Edited by Marc Groenhuijsen and Tijs Kooijmans

THE REFORM OF THE DUTCH CODE OF CRIMINAL PROCEDURE IN COMPARATIVE PERSPECTIVE

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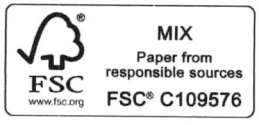

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PREFACE

Marc Groenhuijsen and Tijs Kooijmans

In the autumn of 2008, the Department of Criminal Law of Tilburg University organized two conferences. The first conference dealt with the future of police and judicial cooperation in the European Union, the second conference dealt with recent developments in the law of criminal procedure. Both conferences were organized to mark the completion of the research programma carried out by the Department of Criminal Law on Dutch Criminal Justice in Europe.

The conference about police and judicial cooperation resulted in a book in which the various lectures given at this conference have been collected: Cyrille Fijnaut and Jannemieke Ouwerkerk (eds.), *The Future of Police and Judicial Cooperation in the European Union*, in 2010 also published by Martinus Nijhoff. That book about police and judicial cooperation is complemented by this book about the reform of the Dutch code of criminal procedure in comparative perspective.

We are very grateful to the various speakers for their kind agreement to adapt the text of their presentation as chapters of this book. In this book, the texts of the authors are presented in alphabetic order. By doing so, we deviate from the sequence in which their lectures were presented at the conference: in the plenary morning session mr. G.J.M. Corstens, prof.dr. T. Weigend and prof.dr. M.S. Groenhuijsen gave keynote presentations. In the afternoon sessions, the other authors gave workshop presentations. The keynote presentations aimed at providing a comparative perspective of Dutch criminal procedural law. In order to reach this aim, Corstens and Groenhuijsen presented an overview of recent significant developments in Dutch criminal procedure. In addition, Weigend commented several of the developments from a German legal point of view. Finally, Sir Robin Auld gave a keynote presentation at the plenary morning session. In this presentation, Auld – who had been appointed in 1999 to review how the criminal courts in England and Wales work at all levels – gave an insight into the 328

recommendations that he and his commission made. These recommendations however have hardly been adopted by the government of the United Kingdom. For this reason, as it finally turned out, the keynote presentation of Auld could not be adapted in this book. Although it took quite some time to collect the texts of the authors, we decided to publish their contributions in their original shape, notwithstanding the fact that several developments in the law of criminal procedure have taken place since the 2008 conferences. Those developments have not been elaborated upon in the authors' contributions.

We would like to take the opportunity to thank several people for their commitment to the organisation of the conference itself: our former colleague Remy Gaarthuis and the student-assistants Mark Tax and Iris Haenen (who is currently a PhD student at Tilburg University). They ensured that the conference ran smoothly and also provided assistance to speakers. Furthermore, we would like to thank Felipa Groenewoud Mealha who, as a student-assistant, took care of the layout of this volume.

Last but not least, we are also very grateful to the Board of Tilburg Law School for its financial support towards the costs of both conferences.

Tilburg, springtime 2012

CONTENTS

25 YEARS OF CRIMINAL PROCEDURE IN THE NETHERLANDS

Geert Corstens[1]

1. INTRODUCTION

In the past quarter century, the Dutch law of criminal procedure has been radically amended. In this period, many interesting legislative and case-law developments can be pointed out. Examples are the emergence of confiscation legislation, the increasing influence of fundamental rights and the related case law of the ECHR, the introduction of new investigation methods (of internet, mobile telephony and DNA evidence existed hardly or not at all 25 years ago), the change in the position of witnesses, reorganisation of the preliminary investigation, the introduction of (new) obligations for the judge to provide grounds, the influence of Europe and – particularly after 11 September 2001 – the introduction of counterterrorism measures.

In this paper I shall explain four developments in more detail.[2] I shall discuss the emergence of consensus in the criminal procedure and the altered position of both the perpetrator and the victim in the trial, while, in addition, briefly touching on the expanding powers of the police and Public Prosecution Service and the increased flexibility of the criminal court judge's review of breaches of procedural rules. Fourthly, I focus more specifically on the role of the judge. I shall, however, start with a brief description of two projects which have had great influence in the past 25 years on the Dutch law of criminal procedure and have also had a major share in the above-mentioned four developments: the Moons Committee and the research project Criminal Procedure 2001 (*Strafvordering 2001*).

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[1] President of the Supreme Court (Hoge Raad) of the Netherlands.

[2] I wish to thank *mr.* A. Dingemanse, former law clerk at the Dutch Supreme Court and now employed at the Ministry of Justice, who assisted me in editing the text.

2. *MOONS COMMITTEE AND CRIMINAL PROCEDURE (STRAFVORDERING) 2001*

During the development of the Dutch law of criminal procedure in the past 25 years, the Committee for Review of the Code of Criminal Procedure (Commissie Herijking Wetboek van Strafvordering), formed in 1998, which is named the Moons Committee after its chairman, played an important part. The Committee, which ended its work in 1993, made ten proposals in total. The main ones are those on the revision of the preliminary judicial inquiry[3] and on the breach of procedural rules.[4] The former proposal was incorporated in an Act,[5] which has resulted in a major amendment of, for example the provisions relating to the judicial inquiry, seizure and search. The report on breach of procedural rules includes proposals to abolish the tyrannical effect of the list of charges and for reserving procedural nullities for cases in which any breach of the relevant rule should result in nullity. For the rest, it is up to the judge to attach penalties to the breach of procedural rules. This report was also incorporated in the Act.[6]

Besides the Moons Committee, the research project under the name 'Criminal Procedure 2001' (*Strafvordering 2001*) is worthy of mention. In this project, under the direction of two professors from Tilburg and Groningen, research was done into the question whether – in the light of the legal amendments following each other in rapid succession – it was necessary to draft a new code. After all, owing to all those amendments, not much can still be recognised of the original starting points and system of the current code. The research resulted in a great many proposals.[7] One of the starting

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[3] *Herziening van het gerechtelijk vooronderzoek*, Arnhem: Gouda Quint 1990.

[4] 'Recht in vorm', June 1993, included in *Rapporten herijking strafvordering 1993*, Arnhem: Gouda Quint 1993.

[5] Act of 27 May 1999, Bulletin of Acts and Decrees (*Staatsblad*) 1999, 243.

[6] Act of 14 November 1995, *Bulletin of Acts and Decrees* 1995, 441.

[7] See M.S. Groenhuijsen & G. Knigge (ed.), *Het onderzoek ter zitting. Eerste interimrapport onderzoeksproject Strafvordering 2001*, Deventer: Kluwer 2001; M.S. Groenhuijsen & G. Knigge (ed.), *Het vooronderzoek in strafzaken. Tweede interimrapport onderzoeksproject Strafvordering 2001*, Deventer: Gouda Quint 2002; M.S. Groenhuijsen & G. Knigge (ed.), *Dwangmiddelen en rechtsmiddelen. Derde interimrapport onderzoeksproject Strafvordering 2001*, Deventer: Kluwer 2002; and

points was "that the proceedings must have a focus and a course, determined first of all by what is at stake in the proceedings. This in turn may be largely dependent on the accused's attitude towards the offences of which he or she is accused".[8] In that context, the introduction of a three-track system was advocated: in cases where the most drastic penal sanctions are at issue, hearing by a three-judge division with specifically tailored procedural guarantees, hearing by a single judge for the medium category of offences and an extrajudicial procedure for the imposition of fines by the Public Prosecution Service. Some of the proposals have meanwhile resulted in laws and legislative proposals.[9] One of the main ones is the Public Prosecution Service (Settlement) Act (*Wet OM-afdoening*).[10]

3. *CONSENSUALITY IN CRIMINAL LAW*

About a hundred years ago, criminal law was still surveyable. Criminal law extended to a limited number of offences mainly included in the Criminal Code. After an investigation of the offence by the police or rural constable, the public prosecutor commenced prosecution and it was ultimately up to the court to decide on the sentencing. One could call this a classical model for classical offences. There was hardly any regulatory criminal law.

How differently criminal law has developed in the decades after the Second World War. Violations of regulatory legislation – environment, economy, finances, and traffic – take up increasingly more of the capacity of the criminal courts, even to such an extent that other ways must be sought to process the enormous influx of cases. Partly as a result of the increased workload on the judiciary, alternative possibilities for settlement are emerging. Some of these are: 'joinder *ad informandum*', settlement fine, out-of-court settlement, administrative fine and, as the last offshoot, the 'punishment

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M.S. Groenhuijsen & G. Knigge (ed.) *Afronding en verantwoording. Eindrapport onderzoeksproject Strafvordering 2001*, Deventer, Kluwer 2004.

[8] See M.S. Groenhuijsen & G. Knigge, 'Algemeen deel', in: Groenhuijsen & Knigge 2001, p. 41.

[9] For example the Act of 10 November 2004, *Bulletin of Acts and Decrees* 2004, 580, regarding the confessing suspect.

[10] Act of 18 July 2006, *Bulletin of Acts and Decrees* 2006, 330.

order'.[11] A common feature of these types of sentencing is that they are based on consent, at any rate on not expressing disapproval,[12] thus a type of consensus for the purpose of not allowing the case to get to court. I have used the term consensuality in this context in previous publications.[13] This term means allowing consensus between the prosecuting authority and the accused to have legal consequences or decisive influence in the course of (criminal) proceedings or sentencing.

Consensual elements do not only exist in relation to settlement possibilities.[14] The consent of the accused also plays a part at other times in criminal procedure. In that case, usually shortening rather than avoiding the proceedings is concerned. Examples that can be cited are the times when the accused can make choices concerning a) the allowance of an application to amend the charges (Art. 314 CCP), b) whether or not to examine witnesses (further) (Art. 288 CCP), c) presenting documents (Art. 301 CCP) d) and the manner of resuming the examination after a suspension (art. 322 CCP). Case law on key roles can also be pointed out in which the consent of the accused played a part in the settlement or not of the case on appeal.[15]

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[11] The punishment order is different in the sense that it is an act of prosecution in terms of positive law and it therefore does not prevent prosecution. The consensual element is a bit less emphatically present in it. See G.J.M. Corstens, *Het Nederlands strafprocesrecht*, sixth impression, Deventer: Kluwer 2008, pp. 827 and 828.

[12] This holds particularly for the administrative fine and the punishment order.

[13] G.J.M. Corstens, 'Consensualiteit', *Delikt en Delinkwent* 1994, pp. 4–8 and G.J.M. Corstens, 'Consensualiteit en strafsancties', *Ars Aequi* 1997, pp. 133–139. For an extensive treatment of consensuality, see also M. Hildebrandt, *Straf(begrip) en procesbeginsel* (diss. Rotterdam), Deventer: Kluwer 2002. Part of her research was aimed at answering the question of the effectiveness and legitimacy of consensual, punitive law enforcement. See further J.H. Crijns, 'De strafrechter buitenspel. Buitengerechtelijke afdoening van strafbare feiten in heden en toekomst', *Ars Aequi* 2002, pp. 513–521 and J.L. De Wijkerslooth & J. Simonis, 'Mag het strafrecht een beetje consensueel blijven?', *Trema* 2002, pp. 437–443.

[14] See also M. Hildebrandt, 'Het consensuele moment in het strafprocesrecht', *Delikt en Delinkwent* 1996, pp. 6–22. See further M. Hildebrandt, 'Consensualiteit in het strafprocesrecht', in: M. Hildebrandt, P.T.C. van Kampen & J.F. Nijboer (ed.), *Pleabargaining in Holland?*, Arnhem: Gouda Quint 1994, pp. 109–132.

[15] This case law concerns the situation in which the court should not have got round to the hearing on the merits at trial because one of the persons fulfilling a key role in the examination in court failed to appear, while the latter had not been notified in the manner prescribed by law of the date of the trial, nor had a circumstance occurred showing that he or she had known the date in advance.

Separate mention should be made of the so-called deals with criminals and the arrangement concerning crown witnesses. Here, too, consensus plays a special part in the prosecution. Lastly, I touch on the problems of the waiving of rights in the investigation stage.[16]

The consensual element has a basis in legislation as well as case law. For instance, joinder *ad informandum* is not regulated by law and the crown witness arrangement was not given a legal basis until 2006, while the settlement penalty does have older legal credentials. Consensual settlement of offences is here to stay. A very large number of the offences which were previously subjected to the judgment of the criminal court are now settled in a different way. This tendency is visible throughout Europe.[17] The European Commission also makes use of consensual settlement, for example in imposing sometimes very high fines (millions of euros).[18] In the Netherlands, administrative fines now run into millions as well. The future Fourth Tranche of the General Administrative Law Act (*Algemene wet bestuursrecht*) will provide for a further institutionalisation of the administrative fine.[19] The question sometimes arises whether the placement of a large part of socio-economic criminal law and environmental criminal law under administrative law originates partly in dissatisfaction among the administrative authorities with the length and severity of the sentencing in criminal law.

It is clear that in 25 years, a total reordering of criminal law has taken place. My speech on the occasion of my departure as professor at Radboud University in Nijmegen in 1995 included the following words: "No matter how the material is arranged, it is clear at any rate that a total reordering of what is now called criminal law will have taken place in the fist decade of the 21st century. One could call this a silent revolution in criminal law".[20] I still fully endorse those words. Even though the revolution was somewhat less silent; it has

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[16] See J.M. Reijntjes, 'Het prijsgeven van rechten', *Strafblad*, 2008, pp. 547–559.

[17] See e.g. A.R. Hartmann, 'Buitengerechtelijke afdoening II', in: Groenhuijsen & Knigge 2002, pp. 119–134.

[18] Based on e.g. Art. 85 EC Treaty as well as Regulation 17/62.

[19] *Parliamentary Papers II* (*Kamerstukken II*) 2003/04, 29 702, no. 2, particularly Title 5.4.

[20] G.J.M. Corstens, *Een stille revolutie in het strafrecht*, Arnhem: Gouda Quint 1995, p. 38.

been abundantly written about and discussed. Certainly the latest developments concerning the punishment order have been followed very critically and closely by legal scholars. And rightly so. Because while the settlement figures may be the successful side of the story, objections can certainly be made against it.[21]

One must constantly ask oneself if voluntary consent has been sufficiently ensured and also whether the fundamental principles of the criminal justice system have indeed been sufficiently respected. Is consent voluntary if the offender receives a settlement proposal in a complicated environmental case but cannot estimate what his chances would be in a trial? And what about a Public Prosecution Service that tries to gain an advantage in a difficult and perhaps very weak case? In that case, at any rate, the establishment of the substantive truth as a goal of the trial comes off badly. And what about special and general prevention in this context as a goal of the criminal justice system? Are we creating calculating citizens in this way? The guilt principle is under pressure and external disclosure, in the sense of public accountability, is being forced out of the picture.[22]

The more uncertainty for the offender, the higher the fine and the more serious the offence or violation. In short the stronger the pressure on the fundamental principles of the criminal justice system, the more I question consensual elements. I therefore have reservations regarding the current tendency that more serious offences can also be punished by high sentences outside the criminal court. A recent, thorough cabinet memorandum about the weighing framework for the choice between an administrative fine, a punishment order or customary enforcement under criminal law cannot fully remove my concerns.[23]

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[21] See Hildebrandt 2002, pp. 389–413.

[22] The latter has been somewhat compensated by guidelines prescribing that fines above a certain amount must be made public. See for example the *Aanwijzing hoge transactie en bijzondere transacties* (Instructions for Higher Settlement Penalties and Special Settlement Penalties), of 13 October 2008, *Government Gazette* (*Staatscourant*) 2008, 209.

[23] See *Parliamentary Papers II* 2008/09, 31 700 VI, no. 69. The leading principle in this is the effectiveness of enforcement.

The punishment order is more difficult to construe than the other alternative settlement possibilities. On the one hand, the arrangement is limited to the less serious offences and subject to more guarantees than the settlement penalty arrangement, which is to be abolished. On the other hand, the arrangement provides for the first time for extrajudicial imposition of penalties for classic violations and offences without the explicit consent of the accused. The accused's failure to take action will result in the order becoming final. Furthermore, a punishment order constitutes an act of prosecution and guilt has been established. The fact that the court is put at a distance partly for classical offences with a 'no-objection system' is cause to follow the new rules critically in the time to come.[24]

Regarding the interference of the criminal court, there seems to be a cyclical movement; we return more and more to the classical model; classical criminal procedure for classical offences. A lot can be said for this from the idea of the ultimate remedy. Minor offences can initially be disposed of outside the criminal court. I do not have any fundamental objections either to the decriminalisation of numerous offences, violations of traffic law or other regulatory legislation. But once again, under pressure of an alleged 'shortage of enforcement', the revolution, silent or not, threatens to get out of control.

I close this section with the recommendation that the imposition of penalties out of court can initially best remain reserved for simple, frequently occurring cases of little gravity in which a conviction is generally easily feasible and in which, by guidelines or otherwise, the amount of the penalty is determined at general level.[25] I add one more remark. Surprised, I ask myself why mediation in the context

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[24] See also in this context the complaint of P.A.M. Mevis in his paper, 'Strafrecht, EVRM en Grondwet', in: A.H.E.C. Jordaans et al. (ed.), *Praktisch strafrecht* (Reijntjes collection), Nijmegen: Wolf Legal Publishers 2005, esp. p. 459, that major changes to criminal law are often poorly embedded and that one can wonder whether fundamental questions remain unaddressed.

[25] See Corstens 1997, p. 139. On this point as well, therefore, I have not changed my opinion.

of criminal law has not got a foot on the ground in the Netherlands up to now.[26]

4. PROTECTION OF THE ACCUSED AND THE VICTIM

4.1. The Accused

Developments in the past few years can arouse the impression that the position of the accused in the Dutch criminal justice system is in a bad way. A repressive wind blows. The adjustments to the Code of Criminal Procedure in connection with counterterrorism do not bode well for the (potential) accused. Many of these adjustments extend further than counterterrorism alone. The time of the so-called Utrecht School, in which the accent was on the person of the accused, seems to be over for good. And would all – justified – attention for the victim not distract attention for the accused? Concerns about, among other things, the position of the accused led in 2002 to an open letter from a large group of people employed at the criminal law departments of various universities in the Netherlands.[27] A heated debate was conducted over more recent 'terrorism measures' and I too expressed my concerns about this.[28]

Taking stock of the past 25 years, I am nevertheless of the opinion that, on balance, the protection of the accused has improved considerably. Strasbourg case law has contributed substantially to this. I specifically mention the rules laid down in the ECHR for testimony by witnesses (Kostovski, Van Mechelen, Bocos-Cuesta[29]), the case law on the right of the accused to be present (Lala and Pelladoah[30]),

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[26] This has been dealt with regularly in the literature in the past years, but it seems mainly to be a matter for writers from the circle of the *Tijdschrift voor herstelrecht* (journal for restorative justice).

[27] *Netherlands Law Journal* (*Nederlands Juristenblad*) 2002, pp. 1609 and 1610. See further J. de Hullu, *Materieel Strafrecht*, third impression, Deventer: Kluwer 2006, pp. 15 and 16.

[28] G.J.M. Corstens, 'Dijkdoorbraken in de strafrechtspleging', *Netherlands Law Journal* 2005, p. 289.

[29] Respectively ECHR 20 November 1989, *Dutch Law Reports* (*Nederlandse Jurisprudentie*) 1990, 245 annot. EAA; ECHR 23 April 1997, *Dutch Law Reports* 1997, 635 annot. Kn and ECHR 10 November 2005, *Dutch Law Reports* 2006, 239.

[30] ECHR 22 September 1994, *Dutch Law Reports* 1994, 733, annot. Kn (Lala).

the case law on the *nemo tenetur* principle (Saunders and Jalloh[31]), and on trial within a reasonable time. This Strasbourg case law had a direct effect on Dutch practice. The law was sometimes adjusted with a view to the case law of the ECHR.[32] In short, a gain for the legal protection of the accused in many areas.

Finally, I mention the possibility of penalties for breach of procedural rules. Although the accused was generally still left empty-handed until far into the seventies if irregularities were committed during the investigation stage, it is now common practice that irregularities can be punished by the criminal court. The doctrine of the exclusion of evidence because it was obtained unlawfully has taken root, although now without the sharp edges. I will return to this briefly in section 6.

Numerous aspects of the legal protection of the accused in the Netherlands have undoubtedly improved in the past 25 years. Recent, minor deteriorations do not weigh up against that. All in all, I see no reason to take a glum view of the developments in legal protection of the accused. Such protection is on a high level. There are, however, certainly signs that the upward diagonal line is curving. Every reason thus to remain alert. One of the basic ideas of the CP 2001 research project still deserves attention in this context: the trial should be subject to more stringent guarantees as and when the stake is higher.[33] That idea may well have been worked out on the lower level of the system (extrajudicial settlement), but has hardly been worked out at the top by the legislature. Regarding the more serious cases as well, debates over legislative amendments are generally conducted from the angle of judicial efficiency rather than that of the guarantees for an accused person.

Once again, alertness is called for. Because the adage 'Better that ten or even a hundred guilty persons escape than that one innocent

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[31] Respectively ECHR 17 December 1996, *Dutch Law Reports* 1997, 699 annot. Kn and ECHR 11 July 2006, *Dutch Law Reports* 2007, 226 annot. Sch.

[32] An example is the introduction of Art. 279 CCP, relating to the possibility of having a suspect who fails to appear defended at the trial by a lawyer who declares that he is explicitly authorised to do so.

[33] Groenhuijsen & Knigge 2001, pp. 27, 28 and 41. In this context, a differentiation is mentioned in a three-track trial.

suffer' still deserves strong support. Because if you yourself – innocent, of course – should ever be considered as a suspect, you would hope that you received proper legal protection and that in telling about how you were treated, you would not have to use the final words of Joseph K. in 'Der Prozeß' by Kafka "Wie ein Hund".

4.2. The Victim

The emergence of attention for the victim, partly within and partly outside the trial, stands out the most among all developments. Outside the trial, for example, one could think of the establishment of Victim Support in the eighties of the last century and its further professionalisation in the years afterwards. Within the trial there was a constantly farther-reaching legal protection of the victim, which ultimately resulted in the victim becoming an almost full party to the proceedings. Both national and international developments contributed to this. At national level, I mention as course-changing amendments: the Victim Support Act (*Wet Terwee*),[34] amendments to the 12 CCP procedure,[35] introduction of the right to speak[36] and, still pending at present as a kind of final element, a legislative proposal intended to strengthen the position of the victim.[37] The contribution to this made by the Groningen-Tilburg efforts cannot be underestimated. The victim now has a substantial role in criminal procedure. He or she can claim compensation with much fewer limitations than before can complain about failure to prosecute and has a right to speak during the trial. And the

[34] Stated concisely, this Act expands the victim's possibilities to join the trial as an injured party.

[35] Act of 1 November 2001, *Bulletin of Acts and Decrees* 2001, 531 (Amendment of the rules on guarantees relating to prosecution). In the Explanatory Memorandum to the legislative proposal, previous laws are pointed out which have strengthened the legal position of the victim and subsequently that the legislative proposal is for the purpose of further strengthening the victim's legal position. *Parliamentary Papers II* 1998/99, 26 436, no. 3, p. 5.

[36] Act of 21 July 2004, *Bulletin of Acts and Decrees* 2004, 382.

[37] Amendments to the Code of Criminal Procedure to strengthen the victim's position in the trial: *Parliamentary Papers II* 2004/05, 30 143, no. 2.

aforementioned legislative proposal strengthens the victim's position by way of a department bearing the inscription 'Victims' Rights'.

The international impulse comes from Europe. The independent position of the victim in the trial is recognised in various recommendations of the Council of Europe.[38] Even the European Court of Justice can now concern itself with the victim in the trial, as evidenced by the well-known Pupino case.[39] Who would have imagined this 25 years ago? The ECHR also helps to improve the victim's position. The case law can be pointed out in which the government's duty to investigate and provide information is brought up. The question has been posed, however, whether the positive obligations ensuing from the ECHR should result in farther reaching powers for the victim within the trial.[40]

One of the starting points of the Victim Support Act was that the claim for compensation is accessory to the criminal case and that it should not be allowed to dominate the trial. Now, 15 years later, the victim's role has unmistakably shifted to one of more participation, also during the examination in court, a role in keeping with the functions of the criminal justice system. In farther-reaching developments, the motto is still that the victim's role should be accessory to the criminal case and that the victim should not be able to make the trial go his or her own way, which motto has not lost any of its value.

The past period has taught that attention for both the accused and the victim can go together very well. They both deserve legal protection, and that of one does not have to go at the expense of that of the other.

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[38] See for example the Framework Decision of 15 March 2001, on the standing of victims in criminal proceedings, *OJEU* 2001, L82.

[39] ECJ 16 June 2006, *Dutch Law Reports* 2006, 500 annot. M.J. Borgers.

[40] F. Vellinga-Schootstra & W.H. Vellinga, *"Positive obligations" en het Nederlandse straf(proces)recht* (inaugural lecture Groningen), Deventer: Kluwer 2008, pp. 40–43 seem to answer this question in the affirmative. P.H.P.H.M.C. van Kempen, *Repressie door mensenrechten* (inaugural lecture Nijmegen), Nijmegen: Wolf Legal Publishers 2008, on the other hand, is very reserved about the role the ECHR is supposed to play for victims within the trial.

5. *MORE POWERS FOR THE POLICE AND PUBLIC PROSECUTION SERVICE*

In 1995, a parliamentary inquiry took place in the Netherlands into investigation methods. The reason was the use of unconventional investigation methods by the police. The results of this inquiry hit like a bomb; it became clear that the situation concerning the investigation methods used had got completely out of hand. It was therefore decided to lay down the investigative powers in statutory rules. This resulted in the introduction of the Special Methods of Investigation Act [*Wet bijzondere opsporingsbevoegdheden* (*Wet BOB*)], in which the powers of the police and Public Prosecution Service are extensively defined.

Afterwards as well, whether or not in relation to major reordering, numerous new rules were included in the Code of Criminal Procedure. This was usually necessary to allow the statutory powers to keep up with new possibilities for investigation. The statutory investigative powers have been constantly expanded further. Particularly after 11 September 2001, the police and Public Prosecution Service were given more powers in connection with counterterrorism. There are now many more and broader powers which should be able to meet the wishes of investigation practice. The many powers, however, have not made the legal system any simpler.

One could say that a proliferation of extensively defined powers was created in the Code of Criminal Procedure in the last decades, which have made the system rather complicated and obscure. If it is already difficult for an insider criminal jurist to follow, how will this be in day-to-day police practice? Manageability and efficiency, causes for concern in the evaluation of the Special Methods of Investigation Act,[41] have most likely not improved in the past years. Hope is now placed in the project Criminal Procedure 2011. In that year, several important legislative amendments are to take effect. In a letter to the Lower House, the Minister of Justice wrote that the

[41] The Special Methods of Investigation Act – final evaluation, Research and Documentation Centre (WODC), Research and Policy series, volume 222, pp. 253–255.