer El Al crash airplane 1992
- Train disaster Hoofddorp 1992
- Hercules airplane disaster 1996
- Dakota airplane disaster 1996
- Floods of 1993 and 1995<sup>6</sup>
- Legionella infection Bovenkarspel
- Enschede firework disaster 2000
- Cafe fire Volendam 2001
- Fire prison Schiphol 2005
- Crash Turkish Airlines plane 2009
- Disasters abroad with Dutch involvement
  - Air plane crash Tenerife 1977
  - Air plane crash Paramaribo 1989
  - Air plan crash Faro 1992
  - Tsunami Asia and Africa 2004

**Terrorism**

- French Embassy hostage taking 1973
- South Moluccan hostage-takings 1970s
- Rara attacks 1980s
- IRA and ETA attacks 1980s
- Political murder Fortuyn 2002
- Political murder Van Gogh 2004

**Public disorder**

- Riots marriage princess Beatrix and Claus 1966
- Maagdenhuis occupation in 1969
- New Market riots in 1974
- Squatters Riots Amsterdam including Coronation 1980
- Squatters Riots Groningen and Nijmegen
- Demonstration 1993 Youth Riots
- Riots Eurotop Amsterdam 1997
- Disorder Oosterpark District Groningen 1997
- Riots Amsterdam-West 1998
- Celebration Riots Feyenoord 1999

<sup>6</sup> See Rosenthal e.a. 1997.

- Soccer Riots European Championship 2000
- Riots Den Bosch in 2000 and 2006
- Mass Riots Queen's Day (Koninginnedag) 2001
- Riots Utrecht 2008

#### **Farming crisis**

- Foot and mouth crisis
- Bird flu crisis
- Swine fever crisis

#### **12.4.2 CRISIS MANAGEMENT IN THE NETHERLANDS**

The Netherlands does not have a fully-fledged crisis act. The crisis decision-making in the Netherlands is designed on the basis of various laws, regulations and plans. The main structure of the crisis management is described below. At this moment there are several plans for change but in the rest of the chapter I will discuss this.

The primary responsibility for crisis management and disaster management is at the municipal level. In the Safety Regions Act the obligations for each municipality are displayed. Each municipality in the Netherlands should have a contingency plan setting out how, during a disaster or crisis, intervention will take place. The mayor has the final responsibility and the supreme command during a crisis. All municipalities work together in the before mentioned safety regions where the crisis management and disaster response is organized.

In principle, the crisis management and emergency response take place within this safety region. This requires a unique structure which is applied in each region. This is called the GRIP structure. The GRIP structure distinguishes various stages, also called coordination alarms (GRIP 1 to 4). Each GRIP stage has another decision-making structure:

- GRIP I: Incident Command Location (COPI)
- GRIP II: COPI + Operational Team (OT)
- GRIP III: COPI + IP + Municipal policy team (GBT)
- GRIP IV: COPI + IP + Regional policy team

Depending on the nature, extent, severity and trend of the (threatened) incident, many public and private partners are involved. Below is the core occupation of the various decision-making structures.

#### *Incident Command Location (COPI):*

- Leader COPI (from one of the columns)
- Officer Fire Service (OvDB)

- Officer Ghor (OvDG)
- Officer Police (OvDP)
- Information Officer (from one of the columns)

*Operational Team (OT)*

- Operational manager (one of the columns)
- Operational Team Member or Staff Officer Fire brigade
- Operational Team Member or Staff Officer Ghor
- Operational Team Member or Staff Officer Police
- Operational Team Member or Staff Officer Municipality
- Information Officer (from one of the columns)

*Municipal policy team (GBT)*

- Mayor
- (Main) Public Prosecutor
- Member Fire policy team
- Member Ghor policy team
- Member Police policy team
- Member Municipality policy team
- Information Officer (from one of the columns)

*Regional policy team (RBT)*

- Coordinating Mayor
- Mayors concerned
- (Main) Public Prosecutor
- Regional Fire Commander
- Regional Medical Officer
- Police Chief
- Member policy team town
- Information Officer (from one of the columns)

If there is national crisis another system comes in effect. The Minister of Security and Justice in the Netherlands is coordinating minister in respect of crisis management and disaster relief. This means that the Minister must coordinate between different departments. This Minister has however no power to determine the actions of other ministers. That is, in the Netherlands, not even the case for the Prime Minister.

In case of a national crisis, a ministerial policy team with all relevant ministers is formed under chairmanship of the most concerned minister. The ministerial policy team is assisted by an inter-departmental policy team consisting of the senior officials of various departments. The national crisis center prepares the decisions of both crisis teams. The various departmental coordination centers in

each department prepare the crisis management activities for these departments. The monitoring of the whole system is done by the Public Order and Safety Inspectorate, the inspectorates of the various departments and the independent Dutch Safety Board.

For specific crises such as terrorism, infectious diseases and agricultural decision-making processes there are specific decision-making structures. Sometimes they do not fit the just mentioned general structure for crisis management. Not every crisis in the Netherlands is handled by the same crisis structure. In principle, each department has an own responsibility during a crisis. It depends on how the crisis looks, how the decision-making takes place. In the ministerial policy team one tries to coordinate the differences between the Dutch departments and ministers.

#### 12.4.3 THE DUTCH CRISIS SYSTEM<sup>7</sup>

The Dutch crisis system is complex. In this paragraph I will try to give an opinion on the current state of the crisis system and make some recommendations for the near and distant future. My starting point is that the current administrative organization in the Netherlands no longer suites appropriate crisis management. What is needed is a more fundamental review of the system in order to achieve a higher quality crisis management. In many reports in response to disasters and public disturbances comments were made on the need for further cooperation between police, fire brigade and medical chain. Careful observations are made about the need to achieve greater integration of these emergency services. But in all action plans as a result of recent disasters and civil disturbances this point is not addressed intensively. There is no action plan for integration of the emergency services.

In five propositions I give an overview of the problems of the current organization of crisis management in the Netherlands. Then I give, in three propositions, suggestions on how the organization of crisis management in the Netherlands could be improved. The before mentioned remarks about the safety regions apply also for this paragraph.

##### *Current administrative organization crisis management*

*Proposition A: There is a diffuse network of organizations and officials involved in crisis management.*

Crisis management requires the cooperation of many organizations, municipalities, provinces, virtually all departments, water boards, police regions, fire regions,

<sup>7</sup> Based on and cited from Muller and Baars 2009.

local fire brigades, health authorities, medical emergency services regions, regional health officials, ambulance organizations, public prosecutors and others. It should be noted that within each of these organizations, parts are involved in specific aspects of crisis management. In its totality, dozens of organizations are involved in the different phases of crisis management.

The administrative system in the Netherlands also applies before, during and after crises. This fine-grained administrative system – known as the administrative polder model – seems to work reasonably well for regular administrative and political problems. However, it is questionable to what extent this will work in crisis situations. Before, during and after crises, it is necessary to take quick and sometimes vigorous decisions. The current administrative organization of the crisis management does not meet these requirements.

All these organizations have their own powers, rules and laws. These powers, rules and laws are not always compatible. The territorial limits of all these organizations are often not identical. The establishment of the Safety Regions Act contributes to reducing the problem. There are many border problems in the different phases of crisis management. In some cases there is even competition of powers. It is not just a debate on the powers but also about the tasks of the different organizations. Many exercises are necessary to let the various agents get to know each other. The high turnover of employees in public administration makes a constant exercise policy in crisis management necessary.

Many different types of partnerships are necessary to achieve optimal crisis management. There are not only more or less legal regional relationships but also through agreements one is trying to structure the administrative organization of crisis management. This created a patchwork of arrangements and agreements, all of which play a role in the organization of crisis management.

But the main problem of this diffuse network of organizations involved in crisis management is that it is not exactly clear who is responsible. Since many people are responsible, for example regarding the provision and monitoring of licences it is not clear who has the final responsibility. Crisis management is an area where the responsibility is shared by many hands. After a crisis there are always unpleasant political and public debates in which political, administrative and official representatives are held accountable. The above described diffuse network only leads to more confusion of responsibilities.

*Proposition B: There are insufficient opportunities for unity and uniformity in the various stages of crisis management*

The above mentioned diffuse network of organizations involved in crisis management makes it clear that unity and uniformity is difficult to achieve. Each of these organizations has its own authority and management structure. The complex structure around the police authority is only one of the examples of the impossibility to achieve integrated management and control. The ability of



provincial or central government to effectively intervene in the different phases of crisis management is limited. The intervening powers do exist but are rarely used during real crises.

Although a National Crisis Decision Making Handbook exists, and a large part of the organization during crisis is designed like it is described in this Handbook, it appears that major substantive and qualitative differences arise between the various organizations during a crisis. There is little possibility of formal guidance from state level. The ministerial policy team and the inter-departmental policy team, together with the National Center for Crises are seen as coordinating units. The administrative structure of state instructions is used a few times however, but is still considered “not done” within the Dutch polder model. However, it is questionable to what extent it is not desirable for national authorities to have a more important role in crisis management.

Crisis management – with the exception of terrorism – is primarily a local matter. In the Netherlands, we have considered it prudent that the mayor of a town directs the disasters and civil disturbances and has a direction role. Of course in a regional context and, of course, with the support of professional equipment, and even with coordinating mayors. This local embedding of the security is of great importance in the Netherlands. It allows for the best possible tailor-made security policy for every specific situation. National or provincial interference is not appreciated. The emerging safety regions are the first careful steps towards a more regional organization of crisis management.

*Proposition C: There is no democratic control over crisis management in the Netherlands*  
Crisis management in the Netherlands is a matter of many organizations. These organizations are all involved in only a small part of the overall crisis management. The police focus on civil disturbances, fire brigades on disasters and physical safety, and health authorities and the rest of the medical chain on the health of citizens, the Public Prosecution Service on law enforcement and the water boards on flooding. Earlier we saw that there is a fragmented set of organizations representing all key functions in crisis management.

Each of these organizations has its own accountability and control system.

This fragmentation can also be found as we look more specifically at the democratic control of security in general and crisis management in particular. There is no comprehensive accounting of the activities that organizations perform in the field of crisis management. Only for parts of crisis management, is there an accountability process. Local councils supervise only a part of the duties of the police and fire departments; few permits are actually submitted to committees of the council; provincial councils have a limited view of the controlling functions of the province in this area, the regional board of the police has almost no insight into crisis management. Local councils can hold a mayor accountable for his part in crisis management as the Second Chamber of Parliament can do with

ministers. But it always will be a fragmented accountability. There is no direct democratic control of crisis management in the Netherlands.

*Proposition D: There are differences in degree of professionalism of the officers of the organizations involved*

The many organizations involved in crisis management employ many officers and staff members. There is a considerable difference in the degree of professionalism of the staff. The courses they have taken with regard to crisis management vary greatly. Some organizations such as the police, fire brigades and medical chain, are trying to improve the professionalism of their employees. Sometimes there are volunteers in Dutch crisis management which makes the issue of professionalism even more complex. Other organizations such as the Public Prosecution Service and the water boards to views crisis management much less as one of the core tasks.

Before, during and after crises it is expected that all staff united work to achieve effective crisis management. The difference in professionalism – and in this sector, the difference in status and hierarchy – makes this cooperation not always easy. This is especially problematic in the relationship between the fire brigade and the police. Although the fire brigade formally has a leading role during major incidents, fact is that mainly the police have the actual leading and coordinating role on those measures. The difference in experience and knowledge of dealing with critical situations play a major role. Also, the informal hierarchy between these organizations is important.

*Proposition E: The organizations involved in crisis management speak different languages*

Cooperation between all organizations is crucial for the proper conduct of crisis management. Each of these organizations has its own history, culture and language. The way the police are executing their tasks cannot be compared with the way the fire department does. The contacts between the organizations involved are sometimes very low. In most cases they are confronted with each other in regular work. But it is also possible that only in case of disasters or other crises the staff of the individual services will face each other. If you do not or insufficiently train in the stage before a crisis then there will be “language” problems. One simply lacks the knowledge about each other’s associations and background.

This problem is often solved by ensuring that the preparation for crisis exercises is organized. These exercises – which are often operational in nature – have as a main objective to get to know each other. But it appears from reviews of recent disasters and crises that it is difficult to speak each other’s language. The background and training of staff in crisis management is often very different. Doctors and firefighters do not necessarily have the same reference system. There is a risk that due to communication problems during a crisis unwittingly wrong decisions or lack of coordination takes place.

*Future organization of crisis management*

*Proposition F: Integration of the organizations of police, fire brigades and medical chain has to be realized.*

The organizations of police, fire brigade and medical chain are independent of each other. An integration of these organizations in one security organization can have many benefits. It should be examined to what extent the licensing parts of the municipalities can be accommodated in this security organizations. The benefits relate not only to disaster and crisis management but to the wider security policy in the Netherlands.

The new security organization will be better able to provide integrated crisis management. The various tasks before, during and after crises can be performed effectively and efficiently in an integrated security organization. Licences for companies and institutions can be better coordinated. Also, enforcement can be shaped more effectively and efficiently. The saving of lives, the management of large masses of people and action against defendants may be better if these different organizations are brought together.

With one security organization it is also easier to improve the training and knowledge around crisis management. It will be easier to achieve coordination and agreements within one organization. It will be necessary to change the different cultures of the various organizations into one safety culture for the security organization. Such a culture change of organizations is a difficult task. But it offers the possibilities to achieve an integrated perspective on security issues. The now necessary organizational alignment will almost disappear.

*Proposition G: There should be integral security in different phases of crisis management*

With the proposal of one security organization it is also possible to achieve integral security for the various stages of crisis management. The prevention of crisis can actually be given shape as the authorization relating to safety is placed in one hand. At this time different standards and licensing organizations are competing with each other which leads to problems for citizens or the owners of establishments. They are now faced with different demands from one government. If all concerned organizations become a part of one security organization then it is much easier to achieve the necessary alignment.

The acute control of crises could be improved since both the direct control of a disaster, such as saving lives and controlling the crime scene in places are in the hands of one organization. The police, the medical chain and the fire brigade can still play a recognizable role Dutch in security, but the integration is achieved because these services are all part of one organization. The new Dutch crisis organization should consist of a combination of expertise of police, fire services and medical organizations.

But even after the crises it is useful to have these functions in one organization. It increases the possibilities for appropriate aftercare for victims. It also reduces the chance that needless discussions arise over the cause of the crisis and the failure of parts of the organization. The traditional disaster after the disaster can be reduced if one security organization is realized.

*Proposition H: There should be a possibility of national crisis management*

The safety regions can largely act autonomously with respect to their crisis management. However, the possibility should exist – and may actually be used – for national level of government to influence crisis management. It is necessary that at national level personnel, organization and finances are formed to carry out this task. Crisis management does not agree with the vague responsibility of coordinating ministers. For an adequate crisis management in the different phases it is necessary that one of the ministers actually has the power to intervene. To achieve this we conclude with the opinion of the Council for Public Administration for a decision-making structure for disaster management and crisis management at national level.

“For national crises, where one or more vital interests is at stake, a GRIP-5 structure is introduced. GRIP-5 is there at the moment that the Prime Minister decided that there is a national crisis. In GRIP-5 the structures of the National Manual of Crisis Decision-making come into operation and a MBT is formed which is chaired by the Prime Minister. The Prime Minister decides which department gets the lead in tackling the crisis. During crises where more departments are responsible or where conflicting interests are possible, the Prime Minister has perseverance power in decision-making and he has the decisive voice. He may also give individual ministers an indication to use their powers. Furthermore, the Prime Minister – similar to the mayor at the local level – is responsible for administrative coordination within the government during a crisis, for information to the media and the public and public accountability. Formal legislation is needed for this arrangement.”<sup>8</sup>

## 12.5 Trends in crisis and crisis management<sup>9</sup>

Crisis management has in the Netherlands in recent years grown intensively. In the last twenty years great changes have taken place. Crisis management remains a policy in development. At the end of this chapter, I would like to place crisis and crisis management in perspective.

<sup>8</sup> Council for Public Administration, *Beter besturen bij rampen*, Den Haag 2008. I was member of the Council for Public Administration and chairman of the working group which prepared this advice.

<sup>9</sup> Based on and cited from Muller 2009C. See also Rosenthal, Charles and 't Hart 1989; Rosenthal, Boin and Comfort 2001; Boin, 't Hart, Stern and Sundelius 2005; Smith and Elliott 2006; Boin, McConnell and 't Hart 2008; Borodzeicz 2005; Gilpin and Murphy 2008.

## 12.5.1 CRISES BECOME MORE IMPORTANT

Crises are important in contemporary society. Society depends on a smooth and uninterrupted process of everything. More complex systems are designed to achieve a trouble-free society. In many areas much progress is realized. For many, a peaceful use of ICT or the road or a visit to a hospital has to become a habit. Participation in society without disturbance is increasingly possible. Many processes have been improved or are being improved. Divergence from the usual is becoming more and more important.

Disturbances of these processes are leading, faster than in the past, to irritation, especially when it comes to major crises. The reasoning is: it cannot be possible that this crisis takes place in our society, we have everything so well organized. Crises receive more and more attention. Deviations from the standard deserve to be more and more mentioned. Furthermore, in the media there seems to be a constant need for new crises and incidents. Both developments reinforce each other so that a new crisis arises in the media every day. Some of them are real accidents, disasters, bombings, floods or other types of crisis. In other cases, crises are created. Crises thereby form an increasingly important part of society. They are central to the media, they are an important topic for policy, administration and business, they may directly affect the lives and welfare of citizens, they show defects in the functioning of organizations, they are intensively studied by many inspections and inquiry committees and they remain in the collective memory of society.

For all, it is crucial that a specific crisis can be placed in its proper context. At the time of an actual crisis it may seem that society can no longer function after the crisis. History shows something different. Again and again, society continues with or without modified rules, procedures, organizations and laws. For crisis managers – both in politics, governance, civil service and the industry – it is important to take this into perspective. Obviously without losing sight of the severity and consequences for those directly involved.

## 12.5.2 NEW AND OLD THREATS

The number of crises seems to be increasing. The vulnerability of society seems to be growing. There are not only old threats such as disasters or floods or infectious diseases but also new threats such as ICT failure, nuclear energy, new forms of terrorism and other risks. Old threats may have played an important role in the history of the Netherlands, that does not mean that they are present in the contemporary collective consciousness. For only a few in the Netherlands a major flood from the sea is a real memory. Such threats appear for many people to be something of the past. Crises in the rest of the world show that this is not the case.

The different threats cause various organizations to be involved in crisis and crisis management. There is not one organization within the government that has all types of risks and crises under its responsibility. Companies may be faced with entirely different forms of threats and risks depending on their own products and operations and the place where their offices and factories are situated. Citizens may also be faced with a large variety of crises. The variety of types of crises makes it difficult for all concerned to achieve unique preparation. Partly because of the complex division of responsibilities between all parties involved there will always be an extensive need for intensive forms of cooperation.

#### 12.5.3 RISK ACCEPTANCE IS LOWER

The willingness of citizens and companies to accept risks is becoming less. It is expected that this will not increase in the coming years. Risks are to be excluded and if that cannot be done they have to be insured. This seems to be the main attitude. This development has been called the vulnerability paradox. While society is increasingly vulnerable to disturbances of all kinds, the willingness to accept such disturbances has decreased. In addition, few have real practical experience themselves with crises and disasters. The ability to cope of citizens who have never faced a disaster will be reduced.

The reduction of risk acceptance makes it for political authorities, governments and business more complicated. Citizens and customers increasingly expect that governments and businesses are able to prevent crises and as they unfortunately nevertheless occur they are effectively managed. The expectations of citizens and customers are high. This is forcing governments and companies to intensify preparations for possible threats and crises. An error that could have been avoided will lead to problems in the stage after the crisis.

#### 12.5.4 ROLE OF THE MEDIA AND COMMUNICATION ARE BECOMING INCREASINGLY IMPORTANT

The media play a vital role in various ways before, during and after crises. Media can identify problems in licensing and enforcement. Media are during crises of crucial importance to provide information from the government to citizens. After crises the media play a sometimes decisive role in the justification of the measures taken. Media and crises are closely linked. Governments and businesses are increasingly aware of that. This means that in many organizations intensive plans are developed to implement the most effective way to manage the media. The communication towards citizens during a crisis is sometimes problematic.

The intensity and extent of media attention during and after crises is for most concerned authorities always a surprise. The increased diversity and competition between the media becomes apparent with 24 hours every day news of smaller

and larger crisis being published. The Dutch regional channels have nowadays extensive coverage. Internet has become a crucial part of news distribution. The intensity of media attention and the increasingly important role of the Internet must lead to further professionalism on the side of crisis management by government and business.

#### 12.5.5 CITIZENS HAVE A CRUCIAL ROLE

Citizens are more capable than hitherto was assumed. Citizens are during a disaster reasonable people, just as in everyday reality. They do not panic, but they will, based on the available information and within the time available, decide thoughtful and practically what they can or should do. Authorities do not have to take all initiatives immediately after a disaster. Citizens are able, for themselves, to find alternatives to fit their needs, even during crises. They are also capable of helping others usefully. The government then preferably performs a supporting role and a safety net function for the relatively small group of citizens who, due to circumstances, cannot take care of themselves. Actions of citizens after a disaster are characterized by two elements: saving themselves and saving others. In this context we speak of self-reliance. Self-reliance is any act performed by citizens:

- in preparing for disasters and serious accidents;
- during and after disasters and serious accidents;
- in order to help themselves and others
- in reducing the impact of the disaster or serious accident.

The potential contribution of citizens in preparing for incidents and the response has been under-used so far. Citizens can be actively involved in crisis management. The Dutch campaign “Think Forward” is a first initiative to involve citizens. However, the campaign focuses primarily on preparing citizens for disasters. Citizens can also have an active role in the actual response to a crisis. The government could, much more than in the past, involve the public before, during and after crises. Attention is now almost unilaterally paid to the preparation of professional emergency services. Citizens could be more intensively informed about crises and disasters. Citizens can be more involved by asking them for information about risky situations similar to successful initiatives such as Crime Report Anonymous. Citizens could be involved in disaster exercises. Citizens can obtain a volunteer role during crises which is conducted with a degree of training experience. Citizens can assist in many ways after a crisis. These and other features should not only be identified but also actually be implemented.

### 12.5.6 PREVENTION AND PREPARATION AS AN ENABLER

Increasingly we can speak of the crisis before the crisis. It is about the extent to which organizations actually pay attention to prevention and preparation. Crises investigations and inspections show again and again that in these areas large profits can be obtained. The pre-phase of crisis management is just as crucial as the acute phase. Exercises and training are mainly actually focused on the acute response, but most administrative value is realized in the pre-phase and the after-phase.

In particular, it is about the content and methods of licensing and enforcement. After larger and smaller disasters and crises in the Netherlands it shows that the licensing and enforcement was lacking. It was unclear who was responsible for what, what exactly should be regulated, very complex rules that only experts can be understood, unclear enforcement, non-scheduled maintenance, dubious licence negotiations and enforcement, etc.

In addition, continued attention has to be paid to the preparation for the actual crisis. Meanwhile, most public organizations and businesses have plans on how they should act during crises. Inspections of the Public Order and Safety Inspectorate do not always show a positive picture of the state of preparedness for crises in the Netherlands. Formal plans are in place but some remarks can be made about the actual preparation. In particular with regard to exercises and training. There are relatively a lot of practices and training sessions in this sector. The quality of the exercises varies. The intensity of follow-up of the lessons from the exercises is also different. For some authorities an exercise is an opportunity in which they and their organization can effectively learn, for others it is a forced ritual.

### 12.5.7 RESPONSE CRUCIAL FOR OPERATIONAL EMERGENCY SERVICES

Exercises and simulations are often only aimed at the acute phase response. In these exercises both management of operational services as well as authorities participate. At this stage the operational services play a key role. They are trained and selected to do this. The substantive operational decisions are often only taken by the operational services. Formally, however, authorities like the mayor are in charge of these operational services. They must formally approve the operational decisions taken by the emergency operations such as police, fire brigades and medical emergency services.

This regularly creates problems in the practice of crisis management. Authorities who are too much involved with operational decisions, managers of operational emergency who are making strategic decisions. The distinction between operation and implementation on the one hand and policy and strategy on the other hand is during crises often difficult to make. Exercises and training should therefore focus on the differences between operational and strategic



decision-making during crisis. It may be helpful to specifically name the strategic decisions that are reserved for administrative authorities, such as the decision to evacuate, content and implementation media messages or the prioritization of life-saving resources. In other cases, the operational services just make and implement operational decisions. Authorities should be heavily involved in operational details during a crisis. These details should be left to the operational services. In the pre-phase authorities need to ensure that the operational services are capable of operating adequately during crises.<sup>10</sup>

#### 12.5.8 AFTER-PHASE CORE OF CRISIS MANAGEMENT AUTHORITIES

The after-phase is the core task for the authorities in crisis management. Here important political decisions have to be made. Here the media plays a crucial role. Accountability is one of the central concerns during the after-phase. The after-phase is the responsibility of the authorities, both in public and in private organizations. In the response phase, the operational services have the primary responsibility. In the after-phase the authorities of public organizations and the board of private organizations are necessary to ensure that the different parts of the after-phase of the crisis receive sufficient attention. The complex political and administrative considerations often occur in the after-phase. For authorities and board members this is the real crisis management. Therefore, it is necessary through planning and practice to be sufficiently prepared for this after-phase of a crisis. After a crisis an intensive one-year after-phase is not uncommon. This implies sufficient administrative and organizational attention.

<sup>10</sup> Compare Scholtens 2008.

## 13 Trends and conclusions

In this final chapter I sketch some general themes related to security, safety and criminal justice in the Netherlands. In the first section I sketch the main conclusions about the crucial security, safety and criminal justice organizations in the Netherlands. The second section deals with the general trends on security and safety which can be distinguished. In that section I outline a prospective organizational perspective on security and safety in the Netherlands.

### 13.1 Trends on criminal justice, security and safety

In this section I give the main conclusions and trends regarding the organization and processes of criminal justice, security and safety in the Netherlands on the basis of the previous chapters. They provide an overall picture of the complexity of the Dutch security, safety and criminal justice system.

#### 13.1.1 ORGANIZATIONS

##### *Ministers and State government*

Ministers and national government in the Netherlands received in the last ten years substantially more influence and power on security, safety and criminal justice. Their powers have been extended, they have finances to stimulate policy objectives, they make performance agreements with regions, the management over police, fire brigades and emergency medical services are delegated to the ministers, they can give instructions to local authorities and in some situations even take over the decisions. The ministers of Security and Justice and of the Interior have become the most important authorities with respect to safety, security and criminal justice in the Netherlands. More than in the past, it is possible to make national security and safety policy and intervene in specific situations. Security policy in the Netherlands is actually becoming a national issue.

Many ministers at the national level have a task in security, safety and criminal justice. Although a certain coordinating responsibility for some specific subjects exists, security and safety policy at the national level is particularly common policy. In the Netherlands, ministers have no hierarchical relationship to each other, not even the prime minister. This means that policy at the national level should be achieved by negotiation and compromise. Although in the Netherlands there is

now a Minister for Security and Justice the powers and responsibilities for security, safety and criminal justice are spread across many ministries.

#### *Mayors and municipalities*

At the same time there is another development in the Netherlands. Mayors and municipalities have also received more powers and resources to address security and safety. In recent years, especially the mayors obtained significant additional security powers. Mayors play, in Dutch security, safety and criminal justice policy, a major role. Their responsibilities go very far, in some cases mayors even have criminal powers in respect of their citizens and have the power to restrict fundamental rights. It should be remembered that Dutch mayors are not elected but appointed by the Minister of the Interior on the recommendation of the town council.

In addition, the municipalities as a whole got more opportunities to perform security, safety and criminal justice policy. Many of the tasks in respect of security and safety are decentralized to municipalities. They have a core function in the implementation of the national security and safety policy. At the local level also various initiatives to establish cooperation are created. After the integrated security policy the security house is established. In this security house police, justice, youth services, probation and many others work together to decide which security and safety measures are necessary for a specific person or family. These measures are integrated at the level of a person or family.

#### *Police*

The police in the Netherlands are increasingly becoming a national organization. The latest plans for the reorganization of the police actually include a nationalization of the management of the police. The ministers can almost immediately give guidance regarding the management of the police as the plans become reality. It is expected that the national police force will be effective in 2012. Especially when you look at the Dutch police over a longer period, it is clear that an intensive nationalization process is taking place. While the formal authority over the police continues to be with the mayor and the public prosecutor, the actual power over the police becomes more national.

The Dutch police are traditionally closely embedded in society. Forms of community policing have been, for many years, practised in the Netherlands. The direct relationship between the police and the population has diminished to some extent. There is a certain distance between the police and society. This distance is not necessarily bad. It gives the police the ability to act repressively if necessary. A close integration of police and society would make repressive action by the police difficult.

*Judiciary and public prosecution*

The judiciary in the Netherlands formally consists of both the judges and the public prosecutors. Although the distance between these two organizations is becoming greater, the judiciary in the Netherlands is still formed by both organizations. Both the courts and the Public Prosecution Service have in recent years undergone intensive restructuring. Centralization and nationalization were also the main effects of the reorganization of the Dutch judiciary. The Council for the Judiciary and the College of Prosecutors-General execute an explicit central and national policy. This is much more than just management issues.

For the judiciary, cooperation with other organizations has become increasingly important. The Public Prosecution Service has spent a lot of time and paid a lot of attention to improving the control of the police regarding criminal investigation. The interaction between the courts and the Public Prosecution Service is intensified. Both are explicitly convinced that the legitimacy of society is essential for them. This means that much more than in the past information and explanations should be given in respect of the activities and decisions of the judiciary. The support of society for the judiciary is not static.

*Prison and probation service*

The Prison Service in the Netherlands has become more professional and more national in recent years. Formal and factual, all correctional institutions are now part of one organization. This has made it possible in the Netherlands to achieve a more uniform prison policy. Probation in the Netherlands is still carried out by three separate organizations, although they now are brought under firmer control of the Minister of Security and Justice too.

The number of people in Dutch prisons has decreased in recent years. After a period of strong growth, for some years now a decline can be seen. The explanation by the government is that a proper security policy creates less prisoners. Probably this statement has a certain value. Perhaps another explanation is that the Netherlands in the last ten years had to catch up with other countries in relation to crime and that this catch up is now realized. Complex statements regarding the degree of tolerance in the Netherlands have little significance nowadays.

*Intelligence and security services*

The importance of intelligence and security services has increased in the Netherlands. Not only in counter-terrorism but also regarding other threats to national security, intelligence and security services now play an important role. This role is so far reaching that it is now possible in the Netherlands to use information from the intelligence and security services as evidence in criminal proceedings under certain circumstances. Mainly because of the increased

attention to the threats of terrorism, the intelligence and security services have a more prominent role in security policy in the Netherlands.

In the Netherlands there are no problems with the misuse of powers or inadequate accountability of the intelligence and security services. That is formally and in practice adequately regulated. In the Netherlands, the relevant debate is whether and to what extent intelligence and security services exchange sufficient information with other organizations. The intelligence and security services have much information but this is not always shared with other (security) organizations. The cooperation and exchange of information with other (security) organizations in the Netherlands could be more intense.

#### *Armed forces*

The Dutch armed forces play an important role in international deployments in conflict areas. After 1989, the Dutch armed forces changed into expeditionary armed forces so that it was possible to deploy them to specific areas. Meanwhile, the Dutch armed forces have a lot of experience with these deployments. The decision to deploy has been carefully regulated in which parliament has an explicit role.

In addition to these intensive deployments, the Dutch armed forces have done, in recent years, much work on civil-military arrangements. There are intensive agreements between the national, provincial, regional and local governments and the armed forces for assistance during all kinds of national operations. These are issues such as assistance in the event of major disasters and accidents but also in more mainstream forms of law enforcement in which the armed forces have specific people or resources available. The Dutch armed forces are even cooperating in counter-terrorism. The armed forces in the Netherlands are well aware that a close connection with their own society is sufficient to achieve legitimacy.

#### *Emergency services: fire brigades and medical emergency service*

The emergency services in the Netherlands – fire brigades and medical emergency services – are compelled to follow the developments described above. The further professionalization of the other security organization makes it necessary for the fire brigades and the medical emergency service to professionalize themselves. That means for both the fire brigades as the medical emergency services a major task. Relatively, these organizations are the weakest links in the security chain in the Netherlands.

With respect to these organizations there are now regional structures emerging in the so called safety regions. The fire brigade remains largely local while there are many reasons that regional and even national control will be very useful. Due to the complex structure of the medical emergency service in the Netherlands, the

regional medical officers have almost no power and means to actually achieve things. The whole organizational structure around the medical emergency services is relatively weak. I have advocated an integration of police, fire brigade and emergency medical service to further professionalize the emergency services in the Netherlands.

### 13.1.2 PROCESSES

#### *Criminal investigation*

Criminal investigation in the Netherlands faces different dilemmas. These are dilemmas regarding the investigation and the evidence, the organization of the criminal investigation and the policing methods. These dilemmas require the leadership of the criminal investigation to make explicit decisions, for example on which methods should be used in which phase, how the CID team should be organized, what leads should be followed and what evidence should be collected. With respect to these and many other questions explicit decisions have to be made. A criminal investigation requires explicit choices and not automatic decisions.

The organization of the Dutch criminal investigation is complex. There are different levels of criminal investigation departments and the distinction is not always clear. Again there is a degree of nationalization. The establishment of the national criminal investigation department and the top regional criminal investigation teams also show the need for further forms of unification and even nationalization. The role of the Public Prosecution Service in relation to the criminal investigation has been strengthened in recent years. Certainly as a result of the parliamentary inquiry committee Van Traa the control of the Public Prosecution Service over the police regarding the criminal investigation has tightened. In most cases it can be said that the Public Prosecution Service is effectively the head of the criminal investigation process.

#### *Forensic investigation*

Forensic investigation in the Netherlands has – as in other countries – grown intensively. The number of areas of knowledge regarding forensic expertise is greatly increased. The Dutch Forensic Institute plays an important role regarding forensic research. In addition, very slowly, other forensic institutes are allowed to perform forensic research for the police and the Public Prosecution Service. Also it becomes slowly possible that not only the police and public prosecutors make applications for forensic investigation, but also suspects and their lawyers are getting this opportunity.

The increased intensity of forensic investigations does not mean that it is well organized. In the Netherlands we have seen that through some major errors in the

organization of the forensic investigations, innocent persons were convicted. These miscarriages of justice have led to major organizational changes for the police, the Public Prosecution and the forensic institutions. These changes focus on further professionalizing and deepening of the procedures related to forensic investigation.

*Media, police and the Public Prosecution Service*

Media and public relations is a particular topic in this book. The police and the Public Prosecution service paid, in recent years, much attention to influencing their image in the media. Both organizations now have broad organizational components attempting to shape the image of the police and the Public Prosecution Service. This happens sometimes directly to citizens via internet or indirectly through the media.

Perception and image of security organizations are important. These security organizations must have sufficient legitimacy to perform their tasks. The police and the Public Prosecution Service cannot function if they lack support in society. In that case they receive no or insufficient information. It is also important for security organizations to pay enough attention to how their image may be affected. The aggressive way in which the police and the Public Prosecution Service have dealt with their image building backfired on them. It seemed more a power conflict between the two security organizations than the effective provision of information and responsibly influencing their image in the media.

*Public order maintenance*

The Netherlands has in its history regularly been faced with forms of mass public disorders. Recently they focus mainly on football hooliganism, unrest in poor areas in large cities and incidents during public events. The number of large-scale disturbances has been significantly reduced. Nuisance has increased. The mayors in the Netherlands increasingly obtained new powers to maintain public order. Mayors have in fact almost all powers for all conceivable forms of public disturbances or nuisance. Under specific circumstances it is even possible that mayors evict citizens from their homes on the basis of criminal offences.

In the Netherlands traditionally much attention is paid to preventive measures to ensure public order disorders. In recent years, however, more repressive measures have been deployed. At this moment, a combination of preventive and repressive measures is deployed. But – also caused by harsh reactions from local and national politicians – increasingly more repressive measures are used.

*Counter-terrorism*

Counter-terrorism has in recent years in the Netherlands grown intensively. Not only because of the attacks in the U.S., Madrid and London but also because of

the political murders of Forutyn and Van Gogh in the Netherlands, an increased focus on counter-terrorism emerged. The threat level for terrorist attacks in the Netherlands has for several years now been substantial or limited. This has led to a much more professional organization of counter-terrorism than before 2001.

The core of this organization is the National Coordinator Counter-Terrorism, since 2011 the National Coordinator Counter-Terrorism and Security. This person and organization must ensure that the activities of all organizations in the Netherlands involved in the fight against terrorism are coordinated. This concerns various ministries, municipalities, police, public prosecution, intelligence and security services, armed forces and many international partners. Coordination between these organizations is a complex matter. Although the National Coordinator Counter-Terrorism has certain powers under the political responsibility of the Ministers of Security and Justice and of the Interior, it also remains necessary to achieve various forms of dialogue, consultation and coordination to formulate and implement counter-terrorism policy in the Netherlands.

#### *Crisis and disaster management*

Risks can lead to crises. In the Netherlands, a crisis system is designed to make sure that decisions before, during and after crisis can be made. It will not be surprising that this is a complex system in which many organizations share responsibility and in some cases there is an overlap in responsibilities. Nevertheless, it must be said that in the last ten years major improvements can be seen regarding the organization and functioning of the crisis and disaster management in the Netherlands. Specific changes in the system of crisis management in the Netherlands can be further refined. Safety regions have now been formed in which municipalities, police, fire brigades and medical emergency services are working together. The establishment and development of these safety regions are important aspects of the institutional development of the Dutch security system.

A major problem remains. During a crisis it is not clear who has ultimate responsibility. Although various proposals have been made no final decision has been taken. In my proposal, the Prime Minister has an important role to fulfil. In the Dutch egalitarian political system, this is a difficult proposal to realize.

### **13.2 Trends on security, safety and criminal justice<sup>1</sup>**

In science, some see security as a fashion phenomenon. This ignores the enormous interest in recent years in all aspects of safety and security. For

<sup>1</sup> Based on and cited from Muller 2004. Compare Cachet and Ponsaers 2008 and Cachet, de Kimpe, Ponsaers and Ringeling 2008.



government, parliament and the public it is one of the greatest concerns. Many policies are formulated to improve safety, security and criminal justice not only in the Netherlands. In ten propositions I formulate my perspective on safety, security and criminal justice in general and more specifically in the Netherlands.

The extent and intensity of safety and security and the way they are ensured are key indicators for the quality of a society. At present, the strength of a society is determined on the basis of economic figures. Employment and gross national product are the main clues to whether a society functions properly. But safety and security are also increasingly important as an indicator of the quality of a society. Especially after the attacks of September 11, 2001 it became an integral part of assessing how a society operates. Security and safety are becoming crucial variables in the way citizens and businesses rate the quality of a society.

#### 13.2.1 SAFETY, SECURITY AND CRIMINAL JUSTICE WILL REMAIN IMPORTANT

Safety, security and criminal justice will remain important in the coming years for both practice and science. My expectation is that this issue will continue to be in the top three of worries of citizens, media and politicians. Security and safety have direct consequences for citizens. They are personally faced with an increase in crime and nuisance. It marks the direct consequences to themselves: it is broken, they are harassed and feel unsafe. Safety and security are problems that occur daily and directly.

The safety and security problems are too complex to resolve in the coming years. A certain degree of insecurity and unsafety will always exist. But the tolerance of the citizens regarding insecurity and unsafety has decreased. More than before people will draw attention to unsafe and insecure situations. Security is an issue that can break and change taboos, for example on the crime of specific ethnic groups. This will create a vast and permanent focus on security and safety. Even if the unsafety and insecurity will decrease, the attention for safety and security will stay. Security and safety remain a constant problem because they have direct consequences, not because the actual or perceived rise of unsafety and insecurity. The importance of security will increase if new increases in crime and insecurity will occur. But even if this does not happen, it will continue to attract attention.

Another important reason is that government and industry have mobilized money and people to focus on security and safety. These are increasing budgets and growing organizations. All of these organizations actually do something with that money and those people. This will affect the degree of security and insecurity. The budgets and organizations related to security and safety are becoming very important. They represent a power in itself.

## 13.2.2 SAFETY AND SECURITY BECOME BROADER AND MORE INTEGRATED

The concept of security in the Netherlands has multiple interpretations. Many practitioners and scientists use the term in various ways. There is no comprehensive definition of security. Even a difference in safety and security as we see in the English language is not available in Dutch. The result is that Dutch authors and practitioners use different terms in English, sometimes safety, sometimes security, sometimes different terms. Security is now in law and criminology an accepted concept but a clear definition is still lacking. As indicated in chapter 1, everyone uses in science and in policy the definition of security that best suits them. To define a problem as a security or safety issue or to appoint a solution as a safety or security solution opens new doors. It is attractive to define problems and solutions as security and safety problems and solutions.

Safety and security problems are comparable. The similarities are greater than the differences. There is not only crime and nuisance, but also accidents, unsafety, disasters, food poisoning, threat of terrorism, possibility of an epidemic etc. They all have far-reaching consequences for the lives and welfare of citizens. These risks are reality for the public. They do not distinguish between these risks. Safety has a strong relationship with technical risks. This relationship occurs, for instance, much less in security.

Organizations in safety and security are responsible for just a (small) part of these risks. They have to work together to solve a safety and security problem. This creates all kinds of problems of their own. The organizations involved in safety and security are confronted with the borders that arise during this problem solving. On the other hand, organizations depend on the specific context in which that happens so they have hardly any opportunities for effective and efficient problem solving.

We need a broader concept of safety and security. This is not just about whether and how one becomes a victim of crime, but also what risks people run in traffic, in respect of food and industrial productions. At this moment problems of security and safety are divided into different organizations. Every organization has its own goals and problems. Mutual cooperation is difficult to realize. This divided organizational thinking about safety and security is increasingly less effective. A more inter-organizational or broad perspective on safety and security is necessary.

Safety and security should then be understood as a convergence of the prevention and threatening of risks for citizens. There can only be a safe and secure situation if all conceivable risks are really mitigated. Not only the risks of crime, but also the

risk of an attack by a terrorist organization or the risk of a major fire or disaster. This broad vision of the concept of security and safety implies that all stakeholders can and actually want to look outside the borders of their own organizations. My expectation is – unfortunately – that this will be realistic only in a next generation.

This broad perspective also implies that a more integral problem solution is needed. Organizations have to work together to solve security and safety problems. The handling of security and safety problems needs a more integrated organizational level. In recent years we have seen that cooperation and coordination between organizations in security is not without problems. Organizational changes to a more comprehensive view on the handling of safety and security problems are moving slowly. There are a few hopeful signs that significant changes are to be expected in the coming years.

### 13.2.3 INFORMATION IS CRUCIAL

Crucial for the perception and evaluation of safety and security is information. There are differences between objective and subjective perception of safety and security. But both are based on available information. This information is strongly influenced by personal experiences or – even more – through stories of other people. My expectation is that it will expand in the coming years, both by personal experiences and by the ever increasing media attention. More and more is publicly known about unsafety and insecurity. In a more objective description of the insecurity and unsafety one seeks a more scientific approach.

Information about unsafety and insecurity is crucial. With this information the effects of certain measures will be compared and a more precise view of the insecurity in a specific sector can arise. The quantity of monitors and records on safety and security is enormous. It is not always possible to establish the scientific basis of these data sources. That does not mean that they not are frequently used. The information on safety and security itself is more important than the way it is obtained.

Information is power, even regarding safety and security. Who has the right to the decisive information? This question will play a crucial role in the debate. The information on security and insecurity will be monopolized mainly by government. These data will also be more confidential. Under the guise of tactical and strategic interest safety and security information increasingly will be treated as secret information. This implies that there can hardly be an objective scientific analysis of the safety and security information.

#### 13.2.4 SECURITY AND SAFETY MEANS MANAGEMENT OF EXPECTATIONS

The number of organizations involved in safety, security and criminal justice is increasing. Safety and security are core tasks of many organizations. In this book I have described the complex network of organizations in the Netherlands. But virtually all organizations and all citizens have a certain relationship with safety and security. Crucial for the effectiveness of safety and security measures is the management of expectations of the real possibilities to ensure safety and security. The number of safety and security plans and initiatives suggests that it is possible to reduce insecurity and unsafety to zero. The expectations of citizens and organizations about the effectiveness of these measures are very high. The massive efforts of so many people and organizations must surely lead to a total safe and secure society.

It is necessary to create less tense and more realistic expectations. Insecurity and unsafety will continue. Individual citizens will be permanently faced with some unsafety and insecurity. Organizations in public administration and in industry will increasingly be faced with some form of crime. There is hardly any discussion about an acceptable level of unsafety and insecurity. It remains unclear for both politics and governance and for citizens and businesses what an acceptable level of insecurity and unsafety is.

It would be valuable if at local, regional and national (and perhaps European) level decisions would be prepared and discussions would be held about the acceptable level of insecurity and unsafety. That means that politicians and public administrators as well as chiefs of police and fire commanders would be more explicit that there are real risks in modern society for business and citizens. They should not only indicate what organizational, financial and other safety and security measures have to be taken, but they also have to be explicit on the risks there are and will remain. This discussion should not only be at an abstract level, but should be made individual. Only in this way, will citizens and businesses have a realistic picture of the security and safety that is possible. This is crucial for their acceptance of measures to reduce insecurity and unsafety.

#### 13.2.5 SECURITY, SAFETY AND CRIMINAL JUSTICE ARE BIG BUSINESS

Many are concerned with safety, security and criminal justice. The safety, security and criminal justice market is still growing. A large number of organizations and individuals exist because of safety and security: police, fire brigades, public prosecutors, the judiciary, the Interior and Justice, prisons, research agencies, private security and surveillance, computer companies in monitoring, training and many others at local, regional, national and international level. The amount of

money being earned in the safety and security sector can only be estimated, but the impression is that in recent years a significant increase has occurred. Security is and will be big business.

The private security market in the Netherlands is substantially present in respect of security and private investigation. The extent of private security in the Netherlands remains in comparison with other countries low. There are about 30,000 private security employees in relation to more than 50,000 public police officers. In other areas of security and safety a limited amount is done by private providers. Exceptions are the institutions for the mentally ill offenders which are mainly private institutions, the probation organizations in the Netherlands are almost entirely private and parts of the ambulance services in the Netherlands are private. Within the regular police and the prison system, there is little emphasis on privatization. That seems also to be true for other security sectors.

This observation has two sides. It is good that many people are intensely involved in an increasingly competitive safety and security market. Only in this way can it be ensured that through competition the best ideas and the best products to reduce insecurity and unsafety are designed. Security and safety have become areas where the elite in the public sector, business and science spend their time and attention. This can lead to valuable contributions to improve safety and security. The exchange of ideas is becoming more international. Security products and concepts developed for example in the United States are rapidly and increasingly translated into the European context. These positive effects of increased organizational and individual attention to safety and security must be promoted.

The accountability structure for the private security market in the Netherlands is not intensive and mostly concentrated on private investigators. It is undeniable that many of these organizations and individuals have an interest in continuity of insecurity and unsafety. This does not mean that they directly contribute to the unsafety and insecurity. At this moment there are a few examples of exaggeration or unfair influence on the market. The stakes are high and effective control is not or hardly available. The need to realize adequate control of the security market is growing even in the Netherlands.

#### 13.2.6 SECURITY ORGANIZATIONS ARE STRUCTURALLY RECEIVING MORE POWERS

There is an unmistakable tendency to give safety and security organizations, in particular police and public prosecutors, more and more far-reaching powers. Preventive searches, administrative courts, Terrorist Crimes Acts, increasing penalties, anonymous reporting, stretching special investigative powers, flexible

privacy provisions are only a few of the many examples. The rise of unsafety and insecurity is the dominant argument. There are no examples that if the insecurity of unsafety declines powers are revoked. Once given powers remain, regardless of the actual insecurity and unsafety.

There is hardly any independent research into the actual effectiveness of extending powers on safety and security. It seems a political and public feeling that as police, judiciary and others have more powers, they are better able to combat insecurity and unsafety. There is no need for evidence for this argument. It is a well spread knowledge, they say.

Some in science and practice perceive any extension of powers as a violation of law. I do not agree with such a dogmatic perspective. If extending these powers actually contributes to reducing insecurity and unsafety is not undesirable. But before, during and after the decision to extend the powers independent research has to be available that indicates its importance and effectiveness. This is often lacking. At this moment political rhetoric is dominant. Obviously political will and opinion is important, but a more scientific objectivity would be valuable.

A meaningful discussion about what values exist even in the unprecedented rising insecurity will not be affected. A reference to fundamental rights is too simple. Again, in the light of insecurity curtailment of fundamental rights is already granted. But there are also objective and subjective values that will never be affected, how large is the insecurity? Is torture permissible when a major terrorist attack can occur? Is violation of the privacy of a large group of men, for example, the taking of DNA allowed if it can catch a serial rapist? I would find it desirable if a political and public debate would arise because that way the limits of the extension of powers would produce a better picture. Now this discussion is ad hoc rather than on the basis of a concrete proposal by a chief or a politician on extension of a specific part of the power complex. Such an ad hoc approach does not lead to a meaningful contribution to the identification of fundamental values.

#### 13.2.7 SECURITY AND SAFETY ARE A RESPONSIBILITY FOR EVERYONE

The government is not solely responsible for safety and security. Citizens and businesses have their own responsibility. The government have claimed a monopoly on safety and security for a long time. Based on the size of the safety and security problem and the necessary measures to be taken, an awareness has arisen that others can have their own specific responsibilities. Security and safety are a broad responsibility for all participants in modern society.

So far there are few differences of opinion. Almost everyone is convinced that this broad responsibility exists. Much more uncertainty exists on the size of the responsibility of citizens and businesses. What should the government do and what should citizens and businesses do? The answer to this question is the subject of intense disagreement. “Everyone his own responsibility” is the principle in the modern security and safety debate. Partly based on the need for cuts, the government tries to shift responsibility to private parties and citizens. But how often it occurs and what remains with the government is not entirely clear. Forms of public-private cooperation in this area are structurally problematic. Shifting the responsibility to citizens and businesses can lead to politically undesirable forms of vigilantism.

The debate and decision on the extent of the responsibilities of citizens and businesses is not finished. It is an easy phrase to say in the current political discussion, but there is hardly any specific content of the responsibilities. It has to be clear what the responsibility of the government is and what the responsibilities of others are. There is little point in fine rhetoric to indicate that citizens have their own responsibility for their safety and security, but not make clear what it really is.

Citizens and businesses can do a lot in the prevention of insecurity and unsafety. Not only by technical means, but also by being more aware of what is happening in their environment. Few realize the everyday relevance of the information available to them for safety and security. Awareness in itself is necessary but not sufficient. Citizens – and companies – should have a real possibility to give the relevant information on safety and security to an authority with a formal responsibility for safety and security. The government has and retains responsibility for security and safety if the use of powers are intervening with constitutional rights. In that case, government intervention is necessary. In my opinion, in a democratic state that cannot be transferred to private organizations or citizens.

In the Netherlands there is relatively little discussion and debate about the possibilities of privatization of security. While there is a substantial private security market, this market has not grown because of privatization, but by the emergence of new functions and tasks and by the attitude of the Dutch government to allow private security organizations to take a part in the security market. While the private security market was growing the public security organizations grew also. The total security market in the Netherlands has simply increased. It is undeniable that the private security market is currently growing faster than the public safety market.

The slight tendency towards privatization of security in the Netherlands has several causes. The forms of security that could be done privately in the Netherlands have

partly remained private. These include probation, parts of the ambulances and forensic care. These forms of security have never fully been public, although of course now intensive monitoring and funding by national government exists. In addition, there is an intensive cooperation between security organizations and parts of the industry on safety and security. In public-private partnership structures, the safety of a particular area or a particular form of insecurity are improved. This requires long-term cooperation structures. In several security organizations volunteers are active for example in the fire brigades. This element enhances the private side of safety in the Netherlands. The state has traditionally an important role in security and safety in the Netherlands. Few will see privatization as an attractive alternative, although it would be valuable to examine if the experiences in other countries with meaningful forms of security privatization would be possible in the Netherlands.

#### 13.2.8 SECURITY AND SAFETY ARE LOCAL AND INTERNATIONAL

Ensuring safety and security needs measures both at local and international level. The dilemma in the coming years is how to bring local and international safety and security measures together. Unmistakably, many problems in the field of security and safety have become increasingly international. This internationalization occurs in all areas of society. But the daily problems of security and safety are felt locally: nuisance of drug addicts or young criminals, risks, increased theft and violence and excesses of organized crime. How can we combine, coordinate and arrange international, national, interregional, regional and local safety and security measures?

A problem that is both local and international, does not fit well in the social and political structures of a country. At the same time realizing security in a small town and fighting organized crime in Colombia is organizationally impossible. The problems in the cooperation between all these organizations are extensive. Within a country, a certain form of local security and safety policy can take form. The variation of safety and security organizations among countries is very high. This makes the exchange of information and the operational and strategic cooperation even more difficult.

Is there a solution? This will only be possible if all stakeholders are prepared to give away some of their independence and sovereignty. A more extensive form of cooperation between countries is the only way to ultimately improve safety and security. This is not a plea for international centralization of security. The actual security and safety measures will take place at local level in decentralized units with a high degree of substantive autonomy. For citizens and businesses, the manifestations of insecurity and unsafety are visible at a local level.



## 13.2.9 COMPLEXITY AND NATIONALIZATION

The Dutch security system is complex. In previous chapters I have outlined all the organizations involved in the different parts of security, safety and criminal justice. The responsibilities are divided in a complex manner. There are all kinds of overlap between responsibilities. Sometimes this seems to have a function to ensure that different organizations have an impact on an important aspect of safety. In other cases there is simply unnecessary overlap. In the Dutch security system there is no ultimate decision maker. The dominant Dutch nature of compromise, coalition and consultation also occurs in the security system. Even in crisis situations there should be consultation between all stakeholders.

This complexity leads to unnecessary administrative bustle. In order to provide full security various forms of consultation and coordination are necessary. There have also been different coordination arrangements designed. In recent years, regionalization of security has occurred in the Netherlands. The primary coordination mechanism is the creation of a specific regional body. Thus, in recent years police regions, fire brigade regions, medical emergency regions and safety regions have been formed. Parts of the power of the municipalities and these organizations are transferred to the regions. In addition, the power and influence of the national government with regard to security and safety has increased immensely. In particular the Ministers of Security and Justice and of the Interior play an increasingly dominant role in the safety and security system in Holland. Through performance agreements and funding arrangements the national government is directly influencing local policy.

The result of these developments – complexity and nationalization – is that the possibility may arise that through nationalization the complexity of Dutch security system can be reduced. National – and partly regional – policy and management priorities are set. Regions and municipalities are then responsible for the implementation of these priorities. This would be a desirable development because in this way a more unambiguous and comprehensive security policy can arise. An explicit threat is that this nationalization only adds to the complexity. In the Netherlands simply new coordination arrangements are added and nothing will be abolished. The municipalities stay important, the mayors too, the regions too and national government too. To reduce the complexity it will be necessary to really abolish organizations and coordination arrangements.

## 13.2.10 DUTCH SECURITY SYSTEM CAN BE IMPROVED

Security and safety are broad and extensive problems. The Dutch security and safety system is based on distinctions such as the maintenance of public order and

the judicial order. There are also many task divisions between many organizations. Police, fire brigades and medical authorities operate still quite separate from each other, while the problems of safety and security are increasingly becoming more integrated. Based on historical relationships the Dutch have created some complex cooperation and coordination structures. The result is a complex “safety and security polder model” in which many, many people must confer before decisions can be taken. This necessarily leads to compromises that do not always have a positive impact on safety and security. The many and complex institutional interests must be taken into account.

There is a need for broad public debate on the reorganization of the Dutch security and safety system. The complexity of insecurity and unsafety requires a more comprehensive review. Such a debate is currently difficult to implement in the Netherlands. Authorities and politicians claim that no time could be wasted on a debate and discussion on structures and processes. More and more I am however convinced that the interaction between the contents of safety and security measures and the security and safety system is crucial. There is a growing need to fundamentally look at the organization and structure of the Dutch safety and security system.

The concept of security is nowadays primarily formed in different sectors. Every sector of society or the public administration has its own safety and security policy. Cooperation between these sectors and organizations is difficult. The sector-oriented thinking on security is becoming less effective. Persons and organizations in the various sectors are starting to realize that an inter-sectoral or broad perspective on security is necessary.

Security should therefore be understood as a convergence of the prevention of risks that threaten a citizen's life or functioning. A really safe situation exists when all conceivable risks are mitigated. Not only the risk to become a victim of crime, but also the risk of being attacked by a terrorist organization or the risk of being confronted with a major fire or disaster. This broad vision of the concept of security requires that all stakeholders can and actually want to look outside the borders of their own sectors. This broad perspective on security also implies that a more integral security policy is needed to effectively and efficiently handle security problems. Security will, in other words, become more integrated at an organizational level. In recent years we have seen that cooperation and coordination between organizations in security is not without problems in the Netherlands. I therefore call for a thorough review of the Dutch system of criminal justice, security and safety. Hopefully the insights in this book will be useful for this review.



## Bibliography

Adviesbureau Van Montfoort, *Evaluatie justitie in de buurt nieuwe stijl: Verbindende netwerken in de veiligheidshuizen*, Woerden: 2008.

Albert, H.J., *De ongelijkzijdige driehoek: Onderlinge betrekking tussen lokaal bestuur, Openbaar Ministerie en politie*, Arnhem: Gouda Quint 1996.

Andrew, C., R.J. Aldrich and W.K. Wark (eds.), *Secret intelligence*, London: Routledge 2009.

Ashworth, A. and M. Redmayne, *The criminal process*, Oxford: Oxford University Press 2005.

Barry, D. and H. Hansen (eds.), *The Sage Handbook of new approaches in management and organization*, London: Sage 2008.

Bercovitch, J., V. Kremenyuk and I.W. Zartman (eds.), *The Sage handbook of conflict resolution*, London: Sage 2009.

Beunders, H.J.G. and E.R. Muller, *Politie en media: Feiten, fictie en imagopolitiek*, Zeist: Uitgeverij Kerkebosch 2005 (second edition 2009)

Beunders, H.J.G. and E.R. Muller, Het Openbaar Ministerie en de media, in: E.R. Muller and C.P.M. Cleiren (eds.), *Rechterlijke Macht: Studies over rechtspraak en rechtshandhaving in Nederland*, Deventer: Kluwer 2006, pp. 593-644.

Bierens, J.J.L.M., Geneeskundige hulpverlening bij ongevallen en rampen, in: E.R. Muller e.a. (eds.), *Crisis: Studies over crisis en crisisbeheersing*, Deventer: Kluwer 2009, pp. 817-842.

Bjorgo, T. and J. Horgan (eds.), *Leaving terrorism behind: Individual and collective disengagement*, London: Routledge 2009.

Blyth, M., *Risk and security management: Protecting people and sites worldwide*, New Jersey: John Wiley and Sons 2008.

Boer, M. de and J. de Wilde (eds.), *The viability of human security*, Amsterdam: Amsterdam University Press 2008.

Boin, A., *Contrasts in Leadership*, Delft: Eburon 1998.

Boin, A., Securing safety in the Dutch prison system: Pros and cons of a supermax, *Howard Journal*, 2001, 40 (4), p. 335-346.

Boin, A., P. 't Hart, E. Stern and B. Sundelius, *The politics of crisis management: Public leadership under pressure*, Cambridge: Cambridge University Press 2005.

Boin, A., A. McCnneil and P. 't Hart (eds.), *Governing after crisis: The politics of investigation, accountability and learning*, Cambridge: Cambridge University Press 2008.

Boone, M. and M. Moerings (eds.), *Dutch prisons*, The Hague: Bju Legal Publishers 2007.

Boone, M. and M. Moerings, Growing prison rates, in: M. Boone and M. Moerings (eds.), *Dutch prisons*, The Hague: Bju Legal Publishers 2007, pp. 51-76.

Boone, M., Reclassering, in: E.R. Muller and P.C. Vegter (eds.), *Detentie: Gevangen in Nederland*, Alphen aan den Rijn: Kluwer 2009, second edition (first edition 2005), pp. 333-354.

Born, H. and M. Metselaar, Politiek-militaire betrekkingen, in: R. Moelker and J. Soeters (eds.), *Krijgsmacht en samenleving*, Amsterdam: Boom 2003, p. 76-116.

Borodzeicz, E.P., *Risk, crisis and security management*, Chichester: 2005.

Bovend'eerst, P.P.T., De beheers- en bestuursstructuur van de rechterlijke macht, in: E.R. Muller and C.P.M. Cleiren (eds.), *Rechterlijke Macht: Studies over rechtspraak en rechtshandhaving in Nederland*, Deventer: Kluwer 2006, p. 79-114.

Brand-Koolen, M.J.M., *Studies in the Dutch prison system*, Amsterdam: Kugler 1987.

Brants, C., Justice done and seen to be done? The insitutionalized relationship between the press and the criminal justice system in the Netherlands, in: *International Criminal Justice Review*, 1993, 3, pp. 60-76.

- Brantjes, C., Turmoil and transition: Problems of criminal law enforcement in the Netherlands, *Policing and Society*, 2001, pp. 29-66.
- Broeders, A.P.A., and E.R. Muller (eds.), *Forensische wetenschap: Studies over forensische kennis en organisatie*, Alphen aad en Rijn: Kluwer 2008.
- Buruma, Y., Formele bevoegdheden, in: C.J.C.F. Fijnaut, E.R. Muller, U. Rosenthal and E.J. van der Torre (eds.), *Politie: Studies over haar werking en organisatie*, Deventer: Kluwer 2007, pp. 525-558.
- Buruma, Y., Dutch tolerance, in: M. Tonry and C. Bijleveld (eds.), *Crime and justice in the Netherlands*, Chicago: University of Chicago press 2007, pp. 73-113.
- Button, M., Assessing the regulation of private security across Europe, *European Journal of Criminology*, 2007, 4 (1), pp. 109-128.
- Cachet, A., Public security in the Netherlands: The evolution of problems and policy, in: Cachet, A., S. De Kimpe, P. Ponsaers and A.B. Ringeling (eds.), *Governance of security in the Netherlands and Belgium*, Den Haag: Boom Juridische Uitgevers 2008, pp. 39-57.
- Cachet, A., and P. Ponsaers, Security policy questions, in: A. Cachet, S. De Kimpe, P. Ponsaers and A.B. Ringeling (eds.), *Governance of security in the Netherlands and Belgium*, Den Haag: Boom Juridische Uitgevers 2008, pp. 9-33.
- Cachet, A. and A.B. Ringeling, Integraal veiligheidsbeleid, in: E.R. Muller (ed.), *Veiligheid*, Alphen aan den Rijn: Kluwer 2004, pp. 635-662.
- Cachet, A. and P. Versteegh, Politie en samenleving, in: C.J.C.F. Fijnaut, E.R. Muller, U. Rosenthal and E.J. van der Torre (eds.), *Politie: Studies over haar werking en organisatie*, Deventer: Kluwer 2007, pp. 1043-1078.
- Cachet, A., S. De Kimpe, P. Ponsaers and A.B. Ringeling (eds.), *Governance of security in the Netherlands and Belgium*, Den Haag: Boom Juridische Uitgevers 2008.
- Cavadino, M. and J. Dignan, *Penal systems: A comparative approach*, London: Sage 2006.
- Cheldelin, S, D. Druckman and L. Fast (eds.), *Conflict*, London: Continuum 2008.

- Clegg, S.G., and C.L. Cooper (eds.), *The Sage handbook of organizational behaviour*, London: Sage 2009.
- Collins, A., *Contemporary security studies*, Oxford: Oxford University Press 2007.
- Commissie Bestuurlijke Evaluatie AIVD, *De AIVD in verandering*, Den Haag: 2004.
- Commissie van Toezicht op de Inlichtingen- en Veiligheidsdiensten, *Accountability of intelligence and security agencies*, Den Haag 2007.
- Crelinsten, R., *Counter terrorism*, Cambridge: Polity Press 2009.
- Doelder, H. de, The Public Prosecution service in the Netherlands, *European Journal of Crime, Criminal Law and Criminal Justice*, 2000, 8 (3), pp. 187-209
- Doelder, H. de, and M.E. de Meijer, Het Openbaar Ministerie als magistraat, in: E.R. Muller and C.P.M. Cleiren (eds.), *Rechterlijke Macht: Studies over rechtspraak en rechtshandhaving in Nederland*, Deventer: Kluwer 2006, pp. 265-284.
- Downes, D., *Contrasts in tolerance: Post-war penal policy in the Netherlands*, England and Wales, Oxford: Clarendon 1988.
- Downes, D., Visions of penal control in the Netherlands, in: M. Tonry (ed.), *Crime, punishment and politics in comparative perspective*, Chicago: University of Chicago Press 2007, pp. 93-126.
- Downes, D. and R. van Swaaningen, The road to dystopia?: Changes in the penal climate in the Netherlands, in: M. Tonry and C. Bijleveld (eds.), *Crime and justice in the Netherlands*, Chicago: University of Chicago Press 2007, pp. 31-72.
- Draijer, J.M.J. and J.J.H. Suyver, *Politie in de rechtsorde*, Zwolle: W.E.J. Tjeenk Willink 2005.
- Downes, D., *Contrasts in tolerance: Post war penal policy in the Netherlands and England and Wales*, Oxford: Clarendon Press 1988.
- Dubelaar, M., E.R. Muller and C.P.M. Cleiren, *Naar beginselen van behoorlijke politiezorg*, Den Haag: Elsevier 2006.
- Eekelen, W.F. van, and E.R. Muller, De krijgsmacht als zwaarmacht van de staat, in: E.R. Muller, D. Starink, J.M.J. Bosch and I.M. de Jong (eds.), *Krijgsmacht:*

*Studies over de organisatie en het optreden*, Alphen aan den Rijn: Kluwer 2004, pp. 11-27.

Elzinga, D.J., P.H.S. van Rest and J. de Valk, *Het Nederlandse politierecht*, Zwolle: W.E.J. Tjeenk Willink 1995.

Eikelenboom, S., *Niet bang om te sterven: Dertig jaar terrorisme in Nederland*, Amsterdam: Nieuw Amsterdam uitgevers 2007.

Engelen, D., *Geschiedenis van de Binnenlandse Veiligheidsdienst*, Den Haag: SDU 1995.

Engelen, D., *De Militaire Inlichtingendienst 1914/2000*, Den Haag: 2000.

Ferlie, E., L.E. Lynn jr and C. Politt (eds.), *The Oxford handbook of public management*, Oxford: Oxford University Press 2005.

Fijnaut, C.J.C.F., E.R. Muller, U. Rosenthal and E.J. van der Torre (eds.), *Politie: Studies over haar werking en organisatie*, Deventer: Kluwer 2007, second edition (first edition 1999).

Fijnaut, C.J.C.F., *De geschiedenis van de Nederlandse politie*, Amsterdam: Boom 2007.

Fiselier, J.P.S., Penitentiaire inrichtingen in soort en maat, in: E.R. Muller and P.C. Vegter (eds.), *Detentie: Gevangen in Nederland*, Alphen aan den Rijn: Kluwer 2009, second edition (first edition 2005), pp. 161-198.

Franke, H., *Twee eeuwen gevangen*, Utrecht: Het Spectrum 1990.

Franke, H., *The emancipation of prisoners: A socio-historical analysis of the Dutch prison experience*, Edinburgh: Edinburgh University Press 1995.

Franke, H., *De macht van het lijden*, Amsterdam: Balans 1996.

Gilpin, D.R. and P.J. Murphy, *Crisis management in a complex world*, Oxford: Oxford University Press 2008.

Goold, B. And L. Zedner, *Crime and security*, Aldershote: Ashgate 2006.

Graaf, B.A. de Graaf, *Theater van de angst: De strijd tegen terrorisme in Nederland, Duitsland, Italië en Amerika*, Amsterdam: Boom 2009.



Graaf, B.A. de., E.R. Muller and J.A. van Reijn (eds.), *Inlichtingen- en veiligheidsdiensten*, Deventer: Kluwer 2010.

Graaff, B. de, From security threat to protection of vital interests: Changing perceptions in the Dutch Security Service 1945-1991, *Conflict Quarterly*, 2, 1992, pp. 9-35.

Graaff, B. de, and C. Wiebes, *Villa Maarheeze: De geschiedenis van de inlichtingen-diensten buitenland*, Den Haag: SDU 1998.

Groot-Van Leeuwen, L.E. de, De samenstelling van de rechterlijke macht, in: E.R. Muller and C.P.M. Cleiren (eds.), *Rechterlijke Macht: Studies over rechtspraak en rechtshandhaving in Nederland*, Deventer: Kluwer 2006, pp. 59-78.

Greenwood, R., C. Oliver, K. Sahlin and R. Saddaby (eds.), *The Sage handbook of organizational institutionalism*, London: Sage 2008.

Gardner, D., *Risk: The science and politics of fear*, London: Virgin Books 2008.

Garland, D., *The culture of control: Crime and social order in contemporary society*, Oxford: Oxford University Press 2001.

Gelsthorpe, L. and R. Morgan (eds.), *Handbook of probation*, Devon: Willan Publishing 2007.

Gill, P., S. Marinn and M. Phythian (eds.), *Intelligence theory: Key questions and debates*, London: Routledge 2009.

Gommer, H., *Onder de rechter*, Nijmegen: Wolf Legal Publishers 2008.

Harfield, C., A. MacVean, J.G.D. Grieve and D. Philips (eds.), *The handbook of intelligent policing: Consilience, crime control and community safety*, Oxford: Oxford University Press 2008.

Hatch, M.J. and A.L. Cunliffe, *Organization theory: Modern, symbolic and post-modern perspectives*, Oxford: Oxford University Press 2006.

Hart, A.C. 't, Het nieuwe OM, in: E.R. Muller and C.P.M. Cleiren (eds.), *Rechterlijke Macht: Studies over rechtspraak en rechtshandhaving in Nederland*, Deventer: Kluwer 2006, pp. 143-264.

- Helsloot, I., Fysieke veiligheid, in: E.R. Muller (ed.), *Veiligheid*, Deventer: Kluwer 2004, pp. 345-373.
- Helsloot, I., E.R. Muller and J.D. Berghuijs (eds.), *Brandweer: Studies over organisatie, functioneren en omgeving*, Alphen aan den Rijn: Kluwer 2007.
- Hirsch Ballin, M.F.H., *Anticipative criminal investigation: Theory and counterterrorism practice in the Netherlands en the United States*, Den Haag: T.C.M. Asser Press, 2012.
- Hol, A.M., Rituelen en symbolen in de rechtspraak, in: E.R. Muller and C.P.M. Cleiren (eds.), *Rechterlijke Macht: Studies over rechtspraak en rechtshandhaving in Nederland*, Deventer: Kluwer 2006, pp. 517-534.
- Hoogenboom, A.B., *Het politiecomplex*, Arnhem: Gouda Quint 1994.
- Hoogenboom, A.B., Privatisering van de politiefunctie, in: C.J.C.F. Fijnaut, E.R. Muller and U. Rosenthal (eds.), *Politie: Studies over haar werking en organisatie*, Alphen aan den Rijn: Samsom 1999 (first edition), pp. 549-575.
- Hoogenboom, A.B., and E.R. Muller, *Voorbij de dogmatiek: Publiek-private samenwerking in de veiligheidszorg*, Zeist: Kerkebosch 2002.
- Hoogenboom, A.B., The governance of policing and security, in: A. Cachet, S. De Kimpe, P. Ponsaers and A.B. Ringeling (eds.), *Governance of security in the Netherlands and Belgium*, Den Haag: Boom Juridische Uitgevers 2008, pp. 197-209.
- Hope, T. and R. Sparks, *Crime, risk and insecurity*, Oxon: Routledge 2000.
- Huberts, L.W.J.C. et al, *Paradocaal politiebestel: Burgemeesters, Openbaar Ministerie en politiechefs over de sturing van de politie*, Zeist: Kerkebosch 2004.
- Huberts, L.W.J.C., Politiebestel in de praktijk, in: C.J.C.F. Fijnaut, E.R. Muller, U. Rosenthal and E.J. van der Torre (eds.), *Politie: Studies over haar werking en organisatie*, Deventer: Kluwer 2007, pp. 141-168.
- Jewkes, Y. (ed.), *Handbook on prisons*, Devon: Willan Publishing 2007.
- Jewkes Y. and H. Johnston (eds.), *Prison readings: A critical introduction to prisons and imprisonment*, Devon: Willan Publishing 2006.

- Jochems, T., Performance management and police: The Dutch experience, in: Cachet, A., S. De Kimpe, P. Ponsaers and A.B. Ringeling (eds.), *Governance of security in the Netherlands and Belgium*, Den Haag: Boom Juridische Uitgevers 2008, pp. 119-147
- Jones, T., *Policing and democracy in the Netherlands*, London: PSI 1995.
- Johnson, L.K. (ed.), *Handbook of intelligence studies*, London: Routledge 2009.
- Johnston, L. and C. Shaering, *Governing security: Explorations in policing and justice*, Oxon: Routledge 2003.
- Johnstone G. and D.W. van Ness, *Handbook of restorative justice*, Devon: Willan Publishing 2007.
- Joyce, P., *Criminal justice: An introduction to crime and the criminal justice system*, Devon: Willan Publishing 2006.
- Kalmthout, Foreigners, in: M. Boone and M. Moerings (eds.), *Dutch prisons*, The Hague: Bju Legal Publishers 2007, pp. 101-126.
- Kalmthout, A.M. van, and I. Durnescu (eds.), *Probation in Europe*, Nijmegen: Wolf Legal Publishers 2008.
- Kalmthout, A.M. van, and L. Tigges, Netherlands, in: A.M. van Kalmthout and I. Durnescu (eds.), *Probation in Europe*, Nijmegen: Wolf Legal Publishers 2008, pp. 677-723.
- Kalmthout, A.M. van, Vreemdelingenbewaring, in: E.R. Muller and P.C. Vegter (eds.), *Detentie: Gevangen in Nederland*, Alphen aan den Rijn: Kluwer 2009, second edition (first edition 2005), pp. 307-332.
- Kelk, C., *Nederlands detentierecht*, Deventer: Kluwer 2003.
- Keijser, J.W. de, *Punishment and purpose*, Amsterdam: Thela Thesis 2001.
- Kimpe, S. de, and A. Cachet, Police and safety policy, in: A. Cachet, S. De Kimpe, P. Ponsaers and A.B. Ringeling (eds.), *Governance of security in the Netherlands and Belgium*, Den Haag: Boom Juridische Uitgevers 2008, pp. 209-234.
- King, R.D. and E. Wincupe (eds.), *Doing research on crime and justice*, Oxford: Oxford University Press 2008.

- Koenraadt, F. and A. Mooij, Mentally ill offenders, in: M. Boone and M. Moerings (eds.), *Dutch prisons*, The Hague: Bju Legal Publishers 2007, pp. 167-186.
- Kommer, M., *De gevangenis als werkplek*, Arnhem: Gouda Quint 1991.
- Kommer, M., Personeel, in: E.R. Muller and P.C. Vegter (eds.), *Detentie: Gevangen in Nederland*, Alphen aan den Rijn: Kluwer 2009, second edition (first edition 2005), pp. 355-372.
- Kooijmans, T. and S. Meijer, Inrichtingen voor stelselmatige daders, in: E.R. Muller and P.C. Vegter (eds.), *Detentie: Gevangen in Nederland*, Alphen aan den Rijn: Kluwer 2009, second edition (first edition 2005), pp. 227-260.
- Langbroek, P.M., Organisatieontwikkeling en kwaliteitszorg in de rechterlijke organisatie, in: E.R. Muller and C.P.M. Cleiren (eds.), *Rechterlijke Macht: Studies over rechtspraak en rechtshandhaving in Nederland*, Deventer: Kluwer 2006, pp. 115-142.
- Lange, R de, and P.A.M. Mevis, Constitutional guarantees for the independence of the judiciary, *Electronic Journal of Comparative Law*, 2007, 11 (May 2007).
- Lechner, F.J., *The Netherlands: Globalization and national identity*, London: Routledge 2008.
- Liefwaard, T., Justitiele jeugdinrichtingen, in: E.R. Muller and P.C. Vegter (eds.), *Detentie: Gevangen in Nederland*, Alphen aan den Rijn: Kluwer 2009, second edition (first edition 2005), pp. 261-306.
- Loader, I., Consumer culture and the commodification of policing and security, *Sociology*, 1999, 33 (2), pp. 373-392.
- Loader, I., Plural policing and democratic governance, *Social Legal Studies*, 2000, 9 (3), pp. 323-345.
- Loader, I. and N. Walker, Policing as a public good: Reconstructing the connections between policing and the state, *Theoretical Criminology*, 2001, 5 (1) pp. 9-35.
- Loader, I. and N. Walker, State of denial?: Rethinking the governance of security, *Punishment and Society*, 2004, 6 (2), pp. 221-228.
- Loader, I. and M. Walker, *Civilizing security*, Cambridge: Cambridge University Press, 2007.

Loth, M.A., Rechterlijke beroepsethiek, in: E.R. Muller and C.P.M. Cleiren (eds.), *Rechterlijke Macht: Studies over rechtspraak en rechtshandhaving in Nederland*, Deventer: Kluwer 2006, pp. 457-484.

Lynch, A., E. Macdonald and G. Williams (eds.), *Law and liberty in the war on terror*, Sydney: The Federation Press 2007.

Maguire, M., R. Morgan and R. Reiner (eds.), *The Oxford handbook of criminology*, Oxford: Oxford University Press, fourth edition, 2007.

Mak, E., *De rechtspraak in balans*, Nijmegen, Wolf Legal Publishers, 2008.

Malsch, M., Toetsing en gebruik van deskundigenrapporten, in: A.P.A. Broeders and E.R. Muller (eds.), *Forensische wetenschap*, Deventer: Kluwer 2008, pp. 655-677.

Marks, P. and A. van Sluis, Developments in local public safety policy: A comparison between Antwerp and Rotterdam, in: Cachet, A., S. De Kimpe, P. Ponsaers and A.B. Ringeling (eds.), *Governance of security in the Netherlands and Belgium*, Den Haag: Boom Juridische Uitgevers 2008, pp. 79-99.

Marquery, T.P., *Unity and diversity of the Public Prosecution Services in Europe: A study of the Czech, Dutch, French and Polish systems*, Groningen: University Press 2008

McConville and G. Wilson, *The handbook of the criminal justice process*, Oxford: Oxford University Press 2002.

McLaughlin, E. and J. Muncie, *The Sage dictionary of criminology*, London: Sage 2006.

Meulen, J, van der, and J. Soeters, Dutch courage: The politics of acceptable risks, *Armed Forces and Society*, 2005, 31, pp. 537-558.

Michiels, F.C.M.A. et al, *Artikelsgewijs commentaar Politiewet 1993*, Den Haag: Vuga 1997.

Michiels, F.C.M.A. and E.R. Muller (eds.), *Handhaving: Bestuurlijk handhaven in Nederland*, Alphen aan den Rijn: Kluwer 2006.

Moerings, M., Persistent offenders, in: M. Boone and M. Moerings (eds), *Dutch prisons*, The Hague: BJU Legal Publishers, 2007, pp. 187-208.

- Monahan, T. (ed.), *Surveillance and security: Technological politics and power in everyday life*, London: Routledge 2006.
- Moran, M., M. Rein and R.E. Goodin, *The Oxford handbook of public policy*, Oxford: Oxford University Press 2006.
- Muller, E.R., *Terrorisme en politieke verantwoordelijkheid: Gijzelingen, aanslagen en ontvoeringen in Nederland*, Arnhem: Gouda Quint 1994.
- Muller, E.R., Policing and accountability in the Netherlands: A happy marriage or a stressful relationship?, *Policing and Society*, 2002, 12 (4), pp. 249-258.
- Muller, E.R. (ed.), *Veiligheid: Studies over inhoud, organisatie en maatregelen*, Alphen aan den Rijn: Kluwer 2004A.
- Muller, E.R., Toekomst veiligheid en veiligheidszorg, in: E.R. Muller, (ed.), *Veiligheid: Studies over inhoud, organisatie en maatregelen*, Alphen aan den Rijn: Kluwer 2004B, pp. 779-790.
- Muller, E.R., Rechterlijke macht in perspectief, in: E.R. Muller and C.P.M. Cleiren (eds.), *Rechterlijke Macht: Studies over rechtspraak en rechtshandhaving in Nederland*, Deventer: Kluwer 2006, pp. 707-723.
- Muller, E.R., Politie en politiewetenschap in perspectief, in: C.J.C.F. Fijnaut, E.R. Muller, U. Rosenthal and E.J. van der Torre (eds.), *Politie: Studies over haar werking en organisatie*, Deventer: Kluwer 2007, pp. 1175-1187.
- Muller, E.R., Forensische wetenschap in perspectief, in: A.P.A. Broeders en E.R. Muller (eds.), *Forensische wetenschap*, Deventer: Kluwer 2008A, pp. 733-741.
- Muller, E.R., Trends in terrorisme en terrorismebestrijding, in: E.R. Muller, U. Rosenthal, R. de Wijk (eds.), *Terrorisme: Studies over terrorisme en terrorismebestrijding*, Deventer: Kluwer 2008B, pp. 903-919.
- Muller, E.R., Veiligheids- en politiebestel in perspectief, *Tijdschrift voor de Politie*, 2009A, 2.
- Muller, E.R., Detentie in perspectief, in: E.R. Muller, E.R. and P.C. Vegter (eds.), *Detentie: Gevangen in Nederland*, Alphen aan den Rijn: Kluwer, 2009B, pp. 643-663.

Muller, E.R., *Crisis en crisismanagement in perspectief*, in: E.R. Muller e.a. (eds.), *Crisis: Studies over crisis en crisisbeheersing*, Kluwer: Deventer 2009C.

Muller, E.R., *Inlichtingen- en veiligheidsdiensten in perspectief*, in: B.A. de Graaf, E.R. Muller and J.A. van Reijn (eds.), *Inlichtingen- en veiligheidsdiensten*, Deventer: Kluwer 2011A, pp. 623-639.

Muller, E.R. (ed.), *Crises in Nederland: Rampen, rellen, gijzelingen en andere crises*, Deventer: Kluwer 2011B.

Muller, E.R., Modern terrorism and modern counter terrorism in the Netherlands, in: G. Molier, A. Ellian and D. Suurland (eds.), *Terrorism: Ideology, law and policy*, Dordrecht: Republic of Letters Publishing, 2011C, pp. 361-397.

Muller, E.R., E.T. Brainich, L. Rogier and Th.A. de Roos (eds.), *Tekst en Commentaar Openbare Orde en Veiligheid*, Deventer: Kluwer 2011D.

Muller, E.R. and C.P.M. Cleiren (eds.), *Rechterlijke Macht: Studies over rechtspraak en rechtshandhaving in Nederland*, Deventer: Kluwer 2006.

Muller, E.R., H.R.B.M. Kummeling and R.P. Bron, *Veiligheid en privacy: Een zoektocht naar een nieuwe balans*, Den Haag: Boom Juridische Uitgevers 2007

Muller, E.R., J.P. van der Leun, L.M. Moerings and P.J.V. van Calster (eds.), *Criminaliteit: Criminaliteit en criminaliteitsbestrijding in Nederland*, Deventer: Kluwer 2010.

Muller, E.R., and C.N.T. Otto, Politie, OM en NFI, in: A.P.A. Broeders en E.R. Muller (eds.), *Forensische wetenschap*, Deventer: Kluwer 2008, pp. 591-619.

Muller, E.R. and A. Pieterse, Criminal investigation in the Dutch constitutional state: Viscosity or decisiveness, in: F. Hendriks and Th. Toonen (eds.), *Polder politics: The re-invention of consensus democracy in the Netherlands*, Burlington 2001.

Muller, E.R., L.J.J. Rogier, H.R.B.M. Kummeling, e.a., *Bestuur, recht en veiligheid*, Den Haag: Boom Juridische Uitgevers 2008.

Muller, E.R. and Th.A. de Roos (eds.), *Tekst en Commentaar Openbare Orde en Veiligheid*, Deventer: Kluwer 2006.

Muller, E.R., U. Rosenthal, I. Helsloot and E.R.G. van Dijkman (eds.), *Crisis: Crisis en crisisbeheersing in Nederland*, Alphen aan den Rijn: Kluwer 2009.

- Muller, E.R., U. Rosenthal and R. de Wijk (eds.), *Terrorisme: Studies over terrorisme en terrorismebestrijding in Nederland*, Alphen aan den Rijn: Kluwer 2008.
- Muller, E.R., D. Starink, J.M.J. Bosch and I.M. de Jong (eds.), *Krijgsmacht: Studies over de organisatie en het optreden*, Alphen aan den Rijn: Kluwer 2004.
- Muller, E.R., R.F.J. Spaaij and A.G.W. Ruitenberg, *Trends in terrorisme*, Alphen aan den Rijn: Kluwer 2004.
- Muller, E.R. and P.C. Vegter (eds.), *Detentie: Gevangen in Nederland*, Alphen aan den Rijn: Kluwer, 2009 second edition (first edition 2005).
- Muller, E.R., M. Zannoni e.a., *Ordeverstoringen en groepsgeweld bij evenementen en grootschalige gebeurtenissen*, Den Haag: Boom Lemma Uitgevers 2011.
- Myjer, B.E.P., Integriteit rechterlijke macht, in: E.R. Muller and C.P.M. Cleiren (eds.), *Rechterlijke Macht: Studies over rechtspraak en rechtshandhaving in Nederland*, Deventer: Kluwer 2006, pp. 485-516.
- Neocleous, M. *Critique of security*, Edingburgh: Edingburgh University Press 2008.
- Newburn, T. (ed.), *Policing: Key readings*, Devon: Willan Publishing 2005.
- Newburn, T., *Criminology*, Devon: Willan Publishing 2007.
- Newburn, T. (ed.), *Handbook of policing*, Devon: Willan Publishing 2008.
- Newburn, T., T. Williamson and A. Wright (eds.), *Handbook of criminal investigation*, Devon: Willan Publishing, 2007.
- Onderzoeksgroep Inlichtingen en Veiligheid Defensie, *Inlichtingen en Veiligheid defensie: Kwaliteit, capaciteit en samenwerking*, Den Haag: 2006.
- Oosterom-Staples, H., Using national security and public policy to combat terrorism: The case of the Netherlands, in: *European Journal of Migration and Law*, 2008, 10, pp. 51-75.
- Pakes, F.J., *Link in a chain or spider in a web: The positioning of the Prosecution Service in the Netherlands and England and Wales*, Portsmouth: Institute of Criminal Studies 1999.



Pakes, F.J., League champions in the mid table: On the major changes in Dutch prosin policy, *Howard Journal*, 2000, 39 (1), pp. 30-29.

Pakes, F.J., The politics of discontent: The emergence of a new criminal justice discourse in the Netherlands, *Howard Journal of Criminal Justice*, 2004, 43, pp. 284-298.

Pakes, F.J., The ebb and flow of criminal justice in the Netherlands, *International Journal of the Sociology of Law*, 2006, 34, pp. 141-156.

Pakes, F.J., An international comparative perspective, in: M. Boone and M. Moerings (eds.), *Dutch prisons*, The Hague: Bju Legal Publishers 2007, pp. 297-314.

Peters, B. and J. Pierre (eds.), *Institutionalism*, London: Sage 2007.

Pieters, D., *Social security: An introduction to the basic principles*, Alphen aan den Rijn: Kluwer Law International 2006.

Poot, C.J. de, R.J. Bokhorst, P.J. van Koppen and E.R. Muller, *Rechercheportret: Over dilemma's in de opsporing*, Alphen aan den Rijn: Kluwer 2004.

Posner, R.A., *Countering terrorism: Blurred foces, halting steps*, Lanham: Rowman and Littlefield Publishers 2007.

Power, M., *Organized uncertainty: Designing a world of risk management*, Oxford: Oxford University Press 2007.

Punch, M., *Policing the inner city*, Conneticut: Archon Books 1979

Punch, M., A.B. Hoogenboom and T. Williamsom, Paradigm lost: The Dutch dilemma, *The Australian and New Zealand Journal of Criminology*, 2005, 38 (2), pp. 268-281.

Punch, M., *Zero tolerance policing*, Bristol: The Policy Press 2007.

Raine, J.W. and M.J. Willson, *Managing criminal justice*, New York: Harvester Whaetshaef 1993.

Reijn, J.A. van, Intelligence and the international security assistance force in Afghanistan, in: C. Andrew, R.J. Aldrich and W.K. Wark (eds.), *Secret intelligence*, London: Routledge 2009, pp. 510-521.

- Reiner, R., *Law and order: A honest citizen's guide to crime and control*, Cambridge: Polity Press 2007.
- Roberg, R. K. Novak and G. Cordner, *Police and society*, Oxford: Oxford University Press 2009.
- Roos, Th. A. de, Strafrechtspraak, in: E.R. Muller and C.P.M. Cleiren (eds.), *Rechterlijke Macht: Studies over rechtspraak en rechtshandhaving in Nederland*, Deventer: Kluwer 2006, pp. 361-379.
- Rosenthal, U., *Rampen, rellen gijzelingen: Crisisbesluitvorming in Nederland*, Amsterdam De Bataafse Leeuw 1984.
- Rosenthal, U., M.J. Bezuyen, M.J. van Duin and M.L.A. de Vreeze-Verhoef, *The 1993 and 1995 flood in western Europe*, Leiden: CRC 1997.
- Rosenthal, U., A. Boin and L.K. Comfort (eds.), *Managing crises*, Springfield: Charles C Thomas 2001.
- Rosenthal, U., G. Bruinsma, E.R. Muller et al, *Evaluatie Poliewet 1993: Een diepte-onderzoek*, Den Haag: Vuga 1998.
- Rosenthal, U., M.T. Charles and P. 't Hart (eds.), *Coping with crises*, Springfield: Charles C Thomas 1989.
- Rosenthal, U., E.R. Muller and A.G.W. Ruitenberg, *Het terroristische kwaad: Diagnose en bestrijding*, Den Haag: Boom Juridische Uitgevers 2005 (second edition 2006).
- Rosenthal, U. and E.R. Muller, *The evil of terrorism: Diagnosis and countermeasures*, Springfield: Charles C Thomas Publisher 2007.
- Rovers, B., *Resultaten van veiligheidshuizen*, Den Haag: WODC 2011.
- Sanders, A. and R. Young, *Criminal justice*, Oxford: Oxford University Press, second edition, 2007.
- Savage, S.P., *Police reform: Forces for change*, Oxford: Oxford University Press 2007.
- Schmid, A.P., and A.J. Jongman, *Political terrorism*, Amsterdam 1988.

Scholtens, A., Controlled collaboration in disaster and crisismanagement in the Netherlands, *Journal of Contingencies and Crisis Management*, 2008, 4, pp. 195-207.

Schuyt, C. and M. Kommer, *Niet bij straf alleen*, Amsterdam: AUP 1998

Sheptycki, J.W.E., Political culture and structure of social control: Police related scandal in the low countries in comparative perspective, *Policing and Society*, 1999, 9 (10), pp. 1-31.

Smith, D. and D. Elliott (eds.), *Key readings in crisis management: Systems and structures for prevention and recovery*, London: Routledge 2006.

State, P.F., *A brief history of the Netherlands*, New York: Facts On File 2008.

Steden, R. van, and L. Huberts, The Netherlands, in: T. Jones and T. Newburn (eds.), *Plural policing*, London: Routledge 2006.

Steden, R. van, *Privatizing policing: Describing and explaining the growth of private security*, Den Haag: BJU Legal Publishers 2007.

Stelfox, P., *Criminal investigation: An introduction to principles and practice*, Devon: Willan Publishing 2009.

Sunstein, C.R., *Worst-case scenarios*, Cambridge: Harvard University Press 2007.

Swaaningen, R. van, Public safety and the management of fear, *Theoretical Criminology*, 2005, 9, pp. 289-305.

Swaaningen, R. van, Criminology in the Netherlands, *European Journal of Criminology*, 2006, 3, pp. 463-501.

Tak, P.J.P., *Essays on Dutch criminal policy*, Nijmegen: Wolf Legal Productions 2002.

Tak, P.J.P., *The Dutch criminal justice system*, Nijmegen: Wolf Legal Publishers 2008.

Terpstra, J. and I. Bakker, Justice in the community in The Netherlands, *Criminal Justice*, 2004, 4, pp. 375-393.

- Tonry, M. and C. Bijleveld (eds.), *Crime and justice in the Netherlands*, Chicago: University of Chicago Press 2007.
- Torre, E.J. van, E.R. Muller, U. Rosenthal and M. Bezuyen, *Openbare orde: Ernstige verstoringen, ontwikkelingen en beleid*, Alphen aan den Rijn: Kluwer 2002.
- Tsoukas, H. and C. Knudsen (eds.), *The Oxford handbook of organization theory: Meta-theoretical perspectives*, Oxford: Oxford University Press 2003.
- Vagg, J., *Prison systems: A comparative study of accountability in England, France, Germany and The Netherlands*, Oxford: Clarendon Press 1994.
- Valk, G. de, *Dutch intelligence: Towards a qualitative framework for analysis*, Den Haag: BJU 2005.
- Vegter, P.C., Vormen van detentie, in: E.R. Muller and P.C. Vegter (eds.), *Detentie: Gevangen in Nederland*, Alphen aan den Rijn: Kluwer 2009, second edition (first edition 2005), pp. 47-74.
- Veurink, G.R.C., Justitiële inrichtingen voor ter beschikking gestelden, in: E.R. Muller and P.C. Vegter (eds.), *Detentie: Gevangen in Nederland*, Alphen aan den Rijn: Kluwer 2009, second edition (first edition 2005), pp.199-226.
- Vlek, F., E.R. Muller, et al (eds.), *Uit balans: Politie en bestel in de knel*, Zeist: Kerkebosch 2004.
- Waddington, D.P., *Policing public disorder: Theory and practice*, Devon: Willan Publishing 2007.
- Weijers, I. and T. Liefwaard, Youngsters, in: M. Boone and M. Moerings (eds.), *Dutch prisons*, The Hague: Bju Legal Publishers 2007, pp. 127-166.
- Weringh, K. Van, *De ideale gevangenis*, Amsterdam: Bas Lubberhuizen 1993
- Wiebes, C., *Intelligence en de oorlog in Bosnie 1992-1995: De rol van de inlichtingen- en veiligheidsdiensten*, Amsterdam: Boom 2002.
- Wilkinson, P., *Terrorism versus democracy: The liberal state response*, London: Routledge, second edition 2006.
- Wilkinson, P. (ed.), *Homeland security in the UK: Future preparedness for terrorist attack since 9/11*, London: Routledge 2007.

Williams, P.D. (ed.), *Security studies*, London: Routledge 2008.

Wintle, M., Policing and the liberal state in the Netherlands, *Policing and Society*, 1996, 6, pp. 181-197.

Wood, J. and B. Dupont (eds.), *Democracy, society and the governance of security*, Cambridge: Cambridge University Press 2006.

Wood, J. and C. Shaering, *Imagining security*, Devon: Willan Publishing 2007.

Woude, M.A.H. van der, *Wetgeving in een veiligheidscultuur: Totstandkoming van antiterrorismewetgeving in Nederland gezien vanuit maatschappelijke en (rechts) politieke context*, Den Haag: BJU 2010.

Zedner, L., Too much security?, *International Journal of Sociology of Law*, 2003, 31, pp. 155-184.

Zedner, L., *Criminal justice*, Oxford: Oxford University Press 2004.

Zedner, Securing liberty in the face of terror: Reflections from criminal justice, *Journal of Law and Society*, 2005, 33 (4), pp. 507-533.

Zedner, L., *Security*, London: Routledge 2009.

Zuylen, R. van, in: E.R. Muller (ed.), *Veiligheid*, Deventer: Kluwer 2004, pp. 7-24.

## Glossary

Algemene Inlichtingen- en Veiligheidsdienst (AIVD): General Intelligence and Security Service

Algemene Inspectiedienst (AID): Investigative Agency of the General Inspectorate of the Ministry of Agriculture, Nature and Food Quality

beheer: management

bestuur: public administration

bestuurder: public administrator

bijzondere opsporingsdiensten: special investigative agencies

brandweer: fire brigade or fire service

burgemeester: mayor

Centraal Bureau voor de Statistiek (CBS): Central Bureau of Statistics

Centrale Raad van Beroep: Central Board of Appeal

college van burgemeester en wethouders: board of mayor and aldermen

College van Procureurs-generaal: Board of Prosecutors General

Commissaris van de Koningin: Queen's Commissioner

Dienst Justitiele Inrichtingen: Correctional Institutions Agency

Eerste Kamer: Upper House or Senate

Fiscale Inlichtingen- en Opsporingsdienst en Economische Controle Dienst (FIOD-ECD): Economic Control Agency and the Customs and Excise Investigative Office of the Inland Revenue Ministry

functioneel parket: functional prosecution office

Gedeputeerde Staten (GS): board of provincial deputies

gemeente: municipality

gemeenteraad: city council or municipal council

Geneeskundige Hulpverlening bij Ongevallen en Rampen (GHOR): medical emergency services

gerechtshof: court of appeal

gevangenis: prison

gezag: authority

Hoge Raad: Supreme Court

hoofdcommissaris: chief constable

hoofdofficier van justitie: chief public prosecutor

huis van bewaring: remand house

hulpofficier van justitie: auxiliary to the public prosecutor

Inspectie voor Openbare Orde en Veiligheid (IOOV): Public Order and Safety Inspectorate

Inspectie voor de Sanctietoepassing: Inspectorate for Sanctions Application

Inspectie Volkshuisvesting, Ruimtelijke Ordening en Milieu: Information and Investigation Agency of the Ministry of Housing, Spatial Planning and the Environment

justitiele inrichtingen: detention organizations or correctional institutions

kantongerecht: subdistrict court

korpsbeheerder: police force manager

Korpsbeheerdersberaad: Council of Police Force Managers

Korps Landelijke Politie Diensten (KLPD): National Police Services

landelijk pakket: national prosecution office

Militaire Inlichtingen- en Veiligheidsdienst (MIVD): Military Intelligence and Security Service

Ministerie van Algemene Zaken (AZ): Ministry of General Affairs

Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (BZK): Ministry of Interior and Kingdom Relations

Ministerie van Buitenlandse Zaken (BZ): Ministry of Foreign Affairs

Ministerie van Defensie: Ministry of Defence

Ministerie van Justitie: Ministry of Justice

Ministerie van Veiligheid en Justitie: Ministry of Security and Justice

Ministerie van Verkeer en Waterstaat (VenW): Ministry of Transport and Water Works

Ministerie van Volksgezondheid, Welzijn en Sport (VWS): Ministry of Health, Welfare and Sport

Ministerie van Volkshuisvesting, Ruimte Ordening en Milieu (VROM): Ministry of Housing, Spatial Planning and Environment

Ministerie voor Wijken, Wonen en Integratie (WWI): Ministry of Neighbourhoods, Living and Integration

Nationaal Coördinator Terrorisme Bestrijding (NCTb): National Coordinator Counter Terrorism

Nederlands Forensisch Instituut (NFI): Dutch Forensic Institute

officier van justitie: public prosecutor

Onderraad Veiligheid en Rechtsorde: Council for Security and Legal Order



Openbaar Ministerie (OM): Public Prosecution Service

politieregio: police region

procureur-generaal (PG): prosecutor-general

provincie: provence

provinciale staten (PS): provincial council

Raad van Hoofdcommissarissen: Council of Chief Constables

Raad van State (RvS): Council of State

Raad voor de Rechtspraak: Council for the Judiciary

rechtbank: district court

rechter commissaris (RC): court commissioner

regionaal college: regional council

regionale politie: regional police force

Sociale Inlichtingen- en Opsporingsdienst (SIOD): Social Information and Investigation Agency

staatssecretaris: State Secretary of deputy minister

Tweede Kamer: Lower House

veiligheidshuis: security house

veiligheidsregio: safety region

waterschap: water board

## Author

Prof. dr. E.R. (Erwin) Muller LL.M (1965) holds a Professorship in Security, Safety and Law at Leiden University in the Netherlands and he is the Academic Director of the Institute for Criminal Law and Criminology at Leiden University. He is a permanent Member of the Board of the independent Dutch Safety Board.



## INDEX

|                             |              |                                |              |
|-----------------------------|--------------|--------------------------------|--------------|
| <b>A</b>                    |              | Complaints Committee of the    |              |
| accountability              | 3.1          | Amsterdam Police               | 3.4          |
| Act on Municipalities       | 9.1          | composition drawing            | 6.4.4        |
| Act on Safety Regions       | 12.1.1       | confidence                     | 7.4          |
| Act Temporary House Ban     | 9.1          | confrontations                 | 6.4.4        |
| administrative detention    | 9.1          | constellations                 | 9.3.9        |
| administrative duress       | 9.1          | constitutional monarchy        | 1.4          |
| administrative fines        | 9.1          | constitutional state           | 1.4          |
| AIVD                        | 8.3          | contra-argumentation           | 7.3.8        |
| anti-terrorist units        | 10.4.1       | control                        | 8.4          |
| armed forces                | 11           | cooperation                    | 3.5.4, 4.4.8 |
| authorities                 | 1.2.2        | coordination                   | 4.4.8        |
| autonomes                   | 9.2.2        | Correctional Institutions      |              |
| <b>B</b>                    |              | Agency                         | 5.2.2        |
| Board of Prosecutors        |              | Council for Criminal Law       |              |
| General                     | 2.1.1, 4.2.1 | Application and Youth          |              |
| <b>C</b>                    |              | Protection                     | 5.2.2        |
| capacity                    | 8.5.8        | Council for the Judiciary      | 4.1.1        |
| CCTV                        | 9.1          | Council of Chief               |              |
| Centers for Cooperation in  |              | Commissioners                  | 7.1.2        |
| Forensic Investigation      | 7.1.2        | counter-terrorism              | 10           |
| centralization              | 2.3.2        | – strategy                     | 10.4.2       |
| charge penalties            | 9.1          | court of appeal                | 4.1.1        |
| Chief Constable             | 3.1          | courts                         | 4            |
| CID                         | 6.1          | crime                          | 3.1, 10.5    |
| citizens                    | 12.5.5       | – control                      | 3.5.5        |
| city councils               | 2.2          | Criminal Code                  | 3.4          |
| classification of cases     | 6.2.2        | Criminal Intelligence Services | 8.1          |
| closing drug establishments | 9.1          | criminal investigation         | 4.2.2, 6     |
| closing houses              | 9.1          | – departments                  | 6.1          |
| Commissioner of the Queen   | 1.4          | criminal justice               | 1            |
|                             |              | criminal law                   | 4.1.3        |
|                             |              | crises in Holland              | 12.4.1       |

# INDEX

|                                |          |                                 |          |
|--------------------------------|----------|---------------------------------|----------|
| crisis                         |          | fire brigades                   | 12, 12.2 |
| – management                   | 12       | flexibility                     | 5.3.2    |
| – system                       | 12.4.3   | foreigners                      | 5.2.3    |
| culture                        | 3.5.6    | forensic cases                  | 7.2      |
| <b>D</b>                       |          | forensic expertise              | 7        |
| defence                        | 11       | forensic investigation          | 7        |
| Defence Intelligence and       |          | fundamentalist                  |          |
| Security Research Group        | 11.2.5   | Muslim groups                   | 10.3     |
| definitions                    | 1.2      | <b>G</b>                        |          |
| democratic accountability      | 3.3.3    | General Intelligence and        |          |
| democratic rule of law         | 4.5      | Security Service                | 8.1      |
| democratic state               | 1.3      | General Local Act               | 9.1      |
| deradicalization               | 10.4.2   | General Security and            |          |
| designation security risk area | 9.1      | Intelligence Service            | 2.1.1    |
| detention                      | 5        | <b>H</b>                        |          |
| differentiation                | 9.3.2    | Hofstad Group                   | 10.3     |
| dilemmas                       | 6.5      | house search                    | 6.4.7    |
| disasters                      | 12.4.1   | human intelligence              | 8.2.2    |
| district court                 | 4.1.1    | Humint                          | 8.2.2    |
| DNA                            | 7        | <b>I</b>                        |          |
| drug policy                    | 2.1.3    | impartiality                    | 3.4      |
| due process                    | 3.5.5    | incidents                       | 5.3.7    |
| during his Majesty's pleasure  |          | independent role                | 7.3.2    |
| (TBS)                          | 5.2.1    | individualization               | 9.3.1    |
| Dutch cabinets                 | 2.1.2    | information                     | 9.3.4    |
| Dutch Constitution             | 11.1     | Inspectorate for Sanction       |          |
| Dutch Forensic Institute       | 2.1.1, 6 | Application                     | 5.2.2    |
| Dutch Political Terrorism      | 10.3     | Inspectorate of Security and    |          |
| <b>E</b>                       |          | Justice                         | 5.2.2    |
| emergency                      |          | Institutions for mentally ill   |          |
| – orders                       | 9.1      | offenders                       | 5.2.3    |
| – regulations                  | 9.1      | instrumentality                 | 4.4.9    |
| – services                     | 12       | integrated security policy      | 2.2.2    |
| environment                    | 8.5.2    | integrity                       | 4.4.10   |
| ethics                         | 4.4.10   | Integrity Public Administration |          |
| evidence                       | 6.2      | Supervision Act                 | 9.1      |
| <b>F</b>                       |          | intelligence                    | 8.1      |
| farming crisis                 | 12.4.1   | – and security services         | 2.1.1, 8 |
| finance and staff              | 2.1.2    | – services                      | 8.1      |

- |                                |                |                                  |                    |
|--------------------------------|----------------|----------------------------------|--------------------|
| Intelligence and Security      |                | military                         | 11.3.6             |
| Services Act                   | 8.2.1          | Military Intelligence and        |                    |
| intensification                | 9.3.3          | Security Service                 | 2.1.1, 8.1, 11.2.5 |
| interaction                    | 4.4.1          | Minister of Foreign Affairs      | 2.1.1              |
| international dimension        | 3.5.9          | Minister of Justice              | 4.2.1              |
| international terrorism in the |                | Minister of the Interior and     |                    |
| Netherlands                    | 10.3           | Kingdom Relations                | 2.1.1              |
| interrogation                  | 6.4.6          | Minister of the Interior         | 1.4                |
| investigation                  | 6.2, 6.2.1     | ministers                        | 1.4, 2.1           |
| – category                     | 6.2.3          | Ministry of Defence              | 2.1.1              |
| – methods                      | 6.4            | Ministry of General Affairs      | 2.1.1              |
| – strategy                     | 6.2.4          | Ministry of Health, Welfare and  |                    |
|                                |                | Sport                            | 2.1.1              |
| <b>J</b>                       |                | Ministry of Infrastructure and   |                    |
| judges                         | 4.1            | Environment                      | 2.1.1              |
| Judiciary                      | 4              | Ministry of Justice              | 4.2.1              |
| justice                        | 4.4.2          | Ministry of Security and Justice | 1.4                |
|                                |                | modern terrorism                 | 10.2               |
| <b>K</b>                       |                | multiple-person cell             | 5.2.2              |
| knowledge                      | 6.3.2          | municipalities                   | 1.4, 2.2           |
|                                |                | Muslim groups,                   |                    |
| <b>L</b>                       |                | fundamentalist                   | 10.3               |
| law                            | 4.1            |                                  |                    |
| lawyers                        | 7.3.6          | <b>N</b>                         |                    |
| legal order                    | 10.4.1         | National Coordinator             |                    |
| legal perspective              | 1.2.2          | Counter Terrorism                | 2.1.1, 10.4.2      |
| legal protection               | 4.4.9          | National Ombudsman               | 3.4                |
| legality                       | 3.4            | national operations              | 11.2.4             |
| legislation                    | 10.4.1, 10.4.2 | national police                  | 3.1                |
| local security policy          | 2.2.2          | National Police Force            | 2.1.1              |
| loyalty                        | 11.3.3         | national security                |                    |
|                                |                | – policy                         | 2.1.4              |
| <b>M</b>                       |                | – strategy                       | 2.1.4              |
| magistrates                    | 4.4.7          | nationalization                  | 3.1                |
| major accidents                | 12.4.1         | NATO                             | 11.2.2             |
| management of a criminal       |                | NBC risk                         | 10.5               |
| investigation process          | 6.5            | neighborhood survey              | 6.4.2              |
| mayors                         | 2.2            | Netherlands                      | 1.1                |
| measure                        | 5.2.1          | Netherlands Defence              |                    |
| media                          | 4.3            | Doctrine                         | 11.2.3             |
| medical emergency services     | 12, 12.3       | Netherlands Forensic             |                    |
| mildness                       | 2.1.3          | Institute (NFI)                  | 7, 7.1.1           |

# INDEX

## O

observation 6.4.3  
open source intelligence 8.2.2  
organizational perspective 1.2.2  
Osint 8.2.2

## P

Park Murder in Schiedam 4.2.2  
parliament 8.4.2  
partnerships 2.3.4  
Penitentiary Act 5.2.1  
Penitentiary Principles Act 5.2.1  
permissive culture 9.3.6  
police 3  
– act 3.1  
– care 3.3.1  
– in change 1977 3.2.1  
– in evolution 2005 3.2.2  
– science 3.5.10  
– work 3.3  
policing 3  
– public disorder 9.2  
policy chains 5.3.9  
posting 6.4.3  
powers 1.2.2, 8.2.2  
preliminary custody 5.2.1  
prevention 3.5.8  
preventive searches 9.1  
primacy of politics over  
the armed forces 11.3.2  
Prime Minister 1.4  
principles of proper policing 3.4  
printing 6.4.5  
prison 5  
– institutions 5.2.2  
– service 5.2.2  
private and public order 9.3.8  
private security industry 3.1  
probation 5, 5.2.4  
Probation Service 5.2.4  
professional organization 3.5.3  
proportionality 3.4

provinces 1.4  
public confidence 4.4.4  
public disorder 12.4.1  
Public Events Act 9.1  
public order 10.4.1  
– maintenance 9

## Public Prosecution

Service 2.1.1, 4, 4.2  
public-private partnerships 3.1  
punishment 5.2.1  
Putten Homicide Case 7.2.2

## Q

Queen 1.4

## R

radicalization 10.4.2  
RARA 10.3  
recidivism 5.3.5  
Regional Intelligence Services 8.1  
regional police forces 6  
regulations 10.4.1  
remand houses 5.2.3  
repression 3.5.8  
repressive tendencies 9.3.7  
research at and around  
the crime scene 6.4.1  
response 12.5.7  
review 7.35  
Review Commission 7.2.3  
Review Committee 8.4.2  
RID 8.3  
risk acceptance 12.5.3  
Rode Jeugd 10.3  
Royal Air Force 11.2.1  
Royal Army 11.2.1  
Royal Marechaussee, 11.2.1  
Royal Navy 11.2.1

## S

safety 1  
– regions 12

|                                  |            |                                 |       |
|----------------------------------|------------|---------------------------------|-------|
| Schiedam park homicide           | 7.2.1      | <b>W</b>                        |       |
| Security Houses                  | 2.2.2      | weapons                         | 10.5  |
| security                         | 1          | withdrawal and denial           |       |
| – policy                         | 2.1.2      | of licences                     | 9.1   |
| – policy plans                   | 2.1.2      |                                 |       |
| – system                         | 1.4        | <b>Y</b>                        |       |
| Sigint                           | 8.2.2      | Youth correctional institutions | 5.2.3 |
| signals intelligence             | 8.2.2      |                                 |       |
| society                          | 3.2        |                                 |       |
| South Moluccan youngsters        | 10.3       |                                 |       |
| Special Units                    | 10.4.2     |                                 |       |
| squatters                        | 9.2.2      |                                 |       |
| state departments                | 2.1.1      |                                 |       |
| structure                        | 3.1        |                                 |       |
| subdistrict court                | 4.1.1      |                                 |       |
| subsidiarity                     | 3.4        |                                 |       |
| Super Mayor                      | 12.1.2     |                                 |       |
| supervision                      | 8.4        |                                 |       |
| – of public entertainment        |            |                                 |       |
| and public places                | 9.1        |                                 |       |
| Supreme Court.                   | 4.1.1      |                                 |       |
| symbols                          | 4.4.10     |                                 |       |
| <b>T</b>                         |            |                                 |       |
| tapping                          | 6.4.5      |                                 |       |
| TBS                              | 5.2.1      |                                 |       |
| technical criminal investigation |            |                                 |       |
| department                       | 6          |                                 |       |
| technical forensic knowledge     | 7.3.4      |                                 |       |
| terrorism                        | 10, 12.4.1 |                                 |       |
| Theo van Gogh                    | 10.3       |                                 |       |
| tolerance                        | 2.1.3      |                                 |       |
| town councils                    | 3.3.3      |                                 |       |
| transnationalization             | 9.3.5      |                                 |       |
| trends                           | 3.5        |                                 |       |
| <b>U</b>                         |            |                                 |       |
| uniformity                       | 4.4.6      |                                 |       |
| <b>V</b>                         |            |                                 |       |
| vital infrastructure             | 2.1.4      |                                 |       |
| Volunteers                       | 12.2.2     |                                 |       |



