Universiteit Utrecht

Snel, Betekenisvol en Zorgvuldig

Een tussenevaluatie van de ZSM-werkwijze

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Summary

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Summary

Since early 2011, the Public Prosecution Service (OM) and the national police, in collaboration with their chain partners (Probation organisations (3RO), Victim Support Netherlands (SHN) and the Child Care and Protection Board (RvdK)), have worked on the setting up of a new procedure in order to be able to deal more efficiently with criminal cases related to frequently occurring crimes against detained and (later also) summoned suspects. The reason for this being the societal urgency to address the – too – lengthy processing times for criminal cases. The underlying idea was that with a faster process more efficient and effective action could be taken against frequently occurring crimes. This has led to the so-called accelerated procedure, in Dutch *ZSM-werkwijze*, in which the abbreviation ZSM originally stands for As Fast, Smart, Selective, Simple, Together and Societally Targeted as Possible (*Zo Snel, Slim, Selectief, Simpel, Samen en Samenlevingsgericht Mogelijk*). That palette of ambitions was then bundled into three objectives: 'Fast', 'Meaningful' and 'Meticulous' *('Snel', 'Betekenisvol' en 'Zorgvuldig'*). The accelerated procedure, as this report reveals, has been established during the working process over the past years. In other words: it has been shaped by practice. The accelerated procedure can thus be seen as an organic, evolving process, without a predetermined implementation strategy and without predetermined goals.

The essence of the accelerated procedure is in one sentence: working parallel to each other (instead of successively) cooperating in a shared workplace, working outside of office hours, and early involvement and management by the public prosecutor. The OM, the police, 3RO, SHN and the RvdK – the five chain partners – are simultaneously present in a so-called Selection and Coordination Centre (SCC), in which they directly bring together all the necessary and relevant information to the 'accelerated procedure-table'. Through the collective contribution of information concerning the (alleged) criminal offence and the suspect, the public prosecutor is able to assess what (still) needs to be done in the case. He can then decide whether and how the case should be further handled or disposed: resulting in a settlement decision (in which a final decision is taken in the criminal case) or a routing decision (in which it is decided to refer the case for further judgement and a final decision). This does not concern minor offenses (except for cases at the Public Prosecution Service Central Processing Unit), but instead – in terms of evidence, simple – serious offenses, committed by adult or juvenile suspects. In its original form the accelerated procedure pertains to so-called 'detained cases', i.e. cases in which a suspect is arrested and subsequently held for questioning (possibly followed by a detention in police custody). Since the second half of 2014, the procedure is also used for summoned suspects ('non-detained cases'). The intention is that the accelerated procedure will become the standard procedure in the penal system for frequently occurring crimes after 2016.

The specific impetus for this research into the accelerated procedure was a commitment by the Minister of Security and Justice (made during a consultation with the Parliamentary Standing Committee on Security and Justice on the 5th of June 2013) to carry out an accelerated procedure evaluation. The Directorate Law Enforcement and Crime Prevention subsequently indicated that this evaluation would start in 2015. Then, in July of that year, the Research and Documentation Centre (WODC) awarded the contract to carry out the interim evaluation to Utrecht University.

This research on the accelerated procedure is an interim evaluation of a rapidly changing reality, a so-called 'moving target'. This means that in this report the classic approach of evaluation according to the goal attainment approach, which examines whether goals have been achieved, has not been used. Instead the focus lies on – what is termed in literature as – the goal free approach, which looks

at what the effects of the accelerated procedure are. This approach provides the opportunity to comment on the positive as well as negative (side-)effects of the accelerated procedure. On the basis of existing written information on the accelerated procedure, supplemented with empirical data collected by means of focus groups and expert interviews, this interim evaluation provides an analysis of the progress of the implementation of the accelerated procedure in the penal system and the (side-)effects that this procedure has on the substantive (legal) and procedural level. The (side-)effects in this report are mainly related to the ambitions of the accelerated procedure, which were bundled into the three objective referred to above, 'Fast', 'Meaningful' and 'Meticulous'.

Our research questions are the following:

1. Which substantiation can be given to the three objectives 'Fast', 'Meaningful' and 'Meticulous' considering the necessary interdependence between them, the place and function of the accelerated procedure in practice and the criminal procedural law framework in which the accelerated procedure must function?
2. What is, one and a half years after the national implementation and given the three objectives, the progress regarding the implementation of the accelerated procedure? How do the chosen priorities relate to the objectives and are the currently conducted actions suitable for achieving those objectives?
3. To what extent do the participating organisations to the accelerated procedure succeed in establishing a chain cooperation that contributes to achieving the three objectives? Which obstacles are experienced in that regard?
4. Which positive and negative (side-)effects does the accelerated procedure have?
5. What measures or additions could (still) contribute to the (faster) achievement of the three objectives of the accelerated procedure?

The development of the accelerated procedure: a retrospective

The study of the literature and written documents that have been drafted within the framework of the accelerated procedure shows that the accelerated procedure has undergone a dynamic development over the past five years. It has evolved from bottom-up initiated pilots in 2011 in response to the increasing length of procedures in the penal system, to a national procedure in 2014. In six pilot projects (five regions and the Public Prosecution Service Central Processing Unit) the accelerated procedure was initially designed in 2011 in the workplace. The initiative lay with the police and the Public Prosecution Service, without, as previously mentioned, a predefined implementation strategy or clearly defined goals. This pilot phase lasted from spring 2011 until the summer of 2012. The results of these pilots have been the starting-point for the so-called *Draft 1.0 Accelerated procedure OM*, which saw the light in June 2012 and was developed by the Public Prosecution Service.

In 2012 and 2013 the accelerated procedure was rolled out nationwide and the three other chain partners (SHN, 3RO and RvdK) were explicitly involved in the development and implementation. This resulted in a jointly developed *'Chain Wide' Draft Accelerated procedure 1.1* (December 2012) which has long been a guideline for the design and development of various accelerated procedure locations. With a view to the further development of the national accelerated procedure, in the first half of 2013, a further eight chain-wide working groups were started, whereby each of the working

groups had a different field of work: 'Youth and the accelerated procedure', 'Victim care and the accelerated procedure', 'Execution and the accelerated procedure', 'Investigation and the accelerated procedure', 'Judicial interventions and the accelerated procedure', 'Probation and the accelerated procedure', 'Safety houses and the accelerated procedure' and 'Legal aid and the accelerated procedure'. Currently, at ten accelerated procedure locations all five partner organisations work according to the *Draft 2.0 Accelerated procedure* of December 2013, which they jointly gave form and content to.

The – now – national accelerated procedure is coordinated at the administrative level by the Steering Committee Criminal Justice System Reorganisation (Steering Committee HSK). At the behest of the Steering Committee the so-called *Chain Programme Accelerated Procedure 2015* was written, in which the chain ambitions of the accelerated procedure have been identified more clearly. The ambitions targeted the further development of the procedure has been steered towards. The three goals of the chain programme are: 1) Foundation in order; 2) Meaningful intervention; and 3) Strengthening working meticulously. The accelerated procedure is monitored by annually performing a substantive chain review and by drawing up a quantitative accelerated procedure chain report quarterly. The chain reviews show that the professionals who make use of the accelerated procedure daily are largely positive about the procedure. However, problems are also identified, including that of the existence of regional difference in procedures. The chain reports, which concern case flows, settlement and routing decisions and the duration of procedures, are developing rapidly and can therefore not (yet) be – easily – compared. Statements about the quantitative progress of the accelerated procedure are therefore difficult or impossible to make.

'Fast', 'Meaningful' and 'Meticulous'

As mentioned above, the 'S' of *ZSM* originally stood for a – varying – combination of the concepts 'fast', 'smart', 'selective', 'simple', 'together' and 'societally targeted'. The meaning that was given to these concepts is not always clear, and the definitions may also overlap. The documents available from the early period of the accelerated procedure do not address the relationship between the concepts. Speed has, especially in the beginning, been the dominant concept and the other aspects seem subordinate to it. Comments were quickly made about the dominance of speed by legal practice, the criminal defence law practice and academia. In light of these criticisms the – new – objectives 'Meaningful' and 'Meticulous' were, next to 'Fast', more explicitly placed in the spotlight.

The meaning of the concept 'Fast' in this context somewhat speaks for itself. The aim is to, in cases of frequently occurring crimes, make a settlement or routing decisions within six hours after arrest, or at least within three days if detention in police custody has occurred. 'Meaningful' means that the settlement must have meaning for the victim, the perpetrator and society: the goal is to – from a chain approach – intervene. The suspects should receive an appropriate response, justice will be done to the position of the victim and society should notice that perpetrators are rapidly corrected. In this meaning, the concept refers *in principle* also to the notion that criminal law is, and should be, the last resort. The *Draft 2.0 Accelerated procedure* also speaks of 'meaningful for employees'. In that sense, the concept 'meaningful' seems to run parallel with the concept 'tailor-made', for the victims, the perpetrators, society and the employees. 'Meaningful' also means that criminal cases are resolved in a, for society, 'recognizable' manner. In that sense a tension could arise, in principle, with the ambition of a 'tailor-made' approach, because 'tailor-made' solutions (for example the non-judicial settlement) may not be readily recognizable to society. As such, 'meaningful' resolution is

therefore primarily a balancing act, in which a way must be found between the different perspectives by which 'meaningful' resolution can be interpreted. 'Meticulous' refers in essence to the requirements of the rule of law (in particular: the right to legal representation and the statutory requirements of a penalty order issued by a public prosecutor). Meanwhile *ZSM* is used as an abbreviation for 'Meticulous, Fast and Tailor-Made' (*'Zorgvuldig, Snel en op Maat*'), but this does not seem to entail a significant change of course in terms of the form and content of the accelerated procedure. In this report it has been made clear that the concepts 'Fast', 'Meaningful' and 'Meticulous' are not independent variables, but instead a balance should be made between these concepts.

From within criminal law, two important comments have been placed with the accelerated procedure settlements, which both see to the difficult balance between 'Fast' and 'Meticulous'. The first comment concerns the access to legal assistance. There are no objections towards an accelerated settlement as such, but, in particular from the viewpoint of criminal law lawyers, the tension that arises between fast settlement or routing and the provision of legal assistance, which takes time, has been emphasized. The second comment concerns the diligence of the decision-making process. This diligence, where it concerned the penalty orders issued by public prosecutors in the framework of the accelerated procedure, formed the object of attention (and concern) in the report *Beschikt en Gewogen* by the Procurator General at the Supreme Court which was published at the end of 2014 and led to changes in the accelerated procedure with effect from October 1, 2015. A decision by the Minister concerning the organisation of legal assistance is now waited upon for the accelerated procedure. The starting point is, after all, that the accelerated procedure not only 'is best emphasized' in fast (and meaningful) interventions, but also in meticulous interventions.

The accelerated procedure in practice

The accelerated procedure fits seamlessly within the definition in literature of a 'chain cooperation'; within the accelerated procedure there is clearly an emphasis on all the conditions for a successful chain cooperation, but at the same time, the accelerated procedure faces the problems and challenges of such a chain cooperation. Regarding the cooperation itself, the empirical data, collected in this research through focus groups and expert interviews, shows that the chain cooperation is warmly embraced by the chain partners. None of the chain partners wants to return to the situation prior to the accelerated procedure and the added value of the contributions from the different perspectives is perceived as very valuable. However, what can be deduced from the perceptions and experiences of the respondents is that many of the conditions that make 'working together' into 'collaborating' are not yet sufficiently achieved.

For example, uncertainty regularly arises as to which cases – should – have to be dealt with by the accelerated procedure. There has also been a large influx of very diverse cases, but there is a lack of a clear division with corresponding procedures. Especially a common goal and a common definition of the problem are lacking; therefore the problem arises that there is not always a similar focus or a common course. According to many respondents, a (more) unified basic procedure is required. While this is the purpose of the *Draft 2.0 Accelerated procedure*, several respondents pointed out that for some of the topics governed in that draft differences still exist between regions. Interestingly, the respondents have many conflicting opinions about the practice of the chain cooperation. They are generally very enthusiastic about the potential of the accelerated procedure chain cooperation, but are regularly (more) negative about the realisation thereof. This is particularly true with regard to the

provision of information. The respondents see the actual coordination and the possibility to 'spar' as a clear added value of the procedure, but the number of cases and the target speed regularly hinder the achievement thereof. Partly as a result hereof, decisions are regularly only discussed between the Public Prosecution Service and the police, without involvement of the RvdK, 3RO and SHN. The chain cooperation according to the accelerated procedure has opened the eyes of the employees of the chain partners for the importance of information that other partners can offer, and the complex social background that is sometimes present in – apparently – simple cases. The innovative force that accompanies the accelerated procedure chain cooperation is also, amongst others in terms of working towards new ways of meaningful resolutions, often mentioned by respondents as a positive (side-)effect.

Nearly all respondents perceived the existing ICT facilities as a key obstacle to the effective and fast chain cooperation and context-oriented working. The respondents have a strong need for a common digital information environment, in which (context) information is directly accessible to all partners and in which insight can be obtained into previous and current cases. The chain partners also experience obstacles due to the limited connection of their own organisations to the accelerated procedure. Above all, the various financing methods and performance standards of the individual chain partners, which are inconsistent with the accelerated procedure, are noted.

The connection between the legal profession and the judiciary with the accelerated procedure is a major topic of discussion and policy. The respondents are mostly positive about the legal assistance pilot(s). The relationship between the police, the Public Prosecution Service and the legal profession was good; defence lawyers indicated that they were able to fulfil an important role as the legal assistance provider of the suspect by informing him about what (possibly) lay ahead and further social information; in the sphere of settlements they have hardly played a role. From the judiciary there were also both positive and negative comments raised. Respondents regarded the short-term trying of accelerated procedure summoned cases on trial as a major asset; this speed strengthens the meaningful disposal by the judge according to the respondents. However, questions are raised about the evident meticulousness of decisions according to the accelerated procedure. The fast routing or settlement decisions leads to judges being regularly confronted with incomplete files (in the accelerated procedure the decision is sometimes made to subpoena, on the unjustified assumption that the investigation will be completed when the summons period has expired) and substantively poor applications to set aside a default judgment. The speed of the accelerated procedure can thus lead to significant delays at a later stage.

All respondents expressed concerns about the capacity; relevant organisations and external partners do not have the resources to provide the capacity necessary for the accelerated procedure and required for the accelerated procedure location. In addition, according to most of the respondents, a much greater degree of continuity in the staffing is required. A great deal of rotation and the relatively limited time spent at an accelerated procedure location hinders the proper and fast functioning of the chain cooperation. A frequently heard remark is that the quality of the assessment and the decision is highly dependent on the public prosecutor.

Conclusion

The progress of the accelerated procedure can, at first sight, be assessed as overwhelmingly positive. The basics of the procedure (opening hours, presence of the chain partners) is implemented

nationally. The initial overemphasis on ‘Fast’ appears to have been shifted to a better balance between ‘Fast’, ‘Meaningful’ and ‘Meticulous’ and none of our respondents would want to return to the situation prior to the accelerated procedure. The objective ‘Meaningful’ is currently strongly put forward, but the necessary balance with the other two objectives requires special attention. The comments discussed in this report concerning the access to legal assistance and the diligence in the decision-making also continue to retain their relevance.

In addition, three more general comments can be made. First of all, due to the increasing influx of cases, in combination with the lack of a clear differentiation between cases, the number of ‘non-detained’ cases increases (and therefore the time required to dispose of those cases). This also affects the context-oriented (ability to) work and (being able to do) the meaningful work. The accelerated procedure thus seems to suffer from its own success. Secondly, the shift from the initial overemphasis on ‘Fast’ to ‘Meaningful’ is an understandable and positively assessed development. However, a side note is that cases that appear simple at the start now get the attention they previously would not have gotten. The paradox here is that fast disposal can put a strain on meaningful disposal, but also the other way around. A third paradoxical image that comes to mind concerns the meaning of ‘Meaningful’ disposal. There are sufficient indications that the accelerated procedure yields innovative methods that are meant for, and are suitable to achieve an appropriate and worthwhile intervention. On the one hand there is a clear interpretation of the concept ‘Meaningful’, on the other hand, this might appear to suggest that many cases that were previously not registered and/or directly ended up in the social domain, now get ‘drawn into’ the accelerated procedure and therefore criminal law (in the form of a conditional decision not to prosecute).

It follows from the above that it is in particular the ambiguity that places strains within the current accelerated procedure. Much of the uncertainty is caused by the developing realisation of the accelerated procedure in practice and the bottom-up driven development thereof, combined with the fact that all cases now go through the accelerated procedure and new time limits (seven days; thirty days) have been introduced and new interventions and cooperation conceived. However, the fact remains that the degree of ‘maturity’ which the procedure currently requires more structure. Both the professionals in the workplace, as well as the Steering Committee HSK and other steering bodies must think about how the necessary stability can be achieved. This is not only necessary to actually make the accelerated procedure national, but also to bend the certain degree of wear which seems to appear in the laxity into new innovation and flexibility. Adherence to the current level of regional diversity can be problematic when this serves as a cover for not critically reflecting on the (local) actions. Clear, obvious and widely accepted decisions should be made regarding the three topics below.

Firstly, clarity should exist about the ‘subject’ of the accelerated procedure. The ‘grey area’ that is experienced with regard to the question of what is and what is not covered by frequently occurring crimes, must be abolished. A clearer definition could help, but especially clear criteria to answer the questions, by whom and on which basis is the selection made to allow cases to enter the accelerated procedure, is strongly recommended. Secondly, there should be clarity about a uniform approach. This concerns not only the presence of all chain partners at the accelerated procedure locations, but also the way of information exchange and the coordination of actual actions by the chain partners. Extra attention should be given to the role of the chains’ procedural coordinator (responsible for the coordination of information and case flows) and the public prosecutor (responsible for the content of

the file). Thirdly, in the beginning the focus of the accelerated procedure was on the concept of ‘Fast’. In recent years the emphasis seems to have shifted to ‘Meaningful’. The critical comments about the ‘meticulousness’ that have been raised since the early days of the accelerated procedure can still not be awarded. The search for a balance between these three objectives requires constant attention and a stronger structure.