

A comparative study of the role played by the public prosecutor and the examining judge in the pre-trial investigation phase of French and Dutch criminal procedure

Summary

In this study, the roles of the public prosecutor and the examining judge in the pre-trial phase are defined as the combination of the missions, powers and responsibilities assigned to them by legislation. The way the public prosecutor and the examining judge act in practice and their position towards other actors in criminal procedure (e.g. the trial judge) should also be taken into account.

The main purpose of the study is to provide the Dutch Department of Justice with useful information in two fields: criminal procedure legislation and policy making on investigating organized crime. Because of its comparative description of French law and procedure, the study could also contribute to the development of judicial cooperation between the Netherlands and France.

The study is built upon research in literature as well as research into the pre-trial investigation practice, using both interviews and observation. The results of the study are laid down in two reports.

This first report consists of two parts. The first offers a comprehensive introduction in French law and procedure. The subject of the second part is the direction and control of police investigations.

Direction and control of police investigations are assured by two different forms of regulation. Both in France and in the Netherlands general rules have been formulated giving the public prosecutor and procurators general formal authority over police forces.

A second kind of rules determines the relation between police, public prosecutor and examining judge during the actual investigations, stating which of these is leading the investigations and which can decide the use of investigative and coercive powers.

Research shows that especially in the field of investigating organized crime, a third kind of control has been developed in recent years. Forced by the danger attributed to organized crime as well as by the risks involved in the use of certain investigative methods to combat organized crime, control has been enhanced and centralized on higher levels.

The results show differences between Dutch and French law in all three forms of direction and control.

Centralization of control takes place on a much larger scale in the Netherlands than in France. The choices to concentrate centralization of control - in the Netherlands at the Board of procurators general and in France at the department of justice - result from recent changes in the structure of the public prosecutor services in both countries.

Formal authority of the Dutch public prosecutor over police forces is broader than the authority of his French counterpart. Finally, research into the direction and control on the level of actual investigations, immediately shows important differences between the two countries in the roles of the public prosecutor and the examining judge.

These latter differences will be subject of research in the final report, which will follow by the end of the year 2000.

De sturing en controle van de politie in het Franse en Nederlandse vooronderzoek in strafzaken

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