Re-engineering independence and control

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7. RE-ENGINEERING INDEPENDENCE AND CONTROL: ICT IN THE DUTCH JUDICIAL SYSTEM

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1. Profile of the Judicial System[1]

1.1. Four Layers of Courts

In all, there are 97 courts in the Netherlands. It should be noted that a court might have several courtrooms and many chambers, specialized for handling civil, criminal and – due to recent and ongoing reorganization in almost every court – administrative cases. The custom has largely been that judges change sectors every four years or so. The 97 courts are structured in four layers. At the top there is the Supreme Court, whose main task is to monitor the uniform application of laws made by the courts. The Court has four chambers, which will sit in a number of five or of three judges. The five Courts of Appeal are one layer down; here decisions are made by panels of three judges. The next layer contains the nineteen District Courts, which will either sit in three-judge chambers, or in single-judge chambers. The last level contains 62 Sub-district Courts which exclusively

[1] This profile may be inaccurate in detail and nuance: it is meant to give the overall picture in clear terms. Sources used, apart from occasional interviews by and personal experience of the author are: Ministry of justice, *The Court System in the Netherlands* (Ministry of Justice, Den Haag, 1998); Ministry of Justice, *Recht van Spreken* (Ministry of Justice, Den Haag, 1999); H. Franken, H.W.K. Kaspersen and A.H. de Wild, *Recht en Computer* (Kluwer, Deventer, 1997); Bureau PVRO, *Eerste voortgangsrapportage PVRO* (Bureau PVRO, Amersfoort, 1999); Bureau PVRO, *Tweede voortgangsrapportage PVRO* (Bureau PVRO, Amersfoort, 2000); Ministry of Justice, *Contourennota: Rechtspraak in de 21e eeuw* (Ministry of Justice, Den Haag, 1998); A.H.J Schmidt and W. Six, *IT Support of the Judiciary in the Netherlands,* (Sdu, Den Haag, 2001). See also <*www.openbaarministerie.nl*>; <www.rechtspraak.nl> Jaarverslag 1999 van de Orde van Advocaten: 2000, available at <www.advocatenorden.nl>; Jaarverslag 1998 van de Hoge Raad der Nederlanden: 1999, available at <www.rechtspraak.nl/hoge_raad/>.

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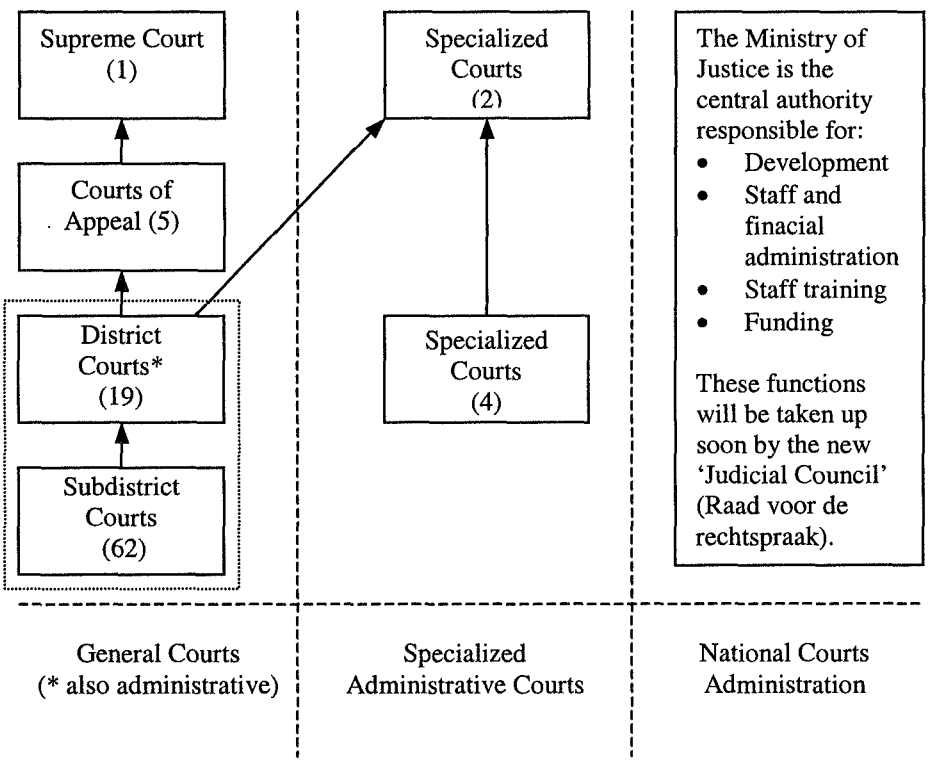
operate single-judge chambers. At this writing (February 2001) a reorganization is promoting the process of merging the Sub-district Courts with the District Courts.

1.2. Three Instances

While there are four layers of courts, justice is administered in three steps, since not all cases start at the bottom level (e.g. Sub-district Court). When higher sums of money or more serious crime is involved, the administration of justice starts at the District Court level. In the first step, the case is discussed in point of law and of fact. In the second, the case will be reconsidered completely: the facts, the rules and the reading of the facts and of the rules will be considered. The third step is to guarantee the uniform application of the law in the court system, and is always performed by the Supreme Court. Here, the reading of the rules has primacy over the reading of the facts.

Fig. 1 Dutch Judicial System (Simplified View)



1.3. Criminal Law

The Dutch criminal judicial system has been considered mildly inquisitorial. Criminal law is concerned with the research, proof, judgement and punishment of acts that have been declared criminal by law. These activities, and the administration of criminal law, are considered a public affair; the victim thus has no influence over the criminal

proceedings of his case, since the authorities have assumed this role. This provides them with quite a lot of power to administer coercive measures to suspects. As a matter of fact, in the eighties and nineties, the scope of these powers has been overestimated by public prosecutors and the police to such an extent that a parliamentary investigation has been necessary to put things into proportion again (the Van Traa-enquiry in 1996).

The police investigate crimes and maintain public order. The investigations are performed on behalf of the public prosecutor. The public prosecutor's service operates under the responsibility of the Minister of Justice, and is in charge of the prosecution of criminal offences with authority over the implementation of criminal judgments. The public prosecutor may either prosecute or drop charges; the latter may be done conditionally. Furthermore, the public prosecutor may offer the indicted to settle the case out of court. If he or she decides to prosecute, the case is brought before the court. If the public prosecutor does not manage to secure sufficient evidence during police investigations, the examining magistrate may be asked to take more far-reaching measures. The examining magistrate is a judge who leads the investigation. The examining magistrate and the trial judge of a case must not be the same person. The trial judge guides the procedure, assures that the prosecution and the defence have an equal say and investigates the facts of the case anew (the police have already done so).

Usually, the police interview witnesses during the preliminary judicial inquiry. Witnesses may be called by the trial judge, by the prosecutor and by the defendant. Most criminal cases are actually investigated and decided in trial. Trial judges will decide on the evidence and the facts, on the proven facts constituting a crime, and on the special circumstances aggravating or mitigating the crime; the sentence will take into account the personal circumstances of the offender. Since this often seems to lead to differences in sentencing policies, several attempts are being made to support sentencing with ICT-systems.

1.4. Civil Law

Most civil law cases are performed in special court sessions called '*rolzitting*', the session where trial documents are exchanged between the attorneys. A standard procedure starts with a written claim (a writ of summons), followed by a statement of defence, followed by a reply, again followed (and finished) by a rejoinder. The judge is passive: what the parties state and accept as the truth becomes the truth for the civil-law trial judge. Of course, civil law procedures may become seriously complicated and end up with the hearing of witnesses and attorneys and asking intermediate decisions in intermediate procedures from the trial judges. Apart from the trial judges, the attorneys-at-law, the plaintiff and the defendant, specific roles are played by the bailiff (presenting the defendant with the writ of summons) and the judge's clerk. The clerk keeps a record of what is said and done at a session of the court. The office of the judge's clerks *(griffie)* manages the administration and administrative support of the trial judges.

1.5. Administrative Law

Administrative law regulates the relations between the authorities and the citizens. Due to recent reorganizations from 1998 on, administrative law procedures are entrusted to special chambers of ordinary courts (before, there were specialized courts for administrative law conflicts). A general administrative law has been implemented, which has harmonized the several distinct organizations and procedures into one single procedure, made part of the general court system. Data regarding expenditure on human resources and technology in 1998 are provided in the table below.

Tab. 1 Technology Expenditure in Million EUR[a]

	1998	*2000*
Courts – overhead	42	–
Prosecutor's offices – overhead	–	40

[a] Technology expenditure is not reported separately but are included as part of the overhead, presumably a most significant part.

Tab. 2 Human Resources Expenditures in Million EUR

	1998	*2000*
Registered attorneys[a]	59	–
Professional judges[b]	151	–
Administrative court personnel[c]	151	–
Prosecutors plus administrative personnel	–	189

[a] The number of registered attorneys in 'man years' in 1999 were 10 405.

[b] The number of professional judges in 'man years' in 1998 were 1 158.

[c] The number of administrative court personnel in 1998 were 3 007.

1.6. The Independence and the Question of Management

In the Netherlands, the independence of the judiciary from the Ministry of Justice and from the Prosecutor's Offices is heavily stressed and constantly discussed. Recently, the appointment of attorneys-at-law as part-time judges has been forbidden in the district where they are entitled to operate as attorney.

The issue of the independence of the judiciary has resulted in an absence of transparent management procedures. Independence has been defended as essential, not only between judge and Ministry, judge and prosecution, judge and attorney-at-law, but also between judges themselves. Consequently, the development of policies by the judiciary has been taboo for a long time.

For this reason the management of the offices and ICT-support has been left largely to the specialized court managers, appointed by the Minister of Justice. Of late, the tendency to accept a form of 'integral management' (i.e. a management of legal and administrative affairs together) has been promoted. Together with several legislative initiatives, a special project called PVRO (project for the re-enforcement of the judiciary) has been launched. In all, the additional investments in the judiciary, as foreseen by the Ministry in the *Contourennota,* increase from 14 million EUR in 1999, to 28 million EUR in 2000 and 41 million EUR in 2001, and finally to 59 million EUR in 2002. The PVRO-project is understood as a programme since it sustains several projects. Many of these projects are

concerned with ICT in the judiciary. The PVRO programme, which aims to re-engineer the management processes of the judiciary, actually started in 1999.

2. Technology Profile

The use of technology in the Dutch judicial system was initiated seriously in the beginning of the eighties. At that time, diverse and non-standardized administrative information systems for text and data processing were employed by several different larger court organizations. The public prosecution offices, however, have always been part of the ministerial organization and in 1984–1988 an ambitious distributed database system was designed and developed for the public prosecution in the different districts. The system somehow got the name Compas and several subsystems were envisaged to support the work of the public prosecutors. All criminal acts were (are – since the system is still in use) pre-categorized, and 'textual building blocks' help the public prosecutors to formulate their claims. The system may be used to monitor case records too. This system is a database and does not offer services at an artificially intelligent level. In the nineties complementary systems have been developed for civil law (Civiel) and administrative law (Berber) court practices. Together, Compas, 'Civiel' and Berber provide court-management information in the derived system called Rapsody. The information of these systems was integrated at and by the Ministry of Justice as late as 1996, but it is still unclear who has the 'jurisdiction' over these data. This problem will be solved when the management of the judiciary is re-engineered. Legislation proposals should be discussed in Parliament in 2001, with the intention to create a new Council for the Judiciary with strategic management competence.

In the Netherlands, the different ministries have quite a large number of database systems sustaining their administrations. Until the end of the nineties, there was a restricted policy in order to exchange data among these sources. Then the 'data connection Act' (*koppelingswet*) came into force, allowing the administration to share information from social security and criminal databases in order to spot people that stay in the Netherlands illegally. In this area there is an extensive net of information exchange between government agencies, very much resembling electronic data interchange (EDI) systems. The use of a personal reference index has greatly enhanced the possibilities of combining and cross-referencing information.

From 1985 onwards, there has been a strong interest within the Dutch academic legal community (as well as in a few ICT-*aficionado* judges) for intelligent programs, helping the courts. These activities have yielded many interesting results that are being utilized in the current trend of legal information management support systems. A few systems are currently in use: IND-xxx is formed by several systems supporting the immigration service in its decisional procedures; Dolor is a system that will compute damages to be awarded for immaterial injuries; INA is a program made by a judge that computes the volume of alimony in accordance with a model agreed upon in the Dutch Association of Judges (NVvR – *Nederlandse Vereniging voor Rechtspraak*) and which is functionally equivalent with a program that is marketed by the Kluwer publishing company. Moreover, many information systems are available for storing and retrieval of case law

(e.g. Justex, Berber) as well as management information (e.g. Rapsody) and literature (e.g. George – but this one is not yet fully operative).

In 1998, the PVRO-project started. In this report the different projects will be treated as plans, since not very many of these plans have been fully implemented yet.

The overall picture of current court technology in the Netherlands includes a Windows 95/98 coordinated personal computer for every judge, public prosecutor and support-staff desk, linked by a local area network in the district court buildings and open to Internet and other TCP/IP services. The Compas network between court buildings operates using a safe network of dedicated lines called Podacs. This network also permits safe communication with the police. The Compas node servers have gradually shrunk from small mainframes to server dimensions. Security features are strict on the safe networks – yet the actual risks have proven to be the security loopholes created by prosecuting officers taking home floppy disks.

3. Technology in the Judicial System

3.1. Case Management Systems in Courts, Prosecutor's Offices, Law Offices

The case management systems mentioned (Compas, Civiel, Berber) are part of the judges' and prosecutor's offices. Ownership of these systems is, as mentioned, debatable for the moment. Use by the courts is mandatory, since information extracted from these databases is used to validate arguments set out in the negotiations concerning yearly budgets for the courts. Typically, judges and prosecutors will not personally work with these systems, which are operated by clerks. At present, the strategic approach for the procurement of case management system is based on project management carried out by the prospected users, while the Ministry of Justice is in charge of the financing of the projects.

Often a so-called Expertise Centre has been brought in to perform feasibility studies and to create functional plans. Software development has been sometimes the task of a special ministerial service, while sometimes it is outsourced. Currently the Ministry of Justice employs framework contracts with a limited number of ICT suppliers.

The functions performed by the software mentioned typically include office automation, calendar management, caseload statistics and management reports (in Rapsody). The case management systems of courts are often integrated with those used by prosecutors: judges, having their own applications and authorizations, may use the Compas databases. In other words, a part of the databases is used by the prosecutor's office and part by the judicial office. This can be seen as a primitive attempt at electronic data interchange between judges and prosecutors, even if the information shared to accomplish the judicial procedures is still almost exclusively in paper form. It must also be noted that lawyers are not connected with Compas.

3.2. The Electronic Legal Work-desk

Judges, prosecutors and lawyers can retrieve information electronically using commercial and governmental information and retrieval systems. These systems are rapidly becoming web-based. The availability of databases containing case law of district or Sub-district courts depends on local initiatives. There is a strong tendency to open these information bases to the general public. At present Internet provides full access to case law and

legislation, as well as doctrinal literature (Kluwer Datalex, Sdu Opmaat, <www.rechtspraak.nl>, <www.overheid.nl>).

Typically, there are no computers in the courtroom. If any software is used for helping judges and prosecutors in the decision making process (e.g. expert systems for computing damages, alimonies, or for suggesting the severity of the sentence), these systems will be used either before the trial session, or in chambers or after the session.

3.3. Courtroom Technology

3.3.1. The Court Record

The court record will often be prepared using a combination of real-time transcription based on steno-typing and (less often) audio-taping. There are as yet no voice recognition systems in use for taking the court record.

The record is created by the court staff and it is only quickly available to the lawyers after the end of the hearing on special request. They need not pay for it and cannot make it more quickly available through payment. When no appeal against the decision is made, the court record may not be written out. Court records are kept as written and signed documents (affidavits) and are retained in the court record folder in the court archive for at least 30 years. It should be mentioned, however, that the Amsterdam district court has experimented for one full working week with an 'electronic court environment' which implies the use of digital court records and filing systems. The experiment was rather successful. It has been paid for by the ICT industry but has not yet been implemented for real use anywhere in the Netherlands – presumably also due to the investments needed.

3.3.2. Litigation Support Systems and Technology for Managing and Presenting Evidence

Multimedia presentations, computer simulation or animation, etc. are very seldom used in the courts of the Netherlands, though there is no law prohibiting them. They are apt to be used when they may influence the judges' appraisal of the case (video may be used, for instance, in cases regarding car accidents). Neither the case file nor any other piece of information will be available in electronic format during the trial, unless deemed necessary and functional by one of the parties. It then will be made available to all the parties involved.

3.4. Telecommunications Links to the Courts

3.4.1. Electronic Data Interchange

At this writing, judicial documents are not exchanged electronically. In order to allow this exchange, new legislation has to come into force. Information from the database systems mentioned earlier is exchanged electronically, but there are no specific court rules that govern this exchange or the legal status of electronic documents, as a free system of evidence is in force in the Netherlands. Digital signatures are used for transactions over the Podacs network since this network is used for secure communication among prosecutors, judges and the Ministry of Justice. Of course judges, prosecutors and lawyers use e-mail and have access to the Internet.

3.4.2. Video and Audio Conferencing

Video conferencing and similar technologies are used when convenient. As mentioned before, the evidentiary system in the Netherlands is free and subordinated to the discretion of the judges. These techniques are not used frequently, however. Not all courts have video conferencing equipment. If children are involved, video conferencing may be considered.

3.5. Technologies for Personnel and Resources Management

As mentioned, the Rapsody system is used as a tool to manage, monitor, and allocate resource needs and to measure performance. Caseload statistics, resources allocation, personnel forecast, judgeships needs, performance indicators, costs analysis, budget determination are all sustained using ICT. These indicators worked recently in the so-called 'Lamicie model'. The model computes the amount of minutes needed per case and adds budget indicators using standard information (hours per person available, percentages of legal and paralegal personnel, percentages overhead – including ICT use). The computer output is used in the actual budget decisions, which are currently made in separate negotiations between the Minister of Justice and the court presidents. In the future the Council for the Judiciary will take over this type of management from the Ministry of Justice.

4. Strategy and Governance of Technology in the Justice System

Whilst in the past few years many IT support projects have been initiated, it should be noted that these projects have so far not emanated from a centralized approach. The main initiators have been, and still are, the Ministry of Justice, the office of the public prosecutor, the judiciary and the developers of case law and jurisprudence databases. Most of the current initiatives are the result of the individual efforts of one of these initiators. Integration and coordination of the projects has only recently been instigated by the creation of PVRO.

4.1. PVRO

The programme for the strengthening of the judiciary, PVRO, is a joint effort of the judges and the Ministry of Justice, respecting both the independence and the impartiality of the judiciary. It is interesting to note, however, that in this statement different interests are at issue, and that these are not necessarily the complement of one another. At issue, as mentioned before, is the adaptation of the independent judges to management; this has more to do with governance of the judges and government of financial resources than with improvement *per se*. In addition to this, while the stated objectives of many projects initially seemed to warrant a marked optimism, a clear distinction remains between the planning and pilot phases of many projects and their actual implementation throughout the Dutch judicial system.

PVRO is an initiative of the Conference of the President-judges of the Courts of First Instance, the Courts of Appeal and the Court of Cassation. The Conference acknowledges the fact that Political Responsibility for the programme rests with the Ministry of Justice,

therefore the projects initiated by PVRO fall under the supervision of the Minister, and are subject to his or her approval. The Minister also appoints the key members of the PVRO project team from among the judges. The project team has been authorized by the Conference of President-judges to initiate new projects.

The stated goal of PVRO is the improvement of the quality of the services provided by the courts to the citizens. This goal has five separate objectives: improving the access to court for litigants, shortening procedures, creating uniform national rules of procedure, improving the communication with the public and improving the quality of procedures. Initiation and implementation of IT support projects can be categorized along the lines of these distinct objectives. Foremost is the stated aim to shorten the litigation procedure and to improve its quality. The underlying aim is to improve the efficiency of the courts and thereby to reduce the costs of an ever-increasing caseload. It is assumed that ICT can help in this respect. Compounding this assumption into a paradox, it must be mentioned that judges will need to spend time acquiring the presupposed IT skills needed for an effective use of the IT support programs. To date, the only step taken towards a solution of this paradox has been a project aimed at providing the judiciary with information on the potential of information technology. The main IT projects initiated by PVRO to shorten and improve the quality of litigation procedures fall into the category of legal information systems aimed at supporting the magistrates in their decision making process.

In criminal proceedings considerable effort has been spent on the development of sentencing programs, and PVRO aims to integrate the individual efforts made to date. Chief amongst those are the Nostra, IVS and BOS[2] projects. Nostra is a sentencing database, developed by a group of courts in the Northern district of the Netherlands; IVS is the information system on sentencing arguments, a model produced by Leiden University and a work force of judges which is now being implemented by the five Courts of Appeal; BOS is an automated checklist that implements the Polaris checklist for public prosecutors. The aim of BOS – a set of 35 guidelines – is to ensure that public prosecutors will demand standard sentences in 80 per cent of the criminal cases before the courts.

The automated handling of administrative fines that are the result of traffic violations has become a routine matter in the Netherlands.

In civil proceedings, several projects that fall outside of the purview of PVRO, are now under way. Magistrates already routinely make use of software tools that compute the size of the claims that should be awarded. In divorce cases the commercial Aliment program computes the amount of alimony to be granted in divorce cases. In tort cases, the amount of immaterial damages to be awarded is computed by the Dolor program – an automated database of case law[3] – which is still in its early stages. It should be noted that

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[2] A.H.J. Schmidt en E.W. Oskamp, 'Over instrumenten die rechters kunnen beïnvloeden' (July 1998) 38 *Trema Vib, special over informatisering van de rechterlijke macht.*

[3] This system has being developed by S.D. Lindebergh. S.D. Lindenbergh, 'Enkele inleidende opmerkingen over smartengeld', *Smartengeld; Uitspraken van de Nederlandse rechter over de vergoeding van immateriële schade, Verkeersrecht* (ANWB, The Hague, 1997).

in both divorce and tort cases the functionality of these tools is no more than the automated application of well-established task-norms and case law to cases which are factually similar. In other words, these programs merely perform a very complex calculation in the very same way as an established checklist prescribes. The Aliment program (and its counterpart INA developed by Judge Van der Pol) applies the 'Trema' norms for alimony, whereas the Dolor program is based on the statistical analysis of published tort case law (mostly immaterial damages awarded in relation to bodily injury). Magistrates who do use commercially available databases of case law and jurisprudence, as well as the above-mentioned programs, acknowledge the fact that the quality of their decision-making is improved by it, even though they still primarily rely on their own judgement.

The second aim of PVRO is to improve access to the courts and to improve access of the public to judicial information. To this effect PVRO has initiated the Internet portal for the judiciary project (ELRO). Under the auspices of ELRO a website (<www.Rechtspraak.nl>) has been made available to the public and to solicitors, offering the latter a remote access to procedural information regarding their cases. This very limited access is not meant to replace traditional procedures, but only to provide solicitors with a faster access to pertinent information, such as when sentences will be pronounced or when evidence has to be given. This is for the time being a pilot project, initiated in January 2000. The site also offers a selection of judgments pronounced by inferior judges, and is intended to offer free access to all the judgments of the court of cassation.

4.1.1. Digitized Procedures

The Ministry of Justice in a recent OGAP report[4], proposed that the use of the office of the clerk *(rolzitting)* should be abolished and that the handling of documents and related procedural matters in civil cases should be left entirely to the attorneys-at-law. The report proposed that ultimately all procedural matters should be handled over the web. This proposal has met with considerable opposition, the main criticism being that it is not well thought through and will lead to chaos. The proposal does not elaborate either on the necessary and far-reaching changes it implies for the Dutch legal system, or on the quantitative effects of the proposal. Nonetheless, appropriate legislation is being prepared.

4.1.2. PVRO Projects

The strategy, the organizational structures, the policies, and the processes that have been established to promote, coordinate, and manage the use of information technology in the justice system can be inferred from the PVRO-programme and more specifically, from the PVRO projects. The following table shows the relevant projects.

It is noteworthy that in all these projects there is room for ICT aspects and there have been funds reserved for ICT design and support. However, only one of these projects is itself about ICT: the Test-bed project. This implies that the ICT aspects of the PVRO

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[4] Projectgroep OGAP, *Rapport: Alternatieven voor inrichting', van het project 'Organisatorische gevolgen afschaffing procuraat,* (Bureau Systeem-en Infrastructuurontwikkeling, Den Haag 1999), RAP 3 OGAP 11 definitief.

projects are put in their proper perspective: the perspective of the processes, essential to the judiciary, and not the one of the ICT specialists, nor of the ministerial professional managers.

Tab. 3 PVRO Projects

Ongoing Projects	*Projects Started in the Year 2000*
Management of the courts	Administrative procedure
Work processes in the courts	Test-bed for ICT-applications in the Courts
Civil procedure	Centre for research and strategy
Divorce procedure	Quality control
Sentencing policies	
Human resource management	
Digital counter for legal affairs (ELRO)	
District change management	

5. Technology Training

It is interesting to note that technology training is not yet a very important issue. The judiciary has its own training centre (SSR), where appropriate courses are held. Furthermore, the test-bed environment will help in specific ICT training issues. When projects are finished, and the results implemented in the courts, most of the training will be directed to the users. And it is expected that for a long time the actual users will remain the clerks and other paralegals.

6. Re-engineering Independence and Control

It is clear that the Minister of Justice, as well as the Conference of President-judges have set their minds firmly on introducing 'integral management' in the courts. Integral management is to be understood, in this context, as management of the judges by the judges. The formal obstacles are being removed through legislation. The strategy chosen for practical implementation is programme management (PVRO) and the tactical approach uses project management (inside and outside PVRO). Naturally, design, implementation and financing of ICT support are a means to, and end within this context, a context that helps to understand the state of the art in court technology in the Netherlands. The fundamental issue is the re-engineering of the independence and control of the judiciary, and the projects concerning design, development, operation and management of court technologies are instrumental to that issue.

Exemplary is the 'Management of the Courts Project'. The project addresses the organizational task of merging the 62 independent Sub-district Courts with the 19 independent District Courts. In this project the PVRO project team prepared a model for the organization of the management of the courts and brought this model for discussion to a group of senior judges. A second opinion was solicited from the organization advisors of Ernst & Young Consultants. Both reactions were negative. Why is this relevant to the overall picture of court technology in the Netherlands? First I give the facts of the re-organization process, then the relevant legal rules, and finally a template for courtroom technology issues stemming from the re-engineering context mentioned above. I will use

this template to summarize and provide an assessment of the Dutch position in European court technology.

Due to recent reorganization, Sub-district courts have to merge with district courts. Sub-district judges perform canton-law practice. The re-organization of courts will make the Sub-district judge disappear, but the canton law practice will remain, to be performed as a specialization inside the district courts. Table 4 gives three states in this process, representing the situation before the reform, the transition phase and the new situation.

Characteristic for the re-engineering process is that the sub-districts of the old situation have vanished in the new situation. After the reform, the canton-law judiciary will have its organizational base in the district courts. For canton-law judges this implies a significant growth of their organizational context. In the old situation the senior sub-district judge had a coordinating role, while all sub-district judges take part in the lobby of the NVvR.

Tab. 4 Re-engineering Dutch District and Sub-district Judiciary in three Stages

Level	*The Traditional Situation*	*The Transition Phase*	*The New Situation*
National-1	Circle of Sub-district-judges	Circle of Sub-District-judges	Circle of canton law judges
National-2	Section Sub-district judges NVvR	Section Sub-district judges NVvR[5]	Section canton law judges NVvR
Sub-district	Senior Sub-district judge	Senior Sub-district judge	
District	–	Coordinating judge (CJ) canton	CJ-canton law
District	–	–	CJ-canton law is member of the court management team
National-3	–	Conference of CJ-canton law	Conference of CJ-canton law
National-4		Conference of CJ-civil law	Conference of CJ-civil law
National-5	–	Conference of CJ-criminal law	Conference of CJ-criminal law
National-6	–	Conference of CJ-administrative	Conference of CJ-administrative
National-7	–	Conference of court presidents	Conference of court presidents
National-8	–	–	Council for the judiciary

Within each new District Court, the judges of the former Sub-district Courts will be part of a specialized canton law sector, headed by a coordinating judge (CJ). The District Court management team will consist of the president and the CJ's of civil, criminal, administrative and, due to the reform, canton law. Furthermore, there will be a higher organizational profile of the canton-law coordinating judges also at the national level, since they will confer like the other coordinating judges.

[5] NVvR has traditionally a role in organizing communication between judges.

Consequently, in the future there will be many additional decisions to make and policies to negotiate for the CJ canton law, and with him for the canton-law judges in general. At the moment – in the transitory phase – the canton-law judges experience considerable pressure and they have no control over the decision taken in the conference. These questions are relevant also from the viewpoint of courtroom-technology research, because many of these decisions and agreements are translated into ICT-applications.

6.1. The Rules Regarding the Operation and Control of the Judiciary in the Netherlands

While the Dutch judiciary have not attempted to implement explicit management models, the introduction of court technologies is related to the managerial notions of operation and control. The courts and the judiciary do not conduct business in a commercial sense, but large numbers of employees, of cases, and sums of public money are involved, and professionalism, efficiency and reliability are nowadays openly asked of the Dutch judiciary. A general need for management is felt, and in the Netherlands voices are heard, crying for 'integral management', this being the concept used to denote transparent, principled management of the judiciary by the judiciary.

Against the integral management movement in the judiciary, the foremost argument has been that of the independence of the judge. Dutch rules on the position of judges go back to notions of the *trias politica* and are found in art. 11 and art. 12 of the General Rulings Act. They state respectively that the judge may not question the law and that he may not formulate general laws while ruling a case. Whenever the legislator formulates a law telling the judges how to reason, however, the judges seem not to notice at all or to forget quickly. Consequently articles 11 and 12 of the General Rulings Act have hardly any weight in the discussions. The other side of the coin is the European Convention of Human Rights (ECHR). Article 6, section 1 says: 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'. The art. 6 criterion of the independent judge provides an exception against any unreasonable infringement of the judge's discretion by the government or administration. Of course, not every act of management by government or administration results in such an infringement, but the limits of external management are reached when the independence of the judge's judgement is encroached upon. It is not clear, however, that the 'independence' criterion of art. 6 ECHR is effective against 'integral management'. Several judges warn against it, citing '*quidquid id est, timeo Danaos*' again and again. These judges argue that judicial independence is threatened by all the conferencing and agreement-making that are the corollaries of integral management.

At the moment the 'independence' argument is losing its appeal, however, articles 9 and 10 of the ECHR protect freedom of thought and of expression. This protection also applies to judges: consequently, information exchange between judges on legal cases and opinions cannot be considered an infringement of independence. But also conferencing by judges is protected by art. 11 of the ECHR on the freedom of assembly and

association[6]. In these conferences, valid agreements may be reached and decisions may be made. Because these decisions and agreements will have external effects and parliamentary control is non-existent, publication of these agreements and decisions is crucial. For the judiciary of a parliamentary state of law it is also necessary to maintain the support of public opinion. For these reasons public opinion must be informed and the judiciary has this duty. Therefore, in modern times, the use of knowledge and content management services will have to be the subjects of integral management practice.

It is not certain that the Dutch judiciary is aware of these arguments. There have been discussions about the completion of case records that do not comply with these notions (completion of criminal-case records and related verdicts occurs only when appeal has been made). The point has often been made that the completion of all case records and related verdicts will put unnecessary pressure on the available resources. This can partly be put in perspective; for instance, in the district Leeuwarden during the year 1998 more than 80 000 canton law cases were processed. On the other hand, the problem can also be solved in a more satisfying manner and with less cost by using a few modern ICT resources. In this context these are rightfully called 'legal knowledge management systems', capable of making all case-law, agreements and decisions available to the public in an effective way. As mentioned above these activities are presently underway in the web-portals <www.rechtspraak.nl> and <www.overheid.nl>.

6.2. A Template

Thus, there are two dimensions of importance when looking at the re-engineering of independence and control in the Dutch judiciary. The first dimension orders the main issues in management per se: (1) the internal structure, (2) the internal relationships and (3) the external relationships. The re-engineering of court management can be seen from these perspectives and much of what has been said above fits nicely in these categories. The second dimension orders the main issues in cooperation per se: (1) information exchange, (2) agreement/decision making and (3) knowledge management. The re-engineering of court management can also be seen from these perspectives. Combining these two dimensions yields a template for the analysis of court technology developments in relation to the re-engineering of independence and control in the Dutch judiciary.

6.2.1. Using the Template as an Analytic Summary for Assessment

In Table 5, the concepts that have been addressed in the preceding sections of this work are allocated to one or more of the cells in the template, thus providing an analytic summary.

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[6] Art. 111 reads: '1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his/her interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State'.

According to Dutch jurisprudence, as soon as judges make agreements and publish them, they become law. Since the judges may be held to these 'laws' by the public (art. 99 RO, of the Act on the organization of the judiciary), they effectively restrict the judge's discretional power. The relative importance of these agreements is clearly brought to the fore in this table: most issues are subject to agreements. The relationship between court technology and re-engineering of independence and control can be read from Table 5 in the knowledge management column.

Tab. 5 Summary Using the Template

Summary	*Information Exchange*	*Agreements/Decisions*	*Knowledge Management*
Internal structure	Court management teams	Project management of the courts Project district court change management Council for the judiciary	Podacs
Internal relations	President conferences CJ-conferences	President conferences OGAP-report Project work processes in the courts Project Civil procedure Project Divorce procedure Project Human resource management	Rapsody Compas, Civiel, Berber INA, Aliment Justex IVS, BOS, Nostra, Dolor
External relations	SSR Sentencing policies	Lamicie-model Rapsody-agreements Contourennota Agreement on alimonies Agreement on dismissal damages Project ELRO	Compas, Civiel, Berber Rapsody <www.rechtspraak.nl> <www.overheid.nl> Kluwer datalex, Sdu opmaat ELRO

Assessing the courtroom technology position of one's own legal system is not an easy task. Based on the information exchanged during the European Seminar on Court Technology (Bologna, September 2000), I have made some educated guesses about the position of the Netherlands in Europe. I think that ICT support of the internal structure and the internal relations of the courts are below average if we look at its potential for information exchange. Also the structural ICT support for decision making in the courts seems to me below average (for the time being). In all other areas I think the Netherlands are average or even above average. I think the internal relations for decision-making are rather good in the Netherlands at this moment, mainly due to the PVRO-programme (and perhaps due to the Dutch *poldermodel,* a Dutch term for the dominant local governance tradition guided by negotiation, compromise and consent) – but ICT support seems to be flimsy in this area. Finally I think the Netherlands performs above average in knowledge management for external relations. This assessment is mainly due to the recent web-based services with case law and with official documents.