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**Tasks of the Council for the Application of
Criminal Law and the Protection of Youth
(RSJ): advice, supervision and jurisdiction**

Evaluation of the Act of Temporary Establishment.

SUMMARY

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Summary

The *Council for the Application of Criminal Law and the Protection of Youth* (RSJ, Raad voor Strafrechtstoepassing en Jeugdbescherming) was established on 1 April 2001 by Act of Temporary Establishment. The Council for the Application of Criminal Law and the Protection of Youth (RSJ) is a merger of the former Central Advisory Council for the Administration of Criminal Justice (Centrale Raad voor Strafrechtstoepassing) and the Advisory Board for Judicial Child Protection (College van Advies voor de Justitiële Kinderbescherming), both established in the 1950s. The act will in principle terminate on 1 April 2005. The Verwey-Jonker Institute has been commissioned to evaluate the RSJ. The aim of the research is to provide material contributing to the decision that is to be taken regarding the continued existence and tasks of the RSJ after 1 April 2005.

The RSJ is an independent body. The Council advises the Ministry of Justice on issues regarding the application and enforcement of policy and regulations concerning the application of criminal law and the protection of youth. The RSJ has two other tasks: a general supervisory task regarding the manner in which penalties and measurements concerning the deprivation and restriction of freedom are enforced, and a judiciary task.

Three considerations play a role in the judgement regarding the future of the RSJ. To begin with, the execution of tasks is to be considered. Is the execution of tasks in accordance with the intention of the legislator? Secondly, the combination of various tasks within one single body is questioned. The Council combines advisory, supervisory and judiciary tasks. As a result of combining these three tasks, the Council may appear to be partial in its judiciary task. The third consideration that plays a role is the question whether the supervisory task of the RSJ can continue to exist in its current form if the plans for an Inspectorate for the Application of Sanctions lead to the establishment of such an inspectorate.

Research question

The following research question will be examined in this study:

How does the RSJ fill in the execution of its legal assignment of administering justice, supervising and advising, and how do the three tasks relate to the notions of impartiality and independence?

This research question consists of the following questions:

1. To what extent does the RSJ enforce its judiciary task in the manner intended by the legislator?
2. To what extent does the RSJ enforce its advisory task in the manner intended by the legislator?

3. To what extent does the RSJ enforce its supervisory task in the manner intended by the legislator?
4. Is the combination of the various tasks (advice, supervision and jurisdiction) within one institute a problem in terms of impartiality and independence, and, if so, in what cases?
5. What scenarios are plausible regarding the future position of the RSJ and the inspectorate that is to be established?

Methods of research

In order to come up with an answer to these questions, various methods of research were applied: case studies, document analyses, literature research and interviews with key figures. By means of these methods, information was gathered on the nature, scope and professionalism of the three tasks on the one hand, and the combination of tasks in terms of independence and impartiality on the other. In addition to this, a literature scan was carried out into the ways in which Belgium, Germany and the United Kingdom have regulated supervision, advice and jurisdiction regarding the application of sanctions.

Evaluation of tasks: summary and conclusions

Jurisdiction

The judiciary task can be characterised as a predominantly administrative judicial process, dealing with one particular specialism, namely detention law. The production of the boards of appeal can be compared with the production of a small criminal law division of an ordinary court of justice.

Research was carried out into the question whether the Council meets the requirements regarding the accessibility of entering an appeal, independence, a reasonable period for proceedings, and an internal and external public nature. Research shows that a large number and a wide variety of appeal cases are entered. The Council does not adopt an unnecessarily formal position concerning the assessment of admissibility, complaints are taken seriously and a case does not fall through due to awkward phrasing. All this results in the Council contributing to accessibility. In addition to this, safeguards regarding the legal proceedings are adequate, and motivations tend to be comprehensible and concise. Cases are settled within the set term. The relevant verdicts can be found on the website of the RSJ and are made public in other manners as well. The Council is considered to be a professional and independent judiciary body.

Even though improvements are always possible, the general impression of the judiciary task is good: it is carried out in the manner intended, and it is of major importance for guarding the internal legal position of inmates, people held under a hospital order, and minors in institutions for juvenile offenders.

Advice

The RSJ can give both asked-for and unasked-for advice to the Minister of Justice on the application and enforcement of legislation in the area of the application of criminal law and minors. The RSJ is the only advisory body that gives advice regarding the enforcement and application of policy and regulations. The RSJ is not an advisory body in terms of the interpretation of the enabling legislation regarding advisory bodies.

The advisory task was studied in terms of expertise, vision, systematic use of other tasks, proceedings period, accessibility and an adequate follow-up. The advice demonstrates the Council's professionalism. The aim of the advising role is to contribute to a dignified treatment and effective reintegration of convicts. This vision of the RSJ is clearly expressed in the advice given, without it appearing one-sided. Advice mainly refers to previously given advice, whilst sometimes supervisory visits are referred to. Advice is given within the desired term, is clearly stated and easily accessible (it can be found on the website and summaries are listed in the Government Gazette and the specialist journal). On the whole, advice is taken seriously by both the ministry and the field. The Ministry of Justice may feel that the RSJ gives insufficient input regarding social questions that are to be solved, whilst the field is of the opinion that it is sometimes necessary for the RSJ to speak out more clearly in favour of the legal position and dignified treatment of convicts. Advice regarding legislation runs smoothly. The ministry is less receptive of unasked-for advice concerning policy issues that are at odds with policy resolutions. Nevertheless, this is no value judgement of this kind of advice: its value can be high, because it is of major importance that the perspective of the legal position, dignified treatment, and reintegration of convicts is considered as well.

Supervision

The supervisory task is related to the way in which penalties and measurements concerning the deprivation and restriction of freedom are enforced, and deals with the aspects of legal position, dignified treatment and reintegration of convicts. The RSJ is the only supervisory body that is concerned with the supervision of legal position and rehabilitation. The aim of supervision is to get an overall picture of the state of affairs in the Dutch prison system, forensic hospitals, correctional institutions for juvenile offenders, and probation and after-care services.

The supervisory task was studied in terms of professionalism of supervisory visits and supervisory reports, transparency, independence and relevance. The supervisory visits take place by means of structured procedures. The RSJ employs a monitoring framework, written documents are analysed prior to the supervisory visits and incorporated in bottleneck analyses, and research takes place on regular intervals. The supervisory reports are written according to a standard format. The transparency of the execution of the supervisory task is made up by the facts that the monitoring frameworks are public and the supervisory reports can be retrieved from the Ministry of Justice. The criteria that were set in the enabling legislation regarding supervision have been taken seriously.

The overall impression is that, of all three tasks, the supervisory task is the one still most under development. Not only is the development towards more theme-oriented supervisory visits still in an early stage, the meaning of social supervision must be worked out more elaborately as well.

Combination of tasks

The combination of tasks poses two problems. On the one hand, the combination of tasks causes the danger of jurisdiction appearing partial. On the other hand, the RSJ can transmit different messages from the various tasks, leading to so-called chameleon behaviour, which could conjure up an unreliable image. The second problem, chameleon behaviour, does not occur frequently. This study has brought forward only one case in which the Council transmitted different messages in its successive roles of supervisory body and judge. To avoid appearing partial in cases where advice and jurisdiction are combined, the RSJ has effected a settlement in its administrative regulations. Personal separation is guaranteed in cases concerning the legitimacy of regulations. In such cases it is safeguarded that members who were involved in advising will not have a seat on the board of appeal. Note that

this situation occurs very rarely: generally, the application of regulations is concerned. Apparent partiality could also occur if members first carry out supervisory visits, and, subsequently, give a judgement about a complaint coming from that particular institution in the board of appeal. In such instances the RSJ also takes care of a personal separation in order to avoid apparent partiality. However, it is not easy for outsiders to check whether this really takes place. In addition to this, the possibility of a settlement for challenge is absent. The problem of obscurity can be solved by establishing separate divisions. The question to what extent supervision, jurisdiction and counsel should be separated in order to prevent the entwining of interests and to avoid apparent partiality cannot be answered on the basis of empirical facts. It is a normative choice.

To conclude the study, a description is given of the pros and cons of the possible scenarios, in which the RSJ has either one, two or three tasks. Which of the scenarios best fits the current and future developments cannot be logically deduced from the results of the research.