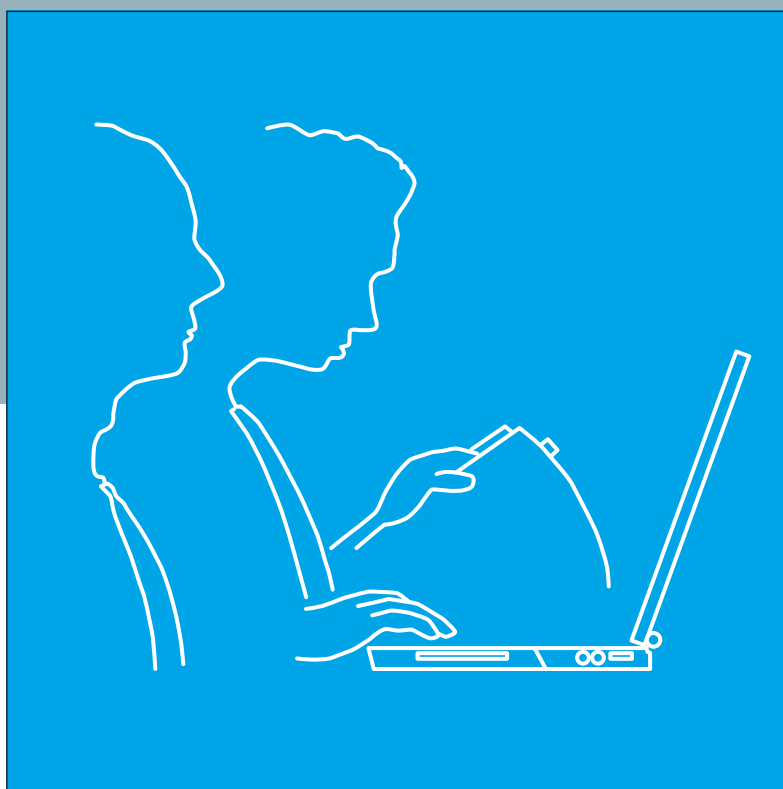


Partners in crime

The role of the **legal advisor** in criminal law, a professional to assist the **judge**

A vision for the future



de Rechtspraak



Programma
Strafsector

About Partners in crime

In front of you lies the end report of the Promoting Skills for Legal Support Staff Project which was prepared on instruction of the National Assembly of heads of Criminal Law departments within the courts and the Netherlands Council for the Judiciary (Raad voor de rechtspraak).

This report is presented in a period in which the number of cases is declining, sectors have to cut their expenses and at the same time the average complexity per case is increasing. In order to deal with this problem, a choice is usually made to reduce the scope of the legal support. This is understandable, as this is easy to realise in the short term. This vision shows how in the near future there will be a greater need for legal support. Increasingly higher requirements are being set for the expertise and skills of the court, which are increasingly difficult to reconcile in one person. In addition, due to ageing and labour shortages in the labour market in the long term, an outflow of judges can be expected which will not be offset by the expected inflow. It is therefore necessary to reinforce the legal support, not only substantively but also numerically.

This requires a different realisation of the supporting functions, a different way of working together and above all of reinforcing the individual legal advisors with new knowledge and competences. On the one hand there is an assignment for the organisation which will have to facilitate the legal advisor in this respect. On the other hand, the legal advisor is ready for an active professionalization of his role.

In this report concrete recommendations are made how this foresight can be shaped in practice in the future. By substantively reinforcing the legal support and giving them a clear position in the cooperation with the judge, it is optimally utilised and the judge can focus on his core tasks. This will benefit the quality of criminal jurisprudence and will probably also save costs.

The Hague, January 2011
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Introduction

*'The question is how the judge can call on another person's knowledge in a transparent and accepted manner and can himself retain final responsibility for the decision.'*¹

The pressure on the quality of the criminal case law is high. The scope and gravity of the cases are expanding, society and the political arena are ever more vocal backseat drivers, legislation and jurisprudence are changing increasingly rapidly, the requirements which are set for (subject-matter) expertise are becoming higher and at the same time case law is facing reduction. The first ones to become the victim of this are the legal advisors, but is this wise?

The perception from outside is that the criminal judge² prepares everything and that he writes all the judgments himself. In various forms on television, in books and in articles this is expressed as a topic in the discussion on the confidence in case law. Practice in the criminal law sector shows, however, that reality is different. Naturally the criminal judge has final responsibility for the quality of his judgment, but it is precisely the area of legal support which over the past few years has been delegated a fair number of substantive legal tasks.

In addition, due to the expected ageing of the population and the related outflow of judges, within a few years even more work will have to be delegated to the legal advisors. The judge of the future will be forced to restrict himself, as person with ultimate responsibility, to his core tasks: leading the session, deciding the matter and as person with final responsibility, steering the team making the judgment. Proper legal support is necessary in order to be able to do this.

Field research

This report sketches a vision of the legal support in the criminal law sectors in the near future. When preparing the report, account was taken of the existing national documents exploring future prospects relating to the Judiciary. These are combined with the outcomes of a field study into the current situation of the legal support in the criminal sectors which was carried out in the autumn of 2009. In this field study legal advisors with varying degrees of experience and their (direct) supervisors were asked questions, inter alia, on the current task realisation, delegation patterns and cooperation with the judge. There was also a discussion of the training paths and the ideal realisation of the legal supporting functions. Such a field study has been carried out for the first time among the criminal law sectors of all district courts and courts of appeal. Appendix II provides a brief description of the approach of the field study.

Structure of the report

This report comprises three components. The first chapter goes into the current situation of the legal support. The field study highlights a number of striking topics which characterise the current situation. The second chapter formulates answers to the question what developments the future will bring and what these mean for the legal support.

1 Vision report 'Toekomstverkenning rechtspraak: expertise en specialisatie', 27 October 2007, p.2.

2 The term Judge refers to both judges in the district courts and judges in the courts of appeal.

The documents exploring future prospects have been taken as the basis in this respect. The third chapter goes into the question how the legal support will have to be given shape in the future in view of these developments and what will be necessary to achieve this. In conclusion, the last chapter contains a summary of the vision for the Judiciary in the future. The report is filled with examples of existing local work practices which utilise the qualities of the legal support.

In this report a choice has been made to use the terms ‘legal advisor’ and ‘legal support’ which are more suited to the current task conception and developments, although the terms ‘court secretary’, ‘secretary’ and ‘secretariat’ are also frequently used in the country.

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1. The current situation: topics from the field study

The field study illustrates a picture of the current situation of the legal support in the criminal law sectors. A number of topics are highlighted which are characteristic for the current situation of the legal support. These topics are: delegation, the realisation of and connection between functions and tasks and the cooperation between the legal advisor and the judge.

1.1 Delegation of tasks from the judge to the legal advisor

Delegation based on need

It can be deduced from the modest regulations describing the tasks and powers of the legal advisor that the legal advisor is traditionally the judge's support. His legal tasks and responsibilities are in the first instance geared to making a record of the hearing, preparing the transcripts of the hearing, preparing the record of verbal judgments and the fleshing out of appeals/cassation appeals.

Regulation of the tasks package of the legal advisor

- The function of the legal advisor or the legal support is not mentioned in the law and other regulations. In Article 14 of the Judiciary (Organisation) Act (Wet op de rechterlijke organisatie) mention is made in Paragraphs 3 and 4 of the function of court clerk:
3. The judiciary officers (gerechtsambtenaren), judiciary officers in training (rechterlijk ambtenaar in opleiding) and trainee judges (gerechtsauditeurs) so designated by the court administration carry out work which has been charged to the court clerk by or pursuant to the law. They are authorised to carry out this work for other courts too. The instruction will be in writing.
 4. The court administration can appoint persons, not being a judiciary officer charged with adjudication, judiciary officer, judiciary officer in training or a trainee judge, as court clerk. In that capacity they can be called to carry out work that is charged to the court clerk by or pursuant to the law.

For the court clerks in the criminal law sector the tasks and work are laid down in the Code of Criminal Procedure, the special criminal statutes, and the like.

The task of the court clerk is described in Article 326 of the Code of Criminal Procedure:

'The court clerk prepares the transcript of the hearing in which a record is made of the observed forms and of everything that arises with regard to the case at the hearing.'

Article 11 of the Court Service Order (Orde van dienst gerechten) sets out:

- 'In addition to the tasks charged to the court clerk by or pursuant to the law, court clerk works in any case comprise:
- a. attending sessions and hearings;
 - b. making records, and
 - c. offering support to a judiciary officer charged with adjudication in all his official actions.'

In the last few years, however, the task package of the legal advisor in many criminal law sectors of both district courts and courts of appeal, has expanded. He is increasingly being asked to prepare the hearings, be a discussion partner in chambers and to write independent draft judgments.

The reason for this can be found in various developments. The increasing scope and gravity of cases – inter alia due to an increase in (mini) mega cases and the consequences of the introduction of the Administrative Settlement Act (Wet OM-aftoening), so that the lighter cases can no longer be presented to the judge – and the increasingly more stringent requirements which are set with regard to expertise – inter alia due to the increase of specialisation with the chain partners – put significant pressure on criminal case law. The output financing³ and historic cost prices force the sectors, however, to deploy judges as efficiently as possible. There are not enough judges to invest the extra time which is necessary to keep up with these developments and to maintain the high level of quality of the criminal case law. This entails a greater need to rely on legal support.

From building blocks to writing sector

Promis (Project for the Improvement of Reasoning in criminal cases)⁴ is a telling example of a project whereby legal support has been given a bigger role. As a leading development in the quality improvement of the criminal sectors, Promis deals with the proper reasoning of the full-panel (3 judges) judgments so that insight is gained into the judges' thought process. However, Promis puts pressure on the work process. In order to Promis a judgment, a thorough legal analysis is necessary in the preparatory phase and there must be structured consultation in chambers. In addition, Promis asks that within the judgment term of 14 days a readable, full judgment is available. The criminal law sectors can do nothing other than call on legal support. Previously the judgment was built up of building blocks by the legal advisor. Due to the increasing requirements for reasoning and Promis, the judgment is now more extensive in writing. The task of fleshing out the draft of the judgment has remained with the legal advisor, as has the preparation of the cases. In both task areas there is a substantive delegation and increase in task for the legal support.

Formative relationship judges/legal advisors

In any event, the differences between the criminal law sectors are large when it comes to the formative relationship between the members of the Judiciary and legal support. There are criminal sectors where there are 0.74 fte legal advisors per judge, and there are sectors with 1.91 fte legal advisors per judge. These are the extremes. Approximately half of the sectors have fewer judges than legal advisors in service. These numbers must be used carefully. In some sectors a number of the legal advisors are formatively included within the administration and in a number of sectors, a part of the tasks of the legal advisor are carried out by the administration. In addition, the staff complement is often determined by the history, the specific organisation culture and the task package of the individual criminal sector which is not the same everywhere. Nor do the numbers say anything about the effectiveness of the deployment of the legal advisors. Criminal law sectors in which there are far more legal advisors than judges working, sometimes have few tasks delegated to the legal advisors. In the criminal law sectors with approximately the same number of legal advisors and judges, the legal advisors have far-reaching powers.

3 See the brochure 'The Financing system of the Netherlands Judiciary' under Publications at www.judiciary.nl.

4 About 50% of criminal judgements is currently written according to the Promis method.

A practical example?

Broader use of clerks leads to 100% Promis:

In order to be able to write a high percentage of 'Promis' judgments, the Court in Breda has invested in the criminal law sector by make extra financial resources available at the start of the Promis project. This has given a quality impulse to the legal support. Legal advisors have been given extra time for a full-panel session in chambers, so that they can properly prepare the session. The extra time which the legal advisor spends on this more extensive preparation, in part pays for itself in chambers and in the drafting of the judgment.

Promis is also given attention in the quality control meetings and Promis coordinators are appointed at an early stage. In addition, the sector has made agreements with the public prosecutor's office regarding the presentation of the case files, it has drawn up flow schedules for the scheduling of the hearings and it has been holding structured planning meetings with the public prosecutor's office for some time.

This attention for Promis entails that in the criminal law sector of the Court in Breda, all full-panel judgments in chambers are written by the legal advisors in the Promis manner.

1.2 Realisation of and connection between functions and tasks

Current situation: different connections between tasks and functions

In most courts there are different functions within the group of legal advisors. Common functions are those of adjunct legal advisor, junior legal advisor, legal advisor, senior legal advisor and staff legal counsel.⁵ Sometimes there are legal administrative staff and clerks which in the one sector fall under the administration in whole or in part and in the other sector are counted as part of the legal support. It is striking that the legal advisors do not have the same background. Some clerks come from the administration, some followed the 'S training' and a number of employees have a HBO-degree⁶ in legal studies. The biggest group at this time has a university education.

In 2007 national advisory job profiles were established for the legal support function. Five different positions have been distinguished: junior legal advisor, legal advisor, senior legal advisor, staff legal counsel and senior staff legal counsel. The same competences have been established for each position: problem analysis, opinion forming and writing skills. The gravity of the positions increases on the basis of the view that the problem of the cases to be dealt with, the degree of independence which is required to handle the cases, the interaction with other disciplines and the degree of specialisation increase. Advisory profiles have been or are being implemented in the criminal law sectors.

The position of senior staff legal counsel is new. The sectors supplement the advisory profiles in accordance with their own situation, whereby the position of senior staff legal counsel has not been fixed for the time being. The field study has shown that the courts have established their own realisation of the connection between the various tasks to the various positions. In most criminal sectors the legal administrative assistant is primarily seen as administrative staff. In other sectors, however, this staff member has also been given court clerk tasks and he is used at hearings of the detention chamber or at simple, single-judge hearings in chambers (hereafter: single-judge sessions). The distinction between the adjunct legal advisor and the junior legal advisor is not very clear. Both are used at single-judge hearings and sessions in chambers.

5 The names used for the function of legal advisor differ between the courts.

6 Hogeschool bachelor's degree programme.

In the same way a number of sectors have indicated that there is no difference between the job description of legal advisor and that of the senior legal advisor. Both are involved with standard single-judge hearings, more complex single-judge hearings and standard full-panel hearings (hereafter: full-panel hearings). The difference is that sometimes they are, and sometimes they are not involved in (mini) mega cases. The task package of the staff legal counsel is realised in a completely different manner. In some sectors the staff legal counsel is a separate position, and occasionally it is a package of tasks from which a (senior) legal advisor is exempt. The odd staff legal counsel is fully removed from the session roster and is primarily involved with policy-related tasks, while in other criminal sectors the staff legal counsel, in addition to his task as a source of information for the sector, is primarily deployed in more complex cases.

What is even more important is that both legal advisors and their superiors indicated in the field study that while allocating cases to clerks, little attention is paid to the specific qualities, experience or specialist knowledge of the relevant clerk.

It is thus possible that an experienced senior legal advisor or staff legal counsel will be placed on the roster at a simple, single-judge hearing and his less experienced junior colleague at a full-panel hearing. The reason for this is that the planning of hearings is generally a matter of availability of persons rather than intentional use of legal quality. Only in the case of involvement with (mini) mega cases do the qualities of the legal advisor seem to explicitly be taken into account. There has thus been no clear or intentional linking of tasks to function levels. This is reflected in the remuneration of the work.

The remuneration of the positions is the same across the country, but because the link between tasks and positions varies across the country, the remuneration of the tasks differs across the country.

The need for more detailed national job profiles with a clear description per function of the tasks and responsibilities is great. These job profiles must be sufficiently distinctive with regard to each other. In working practice the link between the concrete tasks and the positions will have to be clearer. A more conscious rostering and allocation of tasks will also be to the benefit of the quality.

Different working methods for preparation: from supporting the judge to advising the judge

It is not only the link between tasks and functions which differs per sector, the realisation of the tasks is not uniform nationwide. The working method in the preparation phase is a significant example hereof.

Since Promis the writing of the full-panel judgments has been charged virtually in full to the legal advisors and the criminal sectors are nationally choosing the same line. The field study also shows that different versions have been chosen with regard to the other tasks and the role which the legal advisors play in the work process in the criminal sectors. The Vision for the Judiciary in 2020 also notes this: 'The distribution of tasks between judge and 'support': practice differs greatly between courts.' The differences in approach to the preparation method are the most striking. The field study shows that both the legal advisors and the supervisors deem preparation to be one of the core tasks of the legal support. These core tasks are realised in many different ways nationally. The common preparation forms are listed in the box at the end of this paragraph. It becomes clear that some preparation forms are primarily oriented towards administrative tasks, while others in fact have a legally substantive and advisory character.

In general, the criminal sectors opt for one of the aforementioned working methods. Sometimes the preparation methods differ within a criminal sector. What is remarkable is that when choosing a preparation form it is hardly reviewed whether this form aligns with this kind of case or the complexity of the case, even though this could be expected from the viewpoint of quality.

In addition, the criminal sectors make different considerations with regard to the question whether it is precisely the full-panel cases which require preparation. There are sectors which have chosen to have the single-judge hearings in particular prepared by the legal advisor. This is based on, inter alia, the quality consideration that the police court has no natural deliberation time (in the form of chambers) and that as a rule he pronounces judgement immediately after the investigation.

The view is that the legal advisor can assist the single judge at the hearing with his knowledge of the file.⁷

There are also sectors which precisely leave out the preparation of the single-judge hearing to be able to put the emphasis on the preparation of full-panel cases. These differences in approach result in risks. It is more difficult to develop national courses and training which align with the local working methods, it makes the implementation of national new working methods more complex, this makes the rotation of legal advisors to other courts more difficult and with the legal support it causes a certain sense of ambiguity and inequality.

In any event, during the field study it turned out that practice often does not correspond with what the name 'core task' makes us expect. The preparation of criminal cases by the legal advisor is subject to time pressure and is often the first task to fall by the way-side, despite the good intentions.

Various preparation forms

- A. carry out administrative actions, such as organising files, labelling file components, checking formalities (e.g. whether the summons has been properly served, or the leave system applies and whether all relevant participants in the proceedings have been properly summoned) and monitoring the completeness of the file (e.g. finding missing reports);
- B. carrying out administrative actions and reading the file;
- C. carrying out administrative actions and making a first analysis of the case by marking sections in evidence or by completing a checklist;
- D. carrying out administrative actions and making a preparation form with a summary of the file;
- E. carrying out administrative actions and making a preparation form with a legal analysis of the evidence, a crossed indictment (if judicial finding of fact is achieved) and the presentation of 1. possible exculpatory material and 2. possible defences that have been signalled;
- F. carrying out administrative actions and making a preparation form with a thorough legal analysis of the evidence, a crossed indictment (if judicial finding of fact is achieved) and the presentation of 1. possible exculpatory material (with the related conclusion whether this can or cannot lead to acquittal), 2. possible defences that have been signalled and the method of dismissal or arguments as to why the defence would have to be honoured and 3. an advice regarding the type and degree of punishment;
- G. carrying out administrative actions and making a preparation form with a full legal analysis of the evidence, a crossed indictment (if judicial finding of fact is achieved) and the presentation of 1. possible exculpatory material (with the related conclusion substantiated with proper arguments as to which this should or should not lead to acquittal), 2. possible defences that have been signalled and the method of dismissal or arguments as to why the defence would have to be honoured, 3. an advice regarding the type and degree of punishment and 4. case law and legislation relevant for the case.

7 It is common that the legal advisor prepares cases for a single judge hearing for training purposes.

1.3 Cooperation between judge and legal advisor

The culture in a sector determines to a great extent the method of cooperation between the judge and the legal advisor. This cooperation is realised in different ways in the criminal sectors and can even differ per section. The chair of the full bench panel of judges plays a decisive role in this respect.

Alignment of mutual expectations

In general, in the preparatory phase there has been little consultation between the judge and the legal advisor, so that expectations of the various parties were not expressed. The actual cooperation often only starts in chambers. In the field study there was a lot of discussion about the role of the legal advisor in chambers. The ways in which the chambers are realised, vary greatly. In a single case the legal advisor only has the function of minute take in chambers, in most chambers the legal advisor is seen and spoken to as a fully-fledged discussion partner, although he does not always have a say in the decision. The legal advisors indicate that they find it more difficult to speak in chambers if they have not prepared the case themselves.

The interviewees found the cooperation in chambers to be a difficult topic. The expectations about the role and the attitude of the legal advisor are barely exchanged with the judge, even though it is one of the few times in the work process in which there is concrete cooperation. In addition, little attention is paid to this aspect of the work in the sectors. There is no steering toward it, nor specific training.

The cooperation during the drafting of the judgment is in turn too limited. The changes are added to the draft digitally or in handwriting and there is little to no verbal explanation of the comments. If the legal advisor requires such, he has to chase it up himself. It is not usual – during the drafting of the judgment – to gather again or to review the judgment.

Need for feedback

It has often been commented in the field study that it is important for the necessary cooperation that the legal advisor and the judge can and dare call each other to task on their behaviour. The legal advisors have indicated that giving and receiving feedback, despite the various courses, is unfortunately still not taking place. The review committee has also commented on this:

‘The most important national results are that in general judges can give feedback to legal advisors more easily than vice versa. A large majority of all legal professionals finds the feedback received (very) useful. A relatively large percentage has indicated to sometimes experience reticence when giving feedback and sees a risk for the relationship between co-workers as a result of giving feedback.

(...) In general it has been demonstrated during the visits that giving and receiving feedback relating to legal content is easier than relating to conduct. (...) Based on the accuracy of the finding that feedback relating to conduct aspects is regularly found more difficult than feedback relating to content, the question arises whether the feedback culture has been sufficiently developed to make direct comments on conduct aspects by colleagues possible.’

Investing in consultation forms

In addition to the limited feedback relationship, the review committee points out in its report that in a number of courts joint substantive consultation between courts and support is lacking. It points out that this can result in ‘the meaning of certain regulations or case law within the team or the sector not being explained in a clear manner.’

The review committee has warned that greater effort must be put into the development of the cooperation relationship. Although the field study in the criminal sectors does not explicitly show that there is no joint substantive consultation, the legal advisors do clearly give out the signal that investment in the cooperation relationship with the judges is required.

Need for trust, safety and space

The field study presents a good picture of the aspects which influence the cooperation relationship. The competencies of the legal advisor, the quality of his work, the way in which he is introduced to his position and role and the responsibilities and space allocated to him, are to a great extent decisive for the way in which the cooperation is given shape. As what the legal advisor has to offer increases, e.g. by specialisation or by experience, it is logical that the judge should make greater use thereof.

The judge influences the cooperation to a great extent, but he is not always aware of this. He decides how to deal with the hierarchy, whether he offers safety and to what degree he gives responsibility and space to the legal advisor. He also establishes the quality standard for the work by expressing his expectations and correcting the work. If the judge does this properly, mutual trust arises. This will be to the benefit of the quality of the work.

1.4 Conclusion

The three topics described in this chapter are topics which determine the current situation of the legal support to a great degree. It first of all relates to the delegation patterns as these are shaped under pressure of developments such as the introduction of Promis and the increasing gravity of cases. This substantive delegation is currently taking place because full-panel cases are being prepared more extensively and greater requirements are being set for writing the draft judgments, both with regard to the legibility and with regard to comprehensibility. The preparation and writing of the draft judgments are activities which are generally executed by the legal advisor.

In addition, the field study provides insight into the varying realisation given to the job profiles nationwide. The allocation of tasks to functions, in particular, varies significantly. The concrete realisation of the tasks also differs. The various working methods found in the preparation phase are an example of this. The time appears to be ripe to develop clear working methods and more uniform job profiles.

Finally, it has been noted in the field study that the cooperation between the judge and the legal advisor requires attention. There is a great deal of ambiguity with regard to the mutual expectations and there is a need for more feedback and openness.

2. Future developments lead to new tasks and roles

The various vision documents show what developments are pending which will be of influence on the deployment of the legal support. The increasing need for expertise, the revision of the judicial map, the farther-reaching digitalisation, the external orientation and the expected ageing of the population and shortage on the labour market are developments which will be discussed in this chapter.

2.1 Knowledge development

The legal advisor as knowledge manager

In the different papers exploring future prospects and developments there is more extensive discussion of knowledge development in the judiciary. More knowledge is required, knowledge must be made more accessible, the sharing of knowledge will become more important and there is a need for non-legal, specialist knowledge. This aligns with the development noted in the first chapter that there is an increasing specialisation among the chain partners in the criminal justice area. This means greater expertise is required to deal with ever more complex cases. In the Vision of the Judiciary in 2020 it is outlined in this respect how the judge is increasingly finding himself pulled in two directions: 'Judges are expected to have the requisite legal and non-legal expertise at their disposal, however it is organised. (...) This statement contains a contradiction: on the one part the judge is involved in specialisms, on the other an effective resolution of conflicts increasingly requires an approach which exceeds a single legal discipline.'

Moreover, judges are increasingly expected to have more and broader knowledge. 'For example, judges are also deemed to have knowledge of empirical sciences. As (all) this knowledge cannot be encompassed in one person, this makes the organisation of knowledge increasingly more important', as is set out in the Vision of the Judiciary. The entire organisation will have to be involved in the gathering, mobilising and sharing of knowledge: 'While the judge may demonstrate practical wisdom in his decision making, it cannot be expected that the always has all necessary knowledge immediately at hand. Sharing knowledge is necessary and it must be possible to quickly mobilise knowledge in urgent situations. This has consequences for the entire organisation of the Judiciary.'

In the Vision Paper on Future Prospects for the Judiciary: Personnel (hereafter: Vision Paper on Personnel) a role is explicitly laid down for the legal advisor with regard to this knowledge management. The view is that the judge will increasingly rely on the expertise of the legal advisors: 'This applies all the more because not all expertise which a judge must have in order to make decisions can be encompassed in one person.' It is logical to closely involve the legal advisors in the various initiatives in the area of knowledge management. They can play a great role in the gathering, managing and sharing of knowledge in, inter alia, the Wiki Juridica for Criminal Law. They can align in this respect with the already existing knowledge centres. This allows them to take work out of the hands of the judges.

With regard to the noted development that specialist non-legal knowledge will be increasingly necessary, it has been indicated in the Agenda for the Judiciary 2011-2014 that there will be a pilot with specialist non-legal supporters. It is expected that this new staff group will, in view of the nature and the content of their activities, be placed under the legal support division.

2.2 Reform of the judicial map⁸

The legal advisor as a specialist

Due to the revision of the judicial map, courts have been merged and tasks packages have been reclassified. The criminal sector organisation has been enlarged and this allows for specialisation within all sectors. For example, this means things such as specialisms in fraud, economics, the environment and juvenile criminal law. The legal advisor can play a big role in this respect. After having gained generalist knowledge, the legal advisor can gain in-depth knowledge and be deployed as a specialist. The Vision Paper on Personnel has the following to say in this respect: 'In more and more areas there will be a need for specialists, whereby the legal advisor has more knowledge of the relevant legal discipline than the broadly educated and experienced judge.' The legal advisor supports the generalist judge with his specific specialist knowledge.

In addition, the revision of the judicial map provides opportunities for sharing existing knowledge. Here too the legal advisor can play a role as knowledge manager. The gathering, accessing and sharing of knowledge can be placed with him.

A practical perspective

Specialists in support:

Four of the five appeal courts, the large district courts and four medium-sized district courts currently have specialised legal advisors. In general, the small district courts have no specialist legal advisors. There are small and medium-sized district courts where legal advisors are deployed at specific sessions (fraud, economics, the environment, the full-panel section for youth and deprivation) and where it is said that there are legal advisors who know more about these topics than others.

Often a specialist legal advisor is deployed, in addition to his specialist area, on common criminal law, as they like to keep their work varied and because this generalist knowledge is also necessary for the specialisation.

Insofar as there are specialist legal advisors, the field study has shown that at present it differs from court to court how a legal advisor becomes a specialist. A legal advisor can become a specialist on his own request, or be frequently deployed in a specific area because the organisation requires such. It is possible that a legal advisor had specialist knowledge before he started working at the court, was hired for that reason and subsequently developed into a specialist. It is also possible that a legal advisor follows a number of courses in 'his' specialist area and is then put into practice. The above shows that at present on the part of most courts there is no conscious policy with regard to the specialisation of legal advisors.

The legal advisor as flexible staff member

The revision of the judicial map has simultaneously seen the introduction of a new management structure. The division into sectors has been left behind in this respect. The courts are free to choose a new division. It is already clear that the organisation will have to be set up in a more flexible manner. Legal advisors will be expected to be broadly deployable, presumably even in various legal disciplines. This appears to be directly contrary to the increasing need for and options of specialisation. An answer can be to, on the one hand, broadly train and deploy legal advisors and on the other to train and deploy a number of legal advisors as specialists.

8 On the 1st of January 2013, the Netherlands Judicial map was reformed. Important changes are the reduction in the number of courts, from 19 to 11 district courts and from 5 to 4 courts of appeal. This also entails a reduction in the number of court board members, from 95 to 33.

2.3 Increasing digitization

The legal advisor as a pivot in the digital developments

The criminal sectors have to deal with various developments relating to computerisation. In the criminal sectors the Compas computer programme is being replaced with GPS. The single-judge sessions will be introduced into and processed in GPS as much as possible.

In addition GPS tailor-made work is being developed, especially for the full-panel cases and the mega cases. The DSS (Digitalisering Straf Sectoren) Project is steadily progressing. The intention of this project is that more and more cases are presented digitally. The DIVOS 2.0 Project (Digital Presentation of Criminal Cases, part of DSS) is the forerunner of this. DIVOS 2.0 makes it possible to have a digital version of the criminal file and to prepare and handle the criminal case from this digital file. The digital file not only contains the transcripts and other documents, but can also extend to pictorial material, such as photos or video recordings, and audio material. This video and audio material can also be played and listened to in the court rooms from the digital file, which was tested at the beginning of 2011 in Rotterdam and Dordrecht district courts.

The digital file offers new possibilities in the processing of cases. The legal advisor plays a central role as compiler of the preparation form and as the party who makes the file accessible to the judge. The legal advisor will be expected to be in charge, in the court room, of playing audio and video material. The knowledge relating to the entire digital work process is concentrated in the legal advisor. The legal advisor will be facilitated in this respect with knowledge and resources.

In addition to the digital file the judgments will increasingly and more often be made available in digital format. The website Judiciary.nl performs the role as source of knowledge for the outsider. The legal advisor is asked to make the judgments suitable for digital publication.

It is furthermore expected that parties to the proceedings will increasingly be able to obtain information on the criminal proceedings by digital means. It is logical that legal advisors will be closely involved in this process: the information on the progress of a case must be quickly made digitally available.

2.4 External orientation

The legal advisor as environmentally-aware supporter of the judge

Society sets more and more requirements as to the professionalism of the judge and no longer sees his authority as self-evident. Moreover, the media not only pays attention to the legal merits of the case, but increasingly often appear to directly focus on the judges involved in the case. It is of greater importance that the legal advisor is aware of his environment and the social context in which he operates. By building up knowledge in this matter and being aware of the social sensitivities, he can support the judge in his work. The Vision Paper on Personnel sets out: 'Just like the judge he is also aware of his environment and social context.'

In practice the social context is of influence on the setting of priorities (which case will be dealt with first, which case will have a Promis judgment, what media attention can be expected with regard to a case). An environmentally-aware legal advisor will involve the societal context in his considerations of the case. He will also take them into account when writing a readable, comprehensible and substantiated judgment (Promis). Social sensitivity of the legal advisor must therefore be properly trained. It will be helpful in this respect if the legal support forms the best possible reflection of society. The judiciary has an informative task with regard to society which at this time is primarily executed by judges. Judges and legal advisors would be able to execute this task well together; for example, giving information to classes and supervising classes attending a hearing. This results in more interaction between society and the Judiciary.

2.5 Ageing population and shortage on the labour market

More delegation in the future

As described in the first chapter there is already a delegation of legal substantive activities from the judge to the legal advisor. In this respect the review committee has noted that in the execution and division of the work more and more amendments are being made in the strictly functional separation between Judiciary, legal advisors and administration: 'There is delegation on an increasingly larger scale of judicial work to legal advisors. This analysis could give rise to further delegation of judicial tasks to legal advisors, so that efficiency and quality enhancement can be achieved.'

In the various visions of the future attention is, moreover, paid to the ageing population and the concomitant shortage on the labour market which is expected in the longer term. In the Vision of the Judiciary in 2020 the expectation is expressed that this will make it particularly difficult to maintain judiciary staffing levels. This then raises the question what this means for the deployment of legal support in the more remote future. It can be expected that a more structural and farther-reaching delegation of tasks of the judge to the legal advisor is necessary to get the work done.

The field study shows that this farther-reaching delegation can primarily be sought in the legal substantive analysis of the file, whereby the legal advisor provides substantive support for the judge by laying down a detailed, adequate legal analysis in the preparation. A second delegation option can be found in case management, whereby the legal advisor follows the case from start to finish and along the way takes on logistical decisions and substantive decisions about the progress. The legal advisor will see to it that the case will be presented in the session when it is substantively ready, which prevents proceedings from being stayed and hearing room from being left unused.

This delegation of tasks makes a greater claim on skills such as the legal substantive analysis of cases and the planning and organising of cases. The legal advisor will have to be trained for this.

At the same time, it is time to study whether delegation of tasks to the administration is possible. For example, the records of verbal judgments could be prepared by the administration. There are a number of courts where this already happens. The supplementation and copying of documents from the file and the execution of work in the framework of the protocol for staying proceedings are tasks which lend themselves for delegation.

A practical perspective

The legal advisor as case manager:

The criminal sector of the Arnhem Appeal Court has been experimenting since the beginning of 2010 with the relatively new Article 258(5) Code of Criminal Procedure. This experiment entails that the chairman of the 'experiment chamber', for every criminal case in which he finds applications in the statement of appeal, or on the basis of the adjudication of the case by the district court suspects there are applications, will invite counsel and the advocate-general to explain their applications and research wishes. Formally the president will make a presidential decision, but the full-panel chamber will retain full freedom at the hearing to honour or dismiss additional applications. In practice the legal advisors play a big role in this experiment, by the early screening of the criminal case files for research wishes and the (possibly ex officio) need for further investigation. They also often make the contact with the counsel and advocate-general and they schedule the session dates in consultation. Due to this active case management substantially lower percentages of stayed proceedings are achieved and a lower work load (on balance) is realised.

Working in a team context

Another result of the shrinking Judiciary will be that the judge fulfils his role in a different manner. The Vision Paper on Personnel points out the following in this respect: 'In the future the judge will work in a less individualist manner and will act more as the party with final responsibility for decisions of a team of session clerks and staff workers.' This means that the realisation of the cooperation between legal advisor and judge is changing. It is becoming more essential to create a culture in which both can rely on each other and know what they can mean for each other in the work, both substantively and when it comes to planning and organising the work.

2.6 Conclusion

Future developments such as knowledge development, the revision of the judicial map and related alteration in the management structure, the increasing digitalisation, the external orientation and the ageing population and the concomitant expected shortage on the labour market lead first of all to new tasks, a number of which can be logically charged to the legal advisor. Examples of this are the tasks relating to knowledge management and digitalisation. This leads to new skills and a specific attitude and conduct which the legal advisor will have to make his own in order to be able to keep providing the necessary quality in the future. This relates in particular to the development of environmental awareness and flexible conduct. In addition, rapid access to and sharing of knowledge, and proper organisation and planning are becoming increasingly important. The expected developments also give rise to a discussion as to whether the specialisation is to be placed – with the judge or with the legal advisor – and what tasks can be delegated and definitely implemented.

3. Implementation of the Vision: concrete details and realisation

Both the described developments in the current practice and the future developments entail that greater requirements are being set as to the expertise and skills of the legal advisor. This chapter sets out what the ideal legal advisor could look like. A picture is then presented of the ideal cooperation between the judge and the legal advisor. In the following paragraphs, finally, a number of instruments are discussed which are necessary to select and develop the legal advisor and bind him to the organisation: the realisation of the legal support, the recruitment & selection, the education & training and the career policy.

3.1 The ideal legal advisor

The field study, the vision documents and the outlined developments as discussed show that ideally the legal advisor in the criminal sector is a centipede who possesses many competencies and can adequately perform various roles.

The legal advisor as excellent legal support for the judge

The legal advisor presents facts, ideas and opinions in comprehensible and correct language in writing and has a sharp legal analytical ability. He is able to signal possible problems and make connections. In addition he is properly able to distinguish primary and secondary issues. In addition to broad substantive legal knowledge, he possesses basic knowledge of statistics and of the empirical sciences. He is also able to read and then interpret expert reports. The legal advisor is able to independently write clear and comprehensibly substantiated judgments. In addition, he is stress resistant and in his prioritisation he always weighs up the necessary quality and the achievable quantity. He can also be used flexibly, possibly even in more than one legal discipline.

The legal advisor as adviser to the judge

The legal advisor is a fully-fledged discussion partner, sounding board and counterweight for the judge, whereby the legal advisor takes a serious and critical attitude to the judge, gives independent feedback to the judge and provides the judge with information, both solicited and unsolicited. Where necessary the legal advisor will take the judge up on matters and he has no trouble in correcting the judge and if necessary supplementing them. The legal advisor is verbal, pro-active and critical.

The legal advisor as knowledge manager

The legal advisor supports the judge by, in the case before the judge, gathering, accessing and sharing knowledge at the right times. The legal advisor participates in knowledge groups and independently presents substantive topics in the meetings. Where applicable, he has contacts with the knowledge centres. He can consult and supplement the various knowledge systems himself.

The legal advisor as a spider in the digital web

The legal advisor is handy with the computer and the various digital systems which relate to both the organisation of the work and the knowledge systems. He makes the digital file accessible to the judge. In addition he consults and supplements knowledge systems.

The legal advisor as case manager

The legal advisor is good at planning and organising cases. He accesses the cases digitally for the judge and makes decisions when following the case from start to finish about the logistics and progress of the case.

The legal advisor as environmentally conscious staff member

The legal advisor is rooted in society, is externally oriented and is aware of social sensitivities. Consequently he knows what cases require extra reasoning. He aligns his priorities to this. He is also able to give outsiders information on the criminal justice system.

The legal advisor as specialist

The legal advisor has developed into a high quality specialist who has thorough knowledge of certain topics, like fraud, economics, the environment or juvenile criminal law. He is deployed on specialist cases. The specialist is usually a lawyer, but he is sometimes also a specialised non-lawyer.

The legal advisor as trainer

The legal advisor will train new legal advisors, legal advisors that are new to the field of law and trainees. In addition, he supervises sector-starting judges, judges in training (RIOs) and judiciary officers in training (RAIOs). He is good at giving constructive feedback and provides specific supervision of the individual development of the staff member in training.

Naturally not all these roles can be combined in one person.

3.2 The ideal cooperation between judge and legal advisor

With the increase of the number of (substantive) tasks and responsibilities of the legal advisor, the cooperation between the judge and the legal advisor is changing. As has been described in Paragraph 2.5 the judge will increasingly be the director of a team of colleagues and specialists. The judge will rely more on the knowledge and skills of the legal advisor and will focus on the core tasks of the Judiciary. This is only possible if the cooperation of the two is given a more explicit form and if the expectations set for the cooperation, are described and aligned. It also becomes more important that the cooperation involves mutual respect and trust.

With the clarification of the competencies and tasks of the legal advisor it becomes easier to align the wishes and requirements to each other in practice. It is particularly useful to enter into a discussion with the team of judges and legal advisors on the mutual expectations in the work process. This allows concrete alignment on who does what in what phase of the process and how the communication about this alignment is arranged. The quality wishes and substantive expectations with regard to the products to be presented (think in particular of the preparation form and the judgment) can also be aligned.

In addition there will have to be an investment in the feedback culture. This wish is also expressed in the Vision of the Judiciary: 'In the Judiciary there is a culture in which giving feedback and the sharing of knowledge is commonplace.' Training of the skill to give feedback and the demonstration of exemplary behaviour by supervisors are important tools in this respect.

3.3 Realisation of the legal support

Academic and HBO⁹ working and thinking level

Current practice shows that the criminal law sectors at present recruit almost exclusively academics. In addition to the advantages, the disadvantages hereof are slowly becoming visible. In general academics are more difficult for the organisation to retain and they set greater requirements for the career options within the Judiciary. In addition, in the future academics will be scarce and the recruiting of academics not only for the position of judge but also for the position of legal advisor will become difficult. The advice is to organise legal support in such way that it offers a place to both people with an academic and to people at HBO level.

On average, staff with a HBO background and former 'S course' participants remain with the court for longer and form the backbone of the sector. In addition, they often grow within the sector; many 'S course' participants have developed into senior legal advisor or staff legal counsel. In any event, this aligns with the views expressed in the Vision Paper on Personnel:

'Substantial effort will have to be put into recruiting, selecting and training this important group of workers. The vision work group has both HBO and MA university graduates in mind as the training level.'

Based on the positions of junior legal advisor, legal advisor, senior legal advisor, staff legal counsel and senior staff legal counsel, the task division can look as follows. The junior legal advisor can be charged with cases in chambers, (extension of) detention and simple single-judge hearings (alcohol, bulk). The legal advisor can be charged with complex single-judge hearings (detainees), juvenile hearings and simple full-panel hearings and the senior legal advisor with the specialist single-judge hearings (economics, the environment), applications to chambers, complex and specialised full-panel hearings and (mini) megas. The staff legal counsel and senior staff legal counsel are responsible for the sector-wide knowledge management and in addition they are a source of information for complex issues. The staff legal counsel can be used in very complex cases, the senior staff legal counsel at the most complex specialised cases. It will have to be researched how the tasks packages of staff legal counsel and senior staff legal counsel distinguish themselves from each other.

The positions of junior legal advisor and legal advisor can be filled by staff members at HBO level, while the positions of legal advisor, senior legal advisor and (senior) staff legal counsel offer scope for staff members with an academic (Master's) level. The position of legal advisor will become a bridging position where both groups can end up, depending on the individual qualities. Clerks and trainees can be used as a flexible layer. In addition they form a pool from which new fixed legal advisors can be recruited.

In Paragraph 1.1 there was a discussion regarding the current formative relationship between judges and legal advisors. Although it is difficult to make a concrete pronouncement in this respect, it may be expected that in the future there will be more legal advisors than judges and that a desirable formative relationship will be 1.5 fte legal advisor per judge, assuming that delegation of tasks of the legal support to the administration has taken place.

Clear job profiles which align with the (new) competencies

As described in the first chapter, the need for clear task packages and job profiles is great. The expectation is that the redivision of the criminal law sectors in the framework of the redivision of the judicial map will give a natural impulse to align the work processes within the legal support area to each other, to learn from each other and to look for a clearer realisation of the tasks packages and the role of the legal advisor.

9 Ibid note 6.

It is recommended to supplement the job profiles of 2007 by incorporating the competencies and personal characteristics set out in Paragraph 3.1 and include a clear representation of the tasks package of the legal advisor per function level. These modified job profiles must then be introduced nationally. Ideally the function levels and job profiles should not only provide clarity regarding the tasks connected with the primary process, but also about the other tasks and roles which a legal advisor is deemed to carry out, such as training, knowledge management, the realisation of specialisms and chairing jurisprudence meetings. This makes the connecting of tasks more explicit and more uniform across the country.

Clearer realisation of the tasks

In many cases the legal advisor prepares the cases and drafts the judgments, although more and more substantive requirements are being set for the preparation and drafting.

It is expected that – certainly in view of the far-reaching introduction of Promis – all full-panel cases will have preparation of types E through G and complex single judge cases will be given a similar substantive preparation.

A differentiation in the preparation – whereby it is aligned per case what type of preparation the case needs – will give a quality impulse to the work. With less complex single-judge cases it will suffice to have preparation of type B through D and with ‘bulk’ cases, type A preparation will be sufficient (see the various preparation forms mentioned in Paragraph 1.2). It could be reviewed whether the latter preparation method can be delegated to the legal administrative staff.

3.4 Recruitment & selection

The recruitment and selection of legal advisors should align better with the requested competencies. The formulation of specific, more extensive job profiles will make a contribution to this. It is important to actually investigate here whether the job applicants possess or can develop the requested skills. Some sectors are already working with a writing test and sometimes an assignment with which the analytical skill is tested. In this framework one can also think of a search assignment on the internet or in the knowledge systems in order to test to what extent the legal advisor can quickly access knowledge.

The new roles of the legal advisor require a specific attitude and behaviour. Experience teaches that attitude and conduct are difficult to train in practice. It is therefore very important when recruiting and selecting new staff to explicitly review whether candidates have the desired attitude and the right conduct.

3.5 Education & training

‘One consequence of the profession of legal advisor who assists the judge in his work, is more delegation of the judge’s tasks to the legal advisor and working in teams. This entails that the expertise of the legal advisor will have to be greater. This requires not only a minimum of HBO-level in law or MA university degree in law as basic education, but also sets more stringent requirements for the initial training of the clerks. Knowledge management must be a top priority. The legal advisor must be trained to become an adequate adviser (fully-fledged discussion partner), who is capable of obtaining and sharing information. In addition, he will be highly trained in drafting texts.’

The new realisation of the legal support by delegation and specialisation and certainly by the emphasis on knowledge management calls for different competencies and consequently for adapted education and training. The field study has shown that, although training in relation to knowledge and skill is deemed reasonable to good within the organisation, training geared to skills, attitude and conduct is lacking.

The existing training courses must be enhanced and adapted to the skills and competencies mentioned in Paragraph 3.1. This means that existing training courses must be expanded in terms of greater legal substance and that, in particular, new training courses are necessary in relation to skills.

Tailor-made training solutions

The field study has shown that in the sectors regular (individual) training plans are lacking or are not used in practice. There is rarely a tailor-made training plan. This concerns both the training plans to teach legal advisors the basics of the profession, and the training plans in the framework of the continuous development of the legal advisor (permanent education, hereafter also called PE). In practice it has frequently appeared that there is deviation from the training plan.

This is possible because this better suits the development of the clerk, but often the reason is because it is necessary to be able to fill the session roster. Training (new) clerks must not only be based on the needs of the organisation, but must also take account of and be aligned to the needs of the legal advisor. A general training plan can be a start in this respect, but it is better to align a training plan to the individual learning requirements of the legal advisor, taking account of his previous education, knowledge and experience.

The criteria, requirements (when is it good enough?) and review points (when is a next phase or step in the development appropriate?) are often insufficiently clearly formulated in the training plans.

SSR has developed the ‘Court secretary training programme’ (Leergang gerechts-secretaris) for legal advisors first starting out in the criminal sector.¹⁰ In particular, the basic courses of Defence, Evidence, Criminal Judgment, Participation Forms and Intent and Culpability are followed in this initial training programme. In practice it turns out to be difficult to schedule the training at a suitable time in the development of the legal advisor. The training is often either too early – the legal advisor does not have any or has too little experience with the subject matter – or too late – in practice the legal advisor has already acquired a lot of knowledge on his own, so that the training is not sufficiently interesting for him.

10 This training programme contains the following elements: an ‘introduction to the role and function of the legal advisor’, ‘the examination during the court hearing’, ‘the indictment’, ‘defences and grounds excluding criminal responsibility’, ‘the criminal judgement’, ‘special criminal procedures’, ‘coercive measures’ and ‘the legal advisor in practice’.

A practical perspective

PE standards per experience level and per specialism:

The Amsterdam Court has developed PE standards to facilitate the choice of suitable training for any person involved in the choice of training: the individual legal advisor who follows them, the supervisor and the person who ultimately decides on the enrolment. A PE standard contains an overview of training courses which align with the level of experience of a starting, experienced or very experienced legal advisor. In every PE standard a distinction is made between training courses in the area of knowledge, skills and attitude.

The PE standard is a tool. It contains suggestions for the training courses to be followed (and thus no regulations). It is the intention that when choosing from the suggestions, priority is given to those training courses which, in view of the current or expected tasks package of the clerk and his knowledge and experience level, are most relevant. It is thus not necessary that all training courses in the standard are followed. It is also possible to choose a training course which has not (yet) been included in the standard. The choice of training courses is aligned to the experience level of the individual clerk. In this manner it is possible to meet the individual learning requirements and provide tailor-made solutions.

The preamble to every PE standard sets out for which knowledge and experience level the PE standard is intended. Specific training courses are also recommended per specialisation. Naturally the PE standard must be regularly updated.

The trainers of the legal advisor

In all sectors the new legal advisor will be trained by a fellow legal advisor. The field study has shown that these trainers usually have not followed specific training to themselves train new clerks, nor is it reviewed whether the trainer possesses the necessary competencies or affinity to train. The result is that not always is sufficient time and attention paid to the training and that the training does not always take place in the didactically most desirable manner.

SSR has developed a Trainer's Practice training course for legal advisors who train colleagues, but it is not always followed.

Judges are generally not directly involved in training the legal advisors and there is little or no coordinated alignment about the expectations which judges have about the method of training by the fellow legal advisor. However, judges play an important role in the learning and development process of the legal advisor. They are the persons who assess the preparation carried out by the legal advisor and comment on the draft judgment he has put down in writing.

By doing so they set the requirements which the work of the legal advisor must meet and they set a standard for his training. They are not always aware of this. Unfortunately, using chambers as a teaching forum is seldom utilised, so that the opportunity of coaching legal advisors in chambers is often left unused.

The judge is an important factor in creating an environment which encourages learning. During the National Day for legal advisors of 11 January 2010, Prof. Dr J. Kessels¹¹ stated in this respect that learning must be a pleasure. Learning may never evolve into a terror against self-confidence. Faith in one's own ability must remain a central point in order to encourage daring and self-confidence. Daring and self-confidence are necessary in order for the clerk to act independently.

11 Prof. Dr. J. Kessels is a professor in Human Resource Management at Tilburg university and part owner of Kessels&Smit, The Learning Company, an organisation specialised in learning within organisations.

A practical perspective

Mentoring:

The Amsterdam Appeal Court appoints a justice as mentor for new legal advisors (the justice may or may not be from the clerk's own criminal law section). The mentor consults with his mentee on a regular basis. The consultation can be about the draft judgments, the other work or on the initiative of the legal advisor himself, about his well-being.

It is feasible that the mentee formulates specific development points with the mentor and then works on them. The mentee can request his supervisor to allow him to follow specific courses in this context.

How the mentorship is realised will differ per justice. One mentor may have a coaching discussion with his mentee 2 or 3 times a year, the other will have a discussion per hearing. Senior legal advisors who have been working in the sector for a longer period of time can, at their own request, also be appointed a mentor. In this case mentorship is a tool for supporting the legal advisor in his professional development.

Attention for specialisms

The field study has shown that at present, a legal advisor often becomes a 'specialist' virtually by accident, without there being an actual review as to whether this fits in with the development of the relevant legal advisor or whether this aligns with his interests. A legal advisor is often sent to follow the relevant SSR courses, but the question is whether this is sufficient to by rights claim to be a specialist in a specific area. Adequate education and training programmes, both external, and internal – learning on the job – will be developed.

Skills training

The field study clearly shows that among legal advisors the need for skills training is substantial, as increasingly clerks are being called upon to use skills such as writing, proper argumentation, being able to plan and organise, the skill to summarise judgments for publication and to write press releases, being able to deal with digital knowledge systems and being able to correctly interpret expert reports.

Retaining knowledge

In a knowledge organisation like the Judiciary, retaining knowledge is very important. It is therefore striking that only a single criminal law sector has specifically arranged how the knowledge of a departing legal advisor can be retained for the organisation. Most interviewees have indicated that when a legal advisor departs, in addition to experience, virtually all the knowledge of the organisation is also lost, as the acquired knowledge has been stored in a limited and unorganised manner. During the workshops dedicated to this topic at the National Day for legal advisors, inexperienced legal advisors in particular indicated that finding the right information costs an unnecessary amount of time and effort. In addition it became clear that sharing and retaining knowledge is primarily seen as the task of staff legal counsel and legal advisors do not see it as their responsibility to share knowledge they have obtained with colleagues on a structural basis. The organisation does well to make good agreements about and give room for organising knowledge retention. The legal advisor has his own, independent task of making the knowledge he possesses available to his colleagues as much as possible.

Learning organisation and professionalism

The possibility of intervision – a good format for improving the quality of the individual clerks – is only used to a limited degree. Intervision primarily focuses on improving the functioning of the individual professional.

A central point in this respect are aspects of behaviour. This form of inter-collegial review can contribute to a more open culture, more trust between colleagues and concomitantly to better cooperation. For judges, intervision is already a commonly used instrument. The field study shows that, although the legal advisor is deemed a professional, intervision is only used on an incidental basis to promote expertise.

During the National Day for legal advisors, various intervision options were reviewed, such as observing in chambers, joining in the reading of a Promis judgment or appeal, observing hearings and the incident method (with this method an event of incident is discussed in-depth).

Another way to promote the learning organisation is by having legal advisors rotate between sectors or courts or following a work placement at another sector or court. This has practical benefits, whether the period involved is long or short. It also promotes knowledge sharing and learning from each other's working methods. The good initiatives from elsewhere can be taken over and this strengthens the organisation as a whole. In addition, such a work placement in the framework of training can also count toward the PE hours.

Other options for increasing the learning within the organisation – such as feedback on judgments of higher instances – are still insufficiently utilised.

A practical perspective

Intervision:

At the Court in Lelystad, once a month or once every two months legal advisors of the criminal law sector gather in small groups of approx. 6 persons in the framework of intervision. Topics for discussion are presented by the participants by means of the incident method. Because the discussion takes place in a confidential setting, all possible topics can be discussed. This can include such things as sharing or discussing bottlenecks which are experienced with regard to certain work processes or in the cooperation with colleagues. The members of the intervision group can exchange views and – if possible and desired – support each other in achieving a change or improvement in the situation or formulate action points in this respect.

3.6 Career polic

The career policy has been barely recorded within many criminal sectors. In addition, with the career policy attention is virtually exclusively paid to the possibilities for promotion within the own sector to a higher position within the legal support team or to rotation to another sector within the own court. Attention is seldom paid to promotion to positions outside of the own court or even outside of the Judiciary, let alone that this is facilitated. In this framework one can think of offering a career scan, a development assessment, arranging a work placement, an exchange or secondment.

This is already noted in the Vision Paper on Personnel: 'Attention must be paid to the professional in the organisation, to improving development opportunities and to offering career perspectives to all staff on behalf of the development of quality and work motivation.'

In addition, in the field study many interviewees pointed out that the steps which could be taken in the framework of the career were often unclear because clear criteria and review points for taking a next step were lacking.

A uniform, national career policy which is properly applied locally can change this. This will help to keep good legal advisors tied to the organisation for longer.

A practical perspective

From legal advisor to judge:

The 's-Hertogenbosch Appeal Court helps legal advisors who have it in them, the 'high potentials', to make the transition to the bench. The appeal court tries to provide tailor-made solutions in order to achieve this.

The legal advisor must provide good quality work within a short period of time. It is then important that the legal advisor continues developing his skills over a number of years (e.g. adds a specialism) and in addition to his ordinary work also performs extra tasks (e.g. training colleagues). On the nomination of the section president and the sector president, an assessment can then be offered to the legal advisor. If the result is positive, the legal advisor can then be deployed as substitute judge in another court. He will also keep working as a legal advisor with the appeal court. If the other court is satisfied with the way in which the substitute position is carried out, the legal advisor can become a judge. The appeal court has recently started making it clear during recruitment and selection that it is willing to invest in the legal advisor and has developed a career plan with review points in this respect.

High potentials:

Zwolle-Lelystad District Court has a 'high potentials' path of three years. This path encompasses that the high potential in question, for a period of three years, works in the sectors of administrative and civil law, public prosecution, the investigative services and advocacy. Alignment is sought in this respect with the Young Development programme of the Ministry of Justice. This programme is for persons who are no older than thirty at the time of applying, who work in scale 10 or 11 and who have at least six months to three years work experience. After registering interested parties, the supervisor will decide who to nominate to the selection committee. The selection committee will ultimately decide who is allowed to participate in the Young Development programme.

3.7 Conclusion

When reviewing the future developments and the topics in the current situation, it becomes clear what roles the legal advisor should ideally perform. This is of influence on the knowledge, competencies, attitude and conduct which is demanded of legal advisors. This means an important change in the function as it is currently practised. In order to realise this new function, the legal advisor will have to be provided with facilitation by the organisation. Such facilitation must primarily be in the area of the structure of the organisation, the recruitment & selection, the education & training and the career policy. By using these tools and where necessary adapting them, the current clerks can be trained for the, in part new to them, competencies and roles and new clerks can be selected with care so that they will be immediately able to respond to the changes which the future will bring. In addition, it becomes more interesting for the current clerks to remain with the organisation. The position is becoming more challenging and complex because interesting new aspects such as specialisation options, knowledge management and more in-depth work of legal substance is being added. If a good career policy is established, it will be possible to bind legal advisors to the organisation for a longer period of time.

4. Finally

The introduction to this report opened with the question asked in the Vision Paper on Expertise and Specialisation ‘how can the judge call on the knowledge of another person in a transparent and accepted manner and retain final responsibility for the judgment’? The question does not specify what is meant by ‘another person’. The various documents exploring future prospects which have appeared in the Judiciary recently do not immediately make it clear what is meant by ‘another person’, although a smart reader, when rereading and analysing the piece, will realise that the most logical definition of ‘another person’ is the legal advisor. But how is this substantiated in practice?

The 2009 national field study shows the current status of legal support. Under pressure of developments such as the increasing complexity and gravity of cases, the higher requirements set for reasoning and the specialisation among chain partners, the position of legal advisor has grown into a solid, substantive function. The documentary work and the thorough preparation have been vested in the legal support staff virtually throughout the country. This enables the judge to concentrate on his core tasks: presiding over the session, deciding the matter and as the party with final responsibility, guiding the team which makes the judgment. A vision of the future as it is outlined in the various vision documents makes it clear that the end of this delegation and increase in tasks is not yet in sight. The expected pressure on expertise, the reform of the judicial map, the digitalisation, societal pressure and the expected ageing of the population are developments which the judge cannot withstand on his own. A further positioning and professionalisation of the legal support are necessary. A farther-reaching use of substantive legal knowledge, knowledge management, specialisation, support in the digital area, environmental awareness and case management are only a few of the matters which can be placed with the legal advisors.

The field study and the reactions to the first National Day for legal advisors shows that the legal advisor is himself also ready for an emancipation of the profession. He would like to see his trade and input be made more professional and acknowledged to a greater degree. It therefore appears to be time to draw the legal advisor out from behind the curtains and to recognise him – including to the outside world – as the person who in many instances prepares the cases and drafts the judgment and by doing so carries out important substantive work.

This report provides insight into the fact that the new competencies and roles which these changes entail will make the legal advisor’s profession more challenging. However, the legal advisor will have to be provided with facilitation by the organisation. The necessary tools to achieve this are primarily found in HR policy.

This relates to the realisation of the legal support, for example, where the national job profiles and allocation of tasks and functions is concerned; recruitment & selection on the basis of new competencies; training & education where new roles and competencies are concerned. In addition, the legal advisor will himself have to play an active role in the professionalization and acknowledgment of his role. In order to perform the function as described, the legal advisor will have to learn the new competencies in a pro-active manner and will have to make the new role and attitude his own.

Due to the different realisation of the legal advisor's function, the cooperation between judge and legal advisor will change. The judge becomes the leader of a team which prepares and writes the judgment together and will have to get used to the idea of daring to rely on the knowledge and skill of the new legal advisor. If this succeeds, an effective criminal judiciary is within reach. Legal support becomes a quality increasing factor within the criminal judiciary and will ensure an effective criminal judiciary which most likely will also entail cost savings.

The judge will retain sufficient time for reflection, for organising adversary opinions and for cases which require extra time, for example because of their complexity or media sensitivity. In this new equilibrium judge and legal advisor need each other. Both are professionals who each bear responsibility for their own tasks and jointly bear responsibility for sound criminal judgments. Judge and legal advisor are 'partners in crime' in this relationship.

Appendix I Concrete recommendations

Realisation of the legal support

National job profiles

- Make the national job profiles more specific with a clear description per job of the tasks and responsibilities on the one part and the training requirements, knowledge, skills and attitude on the other. The jobs must be sufficiently distinctive compared to each other. These job profiles must align with the competencies and roles mentioned in Paragraph 3.1.
- Legal advisors with at least a HBO level education can be charged with single judge - non-specialist – sessions and simple full-panel sessions. Specialist single judge sessions and full-panel sessions, with the exception of the simple full-panel sessions, must be placed with the legal advisors with an academic (MA) background.
- Make use of the (senior) staff legal counsel by deploying him in very complex (specialised) sessions.
- Review how the position of senior staff legal counsel can be filled compared to that staff legal counsel.
- When drawing up the roster and allocating tasks, check whether the legal advisor in question possesses the right qualifications.

Delegation

- Acknowledge and record that the legal advisor takes care of important substantive preparations of the cases and writes the draft judgments.
- Delegate the substantive legal analysis of the file to the legal advisor.
- Give the legal advisor the task and responsibility of managing the case up to the session.
- Delegate the fleshing out of records of verbal judgments, copying work, supplementation of the file and the activities relating to the execution of the protocol on staying proceedings to the administration.
- Investigate the possibility of delegation to the administration of preparation form A with regard to single judge bulk cases.

Preparation of cases

- Differentiate in the preparation: when choosing the kind of preparation, take account of the type of case and the complexity of the case.
- Give the legal advisor time to prepare full-panel cases, so that these do not fall by the wayside.
- Agree that the legal advisor, with an eye on Promis, prepares all full-panel cases in a working method which aligns with type E through G, as mentioned in Paragraph 1.2.
- Agree that the more complex single judge cases are also prepared substantively by the legal advisor in a working method which aligns with type E through G, as mentioned in Paragraph 1.2.
- Agree that the legal advisor will prepare less complex single judge cases in a working method which aligns with types B through D, as mentioned in Paragraph 1.2.

Cooperation between judge and legal advisor

- Align the expectations between the legal advisor and the judge with regard to the content of the work, the working method and the cooperation. Think of the working method during the preparation, the expectations with regard to deliberations in chambers and in the phase of drafting the judgment.
- Encourage the giving of feedback by training courses and by exemplary behaviour of the supervisors.
- Where this is not yet taking place, it is of great importance to establish joint consultation between judges and legal advisors.

Recruitment & selection

- When recruiting & selecting new legal advisors, align as quickly as possible with the adapted national job profiles or while awaiting the latter, align with the competencies and roles mentioned in Paragraph 3.1.
- When recruiting & selecting new legal advisors, take account of the specialist knowledge desired in the sector.
- During recruitment & selection take account of the fact that it must be possible to broadly deploy legal advisors (select on flexibility and broad legal knowledge).
- In the recruitment & selection of new legal advisors, check whether they possess the right digital skills. Use a search assignment on the internet/in the knowledge systems to test to what extent the applicant can quickly access information.
- Use a writing test and/or assignment to test the analytical ability and writing skills of applicants.

Education & training

- Create uniform national training policy with clear review points and criteria for the legal advisors and implement this.
- For every legal advisor new to the sector or starting a new position/sector, prepare a tailor-made training plan which aligns with the previous education, existing knowledge and competences of the relevant legal advisor and implement it.
- Make a training plan for each legal advisor which relates to the permanent education and implement it. Use can be made of PE¹² standards in this respect.
- Train the current legal advisors where necessary in the new competencies and roles, as these are described in Paragraph 3.1.
- See to sufficient skills training in addition to knowledge training.
- See to it that trainers have at least followed the SSR¹³ Practice Training.
- Appoint a mentor for every legal advisor next to the trainer.
- Speak to the judges about their role as trainer to make them aware of this.
- Utilise the possibilities for creating a learning organisation, such as intervision, coaching legal advisors in chambers and feedback of judgments on higher instances.
- Make use of traineeships and secondments at other courts as a training tool and count these toward PE hours.

Knowledge management & specialisation

- Actively involve the legal advisor in the knowledge management. Give him a substantial role in gathering, managing and sharing knowledge (e.g. via the Wiki Juridica for Criminal Law) and have him make use of the knowledge centres.
- Place the sector-wide knowledge management with the (senior) staff legal counsel and have them be a source of information for complex issues.
- Study which specialisations require specific legal support, at what function level and in what degree (number of fte's per specialisation).
- Develop adequate (external and internal) training and education programmes for specialist legal advisors.

12 Permanent Education: under the quality system RechtspraakQ, every judge and legal advisor is obliged to do 30 hours of relevant legal training each year.

13 Stichting Studiecentrum Rechtspleging: the national training institute for the Judiciary.

- Deploy the specialist legal advisors in a directed manner on the cases which demand this specialism, so that the legal advisor can gain experience and optimally support the judge.
- Organise topic-based sessions to promote the specialism/expertise.
- Organise professional meetings between legal advisors (such as a National Day for legal advisors).

Career policy

- Create a uniform national career policy with clear review points and criteria for legal advisors and apply it.
- Appoint a careers counsellor for legal advisors at each court.
- Facilitate the legal advisors when it comes to external steps to be taken in the framework of his career. Tools which can be used in this respect are: career scan, development assessment, work placements, exchanges and secondments (including with the public prosecution service and law firms).

Appendix II Field Study of Legal Support Staff in the Criminal Sector

Goal

The project group carried out a field study to gain insight into the expertise and professionalism of legal advisors as a professional group in the criminal sectors and to gain information from practice. Attention was paid to the current activities of legal advisors, the changes compared to a few years ago and the expected changes in tasks and roles and the influence thereof on the position of the legal support team.

By means of this field study the project group was able to gather a number of striking work practices.

Approach

In the autumn of 2009 the project group carried out this field study. The project group visited all appeal courts and all district courts in this respect. Three interviews were held per court. At every court there was a discussion with a sector president or other supervisor, a legal advisor who has been working with the organisation for longer than two years and a legal advisor who has been working with the organisation for less than two years. The field study was carried out by the project members themselves. They went to the courts in pairs with the same questionnaire.

All interviewees were always asked the same questions about the current tasks of the legal advisor, the cooperation between the legal advisor and the judge and the related delegation pattern, the knowledge and training of the legal advisor, the attention for knowledge management within the sector and the requirements which are set for the legal advisors. In addition, they were asked for their vision of the changes in the profession, future developments in the judiciary, the ideal realisation of the activities of a legal advisor (inter alia desired delegation and specialisation pattern) and finally the question whether the legal advisor is a professional.

In addition, the supervisors were asked questions about the scope of the labour force in the sector, the fte relationship between judges and legal advisors, the organisation of the legal support and the degree of differentiation, the previous education of the legal advisor and the average annual turnover and rotation percentage among the legal advisors.

Results

The field study presents a picture of the state of affairs at the courts. This relates to a picture of the national situation and not a concrete picture per court. That is why the results have been made anonymous. Separate permission has been asked to include the practical examples.

The field study shows that the content of the legal support branch has changed and the expectation is that this will be subject to further change in the future.

The results of the field study can be viewed as a zero measurement, as no such study has been carried out previously. The results have been used by the project group as starting point for the development of views on the future development of the profession and what the courts need in this respect.

Note

The project group is aware of the fact that because the interview teams were of varying compositions, the contents of the interviews are not always that easy to compare.

As a result, and as a result of the limited number of interviewees, this field study is, naturally, not a scientific study.

