A European criminal justice system

Summaries

Combatting organised crime in Europe; a comparative perspective
M. den Boer

The concept of organised crime has dominated the crime-control agenda of the EU Member States since the early nineties. Despite the development of a joint approach within the framework of Police and Judicial Co-operation in Criminal Matters (Title VI TEU), considerable differences between the Member States remain concerning their definition of organised crime, their law enforcement infrastructure, and their strategic policy agendas. Meanwhile, the EU Member States are exposed to Europeanisation, following the adoption of joint legal instruments and action programmes. Notwithstanding the tendency to harmonise and converge, an EU-wide research project reveals that elements within criminal justice systems that specifically target organised crime have not been subject to fundamental reforms as a consequence of Europeanisation. Nevertheless, each EU Member State has created central facilities within the police and prosecution services to channel and coordinate international information flows. The enlargement of scale and centralisation have however not ruled out decentralisation patterns.

The European Convention on mutual assistance in criminal cases; co-operation in criminal cases
J. Koers

This article deals with the place and function of the European convention on mutual assistance in criminal cases. Its relation to other conventions is discussed. It is emphasised that for rules pertaining to the contents of an international request for legal assistance the judicial authorities must still refer either to article 14 of the European convention on mutual assistance in criminal cases or to article 37 of the Benelux extradition treaty and convention on mutual assistance in criminal cases. One of the conclusions is that it is a deficiency that the European money-laundering and confiscation convention is not included in article 1 of the European convention on mutual assistance in criminal cases. As a consequence international requests for legal assistance with a view to confiscation (and, generally, the use of means of coercion) for example may not be exchanged between judicial authorities directly. The relaxation of the international legal assistance procedure and clarification of a number of specific types of legal assistance are pointed out. The article examines, along general lines, the rules pertaining to: interrogation by video link (article 10); examination of witnesses or expert witnesses by telephone link (article 11); controlled resale (article 12); joint investigation teams (article 13); infiltration (article 14); the interception and recording of telecommunications messages (articles 17 -21). It is one of the conclusions that the European convention on mutual assistance in criminal cases is innovative in a number of respects. Article 4 allows for the possibility that in the execution of an international request for legal assistance the executing authority takes into account the formalities and procedures indicated by the requesting authority as much as possible. The requested state may deviate from these procedures if they are conflicting with the fundamental principles of the requested state. Article 13 of the convention provides a basis for setting up joint investigation teams. With regard to controlled resale and cross-border infiltration the European convention on mutual assistance in criminal cases has little news to offer to the Netherlands. Regarding the increasing communications via mobile networks or satellites, articles 17-22 are important. When the convention is ratified the Dutch legislator will, in some instances, have to provide glosses for the Dutch situation, or even draft new legislation.

The magistrat de liaison; a pioneer in the international co-operation
P.C. Kortenhorst en P.A.M. Verrest
Magistrats de liaison are either public prosecutors or judges, sent by their own state to the Justice Department of another state in order to facilitate international co-operation. The work of a magistrat de liaison consists of a wide variety of activities, mostly situated in the fields of mutual aid in criminal cases, criminal investigations and extradition. But magistrats de liaison also take part in international negotiations and finally, provide both the host state as well as the Justice department of their own state with accurate information. The magistrat de liaison is beyond any doubt in a very privileged position to detect problems in the fields of international justice co-operation. In the co-operation between France and the Netherlands, problems of the kind are mainly due to a lack of communication between investigative authorities. Poor knowledge of foreign law and of comparative law techniques also may lead to misunderstandings, as do uncertainty about the status of international treaties and procedures, and a lack of trust in each other’s criminal policies. Though future developments, such as the creation of Eurojust, may enter directly into the field of activities of the magistrat de liaison, it seems to be an established fact that the presence of a justice representative in a foreign country is very important.

Europe and administrative law enforcement; trends and challenges
A.P.W. Duijkersloot en R.J.G.M. Widdershoven

In this article, the issue of the influence of the EU on national enforcement by way of administrative law is discussed. Two main issues are addressed. First, the extent to which the EU has had an effect on this type of law enforcement in the Netherlands up until the present time. Second, the challenges the EU poses to this type of law enforcement in the future. The influence of the EU has resulted in a kind of administrative law enforcement which can be qualified as more deterrent. Under the influence of EU law, more severe and even punitive sanctions were introduced in Dutch administrative law. Also, EU law restricted the possibilities of forbearance by national authorities. A growing interference of the EU can be distinguished regarding the supervision of enforcement. Where initially only European inspectors in the field of competition law had operational supervisory powers towards market participants in the Member States, now also inspectors of Olaf have obtained such powers. Their national counterparts will have to give the necessary assistance. This development raises some questions for the Netherlands: first and foremost whether the national civil servants charged with supervisory tasks are sufficiently equipped to be able to give effective assistance, and second, whether the Olaf-investigations contain sufficient guarantees. The answer to both questions could be given in a national regulation which comprises a further elaboration on the Olaf-investigation. Finally, we observed that the instruments for the transnational execution of administrative sanctions are insufficient nad should be developed.

Recommendations; on the 'soft law' of the Council of Europe
J.F. Nijboer

In the Europe of 'the forty-two' (the Council of Europe) many different ways of influencing the member states exist. In this article a form of 'soft law' is explained and illustrated: the Recommendations of the Committee of Ministers. Attention is given to the process of drafting such Recommendations and the implementations by the member states. This type of instrument seems to be influential, although it is not easy to see exactly where it works (except for legislation, explicitly initiated on the basis of a Recommendation). In this article three concrete Recommendations are discussed: R(97)3 on witness protection and the rights of the defence, R(95)12 on the management of criminal justice, and R(99)3 containing uniform rules for medico-legal autopsies.

Forensic expertise; European harmonisation
J.F. Nijboer and W.J.J.M. Sprangers In this article the European harmonisation in forensic expertise is discussed along three key aspects: the international exchangeability of investigation results, the impact of the principle of equality of treatment of citizens in Greater Europe and quality assurance and enhancement in the criminal justice system in general and in forensic expertise in particular. A strong stimulant for further harmonisation, especially with respect to investigation results that have to be exchanged cross-border, comes from the Presidency Conclusions of the Tampere European Council (October 1999) that announces among other things a striving for mutual recognition of legally obtained evidence. Besides that, the European Court of Human Rights (ECHR) strongly advocates the equal treatment of the European citizens. However the ECHR's starting point is that the judicial rules belong to the national jurisprudence and thus equal treatment cannot be forced easily. Quality improvement is
a strong driving force but applied until now on single links of the judicial chain only. More emphasis should be given to the quality improvement of the whole chain. Investigations of the effects of European decisions can be very helpful for the necessary harmonisation. Funds should be made available from national and international institutions to stimulate these investigations into the desirability and necessity of harmonisation in forensic expertise.

Towards a legal Europe; what the U.S.A. can teach us
A. Slotboom

In Europe an evolution of the dissimilar legal systems towards an ongoing communisation of criminal law is discernible. After the creation of an economic and monetarian Europe, we observe the creation of a legal Europe. The final outcome of this process is rather unclear at this point of time. The European situation however, with regional, national and international judicial entities and competencies, shows features comparable with the situation in the USA. In the USA, 51 different legal systems at least exist: the fifty federal states together with the federation itself. In this article outlines are be drawn with regard to the lessons Europeans could learn through comparison with the USA. Departing from a description of the USA model (the model penal code, legislative competencies, jurisdiction and the organisation of the police) similarities and dissimilarities are sketched in comparison with the European legal framework. This will prompt a number of thoughts with regard to the possible establishment, tasks and competencies of international institutions regarding the European criminal law system.