

SUMMARY: GERECHTSBESTUREN, INTEGRAAL MANAGEMENT EN MD-BELEID

The aim of modernising the judiciary is to strengthen its administrative capacity, enabling it to take (management) responsibility for its own functioning. An important aspect of modernisation is the implementation of a new administrative model that forms the basis on which a collegiate judiciary, being charged with the integral management administration of a court of law, bears the responsibility for the total functioning of a court. In addition, management development policy is required to create the right conditions for the effective functioning of the new administrative model.

On the instruction of the *Wetenschappelijk onderzoeks- en documentatiecentrum* (WODC) [Research and Documentation Centre] of the Ministry of Justice, research was conducted into the functioning of court administrations as well as integral management and management development policy (MD). The research was part of an evaluation of the Netherlands Council for the Judiciary Act and the Netherlands Organisation and Administration of the Judiciary Act. The topics of research were part of a comprehensive programme for the evaluation of judicial organisations led by the Deetman Committee.

The present research aims to provide answers to the following research questions:

- *How does the administrative model function in the new system of administration of justice as intended by the legislator, and how do judicial administrators discharge their tasks, given their distinct roles, positions and conceptions of duties from the point of view of those involved in daily practice, and what are the experiences with integral management?*
- *What are the experiences with the MD policy within the administration of justice? How is the policy developed with a view to the basic conditions on the execution of duties in the administration of justice?*

In order to provide answers to the above questions, research was conducted into four courts of law. In each court individual discussions were conducted with the members of the court administration. In addition, a group conversation was conducted for each of the courts, with a representation from the judges, and a group conversation with representatives from the court's Works Council. In addition, an analysis of the relevant document was carried out for each of the courts. Finally, interviews were conducted with key members of the Council for the Judiciary, and documents regarding MD policy presented by the Council were examined.

Aim of the modernisation of judicial organisations

The implementation of the Netherlands Organisation of Court Administrations Act (OBG) and the Judicial Organisations Act (RO) introduced administrative bodies for all

courts charged with their general management. The 'double dual' structure that had prevailed until that time was thereby abolished. The old structure implied, first, a formal separation of tasks and responsibilities, in which judges were responsible for the dispensation of justice and its management, while directors of court administrations were (on behalf of the Minister of Justice) charged with operational management. Secondly, the old structure implied a division of tasks and powers relating to court personnel between two court officers. The court presidents were in charge of the judges, while the directors of Court Administrations were, on behalf of the Minister of Justice, in charge of support staff.

The changes in the law were intended to end this undesirable state of affairs, and to make the management boards responsible for integral management. The term integral management is to be understood in this context as involving both integral responsibility for management of the administration and integral management for judges and support staff¹.

The aim of modernisation is to strengthen the administrative capacity of judicial organisations, enabling them to take (management) responsibility for their own functioning. In order to ensure the selection of well-qualified members of management boards, the Council for the Judiciary, jointly with various courts, developed a management development policy. In this process MD policy was to be regarded as the initiator of conditions for the new administrative model: as a result of effective training, members of court administrative boards would be able to discharge their management responsibilities to better effect.

Evaluation of the new administrative model at law courts

In a general sense, practically all discussion partners in the courts that featured in the survey reacted positively to the modernisation procedure. The general opinion was that the courts had started functioning more professionally, with greater attention to operational management. It was also appreciated that courts bear their own management responsibilities under the present legislation. The discussion partners were unanimously positive about the fact that it is no longer possible to lobby for additional funds with the Ministry of Justice. In the old context those who had the best access or superior negotiation skills were able to obtain the most funds. The current system is much more objective and causes the courts to be much more aware of costs.

The introduction of the new administrative model has for all courts resulted in a search for a workable and logical organisation layout. As a result, organisational changes have taken place (or are currently taking place) in all the courts. According to the discussion partners, many of the changes have been derived from the new Organisation of Court Administrations Act. For many members of the courts the integral management responsibility of sector presidents for the entire organisation was introduced without disruption. The centre of gravity of the organisation lies at the level of the sectors, onto which most of the tasks, powers and responsibilities converge.

¹ Explanatory Memorandum to the Organisation of Court Administrations Act (*Memorie van Toelichting Wet organisatie bestuur gerechten*).

Judgments on the administrative model

All members of the judicial managements are convinced of the importance of integral management and collegiate administration. The greater majority of court administrators is of the opinion that administration has become collegiate and more effective. Without exception, the courts are aiming for consensus as the decision mechanism. This does not alter the fact that differences of interest do occur, between the various sector presidents for example; but such differences are subsequently fought out and settled.

The operational management directors are the most critical of the functioning of the administration. They are of the opinion that the sector presidents have only a limited sense of their responsibility in relation to operational management, and suggest that operational management is primarily laid at the door of the operational management director. They also indicate that, although matters regarding performance and conduct are mutually discussed, such discussions could be much more to the point. The operational management directors also conclude that the main focus is on matters to do with direct management, while vision and developments of strategy are to all intents and purposes absent.

The staff at the courts surveyed are generally positive about the functioning of the administration. The prevailing opinion is that the introduction of the new administrative model has led to greater professional management of the organisation. One matter that was raised several times concerned the fact that a great deal of emphasis has been placed on output and production. The introduction of the new administrative model has caused court administrations to become distanced from their organisations, which, however, is not always experienced as problematic. The relationship between court administrations and court Work Councils is variable. The court Works Councils are generally critical of the new administrative model, being of the opinion that too little attention is paid to the quality of the primary process and that while many plans are conceived, the implementation of those plans leaves much to be desired.

All but one of the courts have an Executive Committee. The daily business varies from planning agendas to the execution of practical management tasks. The Act offers the possibility of portfolio assignments. Although, with a single exception, the courts do not operate formal portfolio assignments, divisions of labour of an informal kind often occur between individual members of the court administration.

The current size of the administrative committee (varying from four to seven members) is regarded as workable. Opinions about the ideal size of the court administrative committee are divided. Some would prefer to work with the current number also in the future, but others would prefer a committee of three members. Such preferences, however, are often accompanied by the statement that the sector presidents will have to continue fulfilling their crucial role of linchpins between court administrations and their sectors.

Consultative bodies

The Organisation of Court Administrations Act delegates to the sector meetings responsibility for policy formation regarding the quality of the administration of justice and the uniform application of laws.

The number of sector meetings per year varies markedly between and within courts. At the courts surveyed, sector meetings were used mainly to discuss the state of affairs in relation to production and finances, and to raise matters concerning legal content. In addition, sector meetings also appear to serve as 'social events'.

Court meetings mainly function as social events, being the only occasions when court judges meet each other. The former function of court meetings as decision-making consultative bodies was abandoned.

The national consultative bodies (*landelijke overleggen*, LOVs) are the most important consultative forums. LOVs are generally regarded as useful and content-oriented consultative bodies, focusing on the needs of specific sectors. LOV agendas are regularly exchanged and discussed between members of the administrative boards. However, some respondents are of the opinion that the division of responsibilities and powers between LOVs, presidents' meetings, the Council and court administrations is insufficiently clear.

Role and position of members of court administrative boards

In full accordance with the Act, presidents occupy a leading position and are the standard bearers of their organisation. This is, in fact, expected by the other members of the court administrative boards and the staff in general. Due to the consensus-oriented administrative style that characterises the courts, presidents rarely use the extra powers assigned to them by law. Presidents spend most of their time administering their organisations. They are the standard bearers of their organisations to the outside world, while in addition also carrying out primary process activities.

The sector presidents practically unanimously indicate that they experience the sector presidency as an onerous position. They spend most of their time on management tasks, which does not always leave sufficient time for other tasks. However, practically all sector presidents regard participation in the primary process as essential; it enables them to keep in contact with the profession and remain directly involved with the court's support staff.

The majority of presidents regard themselves primarily as members of the court administrative boards. The dual role of sector president and member of the administrative board is not experienced as problematic in the sense of conflicting roles. The presidents are aware of the potential clashes between sector and court interests, but indicate that in such situations the interest of the organisation is paramount.

It is generally felt that the introduction of integral management has resulted in greater sector control. The sector presidents feel collectively responsible for the functioning of the sector. Not all sector presidents, according to their own statements, are equally

interested in operational management however. In particular those who have been in office for some time observe that the new generation of sector presidents is more knowledgeable in relevant areas than the generation of those appointed when the new administrative model was introduced. The six-year appointment period is regarded as just right by many; two full terms is generally regarded as too long. Although a return to the primary process is seen as a theoretically viable option, most sector presidents do not believe they themselves will exercise that option.

Operational management directors are regarded as full members of the administrative board by the other members. In three courts they are (or are among) the longest-serving members of the board. One of the courts has effected a solution which is striking in the sense that the (acting) operational management director also performs that role for another court. Most respondents indicate that operational management directors hold great influence in view of their lengthy occupation of the post and their knowledge and experience of operational management.

In all the courts surveyed, operational management directors work in close cooperation with the presidents. This cooperation is, in particular, expressed in the consultative progress discussions they hold with the separate sectors, during which progress in regard to sector production and finances are dealt with. Sector presidents mostly experience these discussions as a form of accountability review rather than as consultations on progress.

Management Development policy

With the implementation of the new administrative mode, the Council for the Judiciary developed an MD policy with the aim of equipping members of the court administrative boards as effectively as possible for their administrative posts. The policy concerns sitting as well as potential members of court administrative boards. Both routes are appreciated both for the range and the quality of their content, although the discussion partners at the courts expressed regret about a lack of follow-up activities. Respondents also confirm that they experienced a change in attitude in that they began to think and work more as administrators than as judges.

The Council did not develop an MD policy for middle management (including, for example, team chairpersons), because it believes that this particular responsibility rests with the courts themselves. A number of court discussion partners would welcome the development of a programme for that group as well as the creation of a pool from which courts could recruit middle managers. Due to their restricted capacity, courts find it difficult to provide for an adequate selection. As a result, a number of courts sought cooperation with other courts in their vicinity with regard to this matter.

According to some respondents, MD policy concerning prospective court candidates is mostly a policy that exists on paper only. The fact that few resources are invested in this aspect is a matter of general regret. In this connection, attention during job appraisal interviews is mostly restricted to sounding out staff about their potential interest in a management position.

Conclusions

The court administrative councils in our survey have embraced integral management as an administrative concept. Within the frameworks defined by the Act, the courts themselves started searching for appropriate applications of the new administrative model. For all sections within the judiciary, the administrative boards have clearly been positioned as the main executive body. The definitions of tasks, powers and responsibilities are clear. The court administrative boards are currently better able to manage their own organisations as a result of the transparency of the spending budgets. At sector level in particular, integral management has been effectively implemented. In that sense the introduction of the integral management concept has provided a solution to the aforementioned lack of clarity regarding the (division of) tasks, powers and responsibilities (formerly referred to as the 'double dual structure'). Whether the courts will be able in practice to deal with future tasks will depend mainly on the personal approaches of the members of the court administrative boards and the internal dynamics of the boards themselves. In this connection it was shown, for example, that the way court administrative boards function is to a very significant extent determined by the board presidents. Operational management directors also hold a dominant position. In comparison with the former model, the influence of the operational management director has increased. Directors occupy a dominant position on the administrative boards, based on their specific knowledge of operational management and on the attention they are able to devote to administrative matters compared to sector presidents, as well as on their length of service. One point of concern is the task of safeguarding the knowledge gained by operational management directors for the benefit of their successors. Although, *de jure*, there is a collegiate board that bears the collective responsibility for management, *de facto* it is the operational management director (jointly with the president) who is the leader, as a result of greater knowledge and experience.

The gap between the court administrative boards and court staff has widened, although most respondents do not experience this as (particularly) negative. By introducing sector meetings, the legislator expressed the aim to award a more prominent place to court officials. In practice the teams ensure stronger links with, and clearer positions for, court officials. Thus, the role of the sector meetings is being implemented as the legislator envisaged.

Integral management at court administrative board level is strongly dominated by problems of operational management. As a result, substantive issues concerning the administration of justice fade into the background, to an unacceptable degree. There are relatively few substantive issues for which collective responsibility is taken. Sector presidents have a marked tendency, expressed more clearly in some courts than others, to retain for themselves responsibility for matters concerning the administration of justice. They tend to be reluctant to raise responsibility for such issues to the level of court administrative boards. Operational management is evidently regarded as a safer option in this respect.

The administrative model has not, or not to a marked degree, led to (unbridgeable) conflicts of interest for sector presidents in respect of their roles as members of court administrative boards and as sector presidents. Decision-making is based on consensus. As far as we have been able to ascertain, the manner of decision-making as well as the effectiveness and decisiveness of decision-making are not affected adversely in the process. However, it would be desirable for court administrative boards to be granted more freedom in determining the appropriate composition and size of the boards.

Management Development policy

Although the respondents clearly appreciate the Council's MD policy, it strikes us that no clear frameworks were created in advance that would enable ways of measuring the policy's desired effects. In particular, no explicit analysis has been forthcoming regarding the tasks with which court administrative boards are currently faced and will be faced in the future, and the structural consequences such tasks might have for MD policy. Finally, there is no clear link between MD policy on the one hand and the new administrative model and integral management on the other.

Court internal MD policies are practically absent from the smaller courts. The larger courts do pay attention to MD policy. One matter for attention at the larger courts is the MD policy for non-judges in executive positions.

Administrative capacity

In our view, administrative capacity has grown but not yet to the fullest desirable extent. Administrative capacity seems currently more a matter of executive control than of strategic management. This is understandable, given that, since the introduction of the new administrative model, the emphasis has been mainly on creating effective operational management and the need to put the organisation 'on its own two feet', which was expressed as one of the Council for the Judiciary's main concerns. However, in our view too little attention is being paid to the functioning of the boards in relation to their environments. Members of the boards are not sufficiently involved in translating developments in their environments to their own organisations, although it should be pointed out that the larger courts have moved further in this direction than the smaller courts.