Country: THE NETHERLANDS

1.2.1

New Public Management has been applied by Dutch governments since 1994; the national monopolies of railway services, energy services, telecommunication: they have all been decentralized and all their assets have been brought into newly founded competing private companies; customers are supposed to switch to the cheapest, what they do not; managers without professional expertise have been allowed to earn over-the-top-salaries etc. Before the judiciary already universities and hospitals were confronted with the new management: planning and control, quality management etc. Escape was not feasible. From old days, the judiciary was directly paid by the ministry of justice and needed its daily permission to buy pencils and computers, until in the end of the 1980's the individual courts were allowed their own annual budgets within an annual cycle of Planning & Control. The height of the budget was related to the number of cases which were divided in about 50 - both civil, penal and administrative law - groups of frequent cases, each with its own weight of involvement of human resources (not only judges of course and with an overhead - excluded housing, the costs of which differed too much from one side of the country to another - of about 27% aside from the primary judicial process); this was re-calculated in a time-related tariff pro number of cases in each group. The time which an average judge and staff needed for each average type of case in a group, was estimated on the basis of a calculated guess by experienced judges and widely accepted, also because the alternative (money for who screams loudest) was worse.

Recently the courts have been allowed to save max. 5% of their budgets for another year!

Since 2002 a Council for the judiciary functions as a to both sides negotiating buffer between the Ministry of Justice and the individual courts. Until now budgets have constantly been rising after in the 80's the courts only managed to survive by not fulfilling certain tasks (e.g. writing full-drawn sentences only in case of appeal and otherwise leaving only some notes for the execution!). Efficiency helped to deal with the caseload that rose even faster than the budgets, but now there is a strong feeling in the judiciary that we pressed too far in that direction, especially after a parliamentary discussion about a confession of a DNA-proven murder while someone else was already for 4 years in prison with an asylum ahead. Now that the minister of justice had recently several clashes with parliament on juvenile care and psychopaths who murdered on leave, he wants to spend more on taking care of those groups of people. So for the judiciary the proof of the newly served pudding will be in having less to eat. After years of efficiently saving money that we gave back at the end of the year, now for 2006 the minister refused 8 % of the budget that the Council for the judiciary had asked for!

1.2.2

a) The global budget for the judiciary - except Supreme Court and highest judge in administrative cases, together counting a hundred of judges and staff - amounts to 757 millions of euro in 2006. The Council for the judiciary had asked for 820 millions to administrate its own functioning and distribute the rest among the courts in an annual cycle of Planning & Control.
b) This financial control may result a following year in a discount for a court which needs too much money for its output, compared to other courts. Non-measurable quality may suffer in this quantity-race between individual courts.

c + d) This internal competition between courts should lead to bench-marking and learning from each others best practices. The Council does all his best to promote and facilitate this process of learning - also in quality matters - and improvement. Judicial independence is at stake only in so far as judges are not allowed to balance quantity and quality themselves in individual cases.

e) Quantity of output is measured by their experienced vice-presidents/sectionmanagers giving the judges in their respective section a certain - tradition-based - amount of cases or sessions. More and more contracts are made in which there is also a view on other judicial activities (knowledge-management, training of future judges etc.)

f) Flexible distribution of (small- !)country-wide workload has especially been improved since each judge has been allowed by statute to work in another court; since then it showed possible to distribute so-called mega-cases in penal affairs (in our country taking more than 3 days in stead of the normal 3 hours) from the big cities and courts to smaller courts in the country-side.

g) Regularly courts use to investigate the wishes of their so-called customers (lawyers and their clients, witnesses, interpreters, juvenile advisers, mass-media etc.) in a scientifically and statistically correct way. Afterwards they consult customer panels on improvements of what has been complained about. In the past this has resulted in a.o. open court days, a website, lectures by judges in schools, columns of judges in local newspapers, regular meetings with the press etc. I don't think judicial independence is at stake here, because judges withdraw in cases with parties which they met before in this respect.

h) There has come more emphasis on judicial performance, compared to writing verdicts. Judges are being trained in communication with parties involved in a case, practice intervision of and by colleagues, try to be understandable for lay people (we have no juries or lay judges !), while sessions are becoming hearings and talking gives way to listening.

i) Because fluctuations in payment are strictly related to fluctuations in output and there is being organised a rat-race between courts, there should be more and higher bonuses for results in quality of both the primary process of dealing with cases and of the ways in which public trust is being earned; juries of judges and clients should appoint the nominees.

2.1

The number of judges in the Netherlands is about 2.200, i.e. 13 1/4 pro 100.000 inhabitants (more than 16 millions).

2.2

The budget for the judiciary amounts to 0,8 % of the state budget.

2.3

There is no constitutionally fixed budget for the judiciary.

2.4

The budget for the judiciary has been rising since the 1990's, but lowered this year when the judiciary did not manage to spend all of it and Parliament pushed the minister to spend more on juvenile care, on penalties consisting of urged labour and on detention.

2.5
Cost cutting measures between 1995 and 2005 involved a.o. changes in court procedures, making access to courts and to appeal more expensive, and more and more administrative punishment of smaller infractions while leaving the initiative for appeal to a court with the citizens.

2.6

Because - although the budget for 2006 was lowered bij 8% compared to what he Council for the judiciary asked for, but - the judiciary did not manage to spend all that was annually attributed and most changes in court procedures were initiated by judges themselves, one could say that judicial independence was not at stake. More concern is wanted about the need for citizens to take more own initiatives and having to spend more money to get access to the courts.

3.

The only really existing phenomenon on the field of privatisation of judicial competence is the political sponsorship of alternative dispute resolution. This consists mainly of political and legal promotion of mediation, but the statute did not make it mandatory. Courts will be obliged to assess all new cases from 2006 on, whether they are fit for mediation; judges are being trained for this assessment: if they think the case is fit for it, they may try to persuade the parties into voluntary mediation; there is no sanction on refusal. The financial sponsorship will end after a few years of experiments and promotion.

There have always existed many private courts - whose verdicts marginally may be checked on parties' initiative - especially on the fields of consumer cases with small financial interest (mostly founded by industrial and commercial branches, sometimes together with consumer-organisations) and of sports.
Arbitration in commercial trade has not much grown recently. "Rent-a-judge " does not exist.

4.

Both the Minister of Justice and our national judges' association oppose performance-related remuneration of judges, because it might lessen the independence of judges, while they accepted it for public prosecutors.

Zutphen, 10 th of October, 2005
Gert Vrieze