

## **Summary**

### **Contested legitimacy: an exploratory literature survey on the perceived legitimacy of acts associated with the Ministry of Justice in the Netherlands**

#### **Introduction**

In recent years there have been a number of controversial incidents that lead to severe criticism about the functioning of the legal system in the Netherlands. These incidents were related to, for example, (alleged) cases of miscarriages of justice in Dutch criminal courts, several cases in which prosecuted criminals committed serious crimes while they were temporarily released from prison, and cases of child abuse in families that were placed under the supervision of several official youth care authorities. Whereas according to some commentators these and other examples should be treated as unfortunate but isolated incidents, others argue that the level of controversy surrounding these cases is a clear sign of a wider trend of 'legitimacy erosion' of acts associated the Ministry of Justice in the Netherlands.

#### **Central research question**

Against the background of this social and political debate in the Netherlands, the Research and Documentation Centre (WODC) of the Ministry of Justice has commissioned the Department of Socio-Legal Studies of the University of Groningen to conduct an exploratory literature survey, aimed at providing both conceptual and empirical information about potential indicators for the (alleged) situation of 'legitimacy erosion'.

#### **Method**

In this study, legitimacy is analyzed from a 'bottom-up' perspective. It focuses on (a) empirical studies concerning (b) the concrete experiences of ordinary citizens. The central focus of this study is, in other words, the level of 'perceived legitimacy' of acts associated with the Ministry of Justice in the Netherlands. This study has analyzed the most important (Dutch) empirical research on this subject from the last ten years (1996-2006). Also, several specialists from various academic disciplines were consulted both

during the selection and the analysis of the literature. The literature survey was closed on January 1, 2007.

### **Frame of analysis**

In order to study the 'perceived legitimacy' of acts associated with the Ministry of Justice a frame of analysis was developed. First, (and inspired by Easton) this frame of analysis differentiates between three different elements of 'acts associated with the Ministry of Justice'. In studying these acts, it is important to consider issues related to the perceived legitimacy of: (a) formal institutions, (b) legal officials and (c) rules and regulations (including court rulings). Second, (and inspired by Tyler) the model considers three different dimensions of legitimacy. We can study the level of 'perceived legitimacy' of acts associated with the Ministry of Justice by looking at: (a) the level of public trust, (b) the level of public satisfaction and (c) the level of public acceptance of these acts. In this study, all these elements were integrated into one conceptual model to analyze the existing literature.

### **Legitimacy as public trust**

Most empirical information about the level of perceived legitimacy in the legal system is related to the level of public trust. This is particularly true with regard to the level of public trust in formal institutions and legal officials. Studies on the level of public trust in the legal system and in judges suggests that the situation in the Netherlands is similar to most other European countries. Most long term studies indicate a decline of the level of public trust in the legal system in the Netherlands. Short term studies, however, do not support this conclusion. Moreover, many researchers emphasize that there are many methodological problems associated with studying the level of public trust through survey research.

It turns out that the level of education is the most important predictor for the level of public trust in the legal system (people with a lower level of education show a lower level of trust than those with a higher level of education). In addition, it has been established that public trust in one institution is related to the level of trust in other institutions. In most, if not all, studies public trust in courts equals public trust in criminal courts.

## **Legitimacy as public satisfaction**

Thus far no studies have been conducted which were explicitly aimed at the level of public satisfaction with the legal system (there are some studies, however, about the level of public satisfaction with the police). Moreover, we could not find any relevant empirical material related to the level of public satisfaction with rules and regulations (including court rulings).

With regard to the level of public satisfaction with acts associated with the Ministry of Justice, the most important finding is that about half of those questioned in surveys and other studies are satisfied with the police (as an institution). With regard to legal officials this level is somewhat higher: about 70% claims to be satisfied about judges and about 60% about police officers.

One remarkable finding is that those people who have had personal contact with legal officials are less satisfied about these officials (both as an institution and as an individual) than those who did not have this personal experience. To some extent, this appears to be related to people's expectations. Some level of knowledge about what will happen in, for instance a court or a police station, is highly relevant. It turns out that those people who did have some prior knowledge about what they could expect are more satisfied than those who lack this type of knowledge.

The way people are treated during, for instance, a court procedure is important, but it is less important than the outcome of the procedure. In the literature it is suggested that one of the possible reasons for important changes in the relationship between the general public and the legal authorities is the general trend of individualization.

## **Legitimacy as public acceptance**

Thus far there have not been many empirical studies which consider legitimacy in terms of public acceptance. One of the fields that we have looked at is the level of compliance with court rulings. Moreover, three studies were analyzed which were aimed at the level of public acceptance of rules and regulations.

One of the most important results is that (non) acceptance is often a matter of degree. Moreover, in practice there are many different

types of acceptance. It was established that usually public acceptance is not self-evident: court rulings are not automatically complied with; police officers are regularly insulted; and finally rules and regulations are frequently not carried out.

## **Conclusions**

1. The first result from this survey of the relevant empirical literature, is that the empirical data which are currently available do not point towards a situation of large scale 'legitimacy erosion' in the Netherlands.

2. The second result from this survey of the relevant empirical literature is that, although the empirical data which are currently available do not point towards a situation of large scale 'legitimacy erosion', the level of legitimacy has not remained unaffected. Our study contains several clues which suggest a certain level of 'corrosion' of legitimacy in the Netherlands.

3. The general picture which emerges from this exploratory literature survey is that in the Netherlands the legitimacy of acts associated with the Ministry of Justice is no longer self-evident. In many cases there is a situation of contested legitimacy.

Considering these general conclusions, it should be noted that thus far there are only a limited number of relevant empirical studies available. Moreover, these data are based on a many different studies, often with different research questions and methodologies. Finally, some elements of the acts associated with the Ministry of Justice are better covered than others.

Finally, the most important findings from this literature survey are translated into these four practical suggestions, which may assist the Ministry of Justice in monitoring and reacting to issues of legitimacy:

### *a. Focus on the position and the practice of legal officials*

The practical experiences of legal officials offer an important window on the perceived legitimacy of acts associated with the Ministry of Justice. People often project their general expectations about the formal institutions on these officials. Moreover, the level of public satisfaction and public acceptance of rules and regulations also depends on the perceived legitimacy of the official who enforces these rules.

*b. Take people's expectations about law and justice seriously*

People with a high level of education often display a higher level of public trust in, for example, courts than those with a lower level of education. In addition, the level of perceived legitimacy of acts associated with the Ministry of Justice is closely related to people's expectations about these acts. From this it can be concluded, that people with a lower level of education display a lower level of public trust because they also have other expectations about law and justice than those with a higher level of education.

*c. Collect more information about specific situations*

Both in the theoretical literature on legitimacy and in most survey research, the overall picture is usually considered more important than concrete, individual situations. In this study, however, it was demonstrated that for understanding current developments in the level of perceived legitimacy, these specific situations are very important. Therefore, rather than just emphasizing the general picture, it is also important to focus on the ways in which people perceive legitimacy in individual, specific situations and on the many differences between these individuals.

*d. Widen the perspective on the acts associated with the Ministry of Justice*

To improve the level of information about the perceived legitimacy of acts associated with the Ministry of Justice it is important: not to limit the study of public trust to surveys only, to include issues of public acceptance in future evaluation studies; and to increase the number of studies about the acceptance of rules and court rulings. Finally, this study suggests that the everyday experiences of legal officials are an important, yet often neglected, source of information about the level of 'perceived legitimacy as well.