

De stem van de magistraat

Evaluatie van de subsidie aan de NVvR

Opdrachtgever: WODC, Ministerie van Veiligheid en Justitie

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Management Summary

Background and Motivation

01 The Dutch Association for the Judiciary (*Nederlandse Vereniging voor Rechtspraak* in Dutch, hereinafter referred to by its Dutch abbreviation of NVvR) is the association for public prosecutors and judges. In its role as their trade union, the NVvR looks after the interests of its members and protects the independent (legal) position of the magistracy (public prosecution and judiciary). In its role as a professional association, it safeguards the quality of the administration of justice. The NVvR receives a subsidy from the Ministry of Security and Justice for its tasks as a professional association. This report concerns the evaluation of this subsidy; consequently, it focuses on the NVvR as a professional association and not on its activities as a trade union.

02 The Minister pays the subsidy in order to help bolster the 'independent role of a professional association for judicial officers among the forces at play in the judicial system, alongside the roles of the Minister of Justice, the Board of Procurators General (*College van procureurs-generaal*) and the Council for the Judiciary (*Raad voor de rechtspraak*)', as these roles have evolved since the Council for the Judiciary was established in 2002. Broadly speaking, the subsidy letter makes a distinction as follows between the more general and the more specific aspects of the NVvR's role as a professional association:

- a. Giving the professional group a voice in a general sense. The NVvR has a part to play in throwing light on matters from the joint perspective of the judiciary and the public prosecution service. The NVvR is expected to speak on behalf of the professional group of judicial officers, following consultation where necessary with the Council for the Judiciary (hereinafter the 'Council') and the Board of Procurators General (hereinafter the 'Board'), in its dealings with politicians, the media and society at large.
- b. The specific task of providing timely solicited and unsolicited advice (in its capacity as the voice for the professional group). The NVvR may be asked by the Minister of Security and Justice, or the Council or the Board, to advise on matters of general interest that concern the practice of the profession. The areas of advice envisaged are:
 - i. General legislation
 - ii. Policy on training for judges and public prosecutors
 - iii. Independence and ethics
 - iv. Policy on recruitment and selection

03 The NVvR's advisory task is described in more detail in the explanatory memorandum accompanying the Evaluation of the Modernisation of the Judicial Organisation Act (*Evaluatiewet modernisering rechterlijke organisatie*)¹. The subsidy is also intended as an allowance for the operational authorities employing the judicial officers who carry out activities for the NVvR (as agreed with those operational authorities).

04 The aim of this study was twofold:

- a. To analyse the extent to which the NVvR has used the subsidy it obtained in an effective and efficient manner to fulfil its role as professional association.

¹Dutch Lower House Parliamentary Paper. Session year 2008/2009, number 32 021, number 3, section 7.2.

- b. To identify possible points for discussion concerning the subsidy relationship between the Ministry of Security and Justice and the NVvR.

Research Approach

05 The research was carried out in three stages. In the preliminary stage, a document study of the NVvR's annual plans and annual reports and a comprehensive scan of the NVvR's advice were carried out. In the second stage, an assessment framework was drawn up based on interviews with relevant individuals within the NVvR and the Ministry of Security and Justice; this framework was used for determining the aspects to be evaluated and the manner in which the effectiveness and efficiency of the subsidy expenditure should be evaluated. In the third stage of the study, this assessment framework was used as a guide for:

- a. Interviews with stakeholders;
- b. A self-assessment by the NVvR;
- c. A survey among the professional group;
- d. A meeting with the NVvR aimed at considering points for discussion.

NVvR Organisation and Stakeholders

06 The NVvR organisation consists of a number of bodies, each with its own duties:

- a. Members' Council. This is the association's most senior body.
- b. Board. The board is appointed by the Members' Council.
- c. Office. The association is supported by its own association office, which is managed by a director and carries out secretarial and administrative tasks, and tasks relating to policy and communications.
- d. Commissions. The NVvR board is assisted by six standing commissions that help it reach clear standpoints or provide sound advice.
- e. Working groups/sections. There are working groups designed to pool the expertise of the members.

07 The NVvR has dealings with other stakeholders in the domain of the judicial system. Figure A gives a schematic overview of its relationships with these stakeholders.

- c. Appearances or publications in the media to publicise its position. The NVvR says that it has been more active in this area recently compared to the past. A summary of the media events in the first part of 2013 can be found in Appendix D.
- d. The delivery of products such as the NVvR Judges' Code of Conduct, including the preparatory meetings and products.
- e. Acting as a consultation partner for politicians. The NVvR has direct contacts with politicians and holds regular meetings with the standing parliamentary committee (twice a year) and with the Upper House (twice a year).
- f. Liaison and meetings with other stakeholders, such as the Ministry of Security and Justice, the Council, the Board and the Training and Study Centre for the Judiciary (*Studiecentrum Rechtspleging*, or SSR, in Dutch).

10 The NVvR's advisory task is a specific task in which it represents the professional group. In practice, that advisory task takes various forms and it is important to distinguish between advice on legislation and advice on other topics. Advice on legislation is given at the request of a ministry and results in a written advisory report. Advice on other topics generally does not take the form of official, written advisory reports; instead, advice is given through the NVvR's own activities and verbal communication of the NVvR's standpoint, for example in meetings with stakeholders.

11 In the period from 2009 through to 2012, a total of 143 advisory reports on legislation were produced, 120 of which were substantive. The remaining 23 advisory reports were 'blank advisory reports', which means that the NVvR considered the matter carefully and decided there was no reason to provide substantive advice. The main features of the legislative advice procedure are as follows:

- a. Each year, when the Ministry of Security and Justice produces its programme of legislation, the NVvR responds by indicating which draft legislation it would like to provide advice on.
- b. The Ministry then sends requests for advice from the NVvR in the course of the year. The NVvR is always asked for its advice on draft criminal legislation. Its advice is only requested for draft legislation pertaining to administrative law or private law if the subject matter concerns the practice of the professional group.
- c. The request for advice is discussed in the NVvR's Legislative Commission (*Wetenschappelijke Commissie*). The decision is taken in that meeting as to whether it is necessary to set up a working group to draw up the advice. If the proposed legislation is not particularly complex, the Legislative Commission will draw up the advice itself.
- d. If the proposed legislation is complex or specialised, the Legislative Commission sets up a working group to draw up the advice, consisting of NVvR members who are interested and have the relevant expertise.
- e. The working group either meets in person several times or communicates by e-mail, depending on time pressure, the availability of working group members and the complexity of the advice. The working group is assisted by a policy officer from the office. When drawing up the advice, they may if necessary consult a broader spectrum of members, for example via the Members' Net, via e-mail, by organising meetings focusing on the proposed legislation or through meetings of the commission preparing the advice.

- f. The draft advice is discussed in a Legislative Commission meeting in which all the advisory reports in progress are discussed. If necessary, the advice may be modified during this meeting.
- g. The advisory report is sent to the party requesting it.

12 Besides this formal procedure, there may also be ‘administrative contacts’ between staff at the Legislation and Legal Affairs Department and the NVvR. It turns out that legislative advice is never unsolicited; however the desired list of advisory reports based on the legislative programme is agreed on with input from both sides.

13 Advice on training policy, independence and ethics, and recruitment and selection is different in nature to the legislative advice. This advice is more informal and is not in response to a formal request for advice. The informal character of the advice on the aforementioned topics makes it more difficult to measure exactly what activities the NVvR undertakes in this regard, and with what frequency. The interviews have however given an impression of the kind of activities involved. They show that the NVvR undertakes activities to put into practice its task of advising on training policy and that the NVvR largely incorporates its advice on independence and ethics in its legislative advice. The NVvR gives little or no explicit advice on recruitment and selection, although it does say this is a topic it discusses in administrative meetings³.

Financial Accountability

14 The NVvR gives an account of the costs eligible for subsidy in its annual reports. In this account, it only specifies the aggregate costs eligible for subsidy, with an apportionment formula being used to determine the staff costs in proportion to the policy officers’ activities for the professional association. Table A gives a general overview of the subsidy reporting. The reported costs eligible for subsidy have exceeded the subsidy provided every year.

	2009	2010	2011	2012	Total
Total costs eligible for subsidy	€ 949,513	€ 1,250,451	€ 984,508	€ 985,845	€ 4,170,317
Size of subsidy	€ 866,325	€ 847,700	€ 834,400	€ 825,600	€ 3,374,025
Ratio of costs eligible for subsidy to subsidy received	1.10	1.48	1.18	1.19	1.24

Table A. Overview of the costs eligible for subsidy and the subsidy each year

15 The subsidy takes the form of a lump sum. In the planning and control cycle, the Ministry carries out a minimal check of the NVvR’s annual plans and annual reports, mainly to see whether the reported costs eligible for subsidy are sufficiently high. The NVvR is largely free to decide for itself how to realise its subsidy objectives, given that the nature of the subsidy relationship does not allow specific performance agreements. The Ministry is reluctant to direct the NVvR on how to implement its role in view of the importance of maintaining the NVvR’s independence.

³This refers to formal and informal meetings with the Board and Council, the executive committee of the Presidents’ Meetings, the meetings with the Bar Association, the meetings with the Training and Study Centre for the Judiciary, the meetings with the Department and the meetings within the judiciary sectoral body (*Sectoroverleg Rechterlijke Macht*, or SORM, in Dutch)

16 In a general sense, the NVvR sees a clear relationship between its own objectives and activities and the objectives of the subsidy. In practice, many activities serve multiple objectives (related to both the trade union and the professional association) and it is not always possible to make a clear allocation of individual activities to specific objectives.

Assessment Framework

17 Further clarification is needed regarding the assessment of the effectiveness and efficiency in the context of the subsidy received by the NVvR. The NVvR's assignment is primarily a best-efforts obligation regarding the implementation of its role as a professional association. An important aspect here is that the NVvR should be an independent voice speaking on behalf of the professionals it represents. The Ministry is reluctant to direct the NVvR on how it should perform this task. This means that in its subsidy letter, the Ministry has not specified any tangible, quantifiable targets that the NVvR should achieve. The evaluation of effectiveness is therefore largely based on an analysis of:

- a. The relationship between objectives and activities: do the costs reported as eligible for subsidy fit in with the subsidy objectives?
- b. The perception of the effectiveness of the operations among stakeholder, members and the NVvR itself.

18 An assessment framework was drawn up as a guide for the evaluation of the subsidy given to the NVvR (see Chapter 3). In interviews with representatives of the NVvR and the Ministry of Security and Justice, the interviewees were asked which aspects could be used to assess the extent to which the NVvR has achieved its aims. In broad terms, these aspects concern the representation of the professional group and the process, the substantive quality and the impact of its advice. Ideally, each indicator for effectiveness should have an associated quantifiable standard. However, that was not always possible as the aspects are frequently of a qualitative nature. In the survey among the members, they were asked to give a score out of 10, whereby a 6 (the pass mark in the Dutch school system) was treated as an implicit quantitative standard.

Acting as the Representative of the Professional Group

19 The NVvR acts as the representative of the professional group. It is generally well able to present the points of view of its rank and file. On average, the members are satisfied with the NVvR as the voice of the professionals, its own role within the forces at play in the judicial system, the manner in which it makes use of its overarching position uniting the public prosecution service and the judiciary, and its performance as a consultative partner for politicians. However, the NVvR is not yet exploiting its full potential as a point of contact on behalf of the professional group. The Council and the Board make only limited use of the NVvR as point of contact. In practice, the function as a bridge between the Board and the Council turns out not to be feasible for the NVvR although this is being achieved at the level of the magistracy.

20 In recent years, the NVvR has become increasingly visible in the media. The stakeholders largely approve of the approach the NVvR is taking in this regard. The members are also positive about the topics and the way in which the NVvR appears in the media. The NVvR itself says that it is able to respond relatively quickly to current affairs because of its small-scale setup. Despite this, the stakeholders suggest that the NVvR

sometimes lacks momentum and is too cautious in its response, in part because it consults with the rank and file first. However, the NVvR considers such caution to be essential when addressing important topics.

21 Its members and stakeholders say the NVvR delivers valuable products. As a professional journal, *Trema* is a key product produced by the NVvR. The members appreciate the journal but it is also a substantial cost item as it is published as a hard-copy journal. There are divergent wishes regarding both the content and the form of publication. One-off products produced by the NVvR in recent years include the Judges' Code of Conduct (*rechterscode*) and the Guide on Secondary Jobs (*Leidraad Nevenfuncties*). The members are positive about the NVvR's interpretation of its role in drawing up guides and the Judges' Code of Conduct, as well as the way it keeps the debate going about core values. Stakeholders are more critical of this aspect and see duplication with similar initiatives undertaken by the Council. The NVvR itself sees the Judges' Code of Conduct not as duplication but as a valuable addition to the code of conduct drawn up previously by the Council. The latter code applies to all staff working in the judicial system. According to the NVvR, a specific Judges' Code of Conduct was needed because more specific guidelines apply to the conduct of judges than to that of the other staff in the judicial system.

22 The organisation of meetings serves a variety of purposes for the NVvR: bringing members together, facilitating debate among members, keeping in touch with the rank and file, and improving members' expertise. There is broad agreement on the value of the meetings. Half the members attend meetings from time to time, and a comfortable majority say that the meetings satisfy a need. The members are positive in their assessment of both the content and the organisation of the meetings. Coordination with stakeholders is required, however, to avoid similar meetings being organised at almost the same time.

23 The NVvR says it takes great care in determining its standpoints and it gauges the opinion of the professional group through its commissions, the Members' Council, meetings and polls. In general, the members are in agreement with the standpoints the NVvR takes. Stakeholders criticise the fact that the NVvR sometimes has to renege on agreements made previously after polling its members, or appears to be taken by surprise when the rank and file voice criticisms. The NVvR does not recognise this picture, with the exception of one or two incidents.

24 The membership rate among the NVvR's rank and file is relatively high. Three-quarters of the judges are members, as are half of the public prosecutors. More than a quarter of the members describe themselves as active members.

25 The Members' Council is a point for concern within the NVvR. Stakeholders say they have doubts about how representative the Members' Council is. When asked, more than half of the members say they do not know whether the Members' Council represents the members properly or not.

Giving Timely Solicited and Unsolicited Advice

26 The NVvR's advisory reports on legislation are appreciated by the Ministry's Legislation and Legal Affairs Department, which is the primary recipient of this advice. All the requests for advice are dealt with by the NVvR and by commissions of members. Discussions with the department relating to the advice function well

and the advisory reports are produced in good time. In parallel with the formal advisory process, the NVvR also actively communicates its standpoints to politicians informally. The NVvR maintains contact with other advisory bodies when drawing up its advice, but always produces its own individual advice.

27 According to stakeholders, the NVvR's advice on legislation is of a high quality in terms of its content. It states its position clearly. The advisory reports handle the technical legal aspects at the right level of abstraction. The practical feasibility for the magistracy is elucidated properly. If certain aspects have been overlooked in proposed legislation, the NVvR points this out in its advice. The ultimate effect of the advice cannot be measured precisely. The impact of the advisory reports can be deduced primarily from the fact that they are taken seriously by the Legislation and Legal Affairs Department, members of the government and members of parliament.

28 The association actively involves its members in the advice on legislation. Members see this as an opportunity to influence draft legislation and some of the members do indeed make use of that opportunity. Not all members are familiar with the advisory reports on legislation. Members who are familiar with this advice take a more positive view than members who are less familiar. The members are positive about:

- a. The manner in which the NVvR represents the professional group in giving advice on legislation
- b. The representation of the members by the Legislative Commission
- c. The scope for providing your own input
- d. The content of the advisory reports
- e. The impact of the advisory reports

29 In addition to the plaudits for the legislative advisory reports, there are also points of criticism:

- a. The Council in particular is critical of the advice on legislation by the NVvR. It occasionally sees insufficient added value in the advice on legislation given by the NVvR because the NVvR can focus too much on the organisational aspects, which are already covered in the advice by the Council.
- b. A number of the people interviewed feel that the NVvR is too legalistic in its advice, as a consequence of which relevant societal issues do not get enough attention. However, the Legislation and Legal Affairs Department sees it as primarily the responsibility of the Ministry to consider the societal issues of legislation.
- c. The suggestion of alternatives when the advice contains criticisms is appreciated by the Legislation and Legal Affairs Department, although it understands that this is not the NVvR's primary task.

30 The NVvR's advisory role with regard to training, recruitment and selection, and independence and ethics is different in nature from the advice on legislation.

- a. The NVvR has built up a distinct profile as regards training by developing its own point of view on this and through its involvement in the establishment of the new training centre. This contribution is appreciated by the Training and Study Centre for the Judiciary and the Council. However, the Board says it sees only a limited role for the NVvR here.
- b. In practice, the NVvR hardly plays any role at all in providing advice on recruitment and selection.
- c. The NVvR has organised quite a few things internally concerning independence and ethics and it has developed products such as the Guide on Secondary Jobs and the Judges' Code of Conduct. However, it only pays limited attention to this subject in its external dealings.

31 Innovation in the judicial system has emerged as a new theme for advice but is not yet incorporated in the subsidy objectives. Various stakeholders note that the NVvR is the ideal organisation to tackle this theme but that it has only done so to a limited degree so far. The NVvR could position itself more proactively in the field of innovation in the judicial system.

Conclusions and Points for Discussion for the Future

32 The purpose of the subsidy paid to the NVvR is to give the professional association an independent role within the interplay of forces in the judicial system, in general by giving the professional group a voice and specifically by giving advice. In the years considered, the reported costs eligible for subsidy always exceeded the subsidy received. The activities funded by the subsidy, relating to both giving the professional group a voice and giving advice, are generally valued by the stakeholders and members, and certainly exceed the minimum standard expected of it. The conclusion can therefore be drawn that, given the perceptions of the stakeholders and members, proper use has been made of the subsidy paid to the NVvR and its use can be considered to be both effective and efficient. This is particularly the case for the NVvR's role as the representative of the professional group and for the formal advice on legislation. The NVvR's more informal advisory role regarding independence and ethics, and training and development is also appreciated but is fundamentally different in nature to the formal advice on legislation, although the two are considered on an equal footing in the subsidy letter. The NVvR's advisory role with regard to recruitment and selection is limited in practice.

33 Stakeholders in particular added various critical notes. On the one hand, it is important internally that the NVvR is aware of the issues that concern its rank and file, and makes sure it remains representative. On the other hand, suggestions were made about how it could make better use of its external position, both in its relations and liaisons with other stakeholders and by focusing more attention on societal issues, independence and ethics, and innovation in the judicial system. The points for criticism are generally balanced and constructive, and can therefore be used by the NVvR to draw lessons on how to further improve the effectiveness and efficiency in future.