Contempt of court: Een meerwaarde voor de goede strafrechtspleging in Nederland?

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Summary

CONTEMPT OF COURT. A PLUS FOR THE DUE ADMINISTRATION OF CRIMINAL JUSTICE IN THE NETHERLANDS?

This research focuses on the Anglo-Saxon instrument contempt of court. The instrument emerged in England in the twelfth century as a measure in response to obstructions to the course of justice and still fulfils an important function in common law systems. In recent years, it has repeatedly been suggested that this kind of instrument is necessary in the Netherlands, often against the backdrop of the major changes that have taken place in the judiciary and in society since the introduction of the Code of Criminal Procedure (Sv) in 1926. Changes such as the more emancipated position of the suspect, victims desiring a more important role, heightened public interest in criminal cases and the omnipresent media and social media. In the past, the defence of a case was mainly limited to arguing against the sentence demanded by the prosecution, but currently defence lawyers often pull out all the stops to achieve a favourable outcome for the defendant. The Public Prosecution Service, the enforcer of law and order, is not only magisterial but more so than in the past is now also focused on crime fighting. As a result of these changes, the courts are required to administer justice while balancing the forces at play. Moreover, in recent decades, the way in which the public views the authorities and those holding power has changed drastically. Authority is now less self-evident, to say the least, and the judiciary is more clearly concerned with accountability towards society. Finally, internal changes in how the judiciary is organised have led to a more output-oriented management structure, placing greater emphasis on productivity and efficiency. These developments prompt the question whether the criminal court still has sufficient possibilities to fulfil its unchanged core task: ensuring correct proceedings and a just outcome. Against this backdrop, it is often suggested that the court should have an instrument such as contempt of court at its disposal with which it can act to counter all kinds of obstructions to the course of justice.

Thus, the following question is central to this research:

What role can contempt of court play in securing the due administration of criminal justice in the Netherlands?

This central question has four aspects which will be considered in the various chapters:

1. What do we mean by 'due administration of criminal justice' that is secured by contempt of court?
2. What is contempt of court, how does it work and what are its limits?
3. What instruments similar to contempt of court are used to secure the due administration of criminal justice in the Netherlands, and what lacunas can be identified in these instruments?
4. Can contempt of court or a similar instrument contribute to securing the due administration of criminal justice in the Netherlands and, if so, in what way?

The choice of topic necessitates that the research method to a large degree involved comparative law. The area of research was limited to criminal cases and the implementation of contempt of court was examined in particular in the legal system of England and Wales.

To properly understand the context in which criminal courts function and in which the above questions arise, the developments referred to above will be looked at more closely in the *second chapter*. In addition, an outline is provided of how the roles of the actors in proceedings have changed over the years and how, under the influence of Europe, more adversarial features have been incorporated in criminal proceedings. As a result, criminal proceedings have become more like the scene of a battle where the court also seems to take a less active role, in the sense that more than before, it tends to focus criminal proceedings on the points that have been put forward by the parties to the proceedings. The context of criminal procedure has also changed drastically through the emergence of mass media and social media. This heightened focus on criminal cases is also sometimes reflected in greater public interference in criminal proceedings. The public can be critical and at times distrustful, and erosion of the hierarchical authority of institutions and those in authority can occur. Authority in the judicial system is now also something that has to be 'earned'. Finally, the internal context in which a court has to perform its duties has changed, in particular through the implementation of a more business-like organisation structure.

Since contempt of court is an instrument that aims at facilitating due administration of justice, the *third chapter* deals with the rights and principles that can be considered in this regard. Within the scope of this research, the concept 'due administration of justice' comprises four components: a fair trial, truth finding, authority and efficiency. Indeed, to ensure a due administration of justice, the requirements for a fair trial as laid down in Article 6 European Convention on Human Rights must be met. In addition, justice must be pursued on the basis of the factual truth. A fair trial and truth finding can be

construed as objectives in criminal proceedings. The components authority and efficiency can be considered as preconditions for a due administration of criminal justice. For criminal procedure to function adequately, it is, after all, necessary that the judiciary is accepted by the public as the authority that decides on legal disputes and guilt or innocence. Moreover, it must be possible to adjudicate in an efficient manner and within a reasonable time. Alongside these objectives and preconditions, freedom of expression can be viewed as a counterforce. Although freedom of expression in relation to criminal cases is very important and can also positively contribute to due administration of justice, it can also work against it. Contempt of court is pre-eminently an instrument by which freedom of expression can be limited in order to be able to secure due administration of justice.

The chapter provides an explanation of the components referred to above and considers the aspects that are most significant in the light of contempt of court. When it comes to the right to a fair trial, basically this concerns the fact that a criminal offence is tried by an independent, impartial judge, in public proceedings where the suspect is considered innocent until the contrary is proven. These basic requirements for a fair trial can come under pressure due to all kinds of external interference. For example, interference or commentary from persons holding authority or politicians in relation to (ongoing) legal proceedings and widespread media attention. When it comes to establishing the truth, the outcome of criminal proceedings must be in line with what actually occurred. This objective does not differ essentially within inquisitorial and adversarial systems, but the manner in which the truth is ascertained does vary widely. The authorities – and so also the judiciary – can be expected to make efforts to uncover the relevant facts, but must at the same time observe limits that arise from, for example, the rights safeguarded by the European Convention on Human Rights. When it comes to authority as the legitimate exercise of power, it is required that this is done in accordance with normative opinions and is accepted as such by those over whom power is exercised. So in the case of judicial decisions, these must be based on laws that are established democratically and should be in accordance with the requirements of a fair trial. On the other hand, citizens who come into contact with the law and the more general public must also believe that justice is being done. The authority of judges and other persons in authoritative positions is not self-evident, and in the judiciary much attention is paid to retaining the trust of critical and sceptical citizens. Finally, the pursuit of efficiency contributes towards properly functioning criminal procedure. This is a factor that is considered by judges when adjudicating individual cases, where efficiency must be deliberated alongside other aims and interests. The 'counterforce' freedom of expression entails that it must be possible to speak freely about criminal cases. However, there could be legitimate reasons to give priority to due administration of criminal justice prevailing over the right to freedom of expression.

All things considered, it is clear that the various interests and principles that are included in the notion of due administration of (criminal) justice find themselves out on a complex playing field where these forces can support each other but also sometimes clash, and where they must be considered together or with other interests. Although these inter-connected interests can vary from case to case, it is clear that government authorities can be expected to provide safeguards to guarantee correct criminal procedure.

Chapters 4 and 5 deal with the central topic of this study: contempt of court. Chapter 4 outlines its origins and main features, and chapter 5 looks in more detail at the current practice of contempt of court in the legal system of England and Wales. Contempt of court originated in England and throughout the centuries it has developed in common law as a way to act against a wide range of types of conduct which can disrupt or obstruct the due administration of justice. It is seen as an inherent power presupposed in judicial bodies and necessary for them to operate properly. Contempt of court can be found in all Anglo Saxon legal systems, though its interpretation varies from country to country. More recently, the instrument has been deployed by some international tribunals as a way to act against various forms of obstruction to the course of justice. Currently, a general distinction is made between criminal and civil contempt of court. Conduct that is considered as contempt under criminal law forms such a threat to the administration of justice that it necessitates a public punishment: contempt of court then acts as a penal provision to act, for example, in response to disruptions to order during a trial, witnesses who refuse to cooperate or publications that could affect a fair trial. In contrast, civil contempt is the non-observance of a court ruling or order, where imposing a penalty (generally a fine or detention) should be viewed essentially as a coercive measure.

Today, contempt of court in England and Wales is partially codified. It still covers a large number of different types of conduct, distinguishing between contempt committed in the face of the court, and contempt that is committed outside the courtroom. The first category includes a wide range of conduct, varying from defamation, improper remarks or other types of disruption to order during a court session, misleading the court or failing to meet obligations such as the obligation to appear as a witness and to respond to questions. Contempt outside the courtroom can include influencing witnesses or members of the jury, jury offences such as violating the confidentiality of the deliberations, and non-observance of judicial orders, although in criminal cases this plays a very modest role. One important form of contempt outside the courtroom is what is known as contempt by publication, on the grounds of which it is a crime to make or publish remarks that create a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced (Section 2(2) Contempt of Court Act 1981). This provision is particularly important when it comes to safeguarding a fair

trial by jury, by preventing members of the jury from acquiring information via the media that is not to be used as evidence. The contempt law does not only offer the possibility to subsequently take legal action in response to such publications, but under certain circumstances it can also be used to issue a (temporary) publication ban in advance. One specific type of contempt by publication is the offence of scandalising, on the grounds of which it is punishable to make remarks which are seriously detrimental to the authority of the judiciary. However, this offence was abolished in England in 2013 as it was considered to be incompatible with the right to freedom of expression. This offence, however, does still exist in other common law countries. Because of the fact that contempt of court infringes on freedom of expression, its application is now considered to be justifiable mainly in order to guarantee a fair trial and orderly conduct during proceedings. So contempt is no longer intended to protect the judiciary from criticism. The fact that the court has a clearly distinctive instrument to maintain order and to enforce observance of its orders does of course contribute to the authority of the judiciary.

Traditionally, contempt of court has a different procedure through which the court upon its own motion can indict the defendant and proceed directly to punishment, otherwise known as summary proceedings. As this way of conducting a case is not without problems in light of the requirements for a fair trial, this procedure is currently reserved for cases where immediate intervention is deemed necessary. This usually concerns instances of contempt in the face of the court. At such time, the defendant must be given the opportunity to prepare his defence and to obtain legal assistance for that purpose. In other cases, prosecution is usually carried out in separate proceedings upon the initiative of the Attorney General, following leave of the High Court. At present, contempt of court has a maximum sentence laid down in law of two years' imprisonment or a fine, the amount of which is unlimited.

Over the years, many forms of perverting the administration of justice, which were regarded as contempt before, have become established as 'ordinary' criminal offences. These include perjury and (attempts at) influencing, intimidating or bribing members of the jury, witnesses or the judge. So contempt of court is certainly no longer the only instrument with which the due administration of justice is safeguarded. In this regard, attention has also been paid to the doctrine of abuse of process, on the grounds of which the court has the authority to terminate proceedings, perhaps temporarily, if it believes that a fair trial is no longer possible. In exceptional cases, a high level of negative media interest, for example, can lead the court to decide that a defendant will no longer receive a fair trial from the jury. Further, the parliamentary sub judice rule, on the grounds of which MPs must refrain from commenting on ongoing trials, forms an additional safeguard. Although any comments which are made in a parliamentary debate fall outside the scope of the contempt rules, the sub judice rule de facto constitutes the parliamentary

equivalent of contempt of court. The rule is upheld by parliament itself and is quite strictly observed in practice.

The *sixth chapter* provides an overview of the existing equivalents in the Netherlands in relation to contempt of court. It considers penal provisions, disciplinary measures and other instruments related to criminal procedure, supplemented or otherwise represented in case law, with which courts can act to deal with various forms of obstruction of the due administration of criminal justice. The first category of contempt-like instruments concerns enforcement of order during a court session. One practical measure that to a certain extent can be applied as seen fit is contained in Section 124(2) Sv, on the grounds of which the court, among other things, can have persons who hinder proceedings during a court session removed and can take precautionary measures to prevent possible disorderly conduct in court. Another way to maintain order relates to limiting the time allowed to participants in the proceedings to address the court. Although, in principle, participants in the proceedings must be able to put forward anything they deem to be relevant, the court may intervene if it believes that as a result, the limits to the freedom of expression are exceeded. In the case of lawyers, disciplinary law provides additional standards. On the grounds of their obligation to behave in a manner befitting of proper conduct of a lawyer (Section 46 of the Counsel Act), they should refrain from making inappropriate comments about judges. The penal provision for defamation (Section 266 of the Criminal Code (Sr)) determines the lower limit of what is acceptable. The penal provision for causing of commotion at a court session (Section 185 Sr) is in practice never or hardly ever used. Since separate criminal proceedings have to be initiated by the Public Prosecution Service for these offences, they are of more minor significance for the actual enforcement of order during the proceedings.

Another way of influencing the judicial process is bribery of judges. Bribery is considered a very serious infringement of the integrity and authority of the judiciary and is therefore punishable with a long custodial sentence. Both the briber (Section 178 Sr) and the judge who was bribed (Section 364 Sr) are liable to punishment. Since there have been no known cases concerning the bribery of judges in the Netherlands, this penal provision is mainly in place as a standard.

The chapter then proceeds to set out in what way obstructions to the truth finding in judicial proceedings can be dealt with. The court has various instruments at its disposal to summon witnesses, experts and defendants to appear (a court warrant) and to oblige witnesses and experts to answer questions truthfully (administration of the oath, coercive detention and perjury proceedings). The obligation for witnesses and experts to appear, to answer questions and in that regard to declare that this is done truthfully, has moreover been sanctioned under criminal law (Sections 192, 207 and 444 Sr). Influencing witnesses can be penalized by virtue of Section 285a Sr. Additional disciplinary

standards apply to lawyers on the grounds of which they must refrain from doing anything which in reasonableness could be expected to impair the establishment of the truth. The penal provisions forgery of documents (Section 225 Sr) and making false charges (Section 188 Sr) can be applied if incorrect information is submitted during the proceedings. In addition, the court in criminal proceedings can draw inferences from such attempts to influence truth finding, for example in its valuation of the evidence or – in exceptional circumstances – the right of the public prosecutor to instigate criminal proceedings. Although there is no adequate 'solution' at hand for all conceivable situations, these instruments do provide a fairly comprehensive range of possibilities to respond to obstructions to the establishment of the truth.

The criminal procedure system also has various instruments to respond to noncompliance with court decisions. Substantive criminal law has certain provisions, in which the noncompliance of court decisions constitutes an offence, for example exercising a right from which one has been disqualified in a court decision (Section 195 Sr) and driving while being disqualified from driving (Section 9(1) Road Traffic Act 1994 (WVW)). Most of these penal provisions are not applied often in practice, but they do have a preventative effect endorsing legal norms, and as a result they promote compliance with judicial decisions. In the case of lawyers and members of the Public Prosecution Service who do not comply with court orders, less obvious instruments are available. Disciplinary law can provide support in the case of disobedient lawyers, though in practice this is done very rarely. In the event that the Public Prosecution Service cannot, or is unwilling, to carry out court orders, no solution is provided for in law, and case law shows that a decision on inadmissibility of the Public Prosecution Service in such cases is almost always considered a too far-reaching sanction.

No provision exists in the event of so-called abuse or unreasonable use of procedural law. In the case of the defence, there is also no certainty whether the term abuse can be referred to at all. The courts, in any event, appear to be reticent about qualifying conduct at proceedings as abuse. Nevertheless, consequences can be attached to improper use of procedural law – whether or not it is qualified as such. For example, the Public Prosecution Service is bound to uphold the principles of due process of law, on the grounds of which the courts for example – though to a limited extent – can review the reasonableness or unreasonableness of prosecution. Moreover, in certain cases it can be noted that the participant in the proceedings has no legally relevant interest in the handling of an application or position. Challenge regulations also contain the option to disregard evidently unjustified challenges, though the effectiveness of these is regularly criticised. So in spite of this lack of clear rules, the criminal court does have options to, in a reasonably simple manner, deal with an application in the case of proceedings involving abuse of procedural law or the lack of a reasonable interest. However, there is no clear way to act in cases of abuse and the court does not always have the means to respond

adequately when proceedings are conducted in ways that cause delays or are not efficient or constructive.

Where standards on publicity are concerned, basically there is a great deal of leeway when it comes to freedom of expression during and in relation to criminal cases. The general lower limit is provided in the penal provisions concerning defamation and, specifically in relation to written comments, the prohibition of slander and libel (Sections 261 and 262 Sr). The freedom of the Public Prosecution Service to disclose information is regulated by the presumption of innocence and guidelines on information for the general public. Members of the Public Prosecution Service are also bound to a duty of confidentiality, which is sanctioned under criminal law and can be applied in the case of the deliberate 'leaking' of information (Section 272 Sr). Disciplinary measures can also be taken in such cases. Lawyers can be prosecuted for violating their duty of confidentiality. Disciplinary law has a more practical significance, among other things requiring lawyers to only disclose information when this is in accordance with proper professional conduct and with prior agreement from their client. There are hardly any limitations on the freedom of expression of politicians where criminal procedure is concerned. This is closely related to the lack of a generally accepted sub judice rule. When it comes to journalists and third parties, the criminal court is more or less left empty-handed. Although the Press Council does have some level of self-regulation and the civil courts can offer solutions in certain situations, the criminal courts can only attach consequences in retrospect to the negative outcomes of a 'media trial' and then only to a limited extent, for example by taking it into account in the sentencing.

When the balance is drawn up, it is clear that the total amount of provisions adds up to a diverse and, to a large extent, adequate system of safeguards. Nevertheless, five areas have been identified in which the system does not provide clear or adequate enforcement possibilities, or which are limited in comparison to contempt of court. These are:

1. A substantial amount of the instruments cannot be applied by the criminal court itself as it sees fit; it has no own punitive authority and is dependent on other institutions to apply criminal or disciplinary law.
2. The criminal court has no general authority to enforce compliance with its judgments or orders. This is overcome in part by specific penal provisions, but these do not offer a solution if the Public Prosecution Service does not comply with an order.
3. There is no clearly defined authority with which to respond to the so-called abuse of law of procedure. Although in many cases, even without such authority, the court seems to be able to manage, the possibilities to review evidently unreasonable decisions to prosecute remain very limited, and 'abuse' by the defence and abuse of the challenge regulations cannot always be adequately responded to.

4. Publicity surrounding criminal cases is only partly regulated. Although the penal provisions for defamation, slander and libel mark the lower limit of what is admissible, there are no or very few possibilities to regulate or limit media coverage in high-profile cases.
5. Finally, though of a different order, it is observed that the instruments considered are generally not primarily aimed at securing the authority of the criminal justice system.

In addition, it is clear that the fact that the Dutch system of safeguards in these five areas is not entirely sound, does not mean that in all these areas there is a problematic lack of enforcement that requires action. Lacunas in a certain area can, after all, be compensated by measures in another area. Certain solutions can also entail serious disadvantages. The question whether lacunas actually exist can only be answered after problem-solving approaches, inspired by contempt of court, have also been studied.

The response to the question whether a provision inspired by contempt of court could be an answer to the lacunas observed will be given in *chapter 7*. It is first established that contempt of court is an instrument that is not suitable to be simply incorporated in the Dutch legal system. This is partly due to the fact that the concept is a collective term covering many different instruments, some of which are specifically related to aspects that are alien to the Netherlands, such as trial by jury. Because of these many forms of contempt of court, a discussion on its added value will moreover only be worthwhile if it is made concrete and applied to the problems for which the instrument should offer a solution. It is therefore concluded that the discussion should be aimed at lacunas in the Dutch system and the questions whether adjustment of this system should be considered in specific situations. In addition to this, it appears that the justification for contempt of court is currently mainly related to guaranteeing fair and orderly proceedings, and not (in the first place) in safeguarding the authority of the judiciary. The instrument can be applied when in a specific case there is a risk that the due administration of justice will be impaired, but is not suitable for protecting the administration of justice more generally from potential threats occurring outside a specific criminal case.

After further analysis of the lacunas observed in light of the research findings on contempt of court, it appeared that some of these were not so problematical that additional standards are necessary. This applies in any case to courts not having their own punitive authority. Although the court does not have the authority to punish upon its own motion, maintaining order during proceedings is incorporated in so many other instruments that there is no real lack of safeguards. In addition, the safeguards that already exist are preferable in light of the requirements of a fair trial, since punitive action by a judge in his 'own case' is not without problems. When it comes to the lack

of regulation concerning publicity surrounding criminal cases, it is true that this can be problematic in specific cases. The possible solutions, however, are so far-reaching that their advantages do not outweigh the possible disadvantages. In a system that has no trial by jury, a penal provision such as contempt by publication forms a too far-reaching and unnecessary limitation on the freedom of expression. Less drastic alternatives, such as a ban on publishing information from the records of a criminal case during the preliminary investigation, also face objections partly in light of the observation that though trial by media can perhaps be very difficult for those directly involved, (up to now) it cannot be viewed as being so problematic for criminal justice that action under criminal law is required. In relation to the lack of instruments aimed at authority, it can be observed in any case that additional criminal law standards in the form of a scandalising-type provision are not logical. It is important, moreover, to note that there does not seem to be a problem with authority in the courtroom as such, but more a general dissatisfaction and distrust that is not only aimed towards the judiciary but also other institutions. Criminalization also has two negative effects: it infringes on freedom of expression, and it can have the opposite effect if the critical public has the impression that the judiciary is attempting to silence critics by applying an instrument of power.

Additional safeguards are proposed in the case of the other lacunas identified. Although again a general contempt authority does not appear to be the answer here, there are – with contempt of court and related instruments forming a source of inspiration – instruments conceivable that are more in line with our own legal culture that could contribute significantly to the safeguarding of the due administration of criminal justice. As regards the second lacuna identified, specifically the lack of possibilities to act in the case of noncompliance of court orders by the Public Prosecution Service, it is important that the court is given the possibility to attach consequences to the refusal to carry out an order. Though not a structural problem, from the perspective of the due administration of justice this type of refusal can be so challenging that at the very least the possibility to intervene should exist. This could be a provision by which the prosecution is barred if it refuses or continues to fail to meet its obligations to carry out court orders, when in the court's opinion this leads to serious default and is contrary to the principles of due process and/or the right to a fair trial. As regards the third gap, the lack of an instrument to parry abuse of procedural law, in practice the court can manage very adequately with the means that are available. Although there are concerns about (a possible increase in) abuse of procedural law, for example in the form of dismissing the defence, disciplinary law would still seem to be the most appropriate path to take to review the actions of lawyers. By virtue of the most recent case law by the Supreme Court, the effectiveness of challenge regulations has been improved, in any case for the possibility to deal simply with challenge requests in cases of evident abuse. As regards the

unreasonable use of law of procedure by the Public Prosecution Service, it could be considered to enlarge the options for judicial review of decisions to prosecute that are evidently unreasonable. For the lack of regulation concerning the publicity surrounding criminal cases, indicated as the fourth lacuna, as already pointed out above, the available means are often worse than the problem. However, a parliamentary sub judice rule on the grounds of which politicians refrain in principle from commenting on ongoing legal proceedings could have added value. Although such a measure is not self-evident in the current spirit of the times, from the perspective of due administration of criminal justice it does deserve consideration.

When drawing up the balance, the range of instruments available in the Netherlands to safeguard the due administration of criminal justice is assessed as being adequate to a large extent, though there is room for improvement on the points discussed above. Introducing a contempt of court provision does not appear to be a fitting solution, but contempt of court does act as a source of inspiration for proposals for adjustments that are more tailored to our own legal culture. At the same time, it has become clear that the judiciary is facing challenges for which the proposed points for improvement have no, or only very limited, significance.

Chapters 3 to 7 provide answers to the research questions. *Chapter 8* provides a recapitulation of the research findings. Partly in light of the observation that instruments inspired by contempt of court can only to a certain degree contribute to safeguarding the due administration of criminal justice, this chapter places the findings in a broader perspective. Compared to the past, the courts are less of a central figure in disposing of criminal cases, due among other things to the increase in out-of-court methods of disposal. In recent years, attention has been drawn to the risks and disadvantages of this development from different sides and in varying contexts, and calls are made to halt a further reduction of the role of the judiciary or to reinforce its position. From the perspective of contempt of court, a reappraisal of the central role of the court is also recommended. A clearer positioning of the decisive role of the court and its exclusive authority in the administration of justice can, after all, contribute to safeguarding the due administration of criminal justice and in particular the authority of the judiciary. A second development concerns the tasks of the court. It is observed that in recent years much emphasis has been placed on the role of the judiciary as a provider of service to society, aimed in particular at (re)gaining the public's confidence. This service-oriented approach and the emphasis that is placed on the alleged issue of authority faces criticism. Against the backdrop of the findings from this research, it can be claimed that although authority is not a given fact in these modern times, it could possibly be 'earned' by focussing on the core task instead of providing service. Third, the role and responsibility of other state authorities in safeguarding the position of the judiciary are considered. In light of continuing com-

plaints about work pressure, funding and the organisation of the judiciary, other state authorities should, more than at present, accept a share of the responsibility for shaping the rule of law. From the perspective of contempt of court, it can be expected of other state authorities that they are cautious in their comments on cases coming before the courts, and also that they take a clearer stance against detrimental activities and criticism.

From the findings of this research, and against the backdrop of the discussions outlined above, it can be deduced that on certain points a need does exist for a stronger position of the courts. At the same time, it is clear that this stronger position can, and should, be secured not just with contempt-like instruments. A number of recommendations are formulated in this light. In the case of the legislature, the range of instruments available to the criminal courts should be extended in certain areas; specifically, in relation to the sanctioning of noncompliance with court orders by the Public Prosecution Service and the possibility to review decisions to prosecute. Another, more general, recommendation is that politicians should pay more heed to their shared responsibility for the rule of law, for instance by a review of the sub judice rule. In the case of the judiciary, the recommendations are not so much aimed at the criminal courts, which are quite well provided for with instruments to safeguard the due administration of justice during proceedings. The Council for the Judiciary, however, can fulfil a role by positioning the importance and value of the judiciary less in terms of service to society, and where necessary by better emphasizing and providing (continued) clarification that the judiciary fulfils an entirely separate role and task in society, while also searching for connections with the political arena. Where the media is concerned, a reflection is recommended of the handling of (leaked) information from criminal records. Although sanctions under criminal law are considered too drastic, a thorough reappraisal of self-regulation in journalism is desirable in the light of safeguarding due administration of criminal justice.