

Kostenveroordeling in strafzaken

Een rechtsvergelijkend onderzoek naar de veroordeling van de verdachte in de proceskosten in Duitsland en Engeland

Prof. mr. P.J.P. Tak

Summary

In the Netherlands a discussion is going on whether parties in civil and public court proceedings should contribute more substantially in the costs of the court procedure. The question was raised whether defendants should contribute to the costs of criminal proceedings as well.

Since the early nineteenth century a costs order in criminal cases was known in the Dutch Criminal Code but at the end of that century that possibility has been abolished because it was considered to be an impediment for the rehabilitation of the convicted offender. For a proper discussion on the possible re-adoption of costs orders in criminal cases in the Dutch Code of Criminal Procedure a need was felt for a comparative law report on costs orders.

A *quickscan* on the law systems of countries with a accessible language for the author made clear that in the majority of the West-European countries costs orders can be issued by courts to defendants who were sentenced or pleaded guilty. Based on the results of that *quickscan* it was decided to deal in the comparative law report with the costs order regulations of *Germany* and of *England and Wales*. This report contains a full description of the German and English regulations on costs orders as well as its implementation in practice.

In Germany costs orders are ruled by Sects. 464-474 of the *Strafprozessordnung* (the German CCP, abbreviated: StPO). Whenever the court imposes a sentence it shall make a costs order. The rationale of the costs order is the *Veranlassungsprinzip*, the principle of cause. The costs order has to be paid by the defendant as soon as the verdict becomes final.

Costs orders consist of *Gebühren* (court registration costs) and *Auslagen* (expenses due to activities needed for the prosecution of the criminal case). The amount of the *Gebühren* depends on the sentence imposed. The amount of the *Auslagen* depends on what actions have been taken to prepare the prosecution and may consist of costs like the costs of undercover interception, the costs of DNA-identification, travel expenses and daily allowances of witnesses and the costs of consultancy of experts. There is a substantial number of court decisions on what costs can be claimed. In a number of cases the costs to be paid by the defendants are quite substantial.

The German court does not fix the amount to be paid. The amount is set by a so-called *Kostenbeamte*, an officer of the court, in a costs assessment procedure ruled by the *Gerichtskostengesetz* (the Costs of Court Proceedings Act).

The court does not have any discretionary power to reduce the costs order. Discretionary power may, however, be applied by the *Kostenbeamte* whenever he is of the opinion that the defendant is not able to pay within a reasonable time.

In research it is shown that compared to unsuspended sentences an increasing part of the costs can be collected when a suspended sentence has been imposed. Approximately ten percent of the costs of the criminal procedure are paid from costs orders.

In *England and Wales* a considerable set of rules concerning costs orders exists. Costs orders defendants have to pay are ruled by Sect. 18 of the Prosecution of Offences Act, Part 76 of the Criminal Procedure (Amendment) Rules 2011 and the 2010 Practice Directions (Costs in Criminal Proceedings) of the Lord Chief Justice.

Costs orders can be claimed by the prosecuting authorities. Not only the public authorities like the Crown Prosecution Service but also private authorities such as National Rail, the Post Office and the Health and Safety Executive are vested with prosecutorial power. All these authorities can ask the court to award them with a costs order against the defendant. All expenses by the prosecuting authority that were just and reasonable to prepare a proper prosecution may be claimed. This might include the costs of the prosecuting authority in carrying out investigations with a view to the prosecution of the defendant where the prosecution results and the defendant is convicted.

In England and Wales, unlike in Germany, the court sets the amount of the costs order and whenever this is deemed reasonable and just has the power to reduce the costs as claimed by the prosecuting authority. As far as it concerns the regular costs for the prosecution authority tariffs are set by the Crown Prosecution Service for costs of proceedings like a tariff between £ 620 and £ 930 for a summary trial in a Magistrates' Court. The court has when setting the amount of the costs order to take into account the sentence imposed and to consider the impact on the defendant. Her Majesty's Courts and Tribunal Service is charged with the collection of the sum of the costs order on behalf of the prosecuting authorities.

It follows from the present comparative study that in both countries a conviction to bear the costs of the proceedings in criminal cases contributes to – at least partially, if not entirely – transfer the costs of the criminal justice system on the person who provoked such costs. This rationale underlies the absence of any discussion on this matter in both countries. In neither of the two countries indications exist that the costs order hampers the rehabilitation of the offender nor that the regulation on costs orders is in conflict with the Constitution or international human rights instruments. The objections against the regulation on costs orders in Germany do not concern the character of the costs order itself but the strictness and the way the regulations are implemented.