

131720





L A W I N

131720

**U.S. Department of Justice
National Institute of Justice**

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Ministry of Justice
The Netherlands

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

M O T I O N

a policy plan for Justice in the years ahead
Netherlands Ministry of Justice

Law in motion

Table of contents

Chapter	1	Introductory remarks	8
Chapter	2	Law and society	
	2.1	From denominational divisions to the welfare state: society and the law	13
	2.2	The Society and Crime policy plan	18
		Evaluation of the policy plan	19
	2.3	Continuing pressure on legal care in 1990	21
	2.4	Prospects	26
		Cultural diversity	27
		New technologies	27
		Urgency of environmental problems	28
		Internationalisation	28
		European unification	29
	2.5	Summary and conclusions	30
Chapter	3	Justice in the 1990s	
	3.1	Developments in legal culture	37
	3.2	Intensified implementation of Justice's core tasks	38
	3.2.1	Introductory remarks	38
	3.2.2	General legislative policy	38
		Quality criteria	39
	3.2.3	Responsibility for law enforcement	40
	3.2.4	Law enforcement in connection with crime	40
		Towards a higher enforcement ratio	40
		Matters of quality	43
		Legal assistance	43
		Alternative sanctions, and probation and after-care	43
		Victim support	44
		Recovering the proceeds of crime	45
	3.2.5	The core of the child care and protection system	46
	3.2.6	Priority for refugees	47
		Integration into Dutch society	48
		Europe 1992	48
	3.3	Network formation and public participation	49
	3.3.1	Organisation of general legislative policy	49
	3.3.2	European frameworks	49
	3.3.3	Police cooperation in Europe	51
	3.3.4	The administrative functions of the Public Prosecutions Department	51
		Integrated enforcement of environmental legislation	53
	3.3.5	Preventive policy on aliens	53
	3.3.6	Public participation	54
		Legal self-help	54
		Social responsibility and crime prevention	54

	3.3.7 Involvement of society in child care and protection, implementation of sentences, and probation and after-care	56
	3.3.8 Summary and conclusions	57
	3.4 Modernisation of organisation and management	58
	3.5 Summary and conclusions	60
Chapter	4 1990-1994 programme of activities	
	4.1 Intensified implementation of Justice's core tasks	67
	4.1.1 Legislative policy	67
	Review of draft legislation	67
	Protection of vulnerable interests	67
	Medical law	67
	Combating discrimination	67
	Amendments to law codes	68
	General Administrative Law Act	68
	Amendments to criminal procedure	68
	Amendments to civil procedure	68
	New Civil Code	68
	4.1.2 Responsibility for law enforcement	69
	4.1.3 Step-by-step approach to raise level of criminal law enforcement	69
	4.1.4 Administrative functions of the Public Prosecutions Department	70
	4.1.5 Provision of care by the criminal justice authorities	70
	Penal establishments	70
	Probation and after-care	71
	Child care and protection	71
	Victim support	72
	4.1.6 Policy on aliens and naturalisation	72
	4.2 Network formation and public participation	73
	4.2.1 Legislative and enforcement policy	73
	4.2.2 Crime prevention	74
	4.2.3 External communication	75
	4.3 Modernisation of organisation, operations and research	75
	4.3.1 Organisation of the judiciary and legal aid	75
	Reorganisation of the judiciary	75
	Legal aid	76
	4.3.2 Research	76
	4.4 Financial survey of programme of activities in 1990-1994 and survey of personnel matters	77
	Introduction	77
	Financial survey	78
	Survey of personnel matters	81
Chapter	5 Concluding remarks	84

Introductory remarks

The policy statement issued by the government on taking office, held out the prospect of a paper outlining a general framework for Justice policy. In producing this report, we have fulfilled this intention.

At the start of this policy document we should like to express our appreciation of what was achieved by our predecessors. The previous Minister of Justice, Mr F. Korthals Altes and State Secretary, Ms V.N.M. Korte-Van Hemel, greatly improved the infrastructure of legislation and law enforcement in the Netherlands in their seven-year period of office. The shortage of prison capacity, for example, has now been virtually eliminated. In many other fields too, we can build on the changes and innovations which they initiated.

Nonetheless, we have noted that the institutions charged with the administration of justice, the provision of legal assistance and law enforcement are still showing symptoms of strain in many fields.

There is a need for analysis of the existing problems and of those expected in the future, and for a plan for the years ahead. Our responsibilities extend to general legislative policy, the organisation of the judiciary and legal assistance, general policy on law enforcement and in particular the enforcement of the criminal law, the care of special categories of people such as minors at risk, people in custody and victims, and the application of legislation, for example on aliens. There is a close connection between these different aspects of our responsibility, which are referred to collectively in this report as 'legal care' – in the sense of the provision of legal services. We have therefore drawn up a policy plan which covers the entire field of legal care.

Chapter 2 of this report provides a survey of the main factors which have determined society's demand for legal services in the past and which will determine it in the near future. The problem of the constant strain caused by these factors makes it necessary, in our view, to reconsider the position of legal care in society. Chapter 3 elaborates three concepts which will determine the direction of Justice policy in the years ahead.

These concepts are as follows:

- intensified implementation of the core tasks of Justice with regard to legislation, law enforcement and the application of the law;
- the formation of networks with other administrative bodies and greater involvement of the general public;
- modernisation of organisation and management.

Chapter 4 explains what these new concepts will mean in terms of specific policy proposals in the policy fields described above. The report ends with some final observations.

One last point should be made at the outset. This policy plan has been written from the point of view of our general responsibility for the areas outlined above. As the report will show, we feel that this responsibility by no means excludes the individual responsibilities which other departments and tiers of

government and especially other groupings in our society have in respect of the provision of legal care. On the contrary, we believe that legal services can be improved only in the networks mentioned above. This report emphasises in many places that other administrative bodies and social groupings have responsibilities of their own and that they do indeed make great efforts to assist in the establishment, enforcement and application of the law.

Law and society

2.1

From denominational divisions to the welfare state: society and the law

In the 1960s and 1970s far-reaching changes took place in Dutch society. Prosperity increased as perhaps never before. Individuals became not only more prosperous but also more articulate and, in various respects, freer too. Democracy and participation were the core words of those years. At the same time, many areas of society became more amorphous and hence more anonymous too. The social groupings which had together formed what were termed the 'pillars' of society rapidly lost much of their traditional influence on social and cultural life¹. Some of their functions as providers of care and services were taken over by the welfare state. And the residual forms of charity were almost entirely replaced by the social security system. These closely interrelated processes of change had a major impact on the position of law in society.

The growth of prosperity brought a sharp increase in the number of transactions between individuals. The mass production and consumption of durable goods made new demands on the contract, tort and property law. One result was the development of entirely new areas of law such as consumer law². The abundance of valuable goods such as cars and televisions also increased the scope for theft and other property offences and hence the need to investigate such offences and prosecute offenders. In addition, the need to regulate road traffic also increased. A second major factor which boosted demand for law was the creation of the interventionist or welfare state. Government started to intervene to an increasing extent in the social affairs of the country in order to protect or represent collective and individual interests. In consequence, the web of rules spun by the legislature and the executive became both ever larger and ever more intricate. Legislation created new legal obligations for sections of the population [e.g. in the areas of taxation, town planning and environmental protection]. Their enforcement had to be ensured by the use of sanctions under administrative and criminal law. At the same time, however, legislation also created innumerable new rights which individuals could exercise against the authorities. To ensure enforcement of these rights, the system of legal protection was expanded. Partly as a result of the decisions of the European Court of Human Rights, the right of access to the courts was expanded. As thinking on fundamental rights – both traditional and social – evolved, so dawned the realisation that government should not only respect the freedoms of the individual but also provide safeguards and forms of redress for society. The principle that government should respect fundamental rights in all its actions strengthened the function of fundamental rights. The general principles of proper administration evolved through the decisions of the courts. And in the administrative field too, the courts are increasingly involved in assessing whether regulations are based on a careful assessment of the relevant interests. However, the post-war evolution of Dutch society has not been confined to the

economic and social dimensions. Changes in socio-economic structures were accompanied by cultural changes. It is precisely these socio-cultural changes which we consider to have been of such great significance to the position and operation of the law.

In the denominationally-divided society of the post-war years, the law as it stood enjoyed broad, strong support. There was a large measure of consensus on the substance of the majority of legal norms. Internalisation of these norms was part of people's normal upbringing. Informal social control ensured observance of these norms. As a result, the opportunities for deviant behaviour and crime were few and far between. If disputes arose, people preferred to resolve them in their own circle. There was relatively little inclination in the Netherlands to engage in litigation³. Disputes tended to be referred to authorities within the participants' own denominational community or to semi-corporate bodies such as local employment offices and rent assessment committees⁴. The official Justice authorities [police, Public Prosecutions Department and judiciary] were of limited size in relation to their counterparts elsewhere in Western Europe⁵.

The rapid dismantling of denominational structures had a major impact on Dutch society. Many Dutch people developed a strong individualist ethos in the 1970s⁶. One contributing factor was undoubtedly the numerical preponderance of young people in that period as a result of the post-war baby boom. The average educational level rose in the years that followed reconstruction. People in general and young people in particular became more articulate and critical. What was traditional was no longer accepted unquestioningly. Frontiers were explored and pushed back. The development of this individualist ethos placed a greater emphasis on people's personal responsibility for their own lives. As such, it was in keeping with the growth of a modern society and was comparable to socio-cultural developments in other highly industrialised societies in the West⁷. This development also instituted a process of social democratisation which marked the final step in the process of political democratisation that had taken place previously. The vested interests of members of the Establishment – often referred to disparagingly as the 'regents' or ruling caste – became a subject of discussion and criticism. The more open climate meant that those in positions of responsibility in all kinds of fields were increasingly required to recognise that they had a duty to account for their actions.

As a result of this development, the dependence of many people on organisations which had – often unasked – taken their interests to heart came to an end. With the advent of a social welfare system provided or at least regulated by government, the former recipients of charity gained the right – and, quite rightly, also the legal right – to a reasoned and reviewable decision.

However valuable the increasing emphasis on personal responsibility for one's own circumstances may have been, it has to be said in retrospect that this

responsibility was to a large extent used in a negative manner as a ground for rejecting interference by the authorities and particular social groupings. In consequence, the moves to demand freedoms and secure entitlements, although justified in themselves, became unduly one-sided.

From being a traditionally fairly conventional country, the Netherlands witnessed the adoption of a very tolerant attitude, best characterised by the modern catch phrase 'why not', not only towards alternative forms of dress but also towards pornography, squatting, illegal copying of gramophone records and drug abuse⁸. Influenced by modern trends in criminology, the term crime was replaced by the less pejorative 'deviant behaviour'. Tax and social security fraud were euphemistically designated as 'misuse' and 'improper use'. Some experts even advocated the complete abolition of the criminal law as being an authoritarian institution of the most absolute kind⁹. Increasingly, family and succession law had to take account of alternative forms of family and cohabitation. The number of divorces rose sharply from 1970 onwards, with all the legal problems that this entailed.

The individualist, post-denominational society of the 1970s had a great influence on people's attitude to the law, which often came to be seen as a means of curbing the power of the Establishment.

The legal structure of non-governmental organisations was democratised as far as possible. This was of undoubted benefit to the 'transparency' of the decision-making process and facilitated review of the decisions of these organisations. Non-statutory arrangements and disciplinary justice came to be regarded as being of less standing¹⁰. The opportunities for appealing to the courts against decisions of the authorities were expanded in all administrative fields. And the scope for bringing legal actions was increased by widening the legal aid system.

This change of attitude towards the law imparted a new dimension to the notion of constitutional government; at the same time it was the result of reflection on constitutional and democratic values. In order to enable every one to make actual use of his or her rights, legal and practical impediments to access to the courts were removed. This was in keeping with the general trend in the West European democracies and was supported by the case law of the European Court of Human Rights. In exercise of the fundamental right to due process – both in civil and administrative cases and in criminal cases – fundamental rights may be invoked in many kinds of situation. This has in turn strengthened still further the existing trend towards viewing administrative and social relations more and more in the context of the protection of rights and freedoms.

In keeping with this general trend towards attaching increased importance to constitutional and democratic values, the emancipatory function of the law has gained still greater significance. By its very nature the law has an emancipatory function because it is a fundamental principle of law that everyone should be afforded equal protection of personal rights, irrespective of

his or her personal qualities. Ways of rectifying the disadvantaged position of women, including the use of the law, have been considered in almost all areas of Dutch society, and processes of change have been initiated. At a more general level, measures to combat discrimination has been a central element of legal care.

In these areas, therefore, respect for the law has clearly grown and fundamental rights have been strengthened. However, less attention has been paid to the other side of the coin, i.e. the willingness of individuals to observe statutory norms in the interests of good relations with their fellow citizens and/or in the public interest. To use a sporting metaphor, the powers of the referee and the management have been regulated by law, but less heed has been paid to the observance of the rules on the pitch and the terraces.

As a result of these social and cultural processes, more and more aspects of life in society came to be regulated by law, thereby causing a crisis in the legal system in the 1980s. The number of lawyers has doubled since 1970. And recourse to the courts has become more frequent and more intensive. The number of cases to be dealt with instituted before the courts has risen by 75% since 1970. The criminal courts have been confronted by an increase of 65% in the number of cases to be dealt with and the civil courts by an increase of over 80%. The number of interlocutory injunction proceedings rose from 3,000 a year in the 1970s to 12,000 in 1989. And the caseload of the administrative courts has shot up by 300% since 1970.

In the course of the 1980s there was a sharp rise in the incidence of crimes against property, partly as a result of the increasing anonymity of society as noted above and the abundance of goods susceptible to theft, and partly due to social problems such as drug addiction and unemployment. The resulting nuisance was so great that despite the objections to authoritarian officialdom the police were called in more and more. Greater use was also made of the legal process by government bodies at both central and local level, as their own policies were increasingly frustrated by a general disinclination to observe statutory rules and regulations. The Justice institutions found it increasingly difficult to meet the greater demand for legal services. Not only did shortages of capacity occur but also respect for the law, the police and the courts diminished. More and more individuals took the view that observance of the standards laid down by law and of the provisions of court judgments was no longer an elementary duty incumbent on all citizens but an optional course of conduct, whose pros and cons could be weighed up. As people felt less threatened by the machinery of law enforcement, the public's willingness to comply with norms declined. Even the authorities themselves sometimes proved unwilling or unable to perform their statutory duties according to the letter and spirit of the law, as shown by the large number of judgments made against them by the administrative courts.

This ambivalent attitude towards the law was one reason why politicians

responded slowly and cautiously to the need for extra capacity for the provision of legal care. Initially, political support for major expansions of capacity was forthcoming only for legal assistance and basic police duties. The support for the latter was partly because the duties of the police include provision of assistance and service. However, there was less willingness to expand the Public Prosecutions Department and the prison system. The overall expenditure on the criminal justice system therefore failed to keep pace with the sharp rise in recorded crime. Whereas crime has increased by around 1,000% since 1960, the total budget for combating crime has risen by around 400% [without adjustment for inflation]. Since 1980 recorded crime has risen by around 60% and the budget by 23%¹¹. The same unwillingness to spend extra money on services or departments charged with law enforcement – such as inspectorates, inspection services and social security inspectors – was also apparent in other administrative fields¹².

In short, the legal system was required in the 1970s and 1980s to cope with an increasingly heavy workload in ever more difficult circumstances. Personnel and financial resources were the two areas where the neglect was most apparent, particularly with regard to law enforcement. By around 1985 the legal services were chronically overstretched.

Constitutional government with its democratic and social values was displaying signs of stagnation. And in some respects a lack of standards was becoming apparent in society.

Looking back on these developments, one is obliged to ask whether the significance of law in constitutional government with its democratic and social values was sufficiently recognised. The quantitative growth of legal rules, rights of appeal and the legal profession do not in themselves justify an affirmative reply. This growth may also point to a certain eagerness – on the part of both government and individuals – to use the law as an instrument for securing vested interests, without adequate recognition of the values of the law. These values include a reciprocity of rights and obligations, and the knowledge that it is possible to rely on their enforcement. A stable legal basis for these values is provided in legislation.

If a constitutional government, with its democratic and social values, is to function effectively, it is not sufficient that the executive should be subject to democratic control. Other basic requirements are enforceable fundamental rights, sound legislation and access to the courts. The quality of social welfare facilities, for example, depends on more than just the cash sums available; another determining factor is the certainty that to obtain such facilities one is not dependent on the whim of an individual official. It must be possible to rely on the law.

In a constitutional government, recognition of fundamental social rights – in addition to the 'classic' rights – is therefore more than a mere financial bonus on top of the entitlement to protection of individual liberty as described above.

Too often in recent decades, however, members of society, government included, have exercised their legal rights when it was convenient to them and ignored their legal duties when compliance was not convenient [by 'extra-legal' administration, by misuse and improper use, or simply by breaking the law]. Improved enforcement should also include constantly reminding people of their rights and obligations in a state where the rule of law is recognised.

However, this is only half the job as it is also necessary to adopt a more careful approach to the law. The whole point of a constitutional government with its democratic and social values is that there should be just relationships in society. Dutch society is highly variegated. We value our liberty and the plural nature of our society: religious and philosophical, cultural, economic and political. Government policy, legislation and law enforcement must protect this liberty, not stifle it. For this purpose it is necessary that the government should properly fulfil its core tasks in the field of law, i.e. making, enforcing and administering the law.

We have encapsulated these core tasks in the term 'legal care'.

2.2 **The Society and Crime policy plan**

Before discussing the policy that we propose to improve the provision of legal services, we shall examine trends over the last few years. Since 1985 the judiciary has been greatly strengthened to enable it to cope with the growing flood of civil and criminal cases. In keeping with this expansion of the judiciary, new management structures have been introduced and the use of computers within the judicature has been stepped up.

By implementing the provisions of the Society and Crime policy plan, the two previous governments also started to work off the backlog of maintenance to parts of the criminal justice system¹³. The capacity of the prison system has been virtually doubled since 1983.

The Society and Crime policy plan was not solely concerned with expanding the prison system. At least as important was the new approach to crime which it announced. In this connection, a distinction was made between common crime and serious, organised crime. The main points of the policy on common crimes such as vandalism, theft and burglary were as follows: establishment of the Steering Committee on the Administrative Prevention of Crime, the proposal to halve the percentage of cases in which, for reasons of policy, it is decided unconditionally not to prosecute, and the plans for better treatment of victims.

As regards serious crime, the policy priorities were not only to expand prison capacity but also to intensify the investigative efforts by establishing regional detective teams and intelligence services and to pursue a properly coordinated policy on sentencing demands. Before expressing an opinion on the

present situation, we give below a brief evaluation of what has been achieved in the last five years.

Evaluation of the policy plan

In many respects the plan has been implemented successfully¹⁴. This is all the more gratifying since some of its policy proposals were initially greeted with scepticism or even dismissed out of hand. A number of commentators were sceptical about the appeal to the local authorities and other government departments to contribute to crime prevention. There was also doubt about the feasibility of the target to be achieved by the Public Prosecutions Department, i.e. a 50% reduction in the number of decisions not to prosecute. And, finally, a few commentators dismissed out of hand the plans for a more energetic approach to tackling organised crime. The notion that this form of crime was also becoming an increasingly acute problem in the Netherlands was greeted with disbelief by these critics.

As regards the approach to common crime, the Steering Committee on the Administrative Prevention of Crime has prepared a final report which will be published this year. Subsidies have been granted to about 80 municipalities for some 250 crime prevention projects of varying kinds. A survey has shown that in the majority of the municipalities local crime prevention steering committees have been formed¹⁵. Furthermore, the municipalities were found to have spent almost twice as much from their own budgets on these and similar projects as they received in subsidies.

In some municipalities it was found in practice that common crime could be curbed if the administrative and criminal justice authorities adopted a multi-agency approach. In the municipality of Haarlem, crime was substantially reduced in the period 1985-1989 owing to the well-coordinated efforts of the municipal executive, the police and the prosecuting service¹⁶. It is right to conclude that the subject of crime prevention is now a permanent aspect of policy in the administration of the larger municipalities and that good results are being achieved¹⁷.

Perhaps less convincing are the results at central government level. Two worthwhile initiatives were the introduction of some 1,200 'supervisors' on public transport on a permanent basis and the scheme run by the Ministry of Justice to encourage the appointment of caretakers in high-rise residential blocks. Also useful was the information campaign on shop crime prevention run by the Central Board for the Retail Trade, sponsored by the Ministry of Economic Affairs. But in other areas such as education and housing, the steering committee failed to achieve a breakthrough in obtaining attention for crime prevention.

The percentage of cases in which the public prosecutor decided not to prosecute dropped substantially in the period 1985-1989, according to the annual reports of the procurators general at the Courts of Appeal, although there

was a slight rise again in 1989. We can in any event conclude that the proportion of cases in which an official police report of an indictable offence results in the imposition of a judicial sanction, in the form, for example, of a reprimand, an out-of-court settlement, a fine, community service or a custodial sentence, is now appreciably higher than in the period 1980-1985.

The treatment of victims has been improved in various respects. This is especially true of the provision of information to victims about the criminal proceedings. In addition victim support centres have been established in 60 towns throughout the Netherlands. Each year these centres provide some form of help or support to around 20,000 victims¹⁸.

The measures to implement the proposals for tackling organised crime have taken rather longer to introduce. The main difficulty has been that the Ministry of Justice and the Public Prosecutions Department have too little scope within the present police organisation to guide the investigative work of the police. Supra-local detection teams have gradually been established in many places, partly due to a special funding scheme instituted for this purpose. The work of these teams has often led to the arrest of professional criminals whose activities were revealed by crime analyses.

The opening of the latest penal establishments means that the expansion of the prison system has been carried out entirely according to schedule. Furthermore, the number of sentences involving unpaid labour and other alternative sanctions has increased sharply as planned.

All in all, implementation of the policy plan has in many respects been reasonably successful. The criminal justice authorities and their various partners have proved capable of developing and implementing new policy covering a fairly wide field. Unfortunately, owing partly to external factors, this does not mean that the problems within the criminal justice system have been resolved.

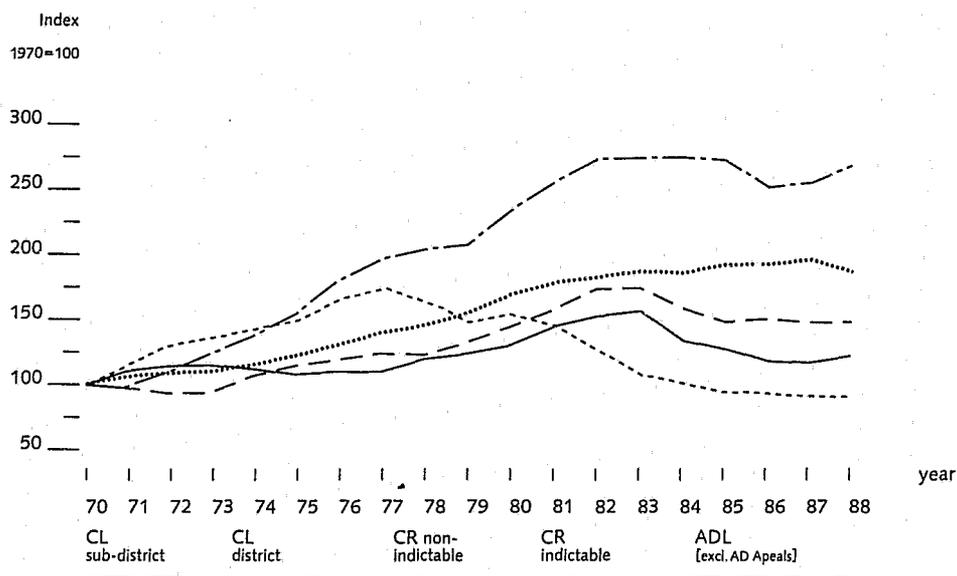
2.3 Continuing pressure on legal care in 1990

Despite the successes of the Society and Crime policy plan, there are numerous indications that legal care in the Netherlands is still under great pressure. A few of these indications will be mentioned here.

The Advisory Council on Government Policy [WRR] has convincingly argued that the legal shape of the Netherlands' constitutional government with its democratic and social values requires improvement¹⁹. Even in the most recent periods of government office and despite the policy of deregulation, too many Acts of Parliament have been passed which cannot stand the tests of clarity, efficiency and above all enforceability. All too frequently, even in recent years, the European or Dutch courts have had to hold that the national law of the Netherlands differs to an unacceptable extent from the rules or principles of European or international law.

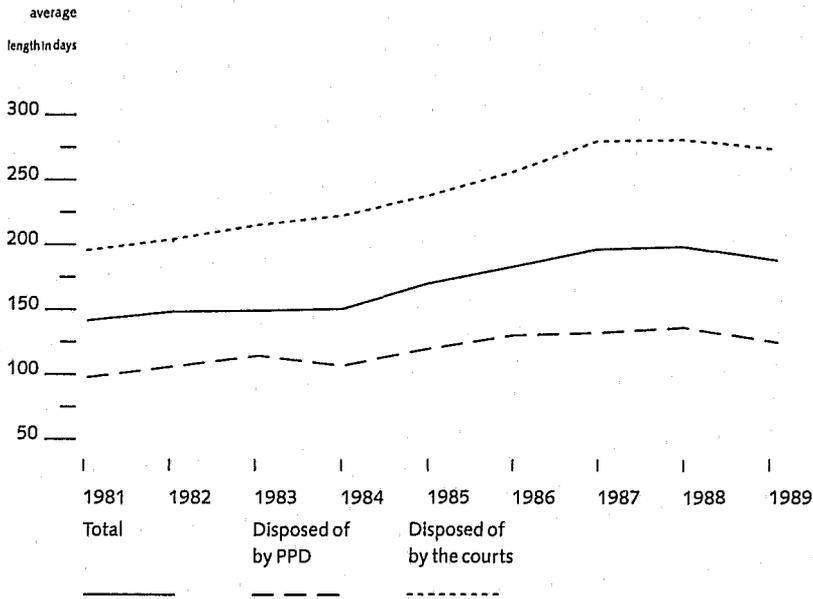
As far as the administration of justice is concerned, the continuous rise in most categories of legal proceedings has come to an end since 1985 [figure 1]. However, the numbers of public service cases, tax cases, complicated [i.e. contentious] civil cases and interim injunction proceedings have risen still further.

Figure 1 * Cases instituted before courts of first instance [1970 = 100]



* CL sub-district: civil law cases before the sub-district courts; CL district: civil law cases before the district courts; CR non-indictable: non-indictable criminal offences; CR indictable: indictable criminal offences; ADL [excl. AD Appeals]: administrative law cases [excl. cases under the Administrative Decisions Appeals Act].
The fall in the number of non-indictable offences dealt with by the Public Prosecutions Department [PPD] and/or the courts since 1977 has been caused by the sharp increase in the number of cases settled out of court by the police.

Figure 2 Length of time for disposal of indictable offences



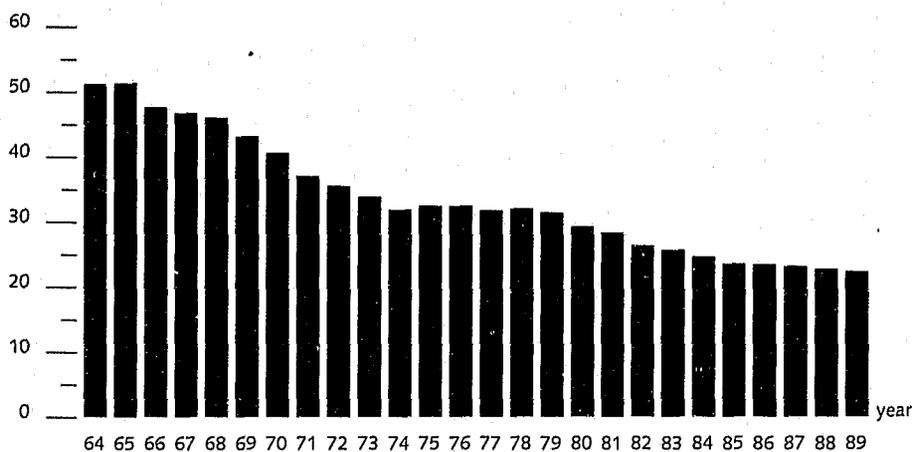
As figure 2 shows, the length of time taken to dispose of cases involving indictable offences declined for the first time in 1989. However, it still takes too long, namely an average of nine months, before the courts have disposed of such cases. Similarly, the duration of tax and administrative law cases must also be reduced still further.

The increase in the volume of appeals from decisions given at first instance is also giving cause for concern [the number of appeals to the Courts of Appeal has almost tripled since 1970], and the situation is even more serious in the case of appeals in cassation [the volume of appeals to the Supreme Court has more than quadrupled over the same period]. Nowadays, the parties and their lawyers are less willing to accept the decision of the courts of first instance.

Under previous governments, various measures were taken to gain control of the expenditure on legal aid. However, these efforts failed to have any lasting success. Since 1985 this expenditure has risen by around 20%.

The percentage of crimes solved by the police is determined in part by the way in which offences are recorded and the extent to which suspects are questioned about any previous offences they may have committed at any time. It is not possible, therefore, to devise a hard-and-fast criterion for assessing the effectiveness of the police's criminal investigation work. Nonetheless, the downward curve in the percentage of cases solved is depressing [see figure 3]. In the last three years the percentage of cases solved has remained fairly stable. However, it is lower than in neighbouring countries.

Figure 3 Percentage of recorded indictable offences solved [1964-1989]



As far as the Public Prosecutions Department is concerned, a positive development that has already been mentioned is the fact that the percentage of cases in which it is decided not to prosecute for policy reasons has declined. Moreover, the duration of cases which are disposed of independently by the Public Prosecutions Department has also diminished slightly.

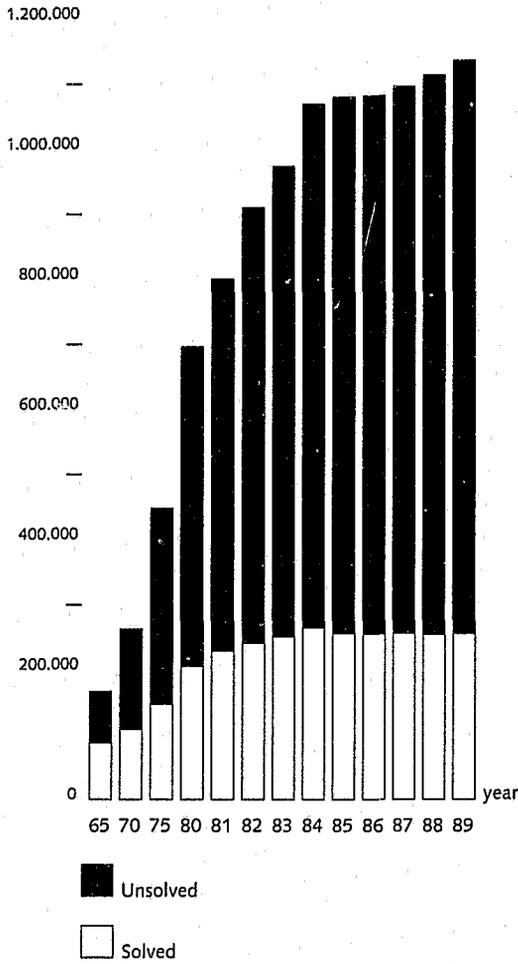
23

However, the Public Prosecutions Department is encountering major problems locally in processing official police reports for non-indictable offences. Situations still occur, partly owing to the use of modern technology, in which more official reports are issued than the Public Prosecutions Department can process within a reasonable period, given the available capacity. Nor are the arrangements for the collection of fines satisfactory, according to the findings of the Public Prosecutions Department in a policy plan entitled 'Criminal law with policy', which is due to be published shortly by the procurators general at the Courts of Appeal.

The ultimate objective of the Society and Crime policy plan was to curb crime. And since 1985 the sharp annual rises in the incidence of crime do indeed seem to have tailed off. This is apparent from the results of the biennial victim survey conducted by the Central Bureau of Statistics [CBS]²⁰. It is also evident from the figures for recorded indictable offences [see figure 4]. The statistical indications that crime among minors is decreasing are particularly encouraging²¹.

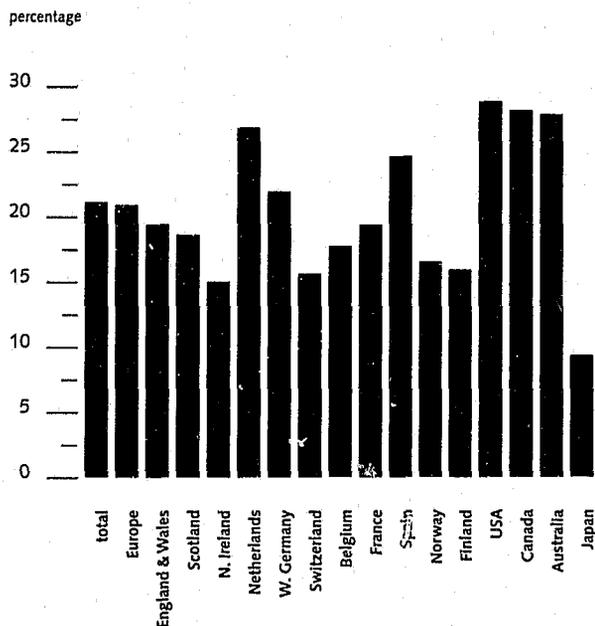
Unfortunately, however, it has to be recognised that crime as a whole has still not declined in real terms in the Netherlands. According to the most recent estimates, the total damage caused by common crime is now over eight billion guilders a year²². The combined annual damage as a result of all forms of crime, including fraud, is estimated to be around Dfl. 35 billion²³.

Figure 4 Trends in recorded crime 1965-1989



Disappointing news for the Dutch police and criminal justice authorities is also provided by the results of an international victim survey carried out in fourteen Western countries²⁴. Of all the European countries taking part, the Netherlands had the largest percentage of inhabitants who had been the victim of such offences as bicycle theft, vandalism, burglary and assault in 1988. Owing to the large number of bicycle thefts, the general victim percentage in the Netherlands was considerably higher than the European average [see figure 5]. If the characteristic Dutch offence of bicycle theft is disregarded, the poor performance of the Netherlands in comparison with the rest of Europe is less striking. Indeed, Spain has an even higher incidence of crime. Nonetheless, the percentage of victims in the Netherlands is still on the high side.

Figure 5 1988 – Victim percentage



A comparison of the police statistics for offences against property in the Netherlands, West Germany, France and the United Kingdom also gives a rather unflattering picture of the Netherlands.

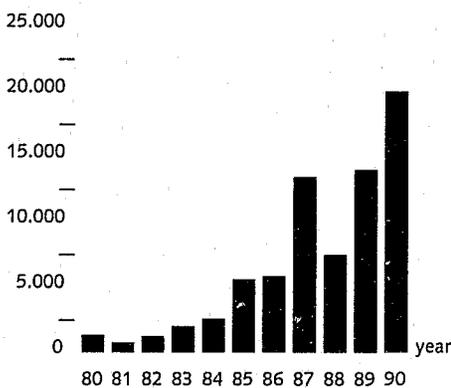
Closer examination of the Dutch police statistics shows that the total number of offences against property remained stable in the period 1984-1989, with the exception of the relatively serious offence of burglary from dwellings. There has been a clear rise in the number of homicides and crimes of violence, including theft with violence [robbery]. These trends indicate that it is precisely the serious forms of crime which are continuing to increase. As a result of the women's rights movement, more attention has been focused on sexual offences [i.e. offences involving violence] against women and girls. Owing to this and other factors, there has been a substantial increase in the number of these offences coming to the attention of the police.

Evidence that the general public in the Netherlands consider the level of crime to be unacceptably high is provided by an opinion survey conducted by the Research and Documentation Centre [WODC] of the Ministry of Justice in March 1989²⁵. This shows that 85% of Dutch nationals aged 18 years and over believed that crime was 'a very serious problem' in the Netherlands. None of the other social problems such as environmental pollution, health care, unemployment

and transport was regarded as being of such gravity. 60% of the population considered that the authorities should allocate more money to combating crime.

As regards child care and protection, the number of cases dealt with has risen in recent years. The number of children subject to a child care and protection order has once again risen sharply since 1985. And the number of applications by the Child Care and Protection Boards to the courts for care orders rose from 1,600 in 1984 to 2,478 in 1989. As far as the policy on aliens is concerned, an increase has also occurred in the number of requests for asylum. As is common knowledge, the number of asylum-seekers rose dramatically from around 1,000 per year in the early 1980s to almost 14,000 in 1989. Some 18,000 requests for asylum are expected in 1990 [see figure 6]. A similar rise has also occurred in most other West European countries. At the same time, there has been a sharp increase in the number of requests for naturalisation, namely from 7,000 per year in the mid-1980s to around 20,000 this year.

Figure 6 Number of requests for asylum [1990 = estimate]



2.4 **Prospects**

Although the causes of the present problems lie partly in the past, when formulating solutions it will be necessary to take account of social and cultural trends expected in the future. Four trends are likely to have to a strong influence on the climate in which the law will operate in the future, namely increasing cultural diversity, the rapid advances of new technologies, the urgency of the environmental protection problem and the internationalisation of society and government policy.

Cultural diversity

From now on the Netherlands will become an increasingly multi-cultural society. According to recent estimates, the Turkish and Moroccan community in the Netherlands will number around 400,000 by 1997. In the big cities in the west of the country, around 20% of the population now consists of members of an ethnic minority²⁶. This percentage will rise still further in the next few years. This trend represents an enrichment of Dutch culture. Yet it also poses risks as regards public acceptance of the law.

Unfortunately, the desirability of the principle of legal equality does not appear equally self-evident to everyone in a multi-cultural society. The police and criminal justice authorities will have to devote more and more effort to combating discrimination, even among their own ranks. And further tensions may arise between the moral norms of some minority groups and the law in force in the Netherlands. One example is the norms relating to the position of women and minors. In enforcing the statutory rules, for example those relating to the equality of women and compulsory schooling for children, the authorities should treat everyone in the same way. If they do not, this will seriously undermine the credibility of law enforcement in the eyes of the indigenous population. Equally, its credibility will be threatened if no effective action is taken to combat the increasing discrimination practised against people of non-Dutch origin.

In addition, there is a danger of major problems occurring with young people of foreign descent who reject the morality applicable in their own community and yet are largely oblivious to Dutch law. Criminological literature provides ample evidence that when migrants from a traditionally rural culture have to adjust to life in a big city, deviant behaviour almost invariably occurs among the second and third generations²⁷. In the Netherlands this social phenomenon is now evident among the ethnic minorities. At present about 25% of the minors coming into contact with the police belong to an ethnic minority. One of the factors that plays a role in the case of young people of foreign origin is the very high rate of long-term unemployment, due among other things to language problems and a consequent lack of skills. A problem which gives particular cause for concern is the social integration of young Moroccans, which is evident from the high crime figures in this group and other factors. Moreover, the nature of the offences committed by them is relatively serious. In addition, adolescents from the ethnic minorities are at risk of becoming addicted to gambling²⁸.

New technologies

Applications of information technology and telematics will increasingly come to dominate everyday life. This means that the contract, tort and property law will have to be adapted, for example in relation to subjects such as copyright, evidence and banking law. These applications will also create new opportunities

for fraud and other forms of crime [computer fraud, hacking and blackmail when the systems are vulnerable]. On the other hand, the scope for security and surveillance has been greatly increased by the advent of modern observation equipment [e.g. integrated security and communication systems for businesses and private individuals, electronic monitoring of people and objects, and DNA prints]. The law must respond promptly and alertly to these developments in order to define standards of conduct.

New and far-reaching developments are also taking place at a rapid rate in the biomedical field. Examples are in vitro fertilisation, gene therapy and genetic engineering, radical transplants, experiments with embryos, tests for hereditary disorders and prenatal diagnostics. The availability of new medical technologies is raising all kinds of urgent ethical issues which can no longer be dealt with in a purely pragmatic way. The development of civil and criminal law in this field will have to be based in part on ethical considerations and choices. It is therefore desirable that society should be actively and continually involved in the process of opinion-forming on these issues.

Urgency of environmental problems

Agricultural and industrial processes constitute a permanent threat to the environment. Self-regulation is inadequate, partly because of the pressure of economic competition. Here too, therefore, is a need to expand legislation and law enforcement in civil, administrative and criminal law. As the legal standards governing the storage and dumping of chemical waste become stricter, criminal organisations will find it increasingly attractive to move into this market. This will necessitate extra efforts on the part of the police and criminal justice authorities.

The problems caused by road traffic will continue to require a major expansion of the legislation for the protection of environmental interests and of the measures to enforce such legislation [e.g. enforcement of the maximum speed limits]. The calls for legislation and above all for supervision and enforcement are still increasing because the problems are becoming more acute and there has been little if any spontaneous improvement in traffic discipline.

Internationalisation

Modern means of transport will substantially boost the volume of international passenger traffic and hence increase the number of aliens temporarily present to the Netherlands at any given time. As a result of political repression in many parts of the world and the gap in prosperity between Western Europe and, for example, Eastern Europe and North Africa, immigration to the Netherlands is still on the increase despite the restrictive policy on admissions. Owing to the provisions governing family reunification and political asylum the flow of immigrants is unending. In addition, there is a substantial influx of illegal immigrants. All this has caused major problems for the administration of justice and law enforcement. And they have been magnified by the division of opinion

within society on this subject. At the one extreme are people who, whether for idealistic or financial motives, go to great lengths to provide illegal immigrants with accommodation and a source of income. And at the other extreme there is an increasing tendency to discriminate against aliens who are legally resident in the Netherlands. It is becoming more and more difficult to find sufficient common ground between these two extremes to provide a basis for a restrictive yet just and humane policy on aliens.

European unification

By signing the European Convention for the Protection of Human Rights and Fundamental Freedoms as a member of the Council of Europe, the Netherlands gave a European dimension to its own legal order as early as 1950. In recent years in particular, the case law generated by this Convention [including the Brogan and Kostowski judgments] has provided a major stimulus to refining the legal protection afforded by domestic law.

The Netherlands is playing an active and committed part in the process of European integration. Economic, social and legal developments in the Netherlands are being deeply influenced by this process. In the first place, European integration determines the margins within which Dutch government policy can be effective. And, in the second place, the European Community has its own independent legal order, which often has a direct bearing on the national legal order.

The influence of Community law on domestic legislation is becoming increasingly important. In fact, much domestic legislation, for example in relation to company law and to the equal treatment of men and women, implements or elaborates European Community directives.

In view of the increasing 'Europeanisation' of government policy on socio-economic matters, environmental protection, aliens policy and so forth, the Dutch legal order is likely to take on a more pronounced European aspect. This will necessitate an adjustment on the part of all institutions and individuals involved in administering the law.

The proposed abolition of the border controls between the EC member states means that legislation in a variety of fields must be harmonised. Owing to the free movement of goods, services, capital and persons, it will also be necessary to coordinate the procedures for the application and enforcement of the law. The need for co-ordination of legal policy in many fields and intensive cooperation between the police and criminal justice authorities in the various EC member states is increasing all the time. The disappearance of the controls at the internal borders of the Community may well encourage crime on a European scale. The Dutch police and criminal justice authorities will have to devise an appropriate response within a European context.

2.5 **Summary and conclusions**

The replacement in the Netherlands of a society divided along denominational lines by a modern consumer oriented welfare state radically altered the position of the law. Owing to the disappearance of the social ties between individuals and to the expansion of the functions of the State, the need for measures to make, enforce and apply the law increased sharply. Constitutional government as established in the nineteenth century evolved further into constitutional government based on democratic and social values. For a long time, the emphasis in this new structure was placed one-sidedly on the rights of individuals vis-à-vis the State and not on their duties towards one another and the community. Each individual had an eye on the main chance as it were and made use of the law for his or her own ends. The law came to be seen by both litigants and government alike more as an instrument than as a normative framework. In consequence, the implementation of the law was seriously impeded.

In the 1980s it gradually became apparent that the institutions concerned were unable, in these circumstances, to meet the increased need for legal care. As a result of the implementation of the Society and Crime policy plan, part of the excess workload caused by this situation has been removed. For example, maintenance of the legal order by application of the criminal law has been facilitated by encouraging the municipalities to take preventive measures. Moreover, there is no longer a serious shortage of capacity in the prisons. However, the external effects of this policy are not yet satisfactory. The incidence of common crime and serious crime is still unacceptably high. And in many other fields of central government policy there are deficiencies in both the quality of the legislation and the supervision of compliance with the prescribed norms. Here too, it is often difficult for individuals to secure their rights owing to the long delays in some courts.

As a result of this situation, the law is in danger of gradually losing its capacity to create order and security. The intrinsic value of the law is diminishing. More and more legal rules are being introduced, but their average effectiveness is declining. Indeed, there would seem to be an insidious process of legal inflation. In consequence, the further evolution of constitutional government in danger of being blocked.

New challenges for the law are already emerging as a result of increasing cultural diversity, the introduction of risky technologies [e.g. in the biomedical field], the pressing need to protect the environment and the internationalisation of social intercourse, for example in the European context.

Recently, there seems to have been a change of attitude towards the law. Exasperation about all kinds of common offences is increasing among the population at large. This is true not only of run-of-the-mill crimes such as burglary, assault and vandalism but also of the widespread infringements of the

maximum speed limits and of some environmental regulations. More and more people are coming to appreciate how important it is for the quality of society that the legal order should function properly. And also the notion is dawning that every person, organisation and body can make a major contribution to this²⁹. Some indications of this cultural turnaround are the initiatives taken by schools to enforce the rules against truancy more strictly³⁰ and by municipal authorities, housing associations and tenants' associations to improve the general atmosphere in residential neighbourhoods or housing estates by enforcing the rules of behaviour applicable to all residents³¹. In some municipalities, agreements about rights and obligations have been successfully concluded between shopkeepers and crowds of young people who frequent shopping malls. These kinds of initiative can be seen as evidence of the re-emergence of social control, albeit in a new form. In due course, these initiatives will bring about a welcome reduction in the pressure on the police and criminal justice authorities. And in general, the social and administrative basis for law enforcement seems to be getting stronger again³². What the Ministry of Justice must do is to take full advantage of these positive developments.

The Justice authorities face major problems. Radical and irreversible changes have occurred in the society in which law operates. We believe that a return to a society divided along denominational lines, with the accompanying forms of social control, is inconceivable. The near future will bring new risks but new opportunities too. In this situation, it will not in our view suffice simply to prescribe more of the same. A strategic reorientation of Justice policy is required. This is why the policy-makers must not exclusively concentrate their attention on the organisation of the machinery of justice: they must also systematically look outwards. In a constitutional state based on democratic and social values, the administration can function properly only in concert with society.

Footnotes

- 1 Zijdeveld, A.C. [1983]
Transformatie van de verzorgingsstaat [Transformation of the welfare state]
In: Ph.A. Idenburg [ed.] De nadagen van de verzorgingsstaat [The declining years of the welfare state]
Amsterdam: Meulenhoff
- 2 Schuyt, C.J.M. [1986]
De veranderde rol van de Hoge Raad in de samenleving [The changed role of the Supreme Court in society]
In: De plaats van de hoge Raad in het huidige staatsbestel [The place of the Supreme Court in the present constitutional structure]
Zwolle, Tjeenk Willink
- 3 Dijk, J.J.M. van [1987]
Over de wenselijkheid van overheidsinterventies op de markt van recht en orde, praeadvies voor de 35e
Jaarvergadering van de Nederlandse Orde van Advocaten [On the desirability of public interventions in the law and order
market, preliminary report for the 35th annual meeting of the Netherlands Bar]
Advocatenblad, no. 14, vol. 67, 8 August
- 4 Verwoerd, J.R.A. [1988]
Beroep op de rechter als laatste remedie? [Appeal to the courts as a last resort?]
Some comparisons between the legal cultures of the Netherlands and the West German state of
North Rhine-Westphalia, 1970-1984
Arnhem: Gouda Quint
- 5 Wetenschappelijke Raad voor het Regeringsbeleid [Advisory Council on Government Policy, 1988]
Rechtshandhaving [Law enforcement]
The Hague: Government Printing Office
HEUNI [1985]
Criminal justice systems in Europe: report of the ad hoc expert group on a cross-national study on trends in crime
and information sources on criminal justice and crime prevention in Europe
Helsinki: Government Printing Office
- 6 Sociaal en Cultureel Planbureau [Social and Cultural Planning Office, 1990]
Sociaal en cultureel rapport 1990 [1990 Social and Cultural Report]
Rijswijk: S.C.P.
- 7 Compare A.C. Zijdeveld [1983]
De culturele factor [The cultural factor]
The Hague: VUGA, p. 80 et seq.
- 8 De Swaan, A. [1980]
Beschaving en verruwing in Nederland [Civilised and uncivilised behaviour in the Netherlands] 1981 Spectrum Jaarboek
Utrecht: het Spectrum
- 9 Hoefnagels, G.P. [1986]
De verloren straffen van Hulsman [The lost sanctions of Hulsman]
In: Bezonnen Hoop, essays presented to Professor L.H.C. Hulsman
Zwolle: Tjeenk Willink
- 10 Elzinga, D.J. [1990]
Zelfregulering kan collectieve rechtsdruk verlagen: totale omkeer in rechtsdenken nodig
[Self-regulation can reduce collective pressure on the law: total change in legal thinking needed]
Binnenlands Bestuur, 6 April, p. 33
- 11 Departement van Justitie [Ministry of Justice, 1989]
Financiële en kwantitatieve gegevens, 1982-1994 [Financial and quantitative data, 1982-1994]
The Hague: Ministry of Justice, Central Financial and Economic Affairs Directorate
Heertje, A. and J.W. Wabeke [1989]
Het dreigende faillissement van justitie en politie [The imminent bankruptcy of the police and criminal justice authorities]
Economische Statistische Berichten, 22 November pp. 1152-1155

- 12 Algemene Rekenkamer [General Chamber of Audit, 1990]
 Verslag 1989 [1989 Report]
 The Hague: Government Printing Office
 Van Duyn, P.C. [1986]
 Doe wel en zie niet om: uitkeringsfraude en Informatiegevoeligheid [Do good and fear not: Social security fraud and information sensitivity]
 Recht en Werkelijkheid, vol. 17, nos. 1 and 2
- 13 Samenleving en criminaliteit [Society and Crime, 1985]
 Een beleidsplan voor de komende jaren [a policy plan for the years ahead]
 Lower House, Parliamentary Session 1984-1985, no 18995 [22 May 1985]
- 14 Samenleving en criminaliteit [Society and Crime, 1986]
 Voortgangsrapportage 1986 [1986 Progress report]
 Lower House Parliamentary Session 1985-1986, no 18995 [6 May 1986]
 Samenleving en criminaliteit [Society and Crime, 1987]
 Actieplan voor de aanpak van de veel voorkomende criminaliteit [Plan of action for tackling common crime]
 Lower House Parliamentary Session 1986-1987, no 18995 [27 January 1987]
 Samenleving en criminaliteit [Society and Crime, 1987]
 Voortgangsrapportage 1987 [1987 Progress report]
 Lower House Parliamentary Session 1987-1988, no 19995 [15 September 1987]
 Samenleving en criminaliteit [Society and Crime, 1988]
 Voortgangsrapportage 1988 [1988 Progress report]
 Lower House Parliamentary Session 1987-1988, no 18995 [23 September 1988]
 Samenleving en criminaliteit [Society and Crime policy plan, 1990]
 Eindrapportage over de uitvoering van het beleidsplan [Final report on the implementation of the Society and Crime policy plan by the Public Prosecutions Department]
 The Hague, February 1990
- 15 Castenmiller, P. and N.A. van Wijk [1990]
 Criminaliteit en beleid: bestuurlijke preventie in gemeenten [Crime and policy: administrative prevention in municipalities]
 The Hague: VNG-Uitgeverij
- 16 Gemeente Haarlem [Municipality of Haarlem, 1989]
 Haarlem heel: voortgangsrapportage 1989 [Haarlem whole: 1989 progress report, main points and developments in connection with the administrative prevention of crime]
 Haarlem: Municipality of Haarlem, Crime Prevention Office
- 17 Zwaneburg, M.A. and A.M.G. Smit [eds., 1990]
 Kleine criminaliteit en overheidsbeleid [Petty crime and government policy]
 Arnhem: Gouda Quint
 Christophe, P. and L.J. Clement [1988]
 Wie het kleine niet weert... [Take care of the little ones...] administrative measures to combat petty crime
 The Hague: Ministry of Home Affairs
- 18 Los [1990]
 Vereniging landelijke organisatie slachtofferhulp, Jaarverslag 1989 [National Association for Victim Support, 1989 Annual Report]
 Utrecht: Vereniging landelijke organisatie slachtofferhulp
- 19 Wetenschappelijke Raad voor het Regeringsbeleid [Advisory Council on Government Policy, 1988]
 Rechtshandhaving [Law enforcement]
 The Hague, Government Printing Office
 Algemene Rekenkamer [General Chamber of Audit, 1990]
 Verslag 1990 [1990 Report]
 The Hague, Government Printing Office
- 20 CBS [1990]
 Slachtoffers van veel voorkomende criminaliteit in 1988 [Victims of common crimes in 1988]
 Voorburg: Central Bureau of Statistics

- 21 Junger-Tas, J. and M. Kruissink [1990]
Ontwikkelingen van de jeugdcriminaliteit:
periode 1980-1988 [Trends in juvenile crime, 1980-1988]
Arnhem: Gouda Quint
- 22 Bedrijfsleven en Criminaliteit [Business and crime, 1990]
Kerngetallen uit de Nederlandse slachtoffer enquête onder bedrijven [Core figures from a survey of Dutch business victims
of crime]
Crime Prevention Directorate, The Hague
- 23 Verhoeff, B.M., A.C.P. Verster and L.H. Klaassen [1988]
Naar een economische benadering van criminaliteit en veiligheidszorg [Towards an economic approach to crime and
security services]
Stichting Maatschappij en Politie
- 24 Dijk, Jan J.M. van., Pat Mayhew and Martin Killias [1990]
Experiences of crime across the world: core findings of the 1989 international crime survey
Deventer: Kluwer Law and Taxation
- 25 WODC [1990]
Enkele resultaten van een enquête over criminaliteit en criminaliteitsbestrijding, april 1990
[Some findings of a survey of crime and anti-crime measures, April 1990]
The Hague: Ministry of Justice, Research and Documentation Centre
Tinnemans, W. [1990]
Mijn fiets terug! [My bike back!]
Intermediair, 13 July 1990
- 26 Wetenschappelijke Raad voor het Regeringsbeleid [Advisory Council on Government Policy, 1989]
Alloctonenbeleid [Policy on residents of foreign origin]
The Hague: Government Printing Office
- 27 Shelley, L.I. [1980]
Crime and Modernisation, the impact of industrialisation and urbanisation on crime. Carbondale and Edwardsville
Southern Illinois University Press
- 28 Driessen, P. and J. Overbekking [1989]
Gokken in Deventer en Nijmegen [Gambling in Deventer and Nijmegen]. Research into the extent, nature and
development of gambling behaviour in the municipalities of Deventer and Nijmegen
Deventer/Nijmegen 1989
- 29 Vuijsje, Herman [1989]
Lof der dwang [In praise of compulsion]
Baarn: Anthos
Denkers, Frans [1990]
Naar een nieuwe balans van verantwoordelijkheden: verslag van de Commissie Sociale Zelfredzaamheid in
opdracht van de Stichting Maatschappij en Politie [Towards a new balance of responsibilities: report of the Social Self-Help
Committee produced for Stichting Maatschappij en Politie]
Arnhem: Gouda Quint
Jaarverslag [Annual Report, 1989]
Stichting Centraal Informatiesysteemschade [CIS]
Rotterdam: Stichting CIS
- 30 Mutsaers, M. and L. Boendermaker [1990]
Criminaliteitspreventie in het onderwijs [Crime prevention in education]
First part of experiment: truancy monitoring
Ministry of Justice, Research and Documentation Centre
- 31 Opdam, E. [1990]
Nu aan de slag [And now to work: social renewal and the quality of the everyday environment]
Ministry of Housing, Physical Planning and the Environment, The Hague, July 1990
- 32 See reference in notes 6 and 25

Justice in the 1990s

3.1 Developments in legal culture

Administering the law has become a problem in Dutch society, but at the same time demand for legal care is increasing rather than decreasing. Hence there is a great risk that ever more statutory norms, both old and new, will become or remain dead letters.

The demand for legal care cannot of itself be a decisive factor in the choice of what legal care the government provides. Inevitably, this particular function of government has to be weighed against other functions. Naturally, the fundamental rights enshrined in the Constitution and treaties and the guiding principles of our constitutional government may not be simply set aside. Certain aspects of legal care are so fundamental to a constitutional government that they must, as it were, be guaranteed before one starts contemplating the comparative merits of more far-reaching wishes for legal care and for other government functions. In this situation, it is necessary that the Justice authorities should concentrate on carrying out their core tasks as well as possible.

The basis for Justice policy in the next few years should be that statutory rules and judicial decisions may not be free of obligation. Respect for the law must be increased by improving the quality of the legislation of central government as a whole. Responsibility for assessing quality lies with the Minister of Justice. Above all more attention must be paid to the enforcement of both new and existing legislation.

In addition, the Ministry of Justice will have to concentrate on discharging more adequately its own specific responsibilities with regard to the implementation and enforcement of the law. The performance of the Justice authorities in enforcing the criminal law and administering policy on child care and aliens will have to be credible. Only then will they set an example which can be followed by the rest of society. To achieve this, the authorities should have a policy which aims at making step-by-step improvements by reference to specific targets. For this purpose, the organisation and administrative structure of the Justice authorities will have to be radically modernised. Furthermore, ways of cooperating with other ministries, tiers of government and semi-government bodies will have to be found and extended.

To make the law effective, the Justice authorities require the support of society as a whole. This support is no longer forthcoming as a matter of course in today's fragmented society and must therefore be actively sought after and organised. In the next few years the law should return to a position where it complements the self-regulating capacity of society. This necessitates consultation at an early stage of the administrative decision-making process with other bodies and authorities on their own efforts to uphold the law. To ensure that law enforcement is credible and to have greater control over their own workload, the Justice authorities should, where necessary, be involved at an early stage in the policy of other administrative bodies. This requires an active

and outward-looking policy. At the same time, the authorities must themselves be receptive to complaints and requests from people working in the relevant field. The authorities owe their partners in the enforcement networks a detailed explanation of their policy¹.

In short, the Justice authorities will have to invest more in the organisation of their external relations. In the next few years, the personnel and financial resources of various parts of the legal structure will have to be increased again. This applies for example to the penal establishments and the Public Prosecutions Department. More importantly, however, the authorities will have to concentrate on their core tasks and on introducing more openness into legal culture and establishing networks with other organisations.

The sections below examine the three central thrusts of Justice policy in the next few years, namely:

- a intensified implementation of Justice's core tasks of making, enforcing and administering the law;
- b expansion of justice policy by means of the formation of networks with other administrative bodies and encouragement of participation by the public;
- c modernisation of their own organisation and mode of operation.

3.2 Intensified implementation of Justice's core tasks

3.2.1 Introductory remarks

The core tasks of the Justice authorities are making, enforcing and administering the law. The activities connected with these core tasks include, first of all, two which in the past were carried out on only a modest scale and usually on a random basis, namely the monitoring of the constitutional and administrative quality of legislation and of general law enforcement.

The other activities are the enforcement of the criminal law, the administration of child care and protection measures, and the application of legislation on aliens. The following subsection explains where the emphasis will be placed in the implementation of the core tasks in the years ahead.

3.2.2 General legislative policy

The Government recognises the need for better control of the legislative process. The Minister of Justice has therefore been given primary responsibility for monitoring the constitutional and administrative quality of legislation. For this purpose, the existing power to check on deregulation has been widened to include reviews of the quality of legislation in a broad sense. New elements are the reviews in the light of Community and international law and fundamental rights, and the extra attention paid to enforceability.

Quality criteria

In checking bills the Ministry of Justice will apply the following six criteria:

– **Lawfulness, including the protection of vulnerable interests by fundamental rights**

This criterion covers review with reference to international and Community law, the general principles of law and other legislation of a higher order. The assessment of lawfulness is not only of importance as a matter of principle, but can also help to prevent a situation in which legislation is later held to be unlawful by a Dutch or European court. Whenever necessary, for example if a bill raises issues of medical ethics, the Ministry will have to examine in particular whether adequate protection is afforded to vulnerable interests from the point of view of fundamental rights.

– **Effectiveness and efficiency**

It will be necessary in each case to ascertain whether the objectives are clearly formulated and whether there is a reasonable likelihood that they can be achieved, given the characteristics of the activities or processes to be controlled. At the same time, it will be necessary to assess the cost-benefit ratio in each case.

– **Subsidiarity and proportionality**

The principle of subsidiarity implies that the legislation should take into account and leave as much scope as possible for individual responsibility and the self-regulating capacity of the relevant organisations and categories of individuals. In each case it will be necessary to ascertain whether it would not suffice to introduce substantive and/or procedural rules to support self-regulation. An important criterion in this respect is whether sufficient protection is afforded to vulnerable interests². The principle of proportionality relates to the burden on particular groups that results directly or indirectly from legislation and whether this burden is in proportion to the benefits obtained by others.

– **Feasibility and enforceability**

The criterion of enforceability means that every important bill must be accompanied by a plan of implementation showing what efforts are deemed necessary in order to enforce it by preventive and repressive action. It will be necessary for example to ensure that compliance with the provisions can be adequately checked and that the scheme is sufficiently fraud-proof; similarly, it must not result in unnecessary appeal procedures, evasion or opposition. Careful attention must also be paid to the choice of sanctions. Criminal law sanctions can usually be justified only if there are reasonable grounds for assuming that sanctions under private law, administrative law or disciplinary law will be inadequate.

– **Coordination**

The terminology and structure of specific items of legislation must be in keeping with codes and general legislation, for example the New Civil Code,

the Codes of Criminal Procedure and Criminal Law, and the General Administrative Law Bill.

– **Simplicity, clarity and accessibility**

The formulation, structure and lay-out of legislation should be clear and comprehensible.

3.2.3 Responsibility for law enforcement

The Minister of Justice is responsible in general terms for the quality of law enforcement. This responsibility is in turn based on his responsibility for ensuring observance of constitutional standards in society and his specific responsibility for the enforcement of the criminal law. This is because inadequate observance of laws often results in an unnecessarily large demand for criminal law enforcement at a later stage [traffic, the environment and economic planning].

The Government has requested the Minister of Justice to produce a policy document on law enforcement. This document, which will shortly be presented to the Cabinet, indicates how the Minister of Justice proposes to discharge his general responsibility for law enforcement in the next few years. It will also explain how the recommendation of the General Chamber of Audit – to the effect that the Minister of Justice should draw up a comprehensive annual report on compliance with economic planning legislation – is to be implemented.

This policy document will propose ways of acquiring knowledge and experience of how legislation, particularly economic and environmental legislation, is currently enforced and of using the experience thus acquired to improve enforcement of existing legislation. Furthermore, the paper will indicate how the expertise and experience acquired can be employed in assessing the feasibility and enforceability of draft legislation.

The evaluation in question must therefore consider more than just legal issues. The multi-disciplinary expertise required for both these tasks will be posted in a unit at the Ministry of Justice, which will be charged with the duties of investigating and providing support. It will be of essential importance for this unit to have excellent contacts with the supervisory and investigative authorities and with the other ministries concerned.

3.2.4 Law enforcement in connection with crime

Towards a higher enforcement ratio

In general, it has to be recognised that the criminal law enforcement ratio – the percentage of offences resulting in action by the criminal justice authorities – has fallen to a very low level. Substantially higher ratios are achieved in neighbouring countries³. In a policy plan to be published shortly by the Public Prosecutions Department, the procurators general at the Courts of Appeal have formulated the objective of substantially increasing the enforcement ratio for

various categories of criminal offence, including burglary. In addition, the length of time needed to process criminal cases will be reduced still further.

These policy objectives have our complete support. An important component of the present policy plan is our intention to raise step by step the enforcement ratio of certain categories of crime yet to be specified. The following strategies will be applied to achieve this enforcement policy.

- a We shall urge that the plans for the police at regional and local level give priority to crime detection work and will recommend to the procurators general at the Courts of Appeal that annual priorities and targets for the detection of criminal offences and prosecution of offenders be set. The Ministry of Justice will account to Parliament for this policy in the explanatory memorandum on the Ministry's budget. Efforts will be made to ensure that when these principles are incorporated into police policy plans due account is taken first of the experience that the National Police Force has gained of management based on accountability for results⁴ and, second, of the administrative arrangement recently made between the Minister for Home Affairs and the burgomaster of Haarlem.*
- b We expect the introduction of regional police forces to facilitate the detection of serious crimes of both local and supra-local nature. Detection will often concentrate on groups of offenders. In support of the core tasks of the police in detection work, we shall work to improve the selection and training of criminal investigation staff [including those assigned to general-purpose neighbourhood teams], to develop a career policy which helps to retain the expertise of the staff for the force, and to strengthen the management of the crime detection units in the police and the Public Prosecutions Department. In order to give the police greater scope for detecting organised crime, two bills will be presented. The first bill is intended to regulate the use by the police of modern monitoring equipment such as directional microphones; such use will be possible with a warrant issued by the examining magistrate. The second bill will make it a criminal offence to engage in preparations for serious crimes such as armed robbery or arson which are obviously to be committed in association with other people.

* Under this agreement the Haarlem force will receive extra money for the period 1990-1995. The force has, according to the chief public prosecutor, set itself specific targets, for example in relation to enforcement of the criminal law. These targets include a general clear-up rate which is 5% higher than in municipalities of comparable size and is at least 25%; a lower general percentage of victims than elsewhere [-10%], which may not exceed 30%; a recorded crime rate which is at least 10% lower than the figures projected on the basis of an earlier re

- c The Traffic Regulations [Administrative Enforcement] Act [known as the Mulder Act] will be introduced as a matter of priority. The Act came into effect in the Utrecht district on 1 September last and will be gradually introduced in the other districts in the next two years. In brief, the system under the Act is that sanctions are imposed by the police and that appeal lies to the public prosecutor [i.e. appeal to a higher administrative body] and thence to the sub-district court. The Act is intended to be used for very common traffic offences which are easy to record and carry a penalty not exceeding Dfl. 500 per incident. As the entire procedure will be largely computerised, it is expected that cases will be disposed of very efficiently. If the first evaluations prove favourable, the system will be extended to other categories of common offence such as fare dodging on public transport, failure to pay the broadcasting licence fee or to pay it on time, and failure to have a statutory safety test carried out on a vehicle.
- d We shall prepare a bill to enable the police to propose an out-of-court settlement in cases of simple theft. This means that the successful 'tit-for-tat' experiments with fines for shoplifting will be placed on a statutory basis, thereby enabling this system to be used more widely⁵. The computerised information system which is needed to implement this policy on out-of-court settlements [in connection with checks on recidivism] will become operational this year on a nationwide basis.
- e In order to reduce the average duration of criminal cases, the Public Prosecutions Department will make a systematic distinction between, on the one hand, very common, less serious offences and, on the other, cases which require extra care. The former category can be disposed of by an administrative procedure, the quality of which will be monitored by the public prosecutor. Often such cases will be disposed of by an out-of-court settlement. The remaining cases are those involving the more serious forms of traditional crime, but also new categories of offence such as environmental fraud, computer fraud, fraud by employers and so forth. In such cases, prosecution should not simply be a matter of following standardised procedures but should require the personal attention of the public prosecutor in all stages of detection, prosecution and enforcement. In the future, such cases will more often be dealt with by teams of prosecutors.
- f Between 1990 and 1996 over 100 extra places will be created in institutions for hospital order patients and 100 places will be created in institutions for young people. These expansions will meet the projected demand in these sectors. The capacity of the prisons will be expanded by around 570 places. In view of the existing capacity in the prison system and the projections for the period ahead, this expansion did not need to be given priority and the extra places will not

be ready until 1993 and 1994. As matters stand at present, the projected expansions will largely but not entirely meet the projected demand for prison capacity. The actual growth of this demand will be monitored very closely, partly because the proposal to make greater use of non-custodial sanctions may curb this growth.

Matters of quality

Legal assistance

The credibility of law enforcement has qualitative as well as quantitative aspects. An essential element of law enforcement is that people who have infringed the law should be treated carefully and fairly when their cases are dealt with; this also boosts the credibility of law enforcement.

The Bar can make a major contribution to this. The fees for the provision of legal assistance by lawyers are being raised, in criminal law as in other fields. In recent years, increasing interest has been shown in criminal law practice both by lawyers specialising in legal aid work and by other lawyers. This has helped to improve the quality of the defence case⁶. The specialist courses to be provided by the reactivated institute for criminal law practice are in our view extremely worthwhile. Another gratifying development is the growing attention being paid by the Bar to the interests of businesses, organisations and private individuals who have become the victims of crime. In the past, insufficient efforts were made to develop this aspect of criminal law practice.

43

Alternative sanctions, probation and after-care

The concept of credibility in the context of the administration of criminal law should not be confused with severity. Criminal sanctions derive their credibility in part from their educational value. The survey conducted by the Research and Documentation Centre [WODC] referred to above showed that most Dutch people are sceptical about the value of custodial sentences. 96% of the respondents were, in principle, in favour of replacing custodial sentences by alternative sanctions in some cases. This endorsement of alternative sentences by public opinion is even more widespread in the case of young offenders.

We regard these striking results as an exhortation to all officials concerned with the development and introduction of alternative sentences, which can partly replace custodial sentences, to proceed with and even speed up their work. According to its policy plan, the Public Prosecutions Department intends to use alternative sentences on a much greater scale. We have set ourselves the objective of making it possible, in cooperation with the probation and after-care services, for the number of community service orders [1989: 6,000] to be increased by 10% annually up to and including 1994.

The bill that has been introduced with regard to juvenile criminal law is intended to strengthen the legal position of a young suspect. Within the limits of this new legislation, the administration of juvenile criminal law will continue to

have an educational dimension. Studies have shown that alternative sanctions are particularly effective in influencing behaviour and inculcating standards in adolescents and young adults⁷. Individual teaching projects, for example, can often help to reduce the social inadequacies which lead young people to commit offences. The HALT project provides a range of sanctions for young vandals, such as unpaid labour, payment of compensation and cleaning work, thereby enabling the offenders to make good some of the damage they have caused. This can strengthen their self-esteem and their sense of social responsibility.

Nor, in relation to adult criminal law, do we acquiesce in the view held by some people that re-education is by definition impossible within a penal context. Since community service and anti-drink-driving courses have proved effective in reducing recidivism, there is every reason to continue looking for new sanctions with educational merit⁸. The Consultative and Advisory Committee on Alternative Sanctions [OCAS] will present us with further proposals on this matter this year. In this connection, further experiments with different forms of day-imprisonment will also be carried out as part of the introduction of phased imprisonment. The prisoners will be offered a scheme aimed at their social rehabilitation which combines training and help in finding employment. The programme for expanding the capacity of the prison system takes account of the expected demand for open and semi-open prisons and institutions for day-imprisonment.

Part of the vocation of the probation and after-care service is to help offenders to re-integrate into society. This service can therefore be expected to make more time available than at present for preparing and supervising existing and new non-custodial sentences. One possibility would be a Dutch variant of the concept of intensive probation supervision developed in the United States and the United Kingdom⁹. As part of their general duty to provide assistance, the probation and after-care services will also be expected to coordinate their activities with the policy of social renewal in the district concerned. We shall ask the probation and after-care services to focus more attention on the points mentioned here in their annual activity plans in the period 1991-1994.

Victim support

To ensure an adequate basis in society for law enforcement, it is essential to have proper arrangements for victim support. We shall do whatever is in our power to speed through Parliament the passage of the bill to improve the legal position of victims of crime, which is of crucial importance to the credibility of the criminal justice system¹⁰. This bill, which has already been introduced, regulates among other things the introduction of compensation orders. The implementation of this legislation by the police and the Public Prosecutions Department will be thoroughly prepared in advance.

Good results have already been achieved in a number of towns, including Middelburg and Leiden, with a system in which the Public Prosecutions

Department and/or the police mediates between the offender and the victim about compensation for damage. This experience strengthens our conviction that satisfactory compensation arrangements can be made in many more cases than at present, under the supervision of the police or the Justice authorities. The physical protection afforded by the police and criminal justice authorities, for example to persons who have been the victims of assault by their spouses or partners, will also be dealt with by us in this context¹¹.

We realise that only the victims of crimes that have been solved will be able to benefit from the imposition of compensation orders and similar measures. Other victims will be dependent on their insurance company or on the limited opportunities for obtaining payments from a charitable body through the intermediary of the National Organisation for Victim Support. The Criminal Injuries Compensation Fund was instituted some years ago to help victims who had suffered serious physical or psychological injury. A working party instituted by us is currently drawing up proposals to improve the operation of this Fund. One of the changes envisaged is speeding up the procedure by simplifying the arrangements for the disposal of cases.

We do not consider it right that the monies required for this new policy on victims should be obtained by siphoning off resources from the budget headings for crime prevention, detection and prosecution. Support for victims should not, in our view, result in a weakening of the measures to tackle crime. This is because the very purpose of such measures is to prevent further victimization. The principle that the damage caused by crime must be recovered as far as possible from the offenders implies that the policy of victim support must be paid for in principle from the proceeds of fines and out-of-court settlements. Like in other countries such as the United States and Belgium, we intend to impose a small surcharge on all fines and settlements to be collected by the Justice authorities in cases of indictable or non-indictable offences.

Recovering the proceeds of crime

Recovering the proceeds of crime Under the Society and Crime policy plan, the efforts to detect organised forms of crime have been stepped up, partly on the basis of systematic analyses of police records. The number of arrests in connection with international drug trafficking etc. has risen¹². But the credibility of the police and criminal justice authorities in the eyes of the general public is determined to a large extent by the subsequent action taken by the criminal justice authorities in precisely these cases. It is not solely a matter of the severity of the sentences imposed. There is widespread exasperation among the general public at the seeming inability of the authorities to exact financial retribution for the crimes in question by depriving the offenders of the gains derived from their crimes. We shall do our best to bring about a considerable expansion of the statutory means available for this purpose. To this end we have already introduced a lengthy bill. Further bills on this subject will have to be introduced

as a result of the increasing need for international cooperation in this field and for the co-ordination of legislation and policy at international level.

3.2.5 **The core of the child care and protection system**

In recent years the official child care and protection system has undergone a metamorphosis as a result of the social and cultural factors described above. Owing to the large number of divorces, the role of advising the courts on civil aspects has grown both in quantity and in difficulty. The criticism levelled against the Child Care and Protection Boards mainly concerns their recommendations on parental authority, guardianship and parental access arrangements¹³. Major innovations in the provision of help to children included the greater emphasis on voluntary arrangements, the child's own motivation and the preference for non-residential forms of assistance. This is one reason why many of the residential facilities have been transferred to the Ministry of Welfare, Health and Cultural Affairs in recent years.

It should be noted that the limits of these changes have now been reached. Where voluntary assistance achieves insufficient results, the official child care and protection service should intervene effectively to protect the vulnerable interests in question. Recent investigations of cases of child abuse, sexual or otherwise,¹⁴ and studies of crime, prostitution, drug abuse and gambling addiction among groups of young people¹⁵ reveal a grim and sad reality. It would in our view be a completely misplaced interpretation of the notion of tolerance if we were to close our eyes to such cases. The provision of assistance on a voluntary basis is often insufficient here.

The policy of the Child Care and Protection Boards will be redirected in such a way as to concentrate on its core tasks in the Justice field, namely applying to the courts for orders and advising the juvenile court judges in civil and criminal law cases.

We gladly endorse the opinion of the Committee on the Task and Functioning of the Child Care and Protection Boards¹⁶ to the effect that there are no major shortcomings in the procedure of the Boards, but that it would be advisable to explain more clearly to the parents and children the purpose of contacts [e.g. investigation of whether a family supervision order or a formal parental access arrangement would be desirable]. Clients should never be left under the misapprehension that the Board's representative is giving non-binding advice on upbringing or providing help on a voluntary basis. The information on the possible legal implications of the contacts will be improved. In view of the great interests which can be at stake in the case of child care and protection measures, decisions must be taken with extreme care. In principle, we are in agreement with the recommendation that the Boards should call in external advisers from other disciplines more frequently. Once a decision has been reached carefully and in accordance with proper legal safeguards, it is essential that – as in other

fields of law – the order finally made by the court should be implemented quickly and adequately. It should be noted that this sometimes creates problems. Family supervision orders made by a court may sometimes have to be cancelled simply because the facilities required for implementation are not available. One of the difficulties is the lack of capacity in both closed and open institutions¹⁷. The capacity of the institutions for young people is to be increased by over 100 places. Consultations are being held with the Ministry of Welfare, Health and Cultural Affairs to find how the placement of children requiring intensive supervision in a closed institution can be guaranteed.

Some other major shortcomings in the implementation of the core tasks are, in our view, the absence of a clearly structured rehabilitation system for young offenders and of an adequate system for the provision of assistance by the Justice authorities to young offenders in general and young offenders of foreign descent in particular¹⁸. Locally, we have backed various experimental projects involving rehabilitation for young people and targeted assistance for Moroccan adolescents. In order to increase the scope for assistance to older minors, we will introduce a bill for the creation of a new civil law measure [the 'aid and support' order]. In this way we hope to introduce a new instrument for the provision of intensive supervision by experienced adults of young people aged 16 to 18 years who are having problems integrating into society. These proposals will be elaborated in the policy document on child care and protection by the Justice authorities which will be published shortly.

47

3.2.6 Priority for refugees

In brief, the Dutch policy on admissions is that aliens are admitted only for the purpose of family reunification or for other pressing reasons of a humanitarian nature and for reception as a refugee, or if admission is in the interests of the Netherlands. In practice, there are large numbers of aliens who do not meet these requirements. Some of them stay in the Netherlands illegally. Others report as asylum-seekers without having any reasonable grounds for claiming the status of refugee. Of those seeking asylum, on average only around 20% are ultimately eligible for a residence permit as a refugee or on some other basis.

As a result of the huge flood of people unjustifiably claiming asylum, genuine refugees are experiencing difficulties. Long-drawn-out procedures sometimes lasting as much as two years are unfortunately by no means exceptional. Furthermore, the social consensus supporting their presence is weakened by the problem of illegally resident aliens. However, there is no real means of drastically curbing the flow of illegal immigrants.

All Western countries are faced with the practical impossibility of keeping a watertight check on the borders to prevent the entry and presence of illegal aliens. We propose to organise the admission procedures in such a way that

unfounded requests can be disposed of speedily. We shall also take steps to strengthen the supervision of aliens once they have entered the country and to facilitate the expulsion procedure. It will thus be necessary to create capacity in the aliens departments of the regional police forces which are soon to be set up and other government services in order to carry out expulsions and exercise supervision of aliens. In addition, sufficient cell space will have to be available in remand centres and police stations to hold aliens in custody while identification procedures etc. are carried out. It follows that the aliens departments will carry out more checks and exercise more supervision and do so on a larger scale. Better cooperation and the exchange of information between government and semi-government bodies and the aliens departments will create the conditions necessary to improve expulsions policy. An office to promote the return of illegal immigrants to their country of origin will also be opened in 1991.

Integration into Dutch society

If a request for admission is granted, Dutch society must also have the means to provide a hospitable reception for the alien in question. Government policy with regard to aliens should not be concerned exclusively with admission, supervision and expulsion. The provision of a hospitable reception and, in so far as the residence is not of a temporary nature, integration of aliens who have been granted entry should also be objectives of government policy. The Ministry of Justice will contribute to this government policy by focusing more attention than hitherto on the development of an active policy of anti-discrimination: hospitality is after all inconceivable in a climate in which discrimination flourishes.

Conversely, it is reasonable to expect the alien to be prepared to form a real part of Dutch society, for example, by displaying the willingness to participate in integration programmes, possibly with the ultimate object of acquiring Dutch nationality. The number of naturalisations has increased sharply in recent years. The capacity to process applications for naturalisation will be adjusted to ensure that the period required for processing them does not increase. Through the systematic provision of information, we shall actively promote the naturalisation of people who have been integrated into Dutch society.

Europe 1992

The Netherlands has argued that there should be freedom of movement within the states that are parties to the Schengen Agreement, for all aliens who have been admitted to one of the states concerned. It has also adopted the same principle as its starting point in EC negotiations. Implementation of the principle presupposes increasing cooperation between states both when granting admission and when expelling aliens.

Essential elements of such cooperation are a harmonised policy on visas,

a computerised system for the exchange of information and a system for settling expulsion costs. The greatest possible agreement should also be reached between the EC countries on the principles of asylum policy.

A study is at present in progress to ascertain the scope for harmonising substantive law on asylum in the member states. Although important national principles of asylum policy should not be abandoned, efforts should be made gradually to harmonise these matters in Europe.

3.3 **Network formation and public participation**

3.3.1 **Organisation of general legislative policy**

The Ministry of Justice is responsible for developing general policy on legislation and administering its implementation [the review work proper]. This new and more far-reaching responsibility requires adjustments to the Ministry's own internal organisation. The General Legislative Policy Department, which has been established for this purpose, will therefore be enlarged.

An essential condition for the success of the legislative policy is the development of close links with other ministries. First of all, contact is required with the Ministry of Home Affairs for review of legislation in the light of the Constitution and for decentralisation matters, with the Ministry of Foreign Affairs for review in the light of Community and international law, and with the Ministry of Economic Affairs regarding the burden on trade and industry. In addition, consultations will have to be held at the earliest possible opportunity with all legislative departments whose bills are being reviewed. This is one reason why we consider it desirable that central legislative departments with which permanent cooperative links can be established should, in principle, be instituted in all ministries. This formation of a network in the legislative field will be promoted where possible by the secondment of legislative drafting staff to other organisations. One or more members of the Public Prosecutions Department will also be seconded to the General Legislative Policy Department to help assess the effect of proposals for criminal sanctions in draft legislation in terms of the expected burden on the police and criminal justice authorities.

3.3.2 **European frameworks**

At present the Dutch legal order is undergoing a gradual process of 'Europeanisation', which is bound to continue in the future. Attempts to reverse this process and prevent the creation of a legal superstructure consisting of the common legal and social order are in our view both undesirable and doomed to failure. This does mean, however, that the creation of European law requires more attention. It is not without reason that in the public debate on the European Community arguments are put forward for strengthening democratic

control over the decision-making process within the Community. In addition, the quality and legal content of EC regulations require attention. The predominantly economic character of current cooperation within the Community may well result in the undesirable situation of primacy being accorded to economic rationality in the legislation.

A predominantly economic approach could easily cause imbalances in the developing legal order of the Community. For example, reference can be made to the initiatives at present being taken by the European institutions in respect of law enforcement. Understandably, financial considerations tend to be decisive [measures to combat fraud with EC subsidies]. The constitutional quality of European society should not, however, be overlooked. We fear that an attempt to safeguard the national legal order from European influences will in practice result simply in the law being subordinated to the economy in Europe¹⁹. The legal activities of the Council of Europe are insufficient to counterbalance this.

The conclusion which we draw from this analysis is that the adoption of a non-committal or defensive attitude to European law would be counter-productive. We therefore advocate a positive attitude in principle to the Europeanisation of the law. A European approach is particularly desirable in areas of the law which are in a state of flux, e.g., concerning information and communication.

A subject which is especially well suited to Europeanisation is economic and environmental legislation, since it reflects cultural values only to a limited extent. Owing to the nature of the subjects in question, there will also be an increasing need for coordination in the context of the EC of the law and policy on aliens and of significant parts of company and banking law.

In principle, however, the future Europeanisation of the law should not go further than is necessary for achieving the objectives of the European Community. One reason why this is important is to protect Dutch cultural values and Dutch law as parts of the national culture. In each case, therefore, it is necessary to examine whether legislation is preferable at European or national level. By way of illustration, we would point to the fact that Dutch criminal law on the possession of firearms is in some respects relatively strict, whereas its policy on prostitution and drug use is relatively tolerant. This reservation does not, it should be noted, preclude intensive cooperation in these fields too, for example, with regard to cross-border activities such as combating organised crime or regulating certain kinds of medical experiments. The choice of which European forum is most suitable can be made from case to case. In short, therefore, we opt for what is in principle a positive attitude to the increasing Europeanisation of the law in the context of the EC, but make at the same time an emphatic reservation in respect of areas such as family law and criminal law in which national cultural values play a major role.

On the basis of an approach to be elaborated in this spirit of constructive criticism, we hope to be able to help guide the development of European law in

the years ahead. Whenever legal matters are dealt with in the United Nations, we shall endeavour in principle to reach a collective position with the other member states of the EC.

3.3.3 **Police cooperation in Europe**

The developments taking place in the framework of the Schengen Agreement and the completion of the single European market in 1992 mean that the Public Prosecutions Department and the police are increasingly having to take account of an international dimension. This means in the first place that they must find time to respond quickly and effectively to requests from abroad for assistance with investigations.

In combating organised crime, Dutch public prosecutors and police officers too should seek assistance from abroad more frequently. In addition, the Public Prosecutions Department and the police – particularly in the border areas – should draw up a list of permanent wishes regarding international cooperation and indicate the priorities. This is also of strategic importance because the Netherlands will only be able to exercise real influence on the structures to be created for police cooperation in Europe if it plays an active role²⁰.

In matters connected with combating crime, the National Criminal Intelligence Service [CRI] is the central body best suited to liaise with other countries, in close cooperation with the Public Prosecutions Department. This means that the Service must be involved in important contacts between Dutch and foreign police authorities. In this connection, the basic principle is still that the Dutch police should refrain from taking part in attempts to bring Dutch nationals within the jurisdiction of a foreign power, unless there is a specific statutory basis for this.

3.3.4 **The administrative functions of the Public Prosecutions Department**

The institution of a criminal prosecution can support the efforts of other bodies in the administrative and police fields. A selection is made by the Public Prosecutions Department partly on the basis of considerations of principle and partly on the basis of available capacity within the legal system. This means that it is necessary for the Public Prosecutions Department and the executive to hold intensive consultations together within the various enforcement networks about priorities and new initiatives.

In recent years, the Public Prosecutions Department has used its best endeavours to improve coordination between the crime detection work of the police, the work of the special investigative services and its own policy on prosecutions. In most parts of the country, it has also become customary for agreements to be made in the tripartite discussions between the burgomaster,

the chief public prosecutor and the police chief regarding an integrated approach to various kinds of crime. If the Public Prosecutions Department is asked to prosecute certain cases as a matter of priority, it sometimes makes its agreement conditional on a greater preventive effort by the executive or other interested parties. Special consultative arrangements may also be made on a local basis, for example in order to tackle social security fraud and fraud by employers. In many areas, it has been realised that the best results can be achieved by a judicious combination of preventive measures, administrative law remedies and civil and criminal law enforcement.

The Public Prosecutions Department is an essential link in the contacts between the administrative and police authorities on the hand and the courts on the other [figure 7]. As mentioned previously, the Public Prosecutions Department coordinates its prosecutions policy with the activities of the police and the executive. This policy, with broad public support, is then presented by the Public Prosecutions Department to the court. The opinion of the court is then considered in the consultations with the executive and the police. The social effectiveness of the criminal justice system is becoming increasingly dependent on the extent to which the Public Prosecutions Department succeeds in properly fulfilling this coordinating role.

Figure 7 Coordinating role of the Public Prosecutions Department [PPD]



In the years ahead the administrative responsibilities of the Public Prosecutions Department will be considerably expanded. As mentioned previously, the Public Prosecutions Department will be closely involved in the management of the regional police forces and will therefore have to contribute to the preparation of the annual policy plans²¹. In order to reflect in these plans the national, regional and district priorities for the prevention and detection of criminal offences and the prosecution of offenders, the Department will have to hold intensive consultations with the relevant partners.

Structured consultation with the judges and the representatives of the probation and after-care service and the child care and protection service regarding the implementation of alternative sanctions [e.g. unpaid work] is already taking place in various districts and will be extended in due course to all

districts. The recruitment, training and career policy of the Public Prosecutions Department will be geared to these new externally-oriented functions.

Integrated enforcement of environmental legislation

In the implementation of the National Environment Policy [NEP] Plan, the Public Prosecutions Department will provide credible judicial back-up for the administrative and supervisory activities of other bodies. The Department's planned approach distinguishes between petty and widespread environmental offences, on the one hand, and serious environmental crime [whether organised or otherwise], on the other. The strategic approach to the former category presupposes systematic and planned enforcement.

The 500,000-odd establishments which hold licences will have to be checked regularly and thoroughly. In this connection, moves will have to be made gradually to reduce the number of situations in which infringements are tolerated. This strengthening of administrative supervision can be supported by arranging for the police to take part in inspections. When inspections have to be repeated, an official police report will, if necessary, be drawn up and followed by a prosecution. The executive, official inspectors, police and Public Prosecutions Department should therefore work very closely together and present a united front to the target groups.

It is of great importance that both the administrative support role played by the police and the police's expertise and capacity with regard to the enforcement of environmental legislation should be strengthened. As part of the project instituted by the Ministers of Justice and Home Affairs for the enforcement of the NEP Plan by the police, the relevant police units will be strengthened again in the years ahead. The main role in tackling serious environmental offences is therefore to be played by the police and criminal justice authorities. Much of this crime is of a cross-border nature and should therefore be tackled in consultation with the authorities abroad. If the offenders are identified, the relevant executive should examine whether civil law proceedings can be taken to compel them to carry out a soil clean-up and/or pay compensation.

3.3.5 Preventive policy on aliens

In order to achieve its objectives, the Ministry of Justice will seek to obtain the cooperation of other administrative bodies in relation to aliens policy as in other fields. Consultations will be held to discuss what we consider to be the incorrect provision of certain public services to illegal aliens. Such action frustrates the democratically agreed policy on aliens and undermines its credibility.

A second priority is consultations with the Ministry of Foreign Affairs and its Directorate-General for International Cooperation regarding the policy to

prevent or restrict the flow of immigrants by the selective disbursement of aid funds. One of the points which will be examined will be the scope for reception in the migrants' own region. This preventive policy on aliens will also have to be developed in a European framework.

3.3.6 Public participation

Legal self-help

The greater assertiveness of the general public means that they are now more inclined – and also more able – to defend their own rights. This new-found assertiveness, combined with the higher educational level of the population at large, has increased the scope for legal self-help, i.e. people's ability to settle a dispute, if necessary after obtaining legal advice, in a way which is satisfactory to all parties.

Between 1982 and 1987, the number of assignments of counsel to provide advice rose sharply, namely by 44% [the total number of assignments rose by 10%]. This upward trend shows beyond doubt that there is a growing need for legal advice. The legal profession in the Netherlands does not have a monopoly on the provision of legal advice. Such advice is also given on a large scale by the advisory departments [which we subsidise] of the trade union federations, legal advice centres, legal assistance insurers, notaries, bailiffs and numerous other organisations. In view of the continuing growth of the expenditure on legal advice and assistance – which has been increased on a structural basis for the coming years by a sum rising to Dfl. 50 million – we shall be forced to make certain changes to the legal aid system. These changes will mean among other things that the provision of legal advice will become the responsibility of the legal advice centres to a greater extent than previously. In this way, we propose to prevent a further rise in the costs of assignments of counsel, without having to raise the limits for obtaining legal advice.

We also regard the introduction in the General Administrative Law Act of a compulsory procedure for the lodging of objections to be a way of encouraging self-help in the settlement of disputes. This helps to ensure that disputes between government bodies and individuals are resolved as far as possible without recourse to the courts. When assessing draft legislation, we shall in each case expressly consider other options, e.g., disciplinary proceedings, conciliation services and arbitration [along lines to be specified in the legislation], once again because of the importance of self-help. If necessary, the participation of the judiciary in forms of disciplinary proceedings etc. will be encouraged.

Social responsibility and crime prevention

The designation of certain acts as a crime means that the majority of the Members of Parliament have pronounced a moral judgement on them. As a rule, this judgement has the support of the great majority of the general public. We

may therefore expect that non-governmental organisations and private individuals will do everything in their power to prevent infringements of these norms in their own circle. In the same way that the individual is not relieved of the primary responsibility to earn his own living merely by the existence of the welfare state, so the existence of a constitutional government does not relieve individuals of their duty to uphold the legal order by ensuring that standards are observed in their own circle. We shall endeavour to involve the general public more closely in the enforcement of the law in various fields.

The social and administrative prevention of crime is an important spearhead of the policy of promoting public participation in the enforcement of the law. In consultation with the Minister for Home Affairs, we shall vigorously encourage the taking of security measures by private individuals, municipalities and businesses. One way in which we will do this is by strengthening the position of the Crime Prevention Organisation within the new regional police forces²². In consultation with the Minister of Housing, Physical Planning and the Environment, we shall examine whether it is possible to include in the building regulations minimum technical crime-prevention standards for the security of new dwellings. Moreover, campaigns involving combinations of administrative and criminal justice measures to combat bicycle theft will be prepared in cooperation with the Ministry of Transport, Public Works and Water Management and carried out on a local basis.

In consultation with the Minister for Home Affairs we shall take steps to increase the number of officials carrying out supervision duties on behalf of municipal services in parks and town centres [city guards]²³. In addition, we shall urge that the security of commercial premises, shopping centres, etc. as provided by private security firms should be improved both quantitatively and qualitatively. We believe that the touchstone of success for these forms of supervision and security is good cooperation with the police and criminal justice authorities, in order to safeguard democratic control and ensure that the work of the various organisations is properly coordinated.

The police themselves will be able to carry out their preventive and other duties more intensively if the institution of police auxiliaries is introduced on a more permanent footing. A number of forces already have officials of this kind, although they are known by differing names²⁴. Consultations will be held with the police organisations on this subject. Another way of stepping up the crime prevention efforts of the police would be, as previously proposed, to convert the reserve police force into voluntary auxiliary police. Moreover, the use of volunteers to carry out light police duties can help to step up preventive efforts at little extra cost.

However, the concept of prevention in the 1990s will have to cover more than just the protection of one's own interests or property against external threats. Crime prevention measures will also have to inculcate a greater sense of responsibility in individuals and private organisations for the observance of legal

norms in their own circles. To this end, we shall not fail to make an urgent and continuing appeal to all sectors of society, among other things by means of an active information campaign.

Pursuant to a recommendation made by the Council for Youth Policy, we shall arrange for more attention to be paid, particularly in primary schools, to the teaching of social standards, for example by the provision of suitable teaching material²⁵.

In our view, the process of social renewal instituted in the larger municipalities by the government will also have to include cultural renewal in normative terms. By this we mean that the target groups of this policy must be encouraged to improve residential discipline in their own neighbourhoods, for example by appointing neighbourhood caretakers to carry out supervisory duties and involving the residents in the upkeep of public gardens and playgrounds²⁶. If desired, subsidies will be made available to the relevant municipalities and housing associations for comprehensive neighbourhood crime prevention projects. These will be linked to the policy of social renewal.

Steering committees or working parties for crime prevention have been established in the majority of the larger municipalities²⁷. These groups differ widely in their administrative position and composition as regards participation by representatives of the police, the Public Prosecutions Department and other organisations [e.g. the Chamber of Commerce]. Together with the Minister for Home Affairs and in close consultation with the Association of Netherlands Municipalities [VNG], we shall take initiatives to strengthen still further the organisation of crime prevention at local level.

In order to involve other government ministries more closely in the creation of favourable structures for crime prevention, the Interdepartmental Steering Committee on Crime Prevention will be revitalised and expanded. The following ministries will take part in it: General Affairs; Justice; Home Affairs; Education; Housing, Physical Planning and the Environment; Transport, Public Works and Water Management; Economic Affairs; Welfare, Health and Cultural Affairs.

3.3.7

Involvement of society in child care and protection, implementation of sentences, and probation and after-care

Members of the general public have traditionally been represented in the management of the child care and protection system [Child Care and Protection Boards, guardianship and family supervision institutions] and the probation and after-care system [the federation and local associations]. We shall continue to actively promote this participation, albeit in a form modified to suit today's needs. The decentralised structure of the organisations also provides good opportunities for cooperation with municipal and provincial services and the establishment of networks.

It is in keeping with our policy of participation that volunteers should be

more closely involved in the provision of victim support and the discharge of after-care and child care and protection duties. Reference should be made in this connection to the activities [which are partly financed by us] of VOICES [Association for the support of initiatives in the field of crime and society] and to the study carried out by the Society and Police Foundation into ways of increasing the ability of individuals to cope in society. We are prepared to support experiments in this field. With our help, a joint study project on the theme of convictions and citizenship is being carried out by the Catholic Council for Church and Society, the Protestant Church and Society Multi-Disciplinary Study Centre, and the Humanist Association.

A good example of the non-governmental schemes advocated by us is the attempt by teachers, social workers and juvenile police in some municipalities to consult the fathers of Moroccan juveniles in trouble with the police in order to find solutions to their involvement with drugs and crime. We also regard foster families as an extremely important form of public participation in child care and protection. We will therefore allocate extra funds for the selection and guidance of foster families.

Cooperation will also be sought with other organisations in connection with prosecutions and implementation of punishment and greater scope will be created for private initiatives. Alternative sanctions such as unpaid labour are already being implemented in the community, owing to the efforts of non-governmental organisations. This greatly benefits the social reintegration of offenders. Another example of private initiative in this field is the out-of-court settlement project in criminal cases in Amsterdam, in which – if cases are not prosecuted – compensation settlements are arranged by the Humanitas organisation between offenders and the victims of their offences. Local schemes are also being prepared for the creation and reservation of jobs for prisoners and ex-prisoners. We see good opportunities for allowing prisoners in the last stage of their sentence to take part in training and job-experience projects arranged under the social renewal programme. Ex-prisoners too should be allowed to benefit as much as possible from the facilities and measures provided in the context of social renewal. As mentioned previously, there is an important task here for the probation and after-care service. In preparing and implementing these activities aimed at ensuring that ex-prisoners find work quickly, the Ministry and the probation and after-care service will work closely with the municipal services and the Regional Employment Boards, and where possible with non-governmental organisations, in connection with arrangements for training, benefit payments, accommodation and employment²⁸.

57

3.3.8 Summary and conclusions

In the years ahead we shall do our utmost to broaden Justice policy by involving other government bodies and non-governmental organisations in

various areas. One way in which this will be done is by closer cooperation with other ministries in reviewing draft legislation and monitoring law enforcement. The Public Prosecutions Department will seek closer contact with its police and administrative partners in enforcing the law. As regards the rehabilitation of prisoners, a link will be established with the social renewal policy of the municipalities. Finally, steps will be taken with others, both in the Netherlands and abroad, to develop a preventive policy on aliens. This policy requires an adjustment to the culture of the Justice authorities in the sense of more openness and the formation of external networks. We shall also support initiatives for a gradual 'Europeanisation' of appropriate areas of law.

We shall also aim to involve the public at large more closely in law enforcement. We believe that the officials responsible for Justice tasks should not only seek to solve other people's legal problems for them but also help other people to tackle their own legal problems. This is not to say that the law must take a step back. In many areas, legislation and law enforcement are indispensable in today's complex and in many respects vulnerable society. The responsibility for this should, however, rest with the members of the general public and their organisations. In some situations the provision of rules and regulations may, subject to certain conditions, be left wholly or partly to the relevant sectors [self-regulation]. More often it will be necessary to call on society as a whole to help to uphold the law [public participation]. Participation by individuals and non-governmental organisations will be promoted not only in connection with crime prevention but also in relation to the activities of the police, the probation and after-care service, the child care and protection service and the victim support organisations.

3.4 Modernisation of organisation and management

Excessive attention to careful procedures and decision-making processes has meant that, in the past, insufficient attention was paid to the efficiency of legal care. In past years radical improvements to the operation of the courts, the Public Prosecutions Department and the Aliens Affairs Directorate of the Ministry of Justice were started without delay. The courts and district prosecutors' offices carried out experiments with smaller, integrated management units at local level.

Experience was also gained with a system involving a single manager [the director of court support services] for all the court services in a given district. As regards the administration of the criminal law, major parts of the large-scale Compas computerisation program will be introduced nationwide this year.

In the period ahead, vigorous efforts will be made to continue modernising the way in which the courts operate in terms of both the management structure and computerisation. A director of court support services will be appointed in all districts before the year is out. Over the next

three years, the first stages of the reorganisation of the judiciary will be implemented. The first step in this far-reaching reorganisation will be to integrate the social security/public service tribunals and the district courts, and for the courts of first and second instance to deal with the cases under the Administrative Decisions Appeals Act [AROB]. At the same time, a start will be made on the second stage, i.e. the integration of the sub-district courts and the district courts. While this reorganisation is under way, the accommodation of the courts will be fundamentally improved.

In order to be able to cope with the hugely increased workload, the establishment of the Aliens Affairs Directorate of the Ministry of Justice increased from 124 staff in 1985 to over 500 in 1990. Much attention has been paid in recent years to improving efficiency in the application of the Aliens Act. This led to a regionalisation of the Directorate and a more business-like approach. Efficiency will continue to be the focus of attention. Recently, we appointed a committee of experts to advise on organisational aspects of asylum policy.

The formation of regional police forces will make it easier to organise the investigation of criminal offences, particularly the more serious ones, on a more efficient basis and to coordinate investigation and prosecution policy. The national services will be grouped together in a separate police force under the control of the Minister of Justice. As stated above, the Public Prosecutions Department will be given a new and extremely important role in the new police system. Organisational arrangements will be made to provide for this. The cooperation between the relevant departments of the Ministry and the Public Prosecutions Department will be intensified.

In carrying out their duties, the police are making increasing use of computerised data processing facilities. The application of modern information technologies for police work will be vigorously supported by us. In this connection, the system will have to be closely coordinated with that of the Public Prosecutions Department, whose computerisation process will also enter a decisive stage in the next few years.

In various places in the Netherlands the criminal justice units of the police are receiving assistance from what are known as Financial Support Offices. The costs of this experiment are more than offset by the proceeds of the assets seized. The results are such that steps will be taken, together with the Minister for Home Affairs, to establish offices of this kind in all future police regions, since the relevant bill – which has already been introduced – will actually increase the powers of the police in this respect.

The measures already taken to modernise the management process at the Ministry itself – for example, measures to devolve the management of field services and organisations and to designate overall managers at the level of director – will be continued. From 1992 onwards, annual activity plans – containing quantitative targets wherever possible – will be drawn up in all

sectors and at all levels of the organisation. These plans will enable policy to be evaluated and, where necessary, adjusted. Under the new arrangement, the overall managers will in principle be responsible for the computerisation programs in their own policy fields. A central unit will monitor coordination between the programs within the framework of the prescribed general information architecture. This unit will also be responsible for the infrastructure of the computer system and for ensuring its security.

Although the Research and Documentation Centre [WODC] of the Ministry of Justice has made an important contribution in recent years to the development and scientific evaluation of criminal justice policy, we consider that academic research is underdeveloped in many fields relevant to the Ministry of Justice. We therefore intend to provide vigorous support for empirical legal studies [criminology and sociology of law] and for comparative law research by providing larger and more systematic subsidies for university research. To modernise the operation of the law, we finally consider that external communications too must be strengthened.

In summary, we propose that the lack of interest in matters of organisation and efficiency which sometimes manifested itself in the criminal justice organisation in the past should be remedied in such a way that constant attention will be paid to the organisational and management aspects of legal services in the future.

3.5 Summary and conclusions

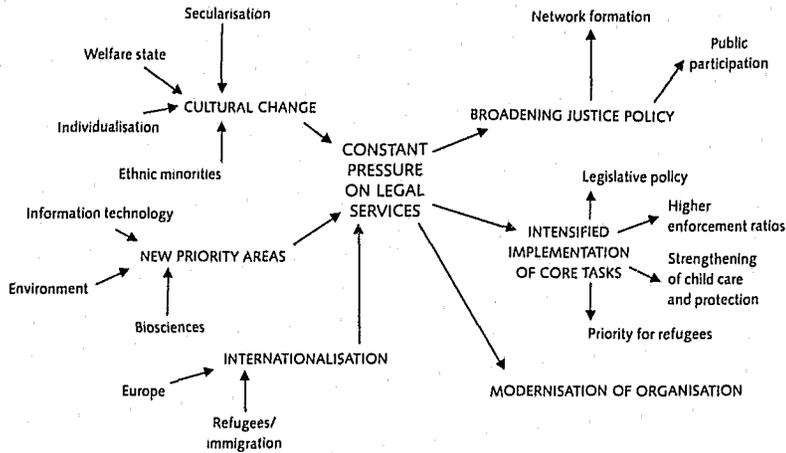
The policy proposals for the years ahead can be summarised as follows. The greatly increased demand for legal services makes it essential to carry out a strategic reorientation of policy. We believe that in the next few years Justice policy will have to be based on the following three general principles:

- a intensified implementation of Justice's core tasks of making the law, enforcing the law [investigation, prosecution and execution of sanctions] and applying the law [child care and protection and aliens policy];
- b formation of networks with other administrative bodies and encouragement of public participation in enforcing the law;
- c modernisation of the organisational infrastructure and mode of operation.

Figure 8 illustrates the problem analysis made in chapter 2 and the policy conclusions drawn in this chapter.

The next chapter contains a summary of the main measures for achieving the above objectives in the period 1990-1994. It concludes with a survey of the extra expenditure budgeted for this policy.

Figure 8 Diagrammatic representation of Law in Motion



Footnotes

- 1 Samenleving en criminaliteit [Society and Crime, 1990]
Eindrapport over de uitvoering van het beleidsplan Samenleving en criminaliteit door het openbaar ministerie [Final report on the implementation of the Society and Crime policy plan by the Public Prosecutions Department]
The Hague, February 1990
- 2 Commissie voor de toetsing van wetgevingsprojecten [Committee for the assessment of legislative projects] [1989]
Verslag van de werkzaamheden van de Commissie voor de toetsing van wetgevingsprojecten in het parlementaire jaar 1988-1989 [Report of the work of the Committee for the assessment of legislative projects, in the Parliamentary Session 1988-1989]
Lower House Parliamentary Session 1989-1990, 21300 no. 7
- 3 Wetenschappelijke Raad voor het Regeringsbeleid [Advisory Council on Government Policy] [WRR] [1988]
Rechtshandhaving [Law Enforcement]
The Hague: Government Printing Office
- 4 Korps Rijkspolitie [National Police Force, 1990]
Op weg naar 2000: een andere kijk op bedrijfsvoering [En route to 2000: a different look at operational administration]
Voorburg: National Police Force, General Inspectorate
- 5 Koolen, L.J.M., C.J. Wiebrens and E. van den Berg [1988]
Geslacht of niet geschikt: een evaluatie van de lik-op-stuk experimenten [Suitable or unsuitable: an evaluation of the tit-for-tat experiments]
The Hague: WODC
- 6 Spigt, L. [1990]
Advocatuur en de rationaliteit in de strafrechtpleging [Defence pleading and rationality in the administration of criminal justice]
Justitiële Verkenningen, vol. 16, January/February
- 7 Kruissink, M. and C. Verwers [1990]
Halt: een alternatieve aanpak van vandalisme, eindrapport van een evaluatie-onderzoek naar Halt-projecten [Halt: an alternative approach to vandalism, final report of an evaluation study of Halt projects]
The Hague: Government Printing Office
Laan, P.H. van der, and A.A.M. Essers [1990]
De Kwartaalcursus en recidive: een onderzoek naar de effecten van het experiment Kwartaalcursus [The quarterly course and recidivism: a study of the effects of the quarterly course experiment]
Arnhem: Gouda Quint
- 8 Tulkens, H.J.J. [1988]
Graden van Vrijheid [Degrees of Freedom]
Arnhem: Gouda Quint
Witvliet, L. [1990]
Alternatieve straf als basis voor nieuw sanctiebeleid [Alternative sentences as a basis for a new policy on sanctions]
VrijSpraak, vol. 4, no. 4
Dijk, J.J.M. van [1989]
Strafsanktionen und Zivilisationsprozess
Monatsschrift für Kriminologie und Strafrechtsreform, vol. 72, no. 6, pp. 437-450
- 9 Home Office [1990]
Supervision and punishment in the community: a framework for action
London: HMSO
Home Office [1990]
Partnership in dealing with offenders in the Community, a discussion paper
London: HMSO, April 1990
Junger-Tas, J. [1990]
Alternatieve Sancties in de Verenigde Staten [Alternative sanctions in the United States]
Delikt en Dellinkwent, Juni 1990
Byrne, James W. [1990]
The future of intensive probation supervision and the new intermediate sanctions
Crime and Delinquency, vol. 36, no. 1, pp. 6-41
- 10 Groenhuijsen, M. [1985]
Schadevergoeding voor slachtoffers van delicten in het strafgeding [Compensation for victims of criminal offences]
Nijmegen: Ars Aequi Libris

- 11 Vrouwen Opvang Rijnmond [Rijnmond Women's Reception Centre] [1990]
 Aanbevelingen congres Met het Oog op de Dader [Conference recommendations from 'With an eye on the offender']
 Rotterdam, May 1990
- 12 Couzijn, J.C.M. [1989]
 Misdaadanalyse en strategiebepaling [Crime analysis and strategy determination]
 Tijdschrift voor de Politie, vol. 51, no. 7, pp. 326-331
 CRI [1990]
 National Criminal Intelligence Service, 1989 annual report
 The Hague: CRI
- 13 Gijsbers, A.J. [chairman] [1990]
 Rapport van de Commissie Taak en Functie Raden voor de Kinderbescherming [Report of the Committee of the Task and Function of the Child Care and Protection Boards]
 The Hague: Ministry of Justice
- 14 Draijer, Nel [1988]
 Seksueel misbruik van meisjes door verwanten [Sexual abuse of girls by relatives]
 The Hague: Ministry of Social Affairs and Employment
 Seksuele kindermishandeling en Justitie [Sexual abuse of children and the Ministry of Justice]
 theme issue of *Justitiële Verkenningen*, vol 6, 1989
- 15 Langemaat, G. van de [1989]
 Jongensprostitutie, een carrière van betekenis [Adolescent male prostitution]
 Jeugd en Samenleving, vol. 19, no. 4, pp. 211-233
Hoeven, Erik van der [1989]
 Deviantie en Integratie: opgroeien in de Nederlandse samenleving [Deviance and integration: growing up in Dutch society]
 De Lier: *Academisch Boeken Centrum*
Diessen, P. and J. Overbekking [1989]
 Gokken in Deventer en Nijmegen [Gambling in Deventer and Nijmegen]
 Research into the extent, nature and development of gambling behaviour in the municipalities of Deventer and Nijmegen
 Deventer/Nijmegen, 1989
- 16 Gijsbers, A.J. [chairman] [1990]
 Rapport van de Commissie Taak en Functie Raden voor de Kinderbescherming
 [Report of the Committee of the Task and Functioning of the Child Care and Protection Boards]
 The Hague: Ministry of Justice
- 17 Laan, P.H. van der [1990]
 Wel geplaatst, maar... An initial survey of the problem of young people who are difficult to place in residential establishments and the associated capacity problems
 The Hague: WODC
- 18 Loef, C.J. [1988]
 Marokkaanse daders in de Amsterdamse binnenstad [Moroccan offenders in Amsterdam city centre]
 Amsterdam: Municipality of Amsterdam, Research and Statistics Department
Junger, M. and M. Zeilstra [1989]
 Deviant gedrag en slachtofferschap onder jongens uit etnische minderheden [Deviant behaviour and victims among boys from ethnic minorities]
 Arnhem: Gouda Quint
Werdmoelder, Hans [1989]
 Een taboe doorbroken: Marokkaanse jongeren en criminaliteit [A broken taboo: Moroccan adolescents and criminality]
Intermediair, vol. 25, no. 12, pp. 17-23
- 19 Hirsch Ballin, E.M.H. [1990]
 Rechtsstaat, Europa en nationale politiek [Constitutional government, Europe and national politics]
 Address given at the spring congress of the Management Science Association, 5 and 6 April
Scheltema, M. [1990]
 Europese integratie: verzwakking van de rechtsstaat? [European integration: weakening of constitutional government?]
 Address given at the spring congress of the Management Science Association, 5 and 6 April

- 20 Fijnaut, Cyrille [1987]
De Internationalisering van de opsporing in westelijk Europa [The internationalisation of criminal investigation in Western Europe]
Panopticon, vol. 8, no. 4, pp. 300-320
- 21 Politiebestel [Police organisation] [1990]
Een nieuw politiebestel In de jaren '90 [A new police organisation in the 1990s]
Lower House Parliamentary Session 1989 – 1990, 21461, nr. 1
Reorganisatie politie [Police reorganisation] [1990]
Letter from the Ministers of Justice and Home Affairs to the Speaker of the Lower House of Parliament concerning the reorganisation of the police
ref. PPR/90/7/U2, 12 June 1990
- 22 Coördinerend Politie Beraad [Coordinating Police Consultative Committee, 1988]
Bestuurlijke en politieke preventie van criminaliteit [Crime prevention by administrative and police action]
The Hague: C.P.B.
Landelijk Bureau Voorkoming Misdrijven [National Crime Prevention Office] [LBVM] [1990]
Tien Jaar criminaliteitspreventie [Ten years of crime prevention]
The Hague: L.B.V.M.
- 23 Kees, P.E. [1990]
Stadswachten in Dordrecht [City guards in Dordrecht: a study of the results of the city guard project in Dordrecht city centre]
Sociaal-Geografisch Bureau, Municipality of Dordrecht, June
- 24 Burk, A.E. and I.H.J. Starmans [1990]
Evaluatie beleidsexperimenten veel voorkomende criminaliteit Hoog Catharijne [Evaluation of policy experiments concerning common crime in a Utrecht shopping precinct]
Dept. of Urban and Labour Studies, Utrecht
- 25 Raad voor het Jeugdbeleid [Council for Youth Policy, 1990]
Jeugddelinkwentie, preventie en straf op maat [Juvenile delinquency, prevention and punishment made to measure]
Amsterdam: Council for Youth Policy
- 26 Harmonisatieraad Welzijnsbeleid [Welfare Policy Harmonisation Council, 1989]
Wijken onder druk [Neighbourhoods under pressure]
Study of living conditions in disadvantaged neighbourhoods
The Hague: Welfare Policy Harmonisation Council
Corstens, G.J.M. and S.C.J.J. Kortmann [1990]
Met recht geweerd [curbed by law]
Report of a study into the legal instruments available to curb common crime
Catholic University of Nijmegen, April
- 27 Castenmiller, P. and N.A. van Wijk [1990]
Criminaliteit en beleid [Crime and policy]
Administrative prevention in municipalities
The Hague: VNG-Uitgeverij
- 28 Nederlandse Federatie van Reclasseringsinstellingen [Netherlands Federation of Probation and After-Care Institutions, 1990]
Beleidsactiviteitenplan 1990-1991 [Policy activity plan 1990-1991]
NFR, February 1990

1990 – 1994 Programme of activities

4.1 **Intensified implementation of Justice's core tasks**

4.1.1 **Legislative policy**

Review of draft legislation

- When reviewing draft legislation, the Ministry of Justice will pay special attention to enforceability and susceptibility to fraud and to compatibility with international, Community and constitutional law. The organisational arrangements for review will be strengthened.
- A policy document on the substance and organisation of general legislative policy will be presented to Parliament around the turn of the year.
- Also at around the turn of the year the Cabinet will determine its position on law enforcement and the implementation of Community law, partly by reference to the recommendation of the committee on the review of legislative projects.

Protection of vulnerable interests

Medical law

In cooperation with the Ministry of Welfare, Health and Cultural Affairs, legislation is being prepared on such subjects as organ donation, tests for hereditary diseases, gene therapy and non-therapeutic genetic engineering, prenatal diagnostics, fertilisation techniques and surrogate child-bearing. As regards the possible need for legislation to regulate euthanasia, we are for the time being awaiting the findings of the R Emmelink Committee on medical practice on euthanasia.

In addition, legislation governing agreements on medical treatment is presently at an advanced stage. The Ministry is also working on statutory regulations governing the admission of patients to mental hospitals.

Combating discrimination

It is hoped that the tightening up of the anti-discrimination provisions in the Criminal Code will still be completed this year. A new Equal Treatment Bill will shortly be introduced by the Government. Positive action aimed at improving the position of certain population groups is essential in order to achieve equal rights.

The Committee for the review of legislative projects has been involved in assessing the acceptability of positive action as a form of government policy for disadvantaged groups in society. Following the publication of its earlier interim report, its final report containing proposals for statutory regulations on the subject will be published this year.

Amendments to law codes

General Administrative Law Act

The General Administrative Law Act will help to prevent the unnecessary fragmentation of administrative law. The first two instalments of the Act will come into effect on 1 January 1993.

The first instalment contains general provisions on the preparation, contents and announcement of orders and the reasons behind them, and on the general, obligatory procedure for notice of objections. The second instalment provides a uniform system of administrative procedural law for the new courts of first instance.

In 1991 a bill containing the third instalment, namely provisions to harmonise other areas of general administrative law, will be published. These areas are enforcement, subsidy arrangements, policy rules, administrative supervision, delegation and mandates.

Amendments to criminal procedure

The law of criminal procedure will be amended in the next few years to take account of international treaties [e.g. the bills introduced in respect of police custody and anonymous witnesses] and new forms of crime [e.g. the bill introduced in respect of computer crime]. The Code of Criminal Procedure Review Committee [the Moons Committee] recently published a report containing radical proposals affecting preliminary judicial inquiries. The Committee is preparing a bill to regulate DNA testing of suspects, which will be ready early in 1991. It is also engaged in a study of the arrangements for remand in custody and the problem of 'head and tail' judgments [i.e. abridged judgments merely stating the charge and the sentence].

Amendments to civil procedure

The law of civil procedure will be amended to take account of the changes in the organisation of the courts. At the same time, an effort will be made to modernise procedural law and make it more accessible. A bill will also be prepared on the rapid collection of debts.

A study will also be made of ways of speeding up the handling by the courts of civil claims for physical injury.

New Civil Code

On 1 January 1992, a fundamental part of the new patrimonial law will take effect. This means that the work on the new Civil Code will have entered a new stage. In the years that follow, the new law of inheritance will be introduced, as well as new provisions governing a number of important contracts in the areas of insurance and companies.

4.1.2 **Responsibility for law enforcement**

A policy document on law enforcement will shortly be submitted to the Cabinet. This will indicate how the general responsibility of the Minister of Justice for law enforcement will be discharged in the years ahead.

4.1.3 **Step-by-step approach to raise level of criminal law enforcement**

- We shall press for attention to be given to the investigative duties of the police in the plans for the police at regional and local level [see also under the Public Prosecutions Department].
- To improve the criminal investigation results we shall take steps in the next few years, in consultation with the Minister for Home Affairs, to ensure that a high priority is accorded to further modernisation of the mode of operation, including computerisation of police records and professional reinforcement of the criminal investigation branch. We shall provide extra resources for reinforcements in staff and equipment of the National Criminal Intelligence Service [CRI] and other central services, partly through the establishment of the twenty-sixth [national] police force. In addition, funds have been earmarked for computerisation projects and for working off the backlog in the replacement of equipment.
- The statutory powers of the police to investigate organised crime will be extended by:
 - changing the provisions governing the handling of stolen goods [bill already introduced];
 - making it a criminal offence to engage in acts of preparation for organised crime [bill to be sent to the Council of State for consideration early in 1991];
 - introducing legislation authorising the direct monitoring of conversations by means of directional microphones, etc. on the issue of a warrant by an examining magistrate [bill to be introduced in 1991];
 - creating new ways of seizing the financial assets of professional criminals, i.e. by preventing the 'laundering' of money obtained through crime and by tracing such money both in the Netherlands and abroad [bill already introduced and further bills to follow shortly];
 - implementing the decision of the Ministers of Justice and Home Affairs to draw up, together with the Minister of Finance and in close consultation with organisations representing financial institutions, a plan of action to combat the laundering of criminal assets. The plan will be based on a system of reports of suspect or unusual financial transactions.
- We shall arrange for a Financial Support Office to be set up in all police regions. In view of the emphasis to be placed in investigations on recovering the proceeds of crime, these offices will concentrate their attention on Dutch crime syndicates, for example on large-scale traffickers in soft drugs.

- The police will be given reinforcements to carry out their new duties under the National Environmental Policy Plan.
- Consultations will be held with the Minister for Home Affairs and the trade union organisations regarding the introduction of police auxiliaries on a larger scale. This could enable the less specialised police work [such as guarding buildings and checking the registers of buyers of second-hand goods in connection with the handling of stolen property] to be carried out more efficiently.

4.1.4 **Administrative functions of the Public Prosecutions Department**

- The Procurators General at the Courts of Appeal will be asked to record in all their future annual reports the principles on the basis of which the chief public prosecutors will negotiate about the justice component of the policy plans of the regional police forces and the prosecution policy geared to them. These principles will be included in a section on law enforcement policy in the explanatory memorandum accompanying the budget of the Ministry of Justice. The memorandum will also contain a report on the criminal investigation results achieved by the regional police forces in the preceding year.
- The Traffic Regulations [Administrative Enforcement] Act will come into force in mid- 1992. A bill to enable the police to propose out-of-court settlements in cases of non-aggravated theft will be introduced in 1992. Organisational arrangements have been made by the Public Prosecutions Department to allow for the administration of these two new forms of case disposal.
- If the initial evaluations of the practical implementation of the Traffic Regulations [Administrative Enforcement] Act are favourable, the system will later be extended to cover other categories of common summary offences.
- The disposal of common indictable offences of a less serious nature will be organised separately by the Public Prosecutions Department. In the main, these cases will be disposed of by means of out-of-court settlements. The disposal of serious cases, including environmental offences, will involve a more labour-intensive approach, for example by a team.
- The recruitment, training and career planning of the members of the Public Prosecutions Department will be geared to its new administrative duties, such as consultation with other administrative bodies on law enforcement and the management of the police. In addition, more scope will be created for subject specialisation.

4.1.5 **Provision of care by the criminal justice authorities**

Penal establishments

- Despite the efforts made by the authorities to tackle the causes of the increase in the prison population and the hospital-order and youth custody

institutions, it will be necessary to make further increases in capacity, as envisaged in the Greven Report on policy on prison and youth custody facilities, 1990-1994.

Prison capacity will be increased by around 570 places, hospital-order institution capacity by over 100 places and youth custody capacity also by 100 places.

As far as the prison system is concerned, the planned increases will not fully meet the projected demand for prison capacity, although they will not fall far short. In the other two sectors, the planned increases will meet the projected demand.

- The building plans for the prison system take into account our proposal to promote non-residential sentences such as day detention. New facilities will be created for 30 day-imprisonment places. The activities and amenities provided in the penal institutions will be increasingly designed to help prisoners readjust to employment. One way in which this will be done, for example, is by making preparations even during imprisonment for assignment to a labour pool.
- By creating over 100 new places in youth custody institutions as referred to above, we shall provide sufficient 'closed' places to implement the judgments of the juvenile court judges.

Probation and after-care

- We shall endeavour to ensure that in the annual activity plans of the probation and after-care institutions in the period 1991-1994 more capacity is gradually allocated to administering non-residential sentences such as unpaid labour. The number of sentences in this category will rise annually by around 10%. As soon as the recommendations of the Consultation and Advisory Committee on Alternative Sanctions have been received, plans for experiments with new types of sentence and conditions of execution will be initiated; at present we are thinking of forms of intensive probation supervision. This is one reason why the role of the probation and after-care service in helping offenders to find employment will be given more emphasis.

Child care and protection

- A policy document on child care and protection will be published this year in which we will indicate our position on the recommendations of the Committee on the Task and Functioning of the Child Care and Protection Boards. In preparing this document we shall take into account the results of the current inquiry into complaints concerning the functioning of the child care and protection system, which is being carried out by the Child Protection Sub-Committee of the Special Parliamentary Committee for Youth Welfare Policy and the Lower House's Standing Committee on Justice. We shall also

consider the Committee's proposal that the executive duties of the juvenile court judges be limited.

- In their contacts with 'clients' the Child Care and Protection Boards will endeavour to clarify the reasons for their involvement, for example the possible provision of advice on a family supervision order or a parental access arrangement. External experts will be called in to assist the Boards more often in the future.
- Arrangements for the rehabilitation of juvenile offenders will be made in all districts.
This is one way in which experiments with the intensive counselling of juvenile offenders will be initiated.
- A bill to regulate the new civil law 'help and support' child protection measure will be introduced in 1991 [this will also provide for the designation of confidential advisers to counsel older juveniles].

Victim support

- Our aim is to introduce the new statutory regulations governing the payment of compensation to victims as part of criminal proceedings [Terwee Committee's proposal] in 1991. For this purpose, the facilities for the care of victims at the district offices of the public prosecutors will be improved. The Public Prosecutions Department will do its utmost to arrange a compensation settlement between victims and offenders in as many cases as possible and to offer physical protection to victims who require this, for example by barring a suspect from public places as a special condition for suspending pre-trial detention.
- In 1991 measures will be prepared for the introduction of a 5% surcharge on all fines and out-of-court settlements collected by the criminal justice authorities [sometimes known as the 'victim support tax' for offenders].
- In accordance with the bill referred to above, provisions will be made to improve the operation of the Criminal Injuries Compensation Fund [i.e. to speed up the procedure].
- The subsidies paid to the local victim support centres of the National Victim Support Organisation will be continued. The aim is to have a network of 65-70 centres covering the entire country by 1993. In 1991 an office will be opened in Amsterdam by the municipal police force – with our support – to provide help to tourists who have been the victim of a crime.

4.1.6 Policy on aliens and naturalisation

- A closed reception centre will be organised in the vicinity of Schiphol Airport for persons who apply for asylum when they arrive but whose application is bound to fail.
- If the number of asylum-seekers does not rise any further, the present

increase in the number of staff will facilitate a substantial reduction in the time taken to process applications for asylum.

- We are being advised on aliens policy by two committees: the first is dealing with the subject of the supervision of aliens once they have entered the country and policy on expulsions, and the second with the organisational and procedural aspects of asylum policy.

Our premise is that both the supervision of aliens once they are in the country and the policy on expulsions must be tightened up. The prison capacity required for this purpose will be made available by us. As regards the other measures to be taken, we shall make a decision in 1991 as soon as possible after receiving the recommendations of the two committees. At that time we shall also send a memorandum of amendment to the Lower House in connection with the bill for the general revision of the Aliens Act.

- To assist the integration into Dutch society of aliens admitted to the Netherlands we shall combat discrimination and promote wherever possible the naturalisation of aliens who have been integrated. The subsidy to the National Anti-Racism Office will be continued.
- An office to promote the return of illegal immigrants to their country of origin will also be opened in 1991.

4.2

Network formation and public participation

4.2.1

Legislative and enforcement policy

- Early in 1991, the Cabinet will decide on the new, integrated Instructions on legislative drafting and on the evaluation of legislation. Its decision will be based among other things on the recommendations of the Interdepartmental Committee on the Harmonisation of Legislation.
- A bill will be prepared to regulate the filing of class action suits with the civil courts [this possibility has already been recognised by the courts themselves].
- Structured consultations between prosecutors, judges and representatives of the probation and after-care service and the child care and protection service on the implementation of alternative sentences, including community service [unpaid labour], will be promoted in all districts.
- Although the members of the Public Prosecutions Department will obviously retain their traditional role as prosecutors in the handling of individual cases, greater emphasis will be placed in the years ahead on their role in determining policy on law enforcement and on consultation with other administrative bodies and the police. A new balance will have to be struck between their roles as prosecutors and as administrators.

4.2.2 **Crime prevention**

- At the end of 1990 the Interdepartmental Steering Committee on Crime Prevention will be established for a second term, with a wider membership. The ministries that will, in principle, take part in the work of the steering committee will be: General Affairs; Justice; Home Affairs; Education; Housing, Physical Planning and the Environment; Transport, Public Works and Water Management; Economic Affairs; Welfare, Health and Cultural Affairs. The secretariat will be formed jointly by the Ministries of Justice and Home Affairs. The new-style steering committee will keep closely in touch with representatives of the other tiers of government and of organisations such as the insurance industry and housing corporations.
- We shall take initiatives to strengthen still further the organisation of crime prevention at local level through the establishment of local steering committees for crime prevention. The position of the Crime Prevention Organisation will be reinforced within the new police organisation.
- The financial contributions to the municipal HALT offices will be continued.
- Both the Ministry of Justice and the Ministry of Home Affairs will, in consultation with the Association of Netherlands Municipalities [VNG], make subsidies for experimental crime prevention projects available to the municipalities. The Ministry of Justice will endeavour in particular to ensure that officials are appointed in 1994 in the big municipalities – particularly in the city centres – to provide assistance and supervision. In doing so, it will provide for a clear division of responsibilities between these officials and the police and any police auxiliaries.

These officials will act as city guards, neighbourhood caretakers and park-keepers. As mentioned in the 1991 police policy plan produced together with the Minister for Home Affairs, we consider that both city guards or supervisors and police auxiliaries have a valuable role to play. However, their functions must remain clearly separate, in the eyes of the public too. There is no reason, therefore, to give general police powers to city guards and supervisors. In addition, we shall provide subsidies for experimental prevention projects to be carried out by non-governmental organisations.
- In cooperation with the Ministry of Economic Affairs we shall support private sector initiatives to provide better security for shopping centres and industrial estates.
- We shall examine whether it is possible to include minimum standards for the quality of locks and hinges in new residential dwellings in the building regulations.
- In cooperation with the Ministry of Transport, Public Works and Water Management, we shall intensify measures to prevent bicycle theft, for example by arranging surveillance for more bicycle sheds at railway stations, organising a new system of bicycle registration under the control of the Crime

Prevention Organisation and providing information on locks. The preventive measures will be complemented at local level by intensification of the efforts to apprehend professional bicycle thieves and to improve surveillance of the trade in second-hand bicycles.

- At the beginning of 1991 we shall introduce a bill to amend the Gambling Act by introducing a minimum age limit of 18 years for all 'rapid turnover' games. Compulsory identification will be introduced for gambling with slot machines and admission to amusement arcades, in order to check the ages of people using the machines. We shall seek the advice of the Association of Netherlands Municipalities [VNG] on whether it is possible to make a further adjustment to the slot machine regulations with a view to increasing the scope for a restrictive municipal licensing policy.

4.2.3 **External communication**

- Measures will be taken to provide better information about the objectives and scope of Justice policy to the administrative bodies and organisations with which the Justice authorities work. The provision of information about general legislative policy and law enforcement policy, and about policy on aliens and naturalisation will be intensified.
- In 1991 a start will be made with a general information campaign on citizenship and law. This will deal with themes such as crime prevention, handling stolen goods and discrimination. In preparing and implementing this information campaign, the Ministry will work closely with the municipalities and organisations representing, for example, the insurance industry and ethnic minorities.

75

4.3 **Modernisation of organisation, operations and research**

4.3.1 **Organisation of the judiciary and legal aid** *Reorganisation of the judiciary*

- In the present government's period of office, the first stage in the reorganisation of the courts, including final provisions for hearing Crown appeals, will be accomplished. The first stage will consist among other things of the institution of administrative law sections at the district courts. These sections will replace the social security tribunals and public service tribunals and also hear cases at first instance involving the Administrative Decisions Appeals Act [AROB] and Crown appeals. An administrative law division will be established at the Council of State to act as appeal court. For the present, the Central Appeals Board will remain as the appeal court for social security and public service cases. Bills to this effect will be submitted to the Council of State this year for consideration.

- The second stage, which is planned to start on 1 January 1995, comprises the integration of the sub-district courts and the district courts and a final arrangement for appeals in civil and criminal cases. The bill is expected to be presented to the Lower House in the second half of the present government's period of office.
- The operating capacities of the judiciary will be improved by strengthening the management qualities of those in charge, expanding administrative support, computerisation and encouraging greater specialisation on the part of the judges and public prosecutors.
- Court premises will be largely refurbished in the period 1990 to 1994.

Legal aid

In the context of open-ended schemes, the budget for legal aid has been increased by amounts rising to Dfl. 50 million in 1994. It is expected that a legal aid bill will be sent to the Council of State before the year is out. Its main points will be as follows. Legal aid for the provision of advice will be channelled as far as possible through the legal advice centres. Assistance with legal proceedings will in principle be provided by the Bar. However, the legal advice centres may also have a share of this work, within certain limits. The present system whereby lawyers are paid a fee per case will be replaced by a system of retainer fees, and the level of the remuneration will be raised.

The additional costs of future policy will be financed from a number of measures such as a change in the income limits up to which legal aid may be claimed, a revision of the applicant's own contributions, adjustment of the income limits for persons living alone, and introduction of an own contribution for assistance with legal proceedings provided by legal advice centres. In anticipation of the new statutory regulation, the system of checking the issue and declaration of assignments of counsel will be improved with effect from 1 January 1991.

4.3.2

Research

Extra funds have been reserved to step up the programme of research into subjects relevant to the Justice field. Three themes will be accorded priority in the research.

The first is the social effectiveness and efficiency of various kinds of statutory regulations, systems of sanctions and specific enforcement measures. The second is the social factors which determine demand for legal care in various fields, such as the nature of statutory regulations, the existence of conciliation services or complaints committees, and the structure of the legal aid system. The third is comparison of legal rules and their practical effect in various countries, particularly West European countries [comparative law studies and comparative research into the sociology of law or criminological research].

4.4

Financial survey of programme of activities in 1990-1994 and survey of personnel matters

Introduction

The implementation of a programme of activities as described in this chapter entails substantial expenditure. In part this expenditure is already provided for in the budget. The remainder of the expenditure will be covered from the extra resources allotted to the budget of the Ministry of Justice for 1991 and thereafter. These extra resources are in the first place the monies made available for implementation of the priorities in the coalition agreement regarding 'safety and security': these sums rise to Dfl. 289 million in 1994 [including the 'Kosto monies'].

In addition, the coalition agreement allocated to the Ministry funds for administering the National Environmental Policy [NEP] Plan; these sums rise to Dfl. 45 million in 1994.

In the preparations for the 1991 budget, an additional sum of Dfl. 40.5 million a year was allocated to the Ministry's budget for the purpose of implementing the priorities listed in the government's statement of policy on taking office, namely action of a preventive and repressive nature to combat crime.

Finally, provision has been made for any sums saved as a result of the 'big efficiency operation' to be allocated as a matter of priority to the reorganisation of the police and the judiciary, and to meet the extra expenditure incurred as a result of the opening of Europe's internal borders in 1992 [Schengen Agreement]. It should be noted that the various government spending cuts, which have also affected the budget of the Ministry of Justice, have reduced the sums available.

The survey below shows which of the extra monies described above will be used for the Law in Motion programme of activities [1990-1994]. The survey does not include the monies for the construction of new court buildings, prison establishments, etc., which have been reserved in the budget of the Ministry of Housing, Physical Planning and the Environment. When this plan was drawn up, it was not yet possible to estimate the costs of some of the activities. Moreover, in view of certain decisions which still had to be made about the 1991 budget, it was not possible to allocate part [albeit a limited part] of the extra monies.

It is expected that this allocation will be available when this policy plan is debated. Finally, it should be noted that not all the activities are listed in the financial survey. This is obvious in view of the nature of this plan, since some of the measures, for example the formation of networks, are primarily of an organisational nature. Through the redirection of activities and in some cases the reallocation of funds, the objectives of the plan can be achieved. For a more complete and detailed survey, reference should be made to commentary on the 1991 budget of the Ministry of Justice.

Financial survey

Intensified implementation of core tasks	funding source	1991	1992	1993	1994	1995
<i>General legislative policy</i>						
– enlargement of staff department	CA	0.5	1.0	1.5	2.0	2.0
<i>Law enforcement</i>						
– police reorganisation [Min. Justice's part] ¹	'91 budget/RE	12.5	17.5	18.5	16.0	4.5
– strengthening crime investigation units	CA	9.5	14.0	11.0	12.5	12.5
– other personnel national services						
– computerisation, other equipment, etc.	CA/Kosto	27.5	32.0	43.5	50.5	50.5
– NEP Plan [police part]	NEP	8.5	17.0	21.0	24.5	24.5
<i>Crime proceeds recovery²</i>						
– Financial support office	'86 CA	7.5	7.5	7.5	7.5	7.5
– 'Strip them' ³	'90 BM	–	8.0	13.0	18.0	20.5
<i>Public Prosecutions Department/judiciary</i>						
– extra staff	CA	12.0	19.0	23.5	29.0	29.0
– NEP Plan [judiciary and other crim. justice]	NEP	9.0	12.5	16.0	20.0	20.0
<i>Enlargement of penal establishments [Greven plan]⁴</i>						
– penal establishments	CA	25.0	32.0	34.5	56.0	56.0
– hospital-order instit.	CA	–	4.0	10.0	6.5	6.5
– youth custody instit.	CA	3.5	10.0	18.0	17.5	17.5
<i>Probation and after-care</i>						
– extension of alternative sanctions, etc.	CA	1.5	2.5	3.0	4.0	4.0
<i>Child care and protection</i>						
– juvenile rehabilitation	CA	2.0	3.5	4.5	6.0	6.0
– help and support measure ⁵	'91 budget	pm	pm	pm	pm	pm
<i>Aliens policy</i>						
– Schiphol Oost ⁶	'91 budget	7.0	7.0	7.0	7.0	7.0
– centre for return of illegal immigrants ⁷	'91 budget	pm	pm	pm	pm	pm
<i>Victim support</i>						
– local victim support centres	CA	0.5	0.5	1.0	1.5	1.5
– Crim. Injuries Comp. Fund ⁸	tax	pm	pm	pm	pm	pm

Amounts expressed in millions of Dutch guilders, rounded to 0.5 million

Financial survey

Network formation/public participation	funding source	1991	1992	1993	1994	1995
<i>Crime prevention</i>						
[incl. city guards, neighbourhood watch, campaign against bicycle theft]	CA/Kosto	7.0	8.5	10.5	12.5	12.5
– HALT offices	Kosto/RE	4.5	5.0	6.0	6.5	6.5
<i>Provision of external information</i>	CA	1.0	1.5	2.5	3.0	3.0
<i>Modernisation of organisation/operations</i>						
– reorganisation of judiciary ⁹ [incl. job evaluation, etc.]	CA/BEO	12.0	27.5	35.0	35.0	38.0
– introd. of improved structure/ computerisation/accommodation	CA	8.0	12.0	19.5	25.5	25.5
– research	CA	3.0	5.0	7.0	9.0	9.0
– Min. of Justice computerisation	CA	9.5	15.5	21.0	27.0	27.0

Amounts expressed in millions of Dutch guilders, rounded to 0.5 million

Explanation of abbreviations under funding source

CA	= 1989 coalition agreement
'91 budget	= extra allocation to Min. of Justice preparatory budget [incl. the Dfl. 40.5 million]
Kosto	= Kosto monies
NEP	= National Environmental Policy Plan
'86 CA	= 1986 coalition agreement
'90 BM	= 1990 Budget Memorandum
BEO	= Big Efficiency Operation
RE	= Reallocation of Min. of Justice budget
Tax	= Victim support tax

Footnotes to financial survey

- 1 Excluding the costs which will be covered by the possible savings from the Big Efficiency Operation and also excluding the costs of the Ministry of Home Affairs.
- 2 These monies have been allocated to the Ministry of Justice's budget under the anti-fraud provisions of the 1986 coalition agreement and are now being used for Financial Support Offices.
- 3 The funding of the 'Strip them' operation is regulated in the 1990 Budget Memorandum by means of a surcharge on fines and out-of-court settlements shown in the Ministry of Justice's budget. These figures relate exclusively to the Ministry of Justice's costs. The figures may be adjusted following an evaluation of the results.
- 4 The sums referred to have been allocated to the Ministry of Justice's budget. No account has yet been taken of the funding of hospital-order capacity under the Exceptional Medical Expenses Act (AWBZ). The sums are also exclusive of the costs of offenders housed in institutions coming under the Ministry of Welfare, Health and Cultural Affairs. N.B. The sums relate only to operating costs.
- 5 More alternative sentences/community service orders will result in an increase in the 'help and support' measures. The amounts involved are not yet known.
- 6 A sum of Dfl. 11 million will be available on the budget of the Ministry of Housing, Physical Planning and the Environment (Government Buildings Service). This relates exclusively to 1991.
- 7 No exact picture can yet be given of the expenditure for this item. Funding will be arranged either from the extra sums made available in the preparations for the 1991 budget or through reallocation within the Ministry of Justice's budget.
- 8 It is intended to finance the expansion of the Criminal Injuries Compensation Fund by means of a 'victim support tax'. The expansion would then have a neutral effect on the budget. Consultations on this funding have still to be held.
- 9 The reorganisation of the judiciary also entails what are known as 'friction' costs. These costs total around Dfl. 10 million a year. They are found from within the budget of the Ministry of Justice (fines and out-of-court settlements).

Survey of personnel matters

Intensified implementation of core tasks	funding source	1991	1992	1993	1994	1995
<i>General legislative policy</i>						
- enlargement of staff department	CA	7	11	16	20	20
<i>Law enforcement</i>						
- police reorganisation [Min. of Justice's part]	'91 budget/RE					
- strengthening crime investigation units	CA					
- other personnel national services						
- computerisation, other equipment etc.	CA/Kosto	80	125	140	155	155
- NEP Plan [police part]	NEP	86	180	226	267	267
<i>Crime proceeds recovery</i>						
- Financial support office	'86 CA					
- 'Strip them'	'90 BM		78	133	189	223
<i>Public Prosecutions Department/judiciary</i>						
- extra staff	CA	147	215	250	300	300
- NEP Plan [Judiciary and other crim. justice]	NEP	61	80	80	80	80 + pm
<i>Enlargement of penal establishments [Greven Plan]</i>						
- penal establishments	CA					
- hospital-order-institutions	CA	100	307	665	141	1141
- youth custody institutions	CA					
<i>Probation and after-care</i>						
- extension of alternative sanctions, etc.	CA	-	-	-	-	-
<i>Child care and protection</i>						
- juvenile rehabilitation	CA	13	20	28	35	35
- help and support measure	'91 budget	pm	pm	pm	pm	pm
<i>Aliens policy</i>						
- Schiphol Oost	'91 budget	90	90	90	90	90
- centre for return of illegal immigrants	'91 budget	pm	pm	pm	pm	pm
<i>Victim support</i>						
- local victim support centres	CA	-	-	-	-	-
- Crim. Injuries Compens. Fund	tax	-	-	-	-	-

Numbers of extra establishment posts

Survey of personnel matters

Network formation/public participation	funding source	1991	1992	1993	1994	1995
<i>Crime prevention</i>						
[incl. city guards, neighbourhood watch, campaign against bicycle theft]	CA/Kosto	1	2	3	4	4
- HALT office	Kosto/RE	-	-	-	-	-
<i>Provision of external information</i>	CA	6	6	6	6	6
<i>Modernisation of organisation/operations</i>						
- reorganisation of judiciary [incl. job. evaluation etc.]	CA/BEO	45	155	200	200	230
- Introd. of improved structure/ computerisation/ accommodation	CA	-	-	-	-	-
- research	CA	6	8	10	10	10
- Min. of Justice computerisation	CA	-	-	-	-	-

The numbers listed above have for the most part already been provided for in the multi-year personnel figures. The survey also makes allowance for the consequences in terms of staff of measures for which sums have already been provided but not yet allocated to the budget of the Ministry of Justice. Examples are the reorganisation of the judiciary and the creation of a reception centre at Schiphol-Oost. As regards the expansion of the judiciary in connection with the NEP Plan, a token entry has been included in addition to the figures given in the survey. This is because part of the available monies will be allocated to staff. Consultations have already been held with the Ministry of Home Affairs on this point.

Finally, the figure specified in relation to the crime proceeds recovery activity only takes into account the staff consequences of the introduction of the 'Strip them' bill.

Concluding remarks

The present policy document deals at length with the quality of legal care in the Netherlands. It clearly reveals that major problems still exist despite the efforts made in recent years. One of the problems requiring attention is the enforcement of democratically established rules – a problem which is sometimes aggravated by poorly drafted legislation. The policy document also examines the crime rate, which is still unacceptably high despite the efforts of many people.

Analysis of the causes of the problems identified in this policy document shows that a great effort will continue to be required in the years ahead in order to tackle these problems. What is at stake is nothing less than the credibility of constitutional government and its democratic and social values. At a time when demand for law is still increasing owing to many different developments in society, the supply is static in terms of both quantity and quality.

The policy document sets out three main, interrelated objectives which the Ministry of Justice will endeavour to achieve in the years ahead in order to make real improvements to the provision of legal care in the Netherlands. The first is to introduce a great many measures to step up implementation of the Ministry's core tasks: general legislative policy, the administration of justice and the provision of legal assistance, [criminal] law enforcement and the provision of care for special categories such as juveniles and victims. The second is to pay extra attention to modernising the organisation and mode of operation of the machinery of justice. We regard a properly functioning organisation as essential if the Ministry of Justice is to be able to discharge its responsibilities adequately.

The Ministry of Justice cannot, however, succeed on its own. If legal care in the Netherlands is genuinely to be improved, it will be necessary to call on the assistance of many other people such as administrative bodies, organisations and associations, and even private individuals. The third objective in this policy plan is therefore to intensify and expand still further the cooperative arrangements and lines of communication with other tiers of government and with organisations in society. We expect the strengthening of the Ministry's external contacts to make a major contribution to the success of the objectives formulated in this policy document. Many of the problems identified in this document require a proper coordination of shared responsibilities.

Within public administration, the Ministry of Justice has a special responsibility for monitoring the administrative and constitutional quality of legislation and regulations. We shall in principle discourage the introduction of legislation which is not strictly necessary – for example, because there is scope for proper arrangements to be made for self-regulation or because it is clear from the outset that enforcement would be impractical. Where it is decided after ample reflection that legislation is required, we shall ensure – in close cooperation with all other parties involved – that the norms contained in it are applied and/or enforced in a credible way. In the next few years more attention will be paid in particular to the enforcement of economic legislation in such fields as traffic and the environment. If a credible and effective policy is to be pursued

in these fields, adequate law enforcement is absolutely imperative.

In order to look after the interests of genuine refugees who are being persecuted for their religious or political beliefs, we shall tighten up parts of our policy on illegal aliens. Various means will be used to bring about the return of asylum-seekers to their countries of origin once they have exhausted the legal remedies available to them.

In order to protect juveniles who are at risk, effective action will be taken where necessary. For this purpose the existing instruments will be supplemented by the creation of new statutory procedures and forms of organisation.

The police and judiciary will be radically reorganised. The scale of their organisations will be adjusted to meet present-day demands, and the organisations themselves will be better equipped to deal with the problems they are required to solve. The extent to which the operations are computerised will be greatly increased, in order that the various parts of the Ministry of Justice can take advantage of modern technology in discharging their duties and achieving their objectives.

We shall endeavour to stabilise expenditure on legal aid by methods which do not reduce the access to the law for the poorest and at the same time leave unaltered the low thresholds for access to legal advice.

Our highest policy priority is, of necessity, to combat crime by preventive and repressive means. The efforts of all concerned should be directed at doing everything possible to reduce crime. The quality of the legal order in the Netherlands is being fundamentally undermined by the extent and gravity of the crime problem. In the consultations on the policy plans of the regional police forces which are to be established, the Public Prosecutions Department will press for sufficient priority to be accorded to the core justice tasks.

The Public Prosecutions Department will arrange its own capacity accordingly. Crime prevention, victim support and alternative sentences will all be given extra emphasis in accordance with the policy on social renewal. The capacity of the penal institutions will be geared to meet projected demand.

An important touchstone of the success of our criminal law policy will be a gradual increase in the number of criminal law responses to persons committing offences such as burglary, assault, robbery and handling stolen goods. Each year we shall publish the results of this step-by-step *intensification of law enforcement policy* in the commentary on the budget of the Ministry of Justice. The commentary will also include a report on the progress made with implementing the other parts of the programme of activities presented in this policy document.

We hope that by formulating this policy objective we have provided all officials involved in the enforcement of the criminal law with a clear focal point. Obviously, crime can be tackled adequately only if society as a whole is prepared to support the police and criminal justice authorities. It is essential that in the years ahead all responsible individuals do their utmost, whether as managers,

entrepreneurs, teachers, residents or parents, to ensure that laws and regulations are better observed in their own circle, not least by ensuring that they themselves observe them. In this way, they can complement the efforts of the police and criminal justice authorities.

In the second chapter of this policy document, we pointed out that law is more than simply an instrument for enforcing claims and realising policy objectives whenever it suits the persons concerned. Under a system of constitutional government, with democratic and social values, law is also concerned with just relationships in society. The law must provide reliable protection for the interests of the weaker members of society. It must enshrine the rights and obligations which give expression to the fundamental values of our society, that is, above all, respect for everyone as persons. Only in this way can we be sure that the variety and dynamism of our society in religious and philosophical, cultural, economic and political terms will flourish.

The motion which law is experiencing must be seen from this perspective. This is why we cannot acquiesce in a system of legal care which is deficient in many respects. This policy document shows what measures we consider to be necessary and practical in order to improve the making, enforcement and administration of law. To us, the law is worth the effort.

September 1990

Published by Netherlands Ministry of Justice

Information Department

P.O. Box 20301

NL 2500 EH The Hague

Information telephone +3170.3706850

Design Heijmerink/Noyons

Photography Fred van de Ende

Printed by Drukkerij Plantijn bv