

Summaries

Justitiële verkenningen (Judicial explorations) is published eight 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. 4, 2009) is *The Dutch judicial system in a European perspective*.

Accountability of the judiciary towards citizens

M. Barendrecht

This article focuses on the growing need internationally for accountability of the administration of justice. The CEPEJ report *European judicial systems* compares the judiciary in the member states of the Council of Europe showing how this justification takes place. Accounting for the administration of justice still involves a lot of attention for the input and the procedures, while accountability for the results is most important. New methods for measuring the experiences of users of the administration of justice are developing. This fits a trend in which hierarchic and internal accountability, for instance through appeal procedures, are becoming less important in favour of horizontal accountability towards stakeholders, colleagues and users of state services.

Quality management for courts and court administration

Ph.M. Langbroek

Quality of organization and quality management are different concepts. The CEPEJ report on efficiency and quality of justice refers to a state of affairs. Quality management is a set of planned, reactive and proactive actions to enhance organisation development in order to improve the functioning of an organisation. Based on case studies on quality management in several COE member states, a distinction is suggested between various levels of involvement of a ministry of justice or a council for the judiciary in quality management in the courts and/or the court administration. A restricted comparative analyses suggests that cooperation between courts and a ministry of justice is based on mutual trust, where the ministry of justice does hardly interfere. In most countries, however,

interactions between the court organisations and the ministry of justice to enhance quality management are coordinated at the central level.

ICT is changing the administration of justice

A.D. Reiling

This article compares ICT in European judicial systems based on the 2008 CEPEJ report on efficiency and quality of justice. It ends by discussing whether ICT is changing the administration of justice. Office automation, jurisprudence databases, e-mail and internet access for judges and clerks have been implemented in most courts in Europe. Case registration systems were less widely introduced, and case and court management systems even less. The forerunners among the judicial systems are ahead when it comes to digital access and external communication. The inaccuracy of the CEPEJ report makes drawing more detailed conclusions problematic. Some observations from other sources show that managing and developing ICT can be difficult for judiciaries. ICT's potential is in enhancing timeliness, access, consistency and public trust. Increased public scrutiny and the availability of information engender predictability. However, judging ultimately involves resolving issues whose outcome is unpredictable.

Independent peer review of law firms

D.J. Wolfson

There is a growing consensus among practitioners that independent peer review is the preferred approach to furthering trust in the legal professions. The article draws on experience abroad, as reported in the professional literature, and lessons from comparable arrangements at home, in academia and the medical professions. It formulates an institutional design in which an autonomous agency, independent of the Lawyers' Association and at arms' length from the Minister of Justice, develops methodology and organizes peer reviews by fellow-practitioners. Since professionals, everywhere, like to share experience, it is argued that making site-visits, sampling case-files, and discussing a self-evaluation of the practice under review promotes open innovation and creates scope for shaping rather than controlling professional excellence. It also allows for discretion in catering to the widely diverging needs of large international law firms and small local practices that a system of command and control could not deliver.

The modern bar in an international perspective

R. van Otterlo

This article describes the development of the Dutch bar, which seems to follow the international trends, the Anglo-Saxon trends in particular. These trends are internationalization, commercialization, organizational professionalization, specialization and differentiation. The Dutch bar nowadays consists of approximately 15.000 advocates, working in approximately 3.800 law firms. Approximately 3.500 advocates work in the Top 30 law firms, whereas the firms consisting of one advocate form the majority of the bar. Particularly during the last decade the bar has grown tremendously due to an increase in demand for specialistic legal service and advice. Due to new developments the client has become more prominent when it comes to determining the quality of the legal service, a phenomenon also known as ‘simultaneity’.

The amount of civil trials in the Netherlands and elsewhere; a comparison in time and in Europe

E. Niemeijer and C.M. Klein Haarhuis

Academic perceptions of litigation rates are dispersed: they vary from observations of a ‘litigation explosion’ to empirical accounts of ‘vanishing trials’. In this article the authors study whether civil trials are increasing or vanishing in the Netherlands. To find out, the authors studied trends in the number of civil cases in the Dutch courts. First, they observed developments in the filings as well as the dispositions of civil cases over the past 25 years, taking into account the trial-likeness of the procedures. Second, they put the Dutch figures – including other indicators of legal activity – in a European perspective. The findings show that the number of court cases in the Netherlands is on the rise. This does not automatically imply, however, that the Netherlands are a highly litigious society. ‘Light’ versions of trials are predominant, as is efficiency in the management of cases. Moreover, the number of lawyers and judges is rather small compared to other European countries.

How much time takes divorce in Europe?

M. ter Voert

In the CEPEJ report litigious divorce cases are selected for additional analysis to get a better understanding of the workload of the courts in Europe and to compare the figures in a more reliable manner.

The report presents the number of litigious divorce cases and the average length of litigious divorce proceedings. This article shows the variety of divorce legislation in European countries and concludes that the figures about divorce cases and length of procedures cannot be used as an indicator for the efficiency of justice in those countries. Furthermore the article presents some detailed information about Dutch divorce cases and shows that the figures presented in the CEPEJ report are incorrect. To get a better understanding of the quality of divorce procedures, the pros and cons of different systems should be investigated.

The execution of court decisions in Europe

R.J.J. Eshuis

This article deals with chapter 13 of the CEPEJ report *European judicial systems* on the execution of court decisions. Unfortunately the report doesn't answer the question how far court decisions are being executed. The report does give information on organisations and agents involved in the enforcement of court decisions. The author gives an impression of the big differences existing between European countries in this field. Most important is the distinction between states where the responsibility for enforcement lies with public authorities and those where this responsibility is left to private agencies. The CEPEJ report seems to suggest that various European countries do a lot more than the Netherlands to guarantee that the law actually takes its course. In the Netherlands state responsibility is limited to the maintenance of means which can be used by parties – for their own cost and risk – in order to compel the execution of a court decision.

Highest courts, legitimacy and leadership

N.J.H. Huls

In this article the author explores – on the basis of Mitchel Lasser's book *Judicial deliberations* – the possibilities of enlarging the legitimacy of the Dutch Cassation Court (Hoge Raad). After a broad theoretical analysis of several concepts of legitimacy he describes the societal position of de Hoge Raad as highest court vis-à-vis rivals, such as the European Courts, the Council of State (Raad van State) and the Council of the Judiciary (Raad voor de rechtspraak). He argues that the cassation institute has to innovate itself and suggest new ways of exerting judicial leadership.