

## Summaries

*Justitiële verkenningen* (Judicial explorations) is published nine times a year by the Research and Documentation Centre of the Dutch Ministry of Justice in cooperation with Boom Juridische uitgevers. Each issue focuses on a central theme related to judicial policy. The section Summaries contains abstracts of the internationally most relevant articles of each issue. The central theme of this issue (nr. 6, 2007) is *The judge as chain partner*.

### **Chain and delta; the imaginization of civil procedure**

*R. Eshuis*

This article explores the idea of modelling civil justice as a 'chain' of production. While analysing the justice system as a chain is a common approach in the study of the criminal procedure, studies of civil procedure generally use different images and metaphors as heuristic means. For the study of conflict resolution systems outside the formal justice system, the chain approach does not seem very fruitful. Here the image of a river delta, in which water tries to find its way to the lowest point and sub streams convert and divert, seems more appropriate. For the judicial procedure however, the chain-approach can be helpful. In the pre-judicial stage, various professionals, like attorneys and bailiffs serve as gatekeepers, preserving the courts from unprocessable input, prospectless claims and parties with unrealistic expectations of the judicial process. This activity helps the courts to function properly and is likely to have a positive effect on the satisfaction with, and trust in the courts. A second field of interest is the execution of judicial decisions and of friendly settlements that are reached in the shadow of the formal procedure. Research, so far, has shown only the tip of the iceberg regarding the relations between what happens in the judicial procedure and the execution of its outcomes. Do friendly settlements reached during the procedure have better execution rates than judicial decisions? Are execution rates for defended cases better than for undefended cases? Does communication and transparency in the procedure lead to better execution rates, as the theory on procedural justice would suggest? A major problem in studying civil justice from a chain perspective is the lack of data.

While the criminal justice is dominated by public agencies, that have to account for their actions, the civil chain is a hybrid system of public and private actors. Systematic collection of data is restricted to the courts.

### **Judiciary, lawyers, notaries and bailiffs; masters of professional stubbornness**

*F.C.J. van de Doelen and E.J.C. van der Vlis*

In recent years Dutch judicial administration has been modernised and the so called free judicial professions (lawyers, notaries and bailiffs) have become more market oriented. The changing positions of the judiciary, notaries, lawyers and bailiffs effect their respective relations and therefore the functioning of the judicial system as a whole. These changing positions erode the old checks and balances in the traditional judicial system. The result is that new frictions in the interaction occur, which is illustrated by the authors. These frictions show that the national policy concerning the (civil) judicial system concentrates too much on the judiciary, notaries, bailiffs and lawyers as such and has no focus on the (changing) interactions of these stakeholders within the judicial system. The minister of Justice has a central task in structuring the relations of judges, lawyers, notaries and bailiffs, not only because of the particular and partial interests of the involved justice professionals, but also for the sake of society as a whole and the citizens in particular. Since formal legal and budgetary instruments are in practice very limited, impulses for a more informal and integrated steering of the justice system may contribute to a solution. The authors mention conceptual strategic policy frameworks, publishing benchmarks concerning prices, productivity and quality and finally introducing more obligatory versions of peer review concerning the interactions of judges, lawyers, notaries and bailiffs within the justice system.

### **Working dynamically together; the children's judge and the chain partners in child protective services**

*M.R. Bruning*

The position of juvenile judges who decide upon child protection matters, in particular upon supervision orders, has changed

enormously in the Netherlands in the past decade. The juvenile judge was originally an active judge in the field of child protection orders and was responsible for both decision-making and the implementation of a protection order. Since 1995 the juvenile judge has become a more passive judge who no longer has any role in the implementation of supervision orders. In this article the interaction of the juvenile judge with the child protective services (Child Welfare Council and Youth Care Agency) will be discussed, both focusing on tensions related to the judicial position of the judge and tensions that can arise in practice between the professional organisations and the juvenile judge. It is concluded that juvenile judges can play an important role in improving the cooperation between the different actors in the field of child protection. Furthermore, the judicial role of the juvenile judge will probably change in the near future and will include a conflict solving role for problems that arise when supervision orders are implemented.

### **The chained penal judge**

*P.C. Ippel*

Policy discourse in the Dutch criminal justice-system often refers to the 'chain-approach' (ketenbenadering). This article investigates the role of the criminal judge in the criminal justice-chain. From the formal legal point the influence of the judge on the execution of penal sanctions is utterly restricted. This seems strange if one perceives the 'chain' as a coherent whole with a shared responsibility of all partners. In the light of the drastic changes in the Dutch penal practice in the last decades the author defends the thesis that there is a more comprehensive moral responsibility of the criminal judge for the integrity and quality of the criminal justice system. The idea that Montesquieu's 'division of power' would obstruct this role, is a fallacy.

### **The Public Prosecution Service between the judiciary, the police, national and local government**

*J.L. de Wijkerslooth*

The theoretical models that rule the relations between the Public Prosecution Service (PPS) and the judiciary, the police, national and local government are relatively simple. The design of these relations

in practice is complex and deviates to an increasing extent from the theory. The consequential tensions will on the long run harm the credibility of the PPS vis-à-vis the judiciary. This problem can only be solved by law, not by management.

### **The judiciary and probation service as partners**

*J.A. van Vliet*

In recent years the probation service has lost its support and service provider function on the periphery between the judiciary and other sections of society, and is now fully integrated into the chain of the criminal justice system. This chain aims to contribute to a safer society by, for example, using evidence based (behavioural) interventions focussed on limiting recidivism. The probation service has to objectively advise judicial bodies and, independently from these, maintain surveillance of the convicted offenders. The judiciary is less guided by political and civil service policy than other members of the criminal justice system chain, and can benefit from the superior, systematic diagnosis and risk analysis that can now be offered by the probation service. However, the judiciary needs to take into consideration more criminal justice goals than solely the intended effect of the punishment on the reduction of recidivism. Between the judiciary and the probation service there appears to be insufficient knowledge of each others situation, while the independence of these two bodies has increased. It is therefore worthwhile investing in the interaction between the judicial and the probation service.