

Bijlage 6: English summary

Introduction

The first of January 2010, new legislation came into force that was intended to solidify the contribution of court experts in Dutch criminal court proceedings.¹⁵² The legislation (referred to as Wds, meaning *Experts in Criminal Cases Act*) introduced a number of changes in the Criminal Prosecution Procedures Act, primarily but not only concerning the role and position of court experts in such procedures. The final goal of the Wds was “strengthening popular trust in the penal system” and “ultimately, popular trust in the Rechtsstaat” through a “distinctive material improvement of the quality of trial practices to be gained by the right utilisation of court experts” according to the explanatory memorandum accompanying the bill.¹⁵³

An essential question in the history of the development of the Wds was: how to guarantee that a court expert contributing to a criminal case does indeed possess the specific knowledge, skills and expertise required in that case? One of the safeguarding facilities that the law provided for was a register of court experts. The law stipulates that there is an independent Board that manages the Register and that assesses experts who apply for registration. Detailed regulation can be found in the *Experts in Criminal Cases Decree*. Article 2 of the Decree specifies the purpose of the Register as follows:

“The purpose of the register is to promote the utilization of court experts who, based on the assessment of the Board, satisfy the quality requirements stipulated in article 2, by gathering and promulgating the data on court experts as far as relevant for potential commissioners”.

The WODC (the Research and Documentation Centre of the ministry of Safety and Justice) commissions a research team headed by professor de Ridder, University of Groningen, to conduct an evaluation of the functioning of the Register. The team consisted of researchers connected to the Pro Facto research agency and the department of criminal law of the University of Groningen.

Research questions and research design

The central research question of this evaluation is:

How does the Dutch Register of Court Experts (NRGD) function and to which extend does it realize the goals that the legislator had in mind when founding the NRGD?

Two sub questions are distinguished:

- I What was the policy of the legislator of which the founding of the NRGD was part, and which assumptions formed the foundation of that policy?
- II How does the NRGD function and to which extend is this in accordance with the goals and expectations of the legislator?

In order to acquire a reconstruction of the policy and underlying assumptions and a description of the actual functioning of the NRGD, sixty interviews were conducted: staff of the NRGD, public prosecutors, attorneys, judges and (both registered and non-registered) court experts. In addition, two surveys were conducted; one amongst all the 520 court experts who up to 31 of December 2013 submitted a registration request and another one amongst criminal lawyers.

¹⁵² Wijziging van het Wetboek van Strafvordering tot verbetering van de regeling van de positie van de deskundige in het strafproces (Wet deskundige in strafzaken) (Stb. 2009, 33).

¹⁵³ Handelingen I 20-01-2009, p. 18-929.

Policy theory

The first part of the research consisted of the reconstruction of the policy theory, that is the set of assumptions on which the legislator founded its policy that instituted the NRGD. The NRGD is but one element in a more encompassing policy for the improvement of the contributions of court experts that also includes directions for judges and public prosecutors, and many other provisions. The Register itself again is a composite of different elements: the Board, its staff, an assessment system and a registry that as a whole is supposed to contribute to the achievement of stated goals concerning the improvement of the court expert's contribution to criminal cases. The reconstruction of the policy and the (sometimes implicit) assumptions underlying the policy is required to generate a base line against which to assess the performance of the Register. The reconstruction revealed that the policy was founded on five core assumptions concerning the (causal) relation between the functioning of the Register and the quality of court expert contributions in criminal case proceedings.

1. the NRGD assessment and selection will result in the registration of court experts with sufficient qualifications only;
2. the Register will offer the commissioning authorities a choice of qualified court experts for all expert questions and matters;
3. If a court expert is utilized in a criminal case, it will, as much as feasible, be a registered expert;
4. the Register and the employment of registered experts enhances the quality of the court experts' advice;
5. the registration of court experts enhances the contributions of experts in the courts' deliberations.

The first three assumptions are about the conditions to be fulfilled in order for the Register to perform successfully. The latter two assumption regard the relationship between the functioning of the Register and the quality of expert contributions in criminal cases. The reconstructed policy set (goals, means and assumptions) has been graphically represented in a goal tree that visualized the chains of causal and normative relations in the policy. The graph is a *partial* goal tree as it represents only part over the overall policy concerning the court experts; merely that part in which the Register is the core element. Indeed the focus of the evaluation is the performance of the Register.

Organisation and procedures

The NRGD is managed by an independent Board: the Board of Court Experts. The Board sets the standards for the assessment of (potential) court experts and decides on individual registration requests. Registrations are made public. The Board administers the register and decides on the removal and (re-)enrolment of experts.

The Board distinguished a number of expert areas. For each expert area it established two separate committees: a committee charged with the formulation of assessment criteria (NAC) and a committee for assessing individual applicants and advising the Board about registration (TAC). One separate committee, the BAC, advises the Board on appeals against registration decisions.

The assessment procedure is by and large the same for each area of expertise. Applicants need to fill out an application form that is to be submitted together with supporting documentation. The documentation required depends on the area of expertise and the type of applicant. The documentation has to show that the applicant satisfies the requirements for registration in his or her area of expertise. Part of the documentation is antecedental: diploma's, licences and certificates pertinent to the area of expertise and indicative of a level of proficiency. Another part of the supporting documentation serves to demonstrate performance in the area of expertise: court reports the applicant has written in the (recent) past. The TAC examines a selection of court reports from a longlist the applicant is to submit. The TAC makes its assessment on the strength of the written material submitted. In case of doubt, the applicant is invited for a further oral assessment. The Board decides on the basis of the TAC advise and the decision can be threefold: registration, registration for a limited term, and rejection for registration.

Registrations

In December of 2010 the NRGD published its first batch of registered court experts on its website. In the following years up to 2013, the ten areas of expertise were dealt with: that is, assessment criteria were drawn up and registration assessments and registration decisions were made. The areas covered are:

- criminal law adults – psychiatry
- criminal law adults – psychology
- criminal law juveniles – psychiatry
- criminal law juveniles – psychology/ortho-pedagogy
- forensic toxicology
- controlled narcotic substances – analysis and interpretation
- forensic weapons and ammunition analysis
- legal weapons and ammunition analysis (in the framework of the Law on weapons and ammunition)
- handwriting examination
- DNA-analysis and –interpretation at source level.

The first four areas together form the larger category of FPPO (forensic psychiatry, psychology and ortho-pedagogy). Eighty percent of the applications were accepted, thirteen percent were denied registration and seven percent withdrew their application. By the end of 2013 there were 529 registered court experts. The rejected applications (13 %) were primarily from FPPO-experts and within that category mostly (30 %) applications of experts on juvenile (mis)behaviour.

The survey among all applicants revealed that the most important reason for applicants to have themselves registered as court expert was that they considered it a necessary condition to continue activities as a court expert. A (large) majority of applicants was satisfied with the carefulness of the registration procedure, the information available to the applicant, the clarity of the assessment standards and the authority and expertise of the members of the assessment panels. There was a strong relation between satisfaction and acceptance, though. The only general dissatisfaction concerned the length of time the procedure took.

The reasons for rejection were miscellaneous. Most cited were:

5. The applicant does not fulfil objective conditions:
 - not the required schooling and training
 - not the required number of rapports
6. Reports written and submitted by the applicant are assessed below the standards set by the Board. The most common failures had to do with:
 - drawing unwarranted diagnostic conclusions;
 - unjustified connections between a disorder and the offence;
 - the inadequacy or the lack of a risk assessment;
 - the (backing of the) forensic advice.

Evaluation

The five core expectations underlying the enactment of the registration system constituted the framework for the evaluation of the functioning of the NRGD. The following sections contain the assessment in those five areas on the basis of the empirical findings.

6. *the NRGD assessment and selection will result in the registration of court experts with sufficient qualifications only.*

It was established that the NRGD complied with the requirements derived from this expectation. First, the Board succeeded in formulating assessment standards for major areas of forensic expertise; sets of criteria that are suitable for the evaluation of the qualifications of the applicants. Second, the Board accomplished the development of assessment committees and

assessment procedures that ascertain to a large extent the selection of the qualified experts and the rejection of the not sufficiently qualified experts. Thus the overall evaluation of the selection procedure is positive. Some critical comments made in interviews are worth noting here. A few of the respondents insisted the Board should be more critical in the assessments. Some of the applicants who's application was rejected claimed that the Board and its advisory committee were biased or lacked the proficiency for an adequate assessment. Such comments serve as a reminder that the support for the Board's approach in the field is not completely solid.

7. The Register will offer the commissioning magistrates a choice of qualified court experts for all expert questions and matters.

This expectation has largely been met: four years after the beginning of the registration procedures, in most instances registered experts are available whenever there is demand. There is a notable exception, however: some areas of expertise are still without registration. It is a small, but significant void. Not under registration are what is called *exotic* kinds of expertise and academic *super experts*. Here looms a paradox. On the one hand, making this specific kind of expertise accessible by registration could very well be an important contribution to the quality of criminal court proceedings. This was the opinion of a panel of key informants that was consulted before the Wds was enacted; they even considered registering these special experts a core indicator for the success of the Register. On the other hand, registration of these small and fluctuating groups of exotic experts and super specialists is most complex and expensive – if possible at all.

8. If a court expert is engaged in a criminal case, it will, as much as possible, be a registered expert.

The courts nowadays almost always engage registered court experts. The public prosecutors and judges for whom they work, assume that the advice of a registered court expert will always be sound. Lawyers on the other hand make little use of the Register. No one uses the Register as a source of information about court experts. In fact, there is limited data on each expert in the Register. However, mediation by both large forensic organisations (NFI and NIFP) ascertains that the right expert is selected for the job. The judges and the prosecutors by now seem to have such trust in registered experts that the appointing magistrate or the attending judge may not always make their own critical appraisal of the expert and his advice.

9. The Register and the employment of registered experts enhances the quality of the court experts' advice.

As far as the realisation of this assumption could be tested, there was little support to be found for it. According to most court experts themselves, the registration as such has had little impact on their performance. Only a number of the junior advisers stated to have profited from the registration procedure for the improvement of their work. The court officials who engage court experts reported that they had not experienced a significant difference in the quality of the advice or the court experts since the commencement of the registration. Improvements, if they were signalled, were of an earlier date, and were mostly contributed to the quality improvement activities of NFI and NIFP. This could be an indication that efforts for enhancement of forensic expertise up front is at least as important as quality control afterwards. The registration system does function as a sieve, however: incompetent advisers no longer have access to the courts. Indeed the NRGD rejected twenty to thirty percent of the applicants, most of whom were court experts under the previous legislation. Further improvement of advisory practices would certainly require the expansion and improvement of the forensic training of experts.

10. The registration of court experts enhances the contributions of experts in the court's deliberations.

This study did not produce clear indications that the NRGD-system strengthened the deliberations of courts. In so far any effect was discernible, it was a slight tendency among judges and prosecutors to take the quality of registered experts and their reports for granted. After all, these experts did overcome the NRGD assessment.

The design and phrasing of questions and assignments for experts was subject of evaluation and improvement even before the establishment of the NRGD. It was not possible to trace the conceivable contributions of the NRGD system to further improvement. The conversion of a court question into an viable research question that the expert can deal with, looms large in the NRGD assessment model. This might have (indirectly) improved the communication between the commissioning magistrate and the court expert.

Over the past four years, the NRGD has become a centre for the gathering and development of forensic expertise. All this knowledge trickles down into the court system only very slowly, if at all. For most judges and public prosecutors, the NRGD system has remained a distant phenomenon.

Conclusion

The NRGD, its Board and staff, have succeeded in developing and applying an assessment system that registered all qualified court experts. This resulted in 529 registrations. The most important result of the NRGD system up to date was the “sieve effect”: excluding from the courts all those experts that showed insufficient aptitude to be a court expert. Beyond that, the NRGD has succeeded in covering all the regular areas of forensic expertise in its assessment and registration structure and thus registering almost all eligible court experts. Very rare and very sophisticated expertise however is not covered and not likely to be covered. Meanwhile, it has become common practice that court magistrates only engage registered experts – if available.

Overall, this evaluation study has established that the NRGD functions well in all relevant aspects. It delivers *outputs* (assessment criteria, assessments and registrations) that are clearly up to standard. As for the *outcomes* of the registration system, the general enhancement of court deliberations, no hard data could be gathered. Soft data suggest that, contrary to what lawmakers expected, the NRGD system did not visibly bring about a critical appraisal of the way the courts, the judges and the prosecutors deal with non-legal expertise in their decision-making. The NRGD is primarily an affair of forensic experts themselves; the coupling with the courts is weak.