

Evaluation of the Netherlands National Investigation Team for War Crimes

Summary

This is a summary of a report of an evaluative research into the working methods of the Netherlands National Investigation Team for War Crimes (Nationaal Opsporingsteam Voor Oorlogsmisdrijven, Dutch acronym NOVO) in the period January 1998 to July 2001. In the course of this research the functioning of those responsible for the Public Prosecutor's Office, the WOS team (Wet Oorlogsstrafrecht/ Act on criminal law in time of war, Dutch acronym WOS), is considered. This research was conducted by the Utrecht School of Governance in coöporation with the Willem Pompe Institute for Criminal Law and Criminology. The research was carried out in an interdisciplinary manner and contained organisational analysis, legal analysis and an investigatory comparative legal research. The methods used for the collection of data were: interviews, file analysis, workshop with (ex-) members of the NOVO team and the study of legal literature.

The NOVO/WOS team considers the reports by complainants as well as information submitted by IND in order to check whether the Netherlands have jurisdiction and as to whether sufficient evidence of any criminal offence exists. The legal framework for that is the Act on criminal Law in Time of War, the Act to implement the Torture Convention and the Act to Implement the Genocide Convention.

Set out below are the main conclusions of the research:

- In the relevant period no indictment was issued. In most cases investigations were discontinued at an early stage, due to lack of evidence.
- Investigatory comparative research demonstrates that the low number of prosecutions for war crimes in the Netherlands cannot be explained by any alleged shortcomings of the Dutch legislation.
- Certain factual circumstances have frustrated a successful execution of the functions of NOVO and WOS. Collecting evidence in war crime cases is highly complicated because:
 - Most of the crimes were committed years ago;
 - The crimes have been committed in a country far away from the Netherlands;
 - Witnesses are traumatised;
 - Reliable witnesses are hard to find;
 - It is difficult to obtain mutual legal assistance from countries devastated by war.
- Even under ideal circumstances as to the expertise and equipment of the team, prosecutions and convictions cannot be guaranteed.
- Apart from the efficiency of the functioning of the NOVO/ WOS team, the political and symbolic role of the prosecution of war crimes must not be underestimated.

The following organisational aspects have influenced the execution of the functions of NOVO and WOS:

- No goals have been formulated by the teams according to which their own functioning could be evaluated.
- The working methodology of the WOS team was input orientated (careful dealing with incoming files), in contrast to the output orientated methodology of the NOVO team (as much police reports and convictions as possible).
- The NOVO team comprised expertise relating to regular criminal offences: however investigation into war crimes requires a multidisciplinary and specialised team in which social-scientific, historical and (international) legal competencies are represented in addition to police.
- Hierarchy and budget / personnel competencies are controlled separately for the NOVO/WOS team and have been insufficiently taken into consideration.
- The personnel of the NOVO team often changed. Experience and continuity could thus not be kept within the team. Both teams never reached their intended strength.
- The instructions given to the NOVO team were insufficient and until recently it did not report and record its activities in detail.

- There was no smooth working relationship between the WOS and NOVO teams. Each expressed doubts about the other's expertise.
- Both the NOVO and WOS teams did not feel supported by the judiciary, police and political leadership.

The research has been concluded with some recommendations:

- The investigation into war crimes is very complex and extremely time-consuming. It requires a multidisciplinary team.
- It also requires clearly formulated goals / changes as well as expansion of personnel and financial means are necessary.
- Hierarchy and budget / personnel competencies must be managed together. This could be achieved by bringing the NOVO team under the Central Prosecutorial Service (Landelijk Parket).
- The practice of the 'Article 1 F' procedure of the immigration authorities must be coordinated with the prosecutorial authorities, with a view to the instigation of prosecutions where appropriate. Data in possession of the immigration authorities must be transmitted to the NOVO/WOS team as soon as possible. Efficiency can be enhanced by taking into consideration the necessities of a criminal trial at the time of interview of a foreigner by Immigration officials.
- International agreements and co-operation are essential conditions for successful prosecutions.
- Expectations as to the outcome in terms of numbers of convictions must be moderate in light of the complexity of the task.

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