

## *In this Issue:*

### **From the Executive Editor:**

#### ***Financing the Judiciary in the Netherlands: between work overload in the courts and government control of the Judicial Budget.***

By Philip Langbroek

### **Professional Articles:**

#### ***Ten Questions for Dory Reiling - Developing IT for Courts***

(Interviewed by Professor Anne Wallace)

..... 1

#### ***Judges and Courts Respond to Opioid Litigation Engulfing U.S. Court Systems***

Markus B. Zimmer, Executive Editor

..... 5

### **Academic Articles**

#### ***Italian Perspectives on the Judiciary***

By Giuseppe Franco Ferrari

..... 13

#### ***Funding the Judiciary: How Budgeting System Shapes Justice. A Comparative Analysis of Three Case Studies.***

By Federica Viapiana

..... 23

#### ***An Examination of How District Attorneys Perceive Justice***

Jackie Chavez, PhD

..... 35

#### ***Effective Court Administration and Professionalism of Judges as Necessary Factors Safeguarding the Mother of Justice – The Right to a Fair Trial***

By Mindaugas Šimonis

..... 47

#### ***What Judges Think About the Meaning of Their Work***

Ricardo Augusto Ferreira e Silva,  
Tomas de Aquino Guimaraes,  
Marcos de Moraes Sousa

..... 59

#### ***Organizational and Process Improvements of Investment Processes Administered by Courts in the Czech Republic***

Viktora Martin, Špaček Miroslav

..... 67

Volume 10, Issue 1, Winter 2019  
ISSN 2156-7964  
URL: <http://www.icaajournal.org>  
Cite this as: DOI: 10.18352/IJCA.292  
Copyright: 



## *From the Managing Editor:*

### *Financing the Judiciary in the Netherlands: between work overload in the courts and government control of the Judicial Budget.*

By Philip Langbroek, Managing Editor

In terms of legal regulations, the Netherlands has a well-balanced but complicated system for financing the judicial functions of government. Judicial appropriations are determined by the collective production of the ordinary courts, the Central Appeal Board, and the Trade and Industry Appeals Tribunal. Different formula rates are applied to each jurisdiction. For example, Plural Judge Panel cases deliver far more money than cases that are decided by a single judge. Below, I argue why, from a constitutional perspective, the appropriations process for funding the Dutch judiciary has undesirable consequences for the functioning of judges and courts. Those consequences flow from the manner in which the appropriations process has been developed and applied in practice by these players: the Ministry of Justice and Security, the Council for the Judiciary, the courts administration and the judges themselves. The financing system essentially functions as a business model rather than as a judicial and court-services model based on the effective administration of justice. It is striking that the judicial organization is treated by the government and parliament as any other government department.

For the judicial organization, the production of the previous year determines budgets for the succeeding year. In the ministerial appropriations process, court production projections for the coming year drive budgetary allocations. For more work than planned, the judicial organization gets 70% of the amount set per case; 30% will be reduced for work levels that do not meet projections. This system also applies in the relationship between the Council for the Judiciary and the courts, as set forth in the Decree on Financing of the Courts, an Order in Council based on the Judicial Organization Act. The production of the courts is measured in minutes of working time. By type of case (for example, criminal case, plural judge panel, administrative law, provisional injunction; family case, etc., together 70 categories), surveys on time spent per category are carried out every few years. In this way, the average amount of minutes spent on a specific case type is determined. And the Minister of Justice determines the compensation per minute once every three years. Within this system, the more cases the courts dispose of, the more money they receive the following year. However, the total amount of money cannot grow larger than the total budget for the judiciary as it has been allocated by the budget bill as it was approved of by Parliament.

The inventors of this system had also anticipated that this business model might yield some perverse incentives. That is why they proposed that the Council for the Judiciary and the court boards should monitor the quality of the court work. This involves measures such as consistency of judicial decision-making, timeliness, impartiality, permanent education, and so on. A separate system was devised for this quality control originally known as Rechtspraak ("Judiciary"), a term no longer in use. The intention was that the results of the measurement system would be factored into the budget negotiations between the Council for the Judiciary and the Minister of Justice. With an annual budget of one billion Euro's and 1.9 million lawsuits, an average court case yields about 525 Euros. These cases are handled by some 9,000 FTE staff, of which some 2,300 FTE are judges; the rest comprise legal and administrative support staff.

There are two major problems in this system. In the first place, the budget for the judiciary is determined by parliament as part of the Ministry of Justice and Security's budget, on the proposal prepared and submitted by the Minister of Justice. This is bound to the budget agreements in the Cabinet, based on the Government Accounts Act and the European Semester (an European Union oversight mechanism for Euro member states). So the Minister of Finance has a big finger in that porridge. That

---

means that the judicial organization is treated like any other government agency. Small cutbacks in the budget have been made everywhere. Efficiency gains projected by the introduction of IT systems that still have to be developed and implemented have yielded no savings to date. And judges are also just civil servants.

When the courts dispose of significantly more cases than projected, the budget for the Justice Ministry does not increase. Maybe the Minister can shift some small budgets here and there to allocate additional funding for the increased production of the courts. But these are political choices, and when the money runs out, it's up. The minister has limited allocations. So the results of those time-writing studies are subordinate to the available justice budget. Incidentally, in 2016 the Court of Audit already issued a report, which showed that quality plays no role in the budget of the judicial organization, because it is dominated by national fiscal policy. I also heard from a researcher that the word 'quality' could not be found in the documents on budget negotiations between the Council for the Judiciary and the Minister of Justice. That is contrary to the Decree on Financing of the Courts. But if quality is not included in those budget negotiations, who should determine what quality is? Hopefully not the government, because if it starts to define the quality of treatment of court cases and of judicial decisions, the Netherlands would distance itself from the rule of law.

The other big problem for the Netherlands' judicial organization is: how do you deal with money and with each other? Every treasurer knows about that. A majority of judges have a huge sense of responsibility. So if your court president asks you to increase speed and dispose of more cases so that the court gets a larger part of the court's national budget pie, in order to save some money for a rainy day in the organization, you do so. Then you work evenings and weekends. Money is money, and besides, you cannot let all those defendants and plaintiffs wait endlessly. And all new judges, new secretaries, new staff jurists and new court administrative staff are acculturated to the same work ethic, not as part of a program, but this is how you deal with each other, it is how you socialize on the job. If funding is reduced, as in recent years, it also hurts immediately, even though successive governments ensure that more and more (criminal) cases are kept away from the courts, partly due to the increase of the court fees.

Part of the problem is also that both the management of the courts and of the judicial organization and the Ministry of Security and Justice, have made the funding model a business model, instead of a pretty transparent system to distribute money on the basis of objective criteria. As a judge you are independent, you do not have to go for the money. You can make choices about how you spend your time. You do not have to do voluntary work for your employer in the evenings and weekends because you are a professional. And as a Council for the Judiciary and as a court, your primary motivation should not be maximizing how much money you earn but how well you administer justice. Because everybody behaves as if the courts are a business, the judges are stuck. They focus exclusively on productivity, leaving almost no time left to think about how work processes can be better and more effective, how to better organize them, or how to improve services to society and communities and defendants and plaintiffs. If they would do that, the production would decrease, and the courts would receive less money: eventually that would lead to reshufflings and redundancies.

In this way, the funding of the Dutch judicial organization remains subordinate to political considerations. It is the ruling coalition government that negotiates the budget. The way in which the budget is spent in the courts is almost entirely transparent for the Ministry of Justice and Security. In the oversight relationships between the Ministry and the Council for the Judiciary, and between the Council for the Judiciary and the courts respectively, control possibilities are limited only by the prohibition in the Judicial Organization Act to interfere with the content of specific cases, and by the prohibition for judges to deny justice in art. 13 of the General Provisions Act (1838):

*The judge who refuses to deliver justice, under the pretext of silence, darkness or incompleteness of the law, can be prosecuted on account of denial of justice.*

This provision is an elaboration of the French Revolution adage that judges are subjected to statutes. This essentially means that judges must deal with every case that has been validly filed at a court. This also means they cannot leave filed cases unattended because they have a work overload. So, in a way, the courts are stuck between a business-model financing system that, politically speaking, is limited by the amount of money politicians are willing to spend on the courts, and the courts' legal and societal obligation to deliver timely and quality decisions.

Predicting judicial production in deciding cases should be undertaken 'without any policy interest.' But the policy of the current Ministry of Justice and Security is to divert as many cases from the courts as possible by (i) stimulating extra-judicial conflict resolution, and (ii) giving sanctioning powers to the Prosecutions Office. Even with all the recent media attention focusing on heavy court caseloads and the personal time judges are committing to it, the current Dutch government lacks the will to abandon deep financial oversight of the judicial organization. During the past 17 years, judicial professionals and their organization have become largely bureaucratized under the current management and financing system. Among many judges, little awareness of professional autonomy remains. Negotiations between the Ministry of Justice and Security and the Council for the Judiciary have begun about financing quality and innovation work in the courts, separate from quantitative-based court production outcomes. This is an indication that the Ministry is taking the societal responsibility of the courts seriously. However, there is no indication at all, that the current Netherlands' government is willing to strengthen the weak and dependent institutional position of the Netherlands' Judiciary.

