Summary

This report contains the results of a research on the use of DNA-profiling techniques in criminal investigation and evidence within the Dutch criminal justice system. The research concentrates on the practice as it was in 1999, prior to a major law reform on this topic that came into force by the first of November 2001. A second research into the practice will follow after the new legislation in order to monitor the implementation of the legislative changes.

The changes in the regulation, that are implemented in the Dutch Criminal Procedure Code and in the related regulation, followed the fast development of the DNA-techniques, as a consequence of which, for instance, not only blood samples but many kinds of biological materials can be used to develop DNA-profiles. Another aspect of the legislative changes was the lowering of the legal thresholds to the application of DNA-profiling techniques in the investigation, and to enhance the effectiveness of running the national forensic DNA-database as it is kept by the Nederlands Forensisch Instituut (NFI).

In this study first the emergence and development of the aforementioned techniques within the practice of the Dutch criminal justice system is described, followed by a chapter on the structure of the research – of which this report contains the results. Next the regulation before and after 2001 is analysed and the crucial factors or indicators to be measured in order to make future comparison possible, are indicated. The results of the empirical research into the practice of 1999, are presented in a quantitative format, accompanied by some explanations and sometimes speculative considerations.

The methods used for the empirical research were analysis of case files, including police and expert reports. Based on the modifications of November 2001 indicators have been formulated to map the changes in the role and the practice around the DNA-research in the criminal procedure. After rendering operational of these indicators case file research was done within the four selected police regions. At the same time interviews were held with persons who in practice are involved in DNA-research. Finally national data concerning criminal offences were also taken into account, in order to compare the outcome of DNA cases with the outcome of criminal offences in general.

Before collecting the data at the courts the researchers have examined the request for a DNA testing of the four selected police regions at the NFI. On the basis of this material an attempt was made to inspect the files of the criminal cases, in which the requests researched at the NFI have played a role. Of the 155 cases in which a DNA-testing really took place, 96 were found back at the public prosecutor’s offices at the district courts and courts of appeal. Due to the problems of the ‘dark numbers’ in investigation, the faltering registration of cases and the lack of an uniform information management, a large number of cases could not be traced.

The research shows that already in 1999 DNA-testing was an established means of investigation; in all the researched courts DNA testing in the administration of criminal justice was used without too many problems. Identification of an offender by means of a match, obtained from the investigation of clues with a profile located in the DNA-database, rarely occurred. Probably this is due to the yet small amount of profiles of known persons in the NFI database. All interviewed practitioners were familiar with DNA testing and were positive about this method of research related to the solving of criminal offences.

In the future the effects of the amendment of the law of 1st November 2001 will be viewed by comparison with the results of this measurement. The researchers recommend the follow up measurement to be carried out in two of more parts. It is essential to start as soon as possible with the ‘monitoring’ of cases before more (forthcoming) amendments of the law will leave their mark on the practice of DNA-research in criminal law.

The report ends with a number of further practical recommendations for the follow-up study. One of the main concerns is the lack of transparency of data about individual cases of aggregate date within the criminal justice system and the lack of feedback-loops (1), which really complicate this kind of research.
Note

(1) These results are consistent with the conclusions of M. Malsch / J.F. Nijboer (eds.), Complex Cases – perspectives on the Netherlands criminal justice system, Amsterdam, 1999.