

Summary

Non-judicial activities of the Judiciary

Set-up

Following the drastic changes implemented in the Dutch judiciary system in 2002, the Minister of Justice, within the framework of improvements still to be achieved, has emphasised retaining and increasing the decisiveness of the Judiciary. One of the methods to realise this is disposing of 'non-judicial activities'. Here, non-judicial activities are understood to mean activities not included within the definition of the tasks deemed part of the judicial domain in accordance with international treaties (article 6 ECHR) and the Constitution (chapter 6, articles 112 and 113). Activities that are deemed judicial include those activities of the Judiciary that take place within the framework of the adjudication of disputes in respect of civil rights and claims, the administration of justice in cases concerning criminal offences and the establishment of civil rights and obligations. Activities that do not fit within this description are non-judicial. The distinction that is made here between judicial and non-judicial thus relates to the nature of the activity.¹

Within the framework of this study and against the background of a desired reduction in the workload of judges, it has been investigated what non-judicial activities the Judiciary carries out and the amount of time which is involved. The description of judicial activities that has been opted for in this study implies that these have been assigned to the Judiciary by law. However, this does not automatically mean that the reverse is true, i.e.: activities that have been assigned to the Judiciary by law could also be characterised as non-judicial. Although this study focuses on the non-judicial activities assigned by law, the study at the same time includes non-judicial activities that have not been assigned by law.

Furthermore, the study concerns more than the activities of judges alone. Since the legislator has regularly assigned non-judicial activities to court officers rather than to judges (or courts of law) and since many of the activities assigned to judges are in fact carried out by court officers, the non-judicial activities of the Judiciary described hereby include both non-judicial activities of judges and non-judicial activities of court officers.

The definition of the problem has been formulated in the study as follows: what non-judicial activities are carried out by the Judiciary, for what reason, how much time is involved in the execution of these activities and can this time be used for judicial activities when the aforementioned activities are disposed of?

The study has been conducted in three phases. During the first phase the non-judicial activities were identified, on the one hand by means of a scan of the

¹ The distinction between judicial and non-judicial tasks could also be based on the question whether or not the activity has been assigned to the Judiciary bodies, but this distinction was not opted for.

existing legislation, and on the other by means of tentative talks with officials within the Ministry of Justice. These talks included discussions as to the reason why the activities concerned are allocated to the Judiciary. The second phase of the study concerned identifying, on the basis of discussions with officials from the Judiciary, of those non-judicial activities whose implementation involves the expenditure of substantial amounts of time. Subsequently, during the third phase, the study zoomed in even further on those activities which can be characterised as non-judicial and which furthermore require the investment of substantial time periods. Where possible, the amount of time spent in relation to these activities has been estimated on the basis of a number of interviews and information already available. Also, legal history has been consulted to determine, if applicable, the grounds for assigning the relevant activities to the Judiciary.

Results

As was done in chapter two, a distinction can be made between activities which have been assigned to judges, those assigned to court registries (offices of the clerks of court) and activities which have been assigned to courts of law. By opting to instruct the (Office of the) Clerk of the Court or the Judge (or President), the intention of the legislator is clear. The purpose behind the choice for instructing a sub-district judge or a court of law, however, is less clear. When making a distinction between the various courts in terms of administering oaths, the territory (district or jurisdiction) of the relevant court of law appears to play an important role. If a distinction in this context was deemed unnecessary, the general term of 'court of law' appears to have been opted for. Particularly in the case of administering oaths however, a coherent system seems to be lacking. The activities that emerged following identification of the non-judicial activities are detailed in appendix III (Internet), as stipulated by law. They have been categorised in six groups.

First of all, *administrative activities*. In most cases this involves maintaining registers (roll of lawyers, successions register, registering terms of delivery, insolvency register, community property register, debt rescheduling register, register of suspension of payments) by (administrative) court officers. In the event that court rulings are recorded in these registers the registration forms a small, but necessary part of a wider procedure. Practice shows that carrying out the administrative activities within the courts involves relatively little time.

Secondly, *advisory activities*. Apart from the RAIO (Trainee Judicial Officer) selection committee and the Committee for Recruiting Members of the Judiciary (CALRM), time spent on advising was not characterised as being substantial. In fact, of these committees, only membership of the RAIO selection committee has been assigned to judges. The time investment required by the committees appears to be relatively limited.

Thirdly, *the administering of oaths*. In most cases this involves notaries, lawyers, and registrars of births, deaths and marriages. The swearing in of translators, rehabilitation officers and judicial officers is less common. All in all, administering oaths takes up relatively little of the courts' (judges and court officers) time.

Fourthly, activities concerning *the right of complaint*. The most important task in this category concerns that of Complaints Committees for Penal Institutions (PIs), Forensic Hospitals and Youth Custodial Institutions (JIs). The Complaints Committees are formed through the Supervisory Committees (CvTs). These CvTs date back to early 1900, evolving from the boards of regents who used to manage

the institutions. Today, each Dutch institution where people are deprived of their liberty has at least one CvT. Some larger institutions with multiple locations have more CvTs. The Complaints Committee, which is formed through the CvT, deals with complaints from detainees and patients in first instance. The Council for the Administration of Criminal Justice and Youth Protection (RSJ) represents the appeal body. Both the CvT and RSJ are part of the third phase of the study and are discussed in greater detail below.

Fifthly, activities involved in *disciplinary law*. Disciplinary law can be regarded as a special form of the right of complaint. Within disciplinary law, the bodies administering justice consist of jurists and experts from the profession, the latter due to the specific knowledge required. This mainly involves legal disciplinary law (lawyers, notaries, accountants and bailiffs) wherein the deployment of a judge is stipulated. The latter is not the case in respect of medical disciplinary law; however, since many judges participate in this as well, medical disciplinary law was also included in the study. Disciplinary law was part of the third phase of the study and shall be discussed in greater length below.

Sixthly, a *miscellaneous* category including all sorts of non-judicial activities assigned to judges (or courts of law). Practically none of these, mostly administrative, activities are referred to as substantial by those involved. The exception to this is the registration of vessels with the Court of Rotterdam.

In-depth

The in-depth study focused on the activities of judges and court officers within disciplinary law, the CvTs (and Complaints Committees) and RSJ. The in-depth study focused on two subjects. First of all the purpose behind the allocation of the relevant task to the Judiciary (if so applicable). Secondly the amount of time spent. In order to obtain a clearer picture concerning the amount of time involved in carrying out the aforementioned activities, the amount of time spent had to be determined as accurately as possible. Precondition here was that this had to be done on the basis of information that was already available and interviews with non-judicial officials from the Judiciary as much as possible. Putting additional strain on judges in respect of collecting information had to be limited to a minimum.

Purpose

Legal history has been consulted in order to discover the grounds for deploying judges for the aforementioned activities. The results of this study can be summarised in brief: legal history hardly provides any information as to the reason why the relevant tasks are allocated to judges.

Disciplinary law

Disciplinary activities represent a substantial non-judicial activity in terms of the amount of time spent. The interviews generally show that the courts of justice pursue the policy line that non-judicial activities developed by judges outside the organisational frameworks of the Judiciary must be carried out in their own time, but in practice this appears to be subject to exceptions. However, also in cases when judges are not released from their usual duties in order to carry out these obligations, it does not mean that relevant activities are always carried out in the free hours and as such do not affect the courts. In the latter case, these consequences do remain limited to, where necessary, taking into account the non-

judicial activities when planning the days on which hearings shall be set for the relevant judges. Since they receive a workload which is equal to that of judges who do *not* carry out non-judicial activities, it means that they will need to make up for the 'lost' time in their free time.

Time spent by judges and court officers on non-judicial activities is hard to estimate, since it depends on a number of factors. These factors involve not only the exact nature of the activity, but also the total number of activities carried out. Within this context, not only the procedure is of importance, but also possible trends, and as such, further developments that can be expected in both the number of cases which judges receive and the manner in which these cases are dealt with. In addition, in respect of the amount of time spent, the number of judges involved in the activity is important. After all, cases which can be dealt with by a single judge (through a chairman's decision and/or on a single basis) take up less judges' time than cases which are dealt with on a multiple basis (multiple section or Council ruling). Furthermore, the nature of the appointment of the judge concerned is important. After all, the deployment of deputy judges who are not part of the established formation of the Judiciary, does not affect this formation.

The aforementioned factors imply that the estimates stated below with regard to time spent by judges and court officers on non-judicial activities must be interpreted with the necessary caution. The estimates are restricted to particular times and places, and are intended, in the first place, to give an *impression* of the scope of the time spent rather than an exact figure.

Notaries

Disciplinary proceedings against notaries are assigned to the Judiciary by law. The nineteen Disciplinary Boards each consist of five members, including the President of the Court acting as the Chairman and a sub-district court judge. The secretarial office of the Disciplinary Boards is accommodated in the courts. Appeals in notarial disciplinary proceedings are heard in the Court of Amsterdam and as such can be deemed a judicial activity.

The amount of time the President of the Court, the Sub-district Judge and the secretarial office spend on disciplinary jurisdiction appears to differ strongly. Not only due to the number of cases and the manner in which each case is dealt with per Disciplinary Board, but also because of the amount of time spent per case varies widely. In Utrecht, for example, a case which is withdrawn prior to being dealt with will cost the Chairman of the Board (President of the Court) more time than a case which runs through the entire procedure in Alkmaar, and which is concluded in a final ruling by the Board. Given such differences, the estimated time spent on dealing with disciplinary proceedings must be interpreted with the necessary caution, and amounted to 2,240 hours of judges' time and 3,735 hours of court officers' time. Converted into fte's (Full Time Equivalents) it concerns 1.4 fte judges and 2.3 fte court officers.

In addition to disciplinary proceedings, the Disciplinary Boards also supervise the notarial practice. According to figures from the Council for the Judiciary, the annual time spent is estimated to be 2,583 hours of judges' time (1.6 fte) and 17,720 hours (10.8 fte) of court officers' time. This means that activities of the Disciplinary Boards involve an estimated total of 3.0 fte judges and 13.1 fte court officers.

The personnel costs incurred by the Disciplinary Boards are at the expense of the ordinary means of the courts. The work arising from the Disciplinary Boards is deemed to be 'normal' work for the courts and support system.

Bailiffs

Disciplinary proceedings against bailiffs are assigned to the Judiciary by law. The execution thereof is in first instance the responsibility of the Bailiff Division in Amsterdam. The division comprises five members, including a chairman. Three members, including the Chairman, are members of the Judiciary; the two remaining members are professional colleagues. Secretarial services are provided by the Court of Amsterdam. Appeals are heard in the Court of Amsterdam and as such can be deemed a judicial activity. The work arising from the Bailiff Division is deemed to be 'normal' work for the courts and support system.

Assuming twenty annual sessions at a full staffing establishment (three members of the Judiciary) the Bailiff Division takes up judges' time at an estimated 72 to 120 working days to deal with disciplinary cases, including the preparation thereof. Adding additional activities of the Chairman and/or Deputy Chairman, which include Chairman's decisions and the inspection of rulings prepared by the secretaries, the total figure amounts between 85 and 140 working days. As such, total judges' time equals between 0.4 and 0.7 fte.

Since 1 January 2005, the divisional secretariat which is provided for by court officers consists of two court secretaries (2.0 fte) and one administrative assistant (0.5 fte). The personnel costs incurred by the Bailiff Division (Chairman, Deputy Chairmen and court officers) are financed by the Ministry of Justice separately and are not at the expense of the ordinary means of the Court of Amsterdam. This also applies to the 32 working days (0.15 fte) for the member judges.

Lawyers

Disciplinary proceedings against lawyers are assigned to the Judiciary by law. There are five Disciplinary Boards, one in each jurisdiction of a court of appeal. Each Disciplinary Board consists of a chairman, a maximum of six deputy chairmen, eight member lawyers and a maximum of fifteen deputy member lawyers. The Chairmen and Deputy Chairmen of the Disciplinary Boards are appointed from members of the Judiciary. Secretarial services are provided by lawyer's offices.

The total judges' time involved with dealing with disciplinary proceedings against lawyers, in the first instance, is estimated to be 76 to 89 hours for Chairman's decisions and 1,663 to 1,865 hour for Board decisions. As such, this concerns between 1.1 and 1.2 fte judges for the Disciplinary Boards.

The Disciplinary Appeals Tribunal consists of a maximum of ten members, including a chairman and a maximum of six deputy chairmen, and four member lawyers; it further comprises deputy members and deputy member lawyers appointed by the Crown up to a number which is deemed necessary. The Chairman and Deputy Chairmen and the members are selected by the Ministry of Justice from members of the Judiciary. Three judges, including the (Deputy) Chairman, participate in Appeals Tribunal hearings. In terms of time spent, the Disciplinary Appeals Tribunal requires an estimated 2.3 to 3.6 fte judges. As such, total judges' time for the Boards and the Disciplinary Appeals Tribunal amounts to 3.4 to 4.8 fte. The personnel costs incurred by the Boards and the Disciplinary Appeals Tribunal are partly at the expense of the professional

organisation, partly at the expense of the Ministry of Justice and partly at the expense of the ordinary means of the courts of justice.

Chartered accountants and accounting consultants

Disciplinary proceedings against chartered accountants (RA) and accounting consultants (AA) are assigned to the Judiciary by law. There are two Disciplinary Boards, one in The Hague and one in Amsterdam. The Disciplinary Boards each consist of one chairman and one or more deputy chairmen, all members of the Judiciary, plus six RAs, six AAs and six persons who are not accountants, but who are experts in this field of expertise. Secretarial services are provided by accountancy firms. Appeals are heard in the Trade and Industry Appeals Tribunal (CBB) and as such can be deemed judicial.

One member of the Judiciary participates in Board hearings: the (Deputy) Chairman. A single case dealt with and heard by the Disciplinary Board normally requires two hours, with preparation requiring approximately one hour. Multiple cases are heard during a hearing of the Board. A hearing often lasts a day, sometimes less, depending on the number of cases which must be dealt with. On an annual basis this normally involves around 113 hours of judges' time (approximately 0.1 fte). The personnel costs incurred by the Disciplinary Board are at the expense of the professional organisation.

Medical disciplinary law

The activities of judges within the framework of medical disciplinary law are of a different nature, since these tasks are not assigned to judges by law. However, this does not alter the fact that judges are released from other duties within courts of law partly in respect obligations to administer medical disciplinary law.

A regional Medical Disciplinary Tribunal consists of two legally qualified members (jurists), one of which is the Chairman, and three member professional colleagues. There are five Medical Disciplinary Tribunals, one in each jurisdiction of a court of appeal. The central Medical Disciplinary Tribunal, which deals with appeals, consists of three jurists, one of which is the Chairman, and two member professional colleagues.

The time spent by judges within the framework of medical disciplinary law appeared to be difficult to estimate. There are differences between the regional Medical Disciplinary Tribunals (and also within the Disciplinary Tribunals concerning time spent) regarding the extent to which hearings take place or complaints are dealt with. In addition, the regional Medical Disciplinary Tribunals amongst themselves differ regarding the extent to which rulings are appealed against, differences which fluctuate through the years. Also, the number of deputies among judges affiliated to the regional Medical Disciplinary Tribunal varies. These deputy judges are sometimes not part of the established formation of the courts of justice and the number of cases they deal with must be taken into account. Finally, it is not clear to what extent the regional Medical Disciplinary Tribunals are in full or part capacity when in session. Further inquiries required in view of the above would exceed the scope of this report. Hence an estimate of time spent by judges on medical disciplinary law has been refrained from.

The personnel costs incurred by the Disciplinary Tribunals are at the expense of the Ministry of Health, Welfare and Sport.

Supervisory Committee (CvT)

CvT membership at PIs, Forensic Hospitals and JJIs is assigned to the judge by order in council. Secretarial services are provided by the courts. Despite the great variety in the workloads of CvTs and Complaints Committees, the workloads in connection with the tasks of these committees can still be estimated, albeit conservatively. In terms of fte it concerns a total of 4.4 to 8.3 fte judges. According to figures from the Council for the Judiciary it concerns 51.4 fte support personnel. The legislator stipulates by order in council that each CvT incorporates at least one judge. This is based on a number of reasons. First of all, when dealing with complaints the CvT has a ruling task (Complaints Committee) and judges are pre-eminent experts in this field. Secondly, judges are deemed suitable to carry out independent and objective supervision in respect of treatment of detainees. Thirdly, it is believed that judges must understand the situation convicted persons are faced with as a result of their court rulings. The personnel costs incurred by the Supervisory Committees are at the expense of the Ministry of Justice.

The Council for the Administration of Criminal Justice and Youth Protection (RSJ)

By law, RSJ membership is assigned to an undisclosed number of members of the Judiciary responsible for administrating justice. In practice, this number amounted to twenty on 31 December 2003.

RSJ is an independent body with three tasks. First of all, RSJ advises the Minister of Justice on the application and implementation of policy and legislation for the administration of criminal justice and youth protection. Secondly, RSJ has a general supervisory task in respect of the enforcement of custodial sanctions and measures and those restricting a person's freedom. Thirdly, RSJ represents the appeal body for the Complaints Committee with PIs, Forensic Hospitals, JJIs and special institutions, for appeals against placements or transfers and in respect of medical complaints.

Given the diverse nature of tasks of the RSJ, and since the exact deployment of (non-deputy) members of the Judiciary is unknown, the amount of judges' time involved with RSJ activities was impossible to estimate within the framework of this study without further inquiries which exceed the scope thereof. Hence this has been refrained from.

The personnel costs incurred by the RSJ are at the expense of the Ministry of Justice.

Finally

Medical disciplinary law and RSJ excluded, the in-depth investigated non-judicial activities are estimated to represent 11.5 to 17.1 fte judges. Court officers are estimated to represent 67 fte. Last year, according to the 2004 annual report of the Council for the Judiciary, the Judiciary employed a total of 8,039 employees (7,221 fte) of which 2,200 (2,004 fte) were judicial officers and 5,839 (5,217 fte) court officers. This means that the aforementioned non-judicial activities in relation to judges represent a figure of 0.6 to 0.9 per cent of judicial activities. Insofar as court officers are concerned, this figure is approximately 1.3 per cent.

Alternatives in respect of substantial non-judicial activities assigned by law

Generally, one could ask whether disciplinary law as such is a truly necessary component. Could complaints on the performance of persons in professions involving confidentiality not be dealt with by complaints committees? Such a

measure within the framework of a reduction in workload for the Judiciary shall have little effect. As stated above, during the course of the study it has sometimes proved difficult to estimate how much time judges and court officers spend on disciplinary (and related supervisory) activities. That does not alter the fact that the information which has nevertheless been collected compared to the formation of the Judiciary does not give the impression that non-judicial activities involve a lot of time.

With that it must be noted that transferring these tasks shall not free up substantial amounts of time which can then be deployed for judicial activities. Firstly this is due to the fact that many judges are not released from other obligations in order to carry out disciplinary activities. This also applies to the CvT (Complaints Committee) and (including exceptions) to non-judicial activities in general which take place outside the organisational context of the Judiciary. This means that these activities are at the expense of their free time, even though they are sometimes carried out during working hours. In that case, the judges shall have to make up for this 'lost' time during their free time.

Secondly, insofar as the disciplinary activities are financed separately (i.e.: not from the ordinary means of the courts), this financing shall lapse when the activities are cancelled. This means that judges who are released from their usual duties in order to carry out disciplinary activities within the courts of law at the expense of third parties (as sometimes happens in the case of medical disciplinary law), can, without extra funding, not be deployed for additional judicial activities when those disciplinary activities would be taken away from them. This also applies to court officers who - always during working hours - work for the Disciplinary Boards for the notarial practice and the Bailiff Division.