



STUDIECENTRUM RECHTSPLEGING  
TRAINING AND STUDY CENTRE FOR THE JUDICIARY

# Study guide for the judicial officer



# Publisher's imprint

The study guide for the judicial officer study programme is published by SSR, Studiecentrum Rechtspleging, the Dutch judicial organisation's training institute. SSR has provided the training and refresher courses for (future) judges, public prosecutors and their staff for fifty years. The judicial officer study programme trains young jurists for the position of judicial officer.

The process of the modernisation and improvement of the quality of the study programme was initiated in 2006. One element of this process was SSR's appointment of a project team for the development of a study guide for the judicial officer study programme. The pilot edition of the study guide was introduced in May 2009.

SSR presented this new, revised edition in September 2010, which was amended on the basis of feedback and recommendations from users including lecturers, training consultants, trainee judicial officers, trainers and the trainee judicial officer council.

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# Dear readers,

**When SSR presented the pilot edition of the new study guide for the judicial officer study programme in May 2009, with a new design and angles of approach, we were interested to see how the trainee judicial officers, courts and public prosecutor's offices would respond to the new study guide and how rapidly the guide would become established.**



On my visits to the various courts and public prosecutor's offices during the past few months I was surprised to see how rapidly the new study guide has become established. I am extremely gratified, since the study guide deserves it: it is a wonderful product. Although, obviously, there is always room for improvement and new insights may develop, I am convinced that in publishing this revised version of the study guide SSR has taken a major step forwards. The philosophy behind and the design of the study guide will serve as a model for other SSR study programmes.

How does the new study guide differ from the pilot edition?

A number of entry groups of trainee judicial officers have worked with the pilot edition since its presentation in May 2009, and now each programme period of the judicial officer study programme has worked with the pilot edition we have obtained a great deal of useful information. In addition, SSR staff presented the study guide to trainee judicial officers and their trainers at the courts and public prosecutor's offices in the autumn of 2009. Almost all responses to the study guide were favourable, although this does not imply that we received no suggestions for improvements.

The feedback on the study guide and the comprehensive recommendations from the trainee judicial officer council has enabled SSR to optimise the guide. Once again, I wish to express my sincere gratitude to Margreet Ahsmann, LL.M, and Angela Talen, M, who once more worked with relentless effort on the perfection of the study guide. They devoted particular attention to the public prosecutor's office programme periods (basic and advanced course) and the external traineeship since these sections had not been worked out in full detail at the time the pilot edition went to print. Consequently, these sections differ most from those in the pilot edition.

The study guide is also published on SSR's website, where the (fillable) forms referred to in this study guide are also available in the Mijn SSR section of the website. The study guide is available in Dutch and English versions.

Looking back on the process I am gratified to note that so many people devoted an enormous amount of energy to the preparation of this valuable guide. I would like express my deepest gratitude to them all.

Dear trainee judicial officers, trainers, training consultants and lecturers: it's now up to you. Use the study guide, make use of the scope and opportunities the guide offers you to create the unique, customised study programme tailored to the individual trainee judicial officers that will enable them to train and develop into the independent, professional and dynamic judicial officers required in our rapidly changing world.

Rosa Jansen,  
Chair of the SSR Board  
and rector of the judicial officer study programme

Zutphen, September 2010

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# Study guide for the judicial officer study programme

## New perspectives for the judicial officer study programme

Fifty years of a unique judicial officer study programme

# Roles in the study programme

## Trainee judicial officer

The trainee judicial officers bear the ultimate responsibility for their learning.<sup>1</sup>

## Court and public prosecutor's office

Trainee judicial officers study and work at a court or public prosecutor's office, where they spend most of their time during the study programme. These courts and public prosecutor's offices bear the responsibility for furthering the trainee judicial officers' day-to-day training and assessment: they provide a workplace which offers the trainee judicial officers an opportunity to experience and learn. The following parties are involved in the study programme:

### ■ Trainer

The trainer supervises the trainee judicial officer at the workplace and has, in principle, been issued certification for this duty. Trainers perform a variety of tasks: they instruct, coach, supervise, organise, give feedback, conduct progress meetings and make assessments. In addition, they serve as a role model in terms of their competence, professional attitude and enthusiasm for the profession.

It is recommended that trainee judicial officers are assigned two permanent trainers at the relevant section of the court or public prosecutor's office since this enables the trainee judicial officers to learn more and promotes objective assessments of their development. When the assignment of two trainers is not feasible then it is recommended that the trainee judicial officer is offered an opportunity to see various judges and public prosecutors at work. The trainee judicial officer can take the initiative to make the necessary arrangements.

Trainers should be relieved of some of their regular duties to provide them time for training: on average, at least one half-day is required for each trainee judicial officer assigned to a section of the court or public prosecutor's office.<sup>2</sup>

The trainer's competence profile specifies the qualities and skills to be possessed by a suitable trainer. This profile is available on SSR's website.

### ■ Mentor at the workplace

The mentor is a counsellor who can be contacted by trainee judicial officers about problems with the study programme (including private problems). The mentor is usually an experienced

judge or public prosecutor who has the authority required to call the trainer at the section of the court or public prosecutor's office to account.

The mentor's competence profile specifies the qualities and skills to be possessed by a suitable mentor. This profile is available on SSR's website.

### ■ Colleagues at the workplace

The trainee judicial officers have many colleagues at the workplace (judges, public prosecutors and legal staff) who can be of value to them during their study programme. These colleagues can be contacted with questions, watch the trainee judicial officer at work, give advice and give feedback, etc. Trainee judicial officers are expected to take the initiative to contact their colleagues and are encouraged to do so by their trainer. Asking questions promotes learning – and no-one is criticised for asking questions.

## SSR

SSR is the training institute for the Justice Administration Council and the Public Prosecution Service and, as such, is responsible for the quality of the study programmes. SSR has been requested by the Justice Administration Council and the Board of Procurators-General to coordinate and organise the judicial officer study programme and prepare the curriculum. SSR maintains regular contacts with the trainers by means of platform meetings and meetings with training consultants. SSR also supports the trainers in their work by organising didactic training courses for them. SSR is the employer of the trainee judicial officers.

### ■ Rector and Board

SSR's Board fulfils the role of rector for the judicial officer study programme.

The Board has also been granted mandates which empower it to make legal status decisions and decisions on the study programme provided to trainee judicial officers. The Board has delegated virtually all these mandated powers to the training consultants.

The Board serves as SSR's contact point for the trainee judicial officers.

### ■ Training consultant

SSR has appointed training consultants for the judicial officer

<sup>1</sup> .  
<sup>2</sup> Decision of the Presidents meeting on 23 March 2009. The Public Prosecution Service has not made a comparable decision: each public prosecutor's office makes arrangements for the time the trainers need to perform their training duties.

study programme. These training consultants are judges and public prosecutors who are seconded to SSR and supervise the training at the workplace on SSR's behalf. The training consultants monitor the national uniformity of the study programme and the assessment of the trainee judicial officers. They also serve as contact person, vade mecum and intermediary for issues relating to the study programme for the trainee judicial officers and other persons involved in the study programme, monitor the study programme and act as consultants during the assessment of the trainee judicial officers. The training consultants are, in effect, liaison officers in the triangle comprised of the trainee judicial officer, SSR in its roles as employer and training institute, and the trainers at the workplace.

■ **Others involved in the judicial officer study programme**

The judicial officer study programme coordinator is responsible for the development, maintenance and implementation of the curriculum offered by SSR.

The judicial officer training bureau is responsible for all organisational issues relating to the judicial officer study programme other than the courses and legal status issues.

The HRM department is responsible for legal status issues.

■ **Lecturers and trainers for SSR courses**

The lecturers are excellent professionals who often originate

from universities or legal practice. Trainee judicial officers attending SSR's courses can acquire the knowledge and skills (attitude) they require for their growth into professionals. The lecturers assume that the trainee judicial officers examine the study texts issued to them before the course and that they have given thought to their learning questions. In some instances the participants need to prepare for courses by completing and submitting a homework assignment. Adopting this approach ensures that the training offered by SSR is as meaningful as possible and tailored to the individual students, where the trainee judicial officers are assigned the responsibility for the design and active shaping of their learning process.

The trainers and actors who take part in the courses have themselves received training in the substance of the courses provided to the judicial organisation.

■ **Colleague students**

Exchanging experiences and insights with their colleague trainee judicial officers enables trainee judicial officers to broaden their insights into working for the Public Prosecution Service or the judiciary. In addition, they can expand their personal network. Maintaining contacts with their colleague students enables trainee judicial officers to learn from and support each other in their learning process. A number of courts and public prosecutor's offices organise special learning activities in which trainee judicial officers can meet and learn from each other.

# Study programme structure

The judicial officer study programme is divided into three programme periods, namely the basic course, advanced course and external traineeship. During the basic course period the trainee judicial officers begin by following a course in the criminal law section (six months) and then continue with a course in the civil law section (ten months), the administrative law section (ten months) and, in conclusion, at the public prosecutor's office (12 months). At the end of the basic programme period the trainee judicial officers opt for either a judicial position or a position as public prosecutor and then, depending on their choice, follow a 10-month advanced course at one of the sections of the court – administrative, civil or criminal<sup>1</sup> – or at a public prosecutor's office. At the end of this period they then, in principle, follow a traineeship – outside the judicial system and the Public Prosecution Service – for a (maximum) of 24 months to enable them to experience the interface between law and society and see how the work of judges and public prosecutors is viewed from a different perspective.<sup>2</sup> The fulltime judicial officer study programme is usually of a period of six years.<sup>3</sup>

Trainee judicial officers who successfully complete the study programme are awarded a certificate during a graduation ceremony. This certificate constitutes, as it were, the admission ticket to a position as judge or public prosecutor.

SSR organises an introduction course at the beginning of the study programme, followed by an introduction course to the relevant section of the court or public prosecutor's office at the beginning of each programme period and supplemented with a number of SSR courses and additional learning activities organised by the section or the court or public prosecutor's office.

The organisation of the course is shown in the following diagram. The general learning assignment plan section contains information about the approach to each programme period. Information about the detailing and structure of the individual programme periods is contained in the sections specifying the curriculum (including the learning assignment plan) for each section of the court and public prosecutor's office.

**DIAGRAM (in the study guide)**

6 months	16 months	26 months	38 months	48 months		72 months
basic course period 1	basic course period 2	basic course period 3	basic course period 4	advanced course period 1	advanced course period 2	award of certificate
criminal law	civil law	administrative law	public prosecutor's office	chosen section or public	external traineeship	
					prosecutor's office	
6 months`	10 months	10 months	12 months	10 months	24 months	

1 The study programme does not extend to family law.

2 The external traineeship is followed at a traineeship place approved in advance by the SSR. This approval is necessary in view of the requirements imposed on the traineeship. More information is given in the Curriculum for the external traineeship section and the trainee judicial officer regulations manual.

3 Other durations are applicable for trainee judicial officers studying part-time, ill for a longer period of time or taking specific forms of leave. More information is given in the trainee judicial officer regulations manual.

# Study programme principles

**The judicial officer study programme is governed by a number of training principles and substantive principles. This Section lists the most important training principles together with their implications for the judicial officer study programme. The next section reviews the substantive principles of the judicial officer study programme.**

## Job-oriented study programme

The judicial officer study programme is a job-oriented programme since the programme is not intended to provide a general education but rather to prepare the student for work in a specific profession, namely either as a judge or public prosecutor. In contrast to more general study programmes, which benefit from a competence-oriented approach, job-oriented study programmes benefit from a combination of a task-oriented and a competence-oriented approach.

For this reason both the design of the judicial officer study programme and the assessment of the trainee judicial officers are based on the performance of the requisite tasks. The tasks, task criteria and competences jointly specify the attainment levels to be achieved at the end of the study programme.

## Learning by working

Since the trainee judicial officers learn on the basis of their actions the study programme focuses primarily on the workplace. This approach links learning directly to the context and results in meaningful learning, where the learning process is perceived as a cycle that begins with a trainee judicial officer's experience or observation in the everyday work, moves on to reflection and objectification which result in new knowledge and insights the trainee judicial officer then implements in practice and, finally, comes full circle with a new experience or observation. The cornerstones of this learning process are experience, reflect, objectify and implement. Trainee judicial officers who continually incorporate new insights build up their knowledge, knowledge which also includes conduct and emotional aspects as integral elements.

The trainer plays an important role in the support of this process of observation/experience, reflection, generalisation (objectification) and implementation. The trainers hold regular meetings with the trainee judicial officers and complete feedback forms on their learning activities, thereby making a contribution to the trainee judicial officers' systematic reflection on and objectification of their experiences. In addition, opportunities need to be available to seek situations in the work which support this experiencing and learning process.

## From simple to complex

A work-oriented study programme, in which students learn by acquiring experience in the performance of the tasks, requires a careful selection of the situations in which the student is placed: it is also necessary to endeavour to achieve the maximum possible gradation from simple to complex.

For this reason it is essential to create a gradual transition from a stable, demarcated and supervised environment to a broadly-defined, continually changing environment in which the trainee judicial officer makes the decisions and bears the overall respon-

sibility. The trainer plays an important role in organising this environment, where the trainee judicial officers need to state what they feel capable of taking on and discuss the manner in which they experience the work and their learning.

## The meaning of 'competences'

'Competence' is a difficult term to define, and is interpreted in terms of 'skills' in the judge profile. However, equating competences with skills underestimates the importance of additional elements such as knowledge. For example, although economists can possess an undeniable analytical capability this does not imply that they also possess the knowledge required to make an appropriate analysis of the documents in a civil law dossier. For this reason this study guide adopts a broader definition of 'competence', namely 'the ability to integrate the entirety of knowledge, insights, skills, attitudes and qualities in the professional actions'. Competent conduct is observable in a variety of situations. In addition, competences can occasionally be closely interrelated, for example strength (assuredness) and self-confidence. Competences form the terminology that is used to analyse and interpret the trainee judicial officer's performance in a manner that provides for the unequivocal specification of the trainee judicial officer's points that need to be developed – or their talents – throughout the study programme.

## Gathering knowledge and practicing skills

The office of judicial officer (judge and public prosecutor) is strongly knowledge-oriented: substantive knowledge, professional skills and communicative skills – the building blocks of competences – can and must to some extent be gathered, acquired and practised separately to achieve the controlled integration of knowledge and skills in the mind that is beneficial to the learning process.

For this reason the SSR courses provide for the segregated collection of knowledge and practising of skills. The majority of these courses are given to small groups, since small groups are ideally suited to exchanges of and reflections on experiences and giving feedback to each other. This enables the trainee judicial officers to become aware of their professional attitude and learn how to develop themselves further.

Additional learning activities can also be organised at the workplace (the court or public prosecutor's office) such as the classes courts organise for practising formulating judgements.

The trainee judicial officers also need to schedule the study hours required to enable them to assimilate knowledge. Consequently, the trainers need to appreciate that the 'production time' is less than the total available time.

## The trainee judicial officer's responsibilities

Learning by working assumes that the trainee judicial officers bear a great responsibility for the management of their personal learning process. Trainee judicial officers are responsible for their development, in analogy with the responsibility judges and public prosecutors bear for the performance of their duties and, consequently, their development. Although the various parties involved in the study programme can give the trainee judicial officer support, the trainee judicial officer is the process owner.

For this reason it is important that the trainee judicial officers take the initiative and are always aware of the fact that they must transform experiences into learning experiences and that only they have a full insight into their learning history. Trainee judicial officers must always be fully aware of the learning goals, which issues are of importance to the learning goals and how their achievement of the learning goals is assessed. Trainee judicial officers who do not fully understand what is expected of them must ask further questions until they do understand. The trainers and other parties involved offer them the necessary support.

### **Suitable instructions from and monitoring by the trainers**

Trainee judicial officers cannot be expected to be capable of complete self-management at the beginning of the judicial officer study programme as they are still unfamiliar with the specific position and with the degree of personal responsibility they will need to assume. Although the study programme endeavours to develop the trainee judicial officers' self-management ability this is not, as such, one of the goals. However, trainee judicial officers need to develop their self-management ability during the study programme. The trainer supports this process by gradually shifting from tight to looser management and, ultimately, to self-management by the trainee judicial officer.

This implies that the trainer begins each programme period by giving a clear explanation of what is expected from the trainee judicial officer on the basis of the curriculum stated in the study guide and that the trainee judicial officer provides for the necessary framework, since the development of the ability to assume responsibility for the learning process begins with clarity about the expectations at every point in the learning process – clarity which is provided by the trainer and the training consultant's specification of the frameworks. During the study programme the trainer ensures that the trainee judicial officer is provided sufficient work suitable for the current learning phase. The trainer monitors the learning process and plans any learning interventions that may be required. The trainer gives the trainee judicial officer constructive feedback on the work, both specific feedback (about the work in progress) and general feedback (the trainee judicial officer's overall progress), conducts a review interview with the trainee judicial officer both mid-way and at the end of each programme period and is involved in the assessment of the trainee judicial officer at the end of the programme period. The trainee judicial officer can always contact the trainer about any questions.

### **Assessment**

The assessment of the trainee judicial officer always has an educational and selective side. The educative side is given shape in the form of the feedback the trainee judicial officer receives from the trainer, while the selective side relates to the question whether the trainee judicial officer is suitable to continue to the next programme period. In both situations the trainer (and, during the external traineeship, the training consultant) assess the manner in which a specific task is performed. The tasks and task criteria specified in this study guide constitute the framework of this assessment and contribute to the objectification of the assessment. The trainee judicial officer is expected to actively seek clarification of the background to the trainer's assessment of his or her performance, more specifically by asking questions, summarising and exhibiting a willingness to listen to the trainer's comments. The trainer needs to realise that his or her level is incomparable to that of the trainee judicial officer and,

consequently, that the feedback needs to be constructive, formulated with respect and focused on assisting the trainee judicial officer in the learning process. Giving feedback and making an assessment is then primarily an indicator: "What progress am I making?" and a challenge: "Are my efforts achieving the desired result?" Regular assessments ensure that the trainee judicial officer's personal growth and development can be monitored. Moreover, the attention the trainee judicial officer receives in regular assessments ensures that the officer's experience of these assessments shifts from "painful to be assessed" to "proud to be assessed".

### **Continuity of the learning process**

The judicial officer study programme is divided into a number of periods to allow trainee judicial officers to become acquainted with the various sections of the court and the public prosecutor's office and enable them to develop themselves in these fields. This assignment to various workplaces and supervision by various trainers enables trainee judicial officers to acquire a wide variety of learning experiences. However, it also poses a risk to the continuity of the learning process.

The maximum possible continuity of the judicial officer study programme's learning process is guaranteed by the use of learning assignment dossiers and development dossiers.

The learning assignment dossier contains records of the results and progress in the relevant section, while the development dossier contains records of progress meetings, review interviews and assessments that serve as the point of departure for further development in the next phase.<sup>4</sup> Due attention needs to be given to the transfer procedure from one period to the next: the trainee judicial officer and the trainer(s) in the new section discuss the content of the learning assignment dossier and development dossier, identify the most important results and points for development and assess their implications for the performance of the tasks in the new section.

### **Becoming an expert takes at least seven years**

Experience has revealed that it takes at least seven years to become an expert in a given field, whilst various studies also refer to a period of 10,000 hours – i.e. intensive experience with, the practice of and reflection on a demarcated task.

This implies that trainee judicial officers continue to develop their professionalisation after they have graduated, since the judicial officer study programme yields novice judges and novice public prosecutors: although they have completed a six-year study programme, the entire six-year period is not devoted exclusively to becoming an expert in a specific profession. New judges and public prosecutors and the organisations they work for need to appreciate that the judicial officers are still novices. For this reason the period after graduating from the judicial officer study programme needs to be regarded and organised as a further apprenticeship period.

# Substantive principles

The previous section of this study guide reviewed a number of training principles governing the judicial officer study programme. This Section discusses the most important substantive principles governing the judicial officer study programme.

## Based on the job profile

The judicial officer study programme is based on the judge job profile (initial training) and public prosecutor job profile (the job profiles are available on the SSR website). Consequently, the study programme prepares trainee judicial officers for their future tasks and responsibilities in these positions. The judge job profile (initial training) specifies a general profile for judges on the basis that 'the judge can be deployed in at least two sections or has specialised in a specific area of law'.<sup>5</sup>

## Training to become novice judge/public prosecutor

The judicial officer study programme trains graduates to the level of novice judge in one section of the court<sup>6</sup> or of novice public prosecutor. The profiles of the two positions contain a general specification of the coherent and overarching skills and personality characteristics required for the appropriate performance of the duties of judges or public prosecutors. The key tasks of the justice administration and Public Prosecution Service constitute the overall framework of the study programme.<sup>7</sup>

A distinction can be made between a number of task areas, also referred to as 'result areas', in the professional actions of judges and public prosecutors, namely six result areas for judges and eight for public prosecutors. Although result areas 5 and 6 are not part of the job profile during the first year of a judge's duties they are included to complete the profile. These result areas are shown between [ ].

These result areas define fields in which the Board expects the incumbent to achieve results. These results can be achieved solely by judges and public prosecutors who are able to carry out a wide range of tasks and activities. Both job profiles include a definition of each task area together with a number of task or performance indicators.

The judge initial training job profile lists 14 competences which are each accompanied by four examples of conduct or 'conduct indicators', as well as a specification of three skills that the job profile states should be included in the judge's skills, namely delegation, quality-orientation and sociability. For completeness these skills (enclosed between [ ]) are included in the following list of competences.

The public prosecutor's job profile also lists a number of competences (7) which, in contrast to the judge's job profile, are not accompanied by conduct indicators but which are supplemented with a statement of a number of critical situations in which the competences could play a role. The profile also specifies 14 essential skills together with the required knowledge and experience. Consequently, the competences and skills specified in the two profiles are not completely identical. However, the essential skills of public prosecutors include skills which are referred to as competences in the judge's job profile: for example, 'effective communi-

cation' is referred to as 'verbal fluency' in the judge's job profile. Conversely, the public prosecutor's job profile contains competences and skills that are not listed in the judge's job profile, such as 'organisational sensitivity', 'persuasiveness' and 'empathy', whilst the judge's job profile includes 'integrity', a criterion not stated in the public prosecutor's job profile. However, this does not imply that judges have no need of empathy or that public prosecutors do not need to act with integrity.

These competences and essential skills can be linked to a task area and, therefore, are necessary for an adequate performance of the relevant task area.

The two job profiles, i.e. the indicators accompanying the task areas, the critical situations, the indicators accompanying the competences and the essential skills, played an important role in the specification of the curriculum. More information about this is given in the next section.

CORE TASK OF THE JUDICIARY:

**"Independently adjudicate irrespective of persons, with due regard for society and on the basis of the principles of the administration of justice."**

CORE TASK OF THE PUBLIC PROSECUTION SERVICE:

**"Maintain legal order in areas in which criminal law plays a role."**

## Task areas, judge

in accordance with the job profile

1. Preparations
2. Hearings
3. Judgements
4. Professionalisation
1. [5. Contribution to legal substance and policy]
2. [6. Supervision and training of clerks]

## Competences, judge

in accordance with the job profile

Decisiveness  
[Delegation]  
Integrity  
[Quality-orientation]  
Learning capacity  
Ability to listen  
Verbal fluency  
Situational awareness  
Forming a judgement  
Prioritisation  
Problem analysis  
Cooperation  
Written fluency  
[Sociability]  
Strength  
Self-reflection  
Self-confidence

5 The judge initial training job profile dates from 3 June 2003 and the public prosecutor's job profile from 17 April 2007. However, task areas 5 and 6 in the judge's job profile are not applicable to the first year of a judge's duties. A new judge's job profile has been formulated (28 November 2007) to serve as an example of a profile within the context of the revision of the judiciary's salary and job grade structure. Since no new study programme has been proposed this study guide is based on the study programme profile dating from 2003.

6 Trainee judicial officers specialise in only one section during the advanced course. For this reason graduate judicial officers who are assigned to another section will need to be offered a course comparable to the advanced course for the relevant section.

7 Derived from Eindrapport herziening Raio-opleiding (2007), p. 153.

### **Task areas, public prosecutor**

in accordance with the job profile

1. Authority and direction of investigations
2. Handling criminal cases
3. Victim contacts and information
4. Networking
5. Intervention, training and supervision
6. Administrative consultation
7. Policy expertise and development of law
8. Projects

### **Competences, public prosecutor**

in accordance with the job profile

Decisiveness  
Situational awareness  
Forming a judgement  
Organisational sensitivity  
Persuasiveness  
Problem analysis  
Cooperation

### **Essential skills**

in accordance with the job profile

Directive skills  
Cooperation  
Effective communication  
Oversee the consequences of personal decisions  
Switch rapidly between work of different levels  
Balance between speed and due care  
Balance between distance and closeness  
Involvement of legal aspects, ethical and social considerations and sense of justice in the formation of an assessment  
Correct formulation of the essence and cohesion  
Adequate Response to unexpected twists  
Identification of inconsistencies  
Problem-solving capacity  
Presentation capacity  
Empathy

## **General information about the curriculum**

**The previous section of this study guide reviewed a number of substantive principles governing the judicial officer study programme. This Section reviews how these are used to give shape to the curriculum.**

The job profiles have been used to draw up a curriculum for each section of the court and the public prosecutor's office. The curriculum is comprised of a specification of the tasks and the associated task criteria, competences and experiential standards. The tasks arising from the result areas are supplemented with orientation tasks and study tasks, as well as information about the supervision methods to be used by the trainer. A specification of this nature has not been drawn up for the external traineeship since the tasks to be carried out during the external traineeship depend largely on the traineeship place and, consequently, cannot be specified in advance.

This section begins with a brief explanation of the various terms used in the curriculum. The following subsections discuss these terms in their mutual interrelationship and explain how they are used to give shape to the curriculum for each section of the court and the public prosecutor's office.

### **Tasks**

The tasks are derived from the job profiles and, in particular, from the result areas. Trainee judicial officers must be offered an opportunity to acquire experience within the scope of the requisite tasks as the professional performance of the office is equated to professional action in the specified result areas.

### **Orientation tasks**

The orientation tasks are tasks which cannot be derived directly from the job profiles but which are necessary to explore the manner in which the various professionals approach their tasks. The orientation tasks are usually carried out before the trainee judicial

officers independently perform the tasks to ensure that they develop an appropriate reference framework for the tasks assigned to the relevant position.

### **Study tasks**

The study tasks are tasks assigned to trainee judicial officers to enable them to assimilate the requisite knowledge, i.e. keeping up to date with literature and case law. Time for these study tasks must also be scheduled outside normal working hours.

### **Task criteria**

The task criteria specify the criteria for the assessment of the performance of the relevant task and are specified in terms of observable, specific conduct. These criteria have been specified in explicit terms since experts are inclined to base their assessment of trainee judicial officer performance on these criteria without being aware that they are doing so.

### **Competences**

The competences specify the integral entirety of knowledge, skills, attitudes, qualities and insights required to act in a professional manner. These competences help trainee judicial officers and the other parties involved to gain an insight into underlying performance aspects and provide a shared terminology that can be used to open these aspects to discussion.

### **Experiential standards**

The experiential standards specify the amount of experience that trainee judicial officers need to achieve the attainment levels for the relevant section as expertise is largely born of experience. The experiential standards specified in the study guide are based on the performance of the average trainee judicial officer and, consequently, serve as a guideline.

## Supervision

The specification of the trainer's supervision provides an insight into the manner in which the trainer could supervise the trainee judicial officer's performance of the tasks and learning process in an appropriate manner. The trainee judicial officer and trainer will ultimately need to develop an appropriate form of supervision that is compatible with the trainee judicial officer's level and degree of independence. The information in this study guide is intended to serve as a guideline for the development of the appropriate form of supervision.

## Curriculum for each section

Personality development is the leitmotif of the entire study programme: the trainee judicial officers are repeatedly confronted with themselves in a continually changing environment. Trainee judicial officers work on their professionalisation by actively reflecting on the tasks they are to carry out and by becoming familiar with their strengths and weaknesses. For this reason it is important that they ask for feedback from all sections of the court and the public prosecutor's office throughout the study programme. Although the courses at the sections of the court and the public prosecutor's office share one common factor – learning how to act as a judicial officer – they also exhibit substantive differences that are determined by the nature and type of work in the relevant section. For this reason a specific curriculum has been drawn up for each section. This is also the reason why each specification of the curriculum for a specific section of the court and the public prosecutor's office begins with a brief (general) outline of the position to provide trainee judicial officers starting work in that section of the court or public prosecutor's office an insight into the work of the relevant judge or public prosecutor. This outline includes the essential and characteristic elements of the relevant position: for example, the work and thinking methodologies of criminal law judges<sup>10</sup> differ from those of civil law judges, administrative law judges and public prosecutors.

The curriculum continues with the result areas, which are drawn up in a comparable manner: each begins with an outline of the result area, an indication of how judges ideally perform this element of their work. For example, the curriculum for civil law judges includes an outline of the preparations task area, the hearings inquiry task area, the hearing appearances task area and, in conclusion, the judgement task area. These outlines enable the trainee judicial officer to make an initial exploration of the task area and are not intended to be exhaustive: they are primarily intended to enable the trainee judicial officer to understand the importance of the competences specified for the relevant task area. Consequently, the outlines of the position and result/task areas differ for each section. However, the outlines included in the curriculum for the basic course and advanced course in a specific section are identical since they in effect specify the ultimate goal to be achieved at the end of the relevant course.

The result and task areas in the judge's profile for the three court sections – criminal law, civil law and administrative law – and in the public prosecutor's profile for the public prosecutor's office are detailed further in tasks and task criteria to make the task areas of the judges and public prosecutor more explicit for the trainee judicial officer and to provide for optimum supervision. The tasks and task criteria are derived from the indicators for the result areas, the critical situations, the indicators for the competences, the essential skills and from various meetings with trainers. They specify the criteria for the assessment of the performance of the relevant

task. As the trainee judicial officers can make only very limited use of their 'automatic pilot' at this stage the task criteria can assist the trainee judicial officers in their preparations for a task and in retrospective self-assessments of the performance of that task. The task criteria are also of use to the trainers since they in effect specify when a task has been performed in an appropriate manner.

Each task area is followed by a list (in alphabetical sequence) of the most relevant competences, the central competences. The trainee judicial officers can then understand which competences are at least of importance to the appropriate performance of the task, while the competences can assist the trainer in stating the underlying reasons for a possible inadequate performance of the task or, conversely, in stating the precise nature of the trainee judicial officer's qualities.

Each task area is also accompanied by orientation tasks that are intended to enable the trainee judicial officers to gain an insight into the work of judges and public prosecutors in that task area. These tasks include, for example, auditing a hearing, acting as the court registrar at a hearing and attending a tripartite consultation.

Each curriculum also includes study tasks that are related to the knowledge required for the relevant section and the public prosecutor's office. These are necessary as trainee judicial officers can come from very different backgrounds and will probably not all have graduated in the same subject. For this reason they will need to fill in any gaps in the knowledge they require for their work. The study tasks also enable the trainee judicial officers to reflect on the material they have learnt.

## Two periods in the study programme: the basic course and advanced course

It will be self-evident that the various task areas and competences specified in the job profiles are not and cannot be addressed to an equal extent in the various sections. The basic course devotes a great deal of attention to the development of professional competences. Problem analysis is the most important professional competence in all sections. The course in each section also devotes attention to verbal and written fluency, listening and formation of an opinion. While the criminal law course places the emphasis on the initial acquaintanceship with the judge's duties and (from the sideline) the public prosecutor's duties, with a great deal of attention to the preparation and deliberation in chambers result areas, the civil law course focuses on the ability to analyse, structure and formulate judgements, i.e. the judgement results area, the administrative law course focuses on the handling of the hearing task area so that the trainee judicial officers are subsequently able to carry out this task in independence when they start in the public prosecutor's office and, in conclusion, the public prosecutor's office course focuses on learning to prioritise and make rapid decisions. For this reason the trainee judicial officers are sworn in as deputy public prosecutors at this stage of the course. Trainee judicial officers who select an advanced course at a section of the court have achieved a degree of independence sufficient for their appointment to the position of deputy judge.

The basic course also devotes attention to the task areas and competences that are common to the judicial administration and Public Prosecution Service, the most conspicuous of which include the shared 'professionalisation' and 'handling criminal cases at the hearing' task areas and the associated competences. Since the most conspicuous shared characteristic of the judge and pu-

<sup>10</sup> Training profiles for the various duties of criminal court judges have been developed in *De strafrechter en Profiel, Deskundigheidsbevordering van de strafrechter* (2008).

blic prosecutor halves of this study programme is the training to become a 'judicial officer', which cannot be reduced to a single task area, the training of judicial officers is addressed in the following section. This section does not focus on the professional competences, but rather on the shared management and moral competences. These are not, in principle, included separately in the specification of the attainment levels since they are regarded as underlying competences required for the performance of every task: for example 'integrity'. These competences are specified solely when they need to be addressed in a specific programme period, such as the situational awareness competence in the administrative law section.

The programme periods in the various sections of the court and the public prosecutor's office are intended to continually confront trainee judicial officers with new subject matter and situations within short timeframes. This enables the trainee judicial officers to hone their analytical capability and formation of an opinion, develop their strength and self-confidence, improve their ability to reflect and accelerate their response and accommodation to new situations since the trainee judicial officers are in a better position to discover themselves and develop when they acquire as many learning experiences as possible. In addition, the trainee judicial officers can then make a more carefully-considered choice for specialisation in one of the advanced courses at a court section or the public prosecutor's office. For this reason preference is given to a section where the trainee judicial officer can still learn a great deal: the advanced course will then really be an advanced course.

### Attainment levels

The attainment levels for each section are comprised of a specification of the qualities to be exhibited by the trainee judicial officers when performing the various tasks (with the associated task criteria, competences and experiential standards). A comparison of the attainment levels for the basic course and the advanced course reveals that a number of attainment levels specified for the basic course are also specified for the advanced course, although the stringency of these attainment levels differs between the two phases of the study programme. Trainee judicial officers following the basic course are, above all, required to possess a general knowledge of and insight into the limited area in which they have received their training: they are not required to comply with all task criteria specified for the various tasks at this stage. Task criteria that are not applicable to the basic course are indicated with an asterisk. In addition, the degree of complexity of the cases referred to in the advanced course differ from those in the basic

course. During the basic course trainee judicial officers will need to be able to make use of their problem-solving capacity in simple cases and cases of an average complexity and demonstrate their skills in less complex situations.

Trainee judicial officers following the advanced course will need to have deepened their knowledge and insights and broadened them to extend to special situations. In addition, they will need to adopt an adequate approach to more complex problems and work in (a greater degree of) autonomy. They will now be able to stand above the subject matter, maintain an overview in chaotic cases, think in terms of scenarios and think through the consequences of those scenarios: they are able to tackle their tasks in an integral manner and in autonomy.

The trainer's roles in the basic and advanced course reflect these differences: the trainers supervise the trainee judicial officers closely during the basic course but fulfil a primarily coaching role during the advanced course, the period in which the trainee judicial officers' decision-making powers are continually expanded. The following results need to be achieved for the successful completion of the relevant phase of the study programme.

### After the basic course phase of the judicial officer study programme

the trainee judicial officer has explored the profession of judge and public prosecutor and has gained an insight into what the work entails;

the trainee judicial officer has achieved demonstrable progress in the performance of the duties of judges and public prosecutors as specified by the study programme's attainment levels.

### After the advanced course phase of the judicial officer study programme

the trainee judicial officer works (virtually) at the level of a novice judge or public prosecutor as specified by the study programme's attainment levels and has acquired sufficient experience to take up the duties of a novice judge in the section chosen for the advanced course or as a novice public prosecutor. Graduate judicial officers who are assigned to a section other than the section where they followed their advanced course will lack the necessary experience in their new section. For this reason they will need to be offered a course largely comparable to the advanced course in their new section.

Trainee judicial officers who are exempted from an external traineeship are expected to achieve the requisite attainment levels at the end of the advanced course.

# Judicial Officer: judge or public prosecutor

## Professional competences

Judges and public prosecutors bear the responsibility for the competent fulfilment of their office.<sup>11</sup> They are under the obligation to do everything necessary to develop and maintain the knowledge, skills and personal qualities they need for the appropriate fulfilment of their office. For this reason they are responsible for the development and maintenance of a high level of competence and follow the necessary courses: for example, they are required to keep up to date with relevant developments in international law since Dutch judges and public prosecutors are also 'European'

judges and public prosecutors.

Many task areas in the two job profiles relate to the judicial officers' professional competences, such as their intellectual and analytical capabilities, their written and verbal fluency, their contactual qualities and their professional attitude. These competences are included as central competences in the specification of the attainment levels.

## Management competences

The professional competences are closely related to the associated

<sup>11</sup> The following is largely derived from and inspired by an article written by M. Loth, *Met goddelijk goud gemengd: investeren in het menselijk kapitaal van de rechtsstaat*, which is enclosed as an appendix to the judge's job profile and has subsequently been published in *Trema*, September 2003, p. 247-

requirements they impose on speed, efficiency, effectiveness, control of the work processes and customer-friendliness, etc. These requirements are also referred to as management competences since they specify the skills that need to be possessed for the appropriate management of the performance of the tasks. Consequently, these management competences support and enhance the professional competences. However, other skills are of importance. The judge's job profile specifies the Professionalisation result area as follows

Judges are able, on the basis of their personal work experience and in structured collegial consultations, to:

- critically review their personal performance in their professional role (self-reflection);
- use this self-reflection to formulate reasoned choices for changes in their conduct (in their professional role);
- put these changes in conduct into practice;
- make a contribution to their colleagues' development by holding a mirror in front of their colleagues and take active part in actively reviewing the consequences of this confrontation for the relevant colleague in the relevant situation, thereby taking account of their colleague's personal development;
- adopt an adequate approach to the effect of interactions within the group.

For this reason, this task area includes at least skills such as learning capacity, self-reflection and cooperation skills that play an important role in learning. These competences need, in analogy with the other management competences, to be equally applicable to public prosecutors, even though they are not explicitly specified in one of the task areas included in the public prosecutor's job profile.

The management competences are not, in principle, included separately in the specification of the attainment levels since they play a role in the performance of all tasks. However, when specific attention needs to be devoted to a management competence during a programme period then the relevant management competence is included in the central competences.

### **Moral competences**

The requirements imposed on the competence fulfilment of the office are not restricted to intellectual requirements but also extend to moral competences since judges and public prosecutors are also – and above all – responsible for the manner in which they fulfil their office. The moral competences relate to the core values of the offices of judge and personal prosecutor and are closely related to the personality of the judge or public prosecutor. The moral competences relate primarily to situational awareness and the ability to think and act authentically and in autonomy, together with the associated character traits such as an independent mind, moral courage and integrity. These are not, in principle, included separately in the specification of the attainment levels as they are regarded as underlying competences required for the performance of every task. However, they are specified separately when they require specific attention during a given programme period. Moral competences, in analogy with the management competences, relate primarily to character traits and, consequently, competences that transcend the judicial-professional duties and are equally applicable to the entire study programme.

Since these moral competences are of great importance to the fulfilment of the office of judge and public prosecutor a number are reviewed in the following subsections.

### **Situational awareness**

Judges delivering their judgement and public prosecutors holding their closing speech always, to a greater or lesser extent, exercise their influence on society. Judicial officers who are aware of the role their position and organisation fulfil in society and acquaint themselves with the developments in society and society's opinion of the position of judge and the judiciary or of public prosecutor and the Public Prosecution Service are able to formulate a judgement that takes account of the issues that the parties regard as important and which is acceptable to society.

Judicial officers conducting hearings and delivering judgements or holding their closing speeches need to be able to find a balance between their independence and due regard for the entirety of policy agreements and frameworks formulated jointly with their colleagues. As a result, judicial officers need to devote continual attention to their environment and the judicial developments and changes that take place. They will also need to seek opportunities for consultations, sharing knowledge and reaching harmonisation with their colleagues (at a national level and within their court/public prosecutor's office).

### **Integrity**

Judges and public prosecutors are required to maintain the authority and integrity of their office and to refrain from all acts that could impair the public's confidence in the judiciary: the public's confidence in judicial administration and the judiciary is the end and the maintenance of a high level of conduct – by means including compliance with the code of conduct – is the means. The basic function of the administration of justice in a state under the rule of law is to guarantee honest judgements.

A distinction needs to be made between the integrity of the office and the integrity of the officers (judges and public prosecutors), although the two have a direct relationship with each other. The first of these two forms of integrity is comprised of the institutional guarantees that encompass the office and are focused on honest judgements: the second is the integrity of the person who fulfils the office. The criterion for compliance with the integrity requirement is public confidence. Judicial officers acquire and retain authority when their words and actions demonstrate that they serve the legal order and the litigants (and not vice versa).

### **Impartial judgement**

Independence is manifested in impartiality. Impartiality requires judges to at least fulfil their obligations without preference for or prejudice towards the standpoint or person of one of the parties. Judges also do everything possible to enhance public confidence in their impartiality, avoid making public comments about pending cases, and will disqualify themselves from a specific case when necessary (although they will endeavour to avoid or limit the need to do so). The impartiality guidelines lay down the regulations governing the prevention of (the semblance of) the entanglement of interests.

Public prosecutors also need to adopt the position as an independent finder of the truth. The public prosecutors' role in criminal proceedings is such that it is inevitable that they occasionally need to give public account for their actions before the hearing. When this is necessary then they give public account in an objective manner and without anticipating the outcome of the relevant criminal case. Public prosecutors they take express account of the interests of all the parties involved in a criminal case and avoid rabble-rousing. They also safeguard the interests of the victims and/or their dependents, where necessary, but without neglecting

the suspect's interests. Public prosecutors represent the interests of society without regard to their personal interests and without representing the interests of other parties.

### Independent position

Judges must always adopt and retain an independent position, uphold the guarantees created to safeguard their independence and contribute to optimum conditions for impartial judgements. Judges can do little with respect to constitutional independence other than ensuring that this independence is not put in jeopardy. Their functional independence is manifested in the form of freedom of judgement ("liberum arbitrium"), pursuant to which judges are responsible for ensuring that their judgements are governed by lawfulness, i.e. by legality and justice. Judges are bound solely by law, not by instructions issued by any party whatsoever. Conse-

quently, all judgements must always remain free of every form of influence, pressure and direct or indirect intervention, irrespective of the cause or the reason. Public prosecutors also safeguard their independent position within the Public Prosecution Service's statutory hierarchical framework which, in practice, is manifested in the form of 'involved distance' and 'impartial finding of the truth' (see above under 'impartial judgement'). 'Involved distance' refers to the public prosecutors' position: although they are involved in the activities of the partners in the chain and the participants in the criminal proceedings, they also remain their independence from these parties at all times, in particular with respect to their relationships with the police, victims and/or surviving relatives. Public prosecutors also need to be able to cope with social pressure without losing sight of society's interests.

## General information about the learning assignment plan

**The training and substantive principles reviewed in the previous sections constitute the basis for the design and direction of the learning process: the previous section explained how these principles are used to give shape to the curriculum. This section reviews the structure of and activities to be carried out in every learning period.**

### Structure for the design and direction of the working and learning process

This study guide specifies the framework for this process in the form of a learning assignment plan which states how and what trainee judicial officers should receive, and how and what they need to learn. Structure is also essential in the supervision of the trainee judicial officers. Since structure provides for the direction, control and safety of the learning process the judicial officer study programme includes a number of predetermined contact times between the judicial officers and their trainer(s) and uses a learning assignment dossier and development dossier. This section begins with a brief explanation of the two dossiers and then continues with a more detailed review of the various meetings and interviews to be held during the study programme. The following sections specify the curriculum for each section and the public prosecutor's office, with specifications of the tasks to be carried out (and the associated task criteria and competences) and a concluding subsection with a detailed learning assignment plan listing the work to be carried out and the courses that are to be followed in each week of the programme period.

### Learning assignment dossier

Work is the most important educational tool in the judicial officer study programme, and for this reason feedback on the work is essential if trainee judicial officers are to be able to learn from their experiences and give considered direction to their learning process. This is in turn supported by maintaining an up-to-date learning assignment dossier for each programme period. The learning assignment dossier is a ring file used to store the work carried out by the trainee judicial officer – such as judgements formulated by the trainee judicial officers – and all the associated feedback forms completed by the trainers. SSR has prepared a learning as-

signment dossier for each programme period.

This dossier contains the following forms (which have been published on [www.ssr.nl](http://www.ssr.nl)):

- *Summary* of the tasks carried out in the relevant section or public prosecutor's office

used to list the work that has been carried out and to keep track of the extent to which this complies with the stipulated experiential standards (see the curriculum/attainment levels).

- *Feedback form* for the tasks carried out in the relevant section or public prosecutor's office

used to collect feedback on the trainee judicial officer's performance and learning process in a uniform manner.

Feedback forms have been prepared for all tasks to be carried out during the study programme. In principle, the trainer completes a feedback form once the relevant task has been carried out. The feedback forms include a 'Particulars' section which can be used to note comments about factors that have influenced the performance of the task, such as particulars about a case (for example, 'difficult case in view of the current phase of the study programme') or particulars about the trainee judicial officer (for example, 'the trainee judicial said that he had a headache during the hearing').

The feedback form also states the task criteria and competences as specified in this study guide to serve as a prompt for the trainer. The trainer does not need to award a grade for all the task criteria, but solely to the conspicuous tasks criteria. The conspicuous task criteria can be circled when the trainee judicial officer meets the relevant criterion or checked when the trainee judicial officer needs to devote attention to the criterion, i.e. with an o or x. The 'Notes' section is used to explain the reason for checking the task criteria and for other comments about the manner in which the task was performed, where relevant with a reference to the competences to indicate what is required for further development.

The feedback forms are completed on the basis of the level of the

trainee judicial officer at the end of the study programme. The information stated in the 'Notes' section automatically results in the overall conclusion, i.e. 'developing', 'at the required level', 'strength' or 'not applicable'. Trainee judicial officers will have many 'developing' points at the beginning of the study programme since they still need to carry out a great deal of work. When they make appropriate progress then these points will change to 'at the required level' or even 'strength' during the course of the study programme. This approach enables the trainee judicial officers to follow their development.

- *Feedback form, sundry*

used to request feedback in situations in which the trainee judicial officer has not carried out a specific task but which are nevertheless of interest with respect to the development of competences, for example when trainee judicial officers who have taken part in a consultation ask a colleague to give feedback on the manner in which they took part in the consultation.

- *Reflection form for orientation tasks*

to reflect on tasks carried out to explore the position, such as the auditing of hearings. The underlying idea is that trainee judicial officers can learn more from orientation tasks such as auditing when they subsequently reflect on what they have observed and identified and then review the most important conclusions for their future work.

The trainee judicial officers file the completed feedback and reflection forms in the learning assignment dossier under each task and criteria to keep clear records of their learning experiences and learning process for each task. The trainee judicial officers are responsible for keeping the learning assignment dossier up to date and for ensuring that the trainers receive the dossier well in advance of review interviews to enable them to prepare themselves.

### **Development dossier**

The development dossier is used to monitor the trainee judicial officers' development and record their results. This dossier is a ring file (prepared by SSR) which contains general information about the trainee judicial officer and the reports of the progress meetings and review and assessment interviews. The trainee judicial officers are responsible for filing the (original) minutes of all meetings and interviews conducted with them and copies of the assessment forms in their development dossiers so that a following trainer has a clear insight into the progress they have made. Consequently, the dossier also contributes to the continuity and consistency of the study programme. The trainee judicial officers are responsible for filing these documents until the study programme has been completed. The information contained in the development dossier is also used as one input for the determination of specific learning goals for each programme period. The development dossier contains the following forms (which are also published on [www.ssr.nl](http://www.ssr.nl)):

- *Summary of the timetable for the overall study programme*

used to keep records of the trainee judicial officers' progress in the study programme relative to the timetable and the trainers who were assigned to the trainee judicial officer.

- *Curriculum Vitae questionnaire*

used to make notes of important and interesting data about the

trainee judicial officers' previous studies and work experience for the intake interview and additional information that can be of importance to the trainers during the study programme. The trainee judicial officers complete this form before beginning the study programme and subsequently keep the information up to date. More information about this questionnaire is given in the subsection on the intake interviews at the beginning of each new programme period.

- *Intake form*

used to make notes of the most important information about earlier experiences for the intake interview conducted at the beginning of each programme period and to keep records of the agreements for the coming learning period. Prior to the intake interview the trainee judicial officers reflect on the most important conclusions about their learning process. These are discussed during the interview and noted on the form.

When, for example, the trainee judicial officer and the trainer evaluating an earlier programme period concluded that the organisation of the personal work was an issue requiring attention then the trainee judicial officer can discuss this during a following intake interview and explore how more attention can be devoted to this aspect during the coming programme period, for example by agreeing that the trainee judicial officer will reflect on this aspect at regular intervals and that the aspect will be a standing item on the agenda for the feedback meetings.

- *Review form*

used to make records of the performance and learning results during the first half of the study programme.

The trainers make notes of their general impression of the trainee judicial officer's progress and assessment of the performance of the tasks in each result area, together with an explanation. The competences can be used to specify the aspects that need to be developed further.

- *Progress form*

used to make notes of interim progress meetings.

The trainers make notes of their conclusions about the trainee judicial officers learning process and results, as well as any additional agreements on supervision and supplementary learning activities, where relevant. Adopting this approach increases the insight into and control of the learning process.

- *Assessment form*

used to record whether the performance and learning results achieved by the end of the course in a specific section or the public prosecutor's office comply with the requisite requirements.

The training consultant sends an e-mail with a form to the relevant trainer(s) shortly before the end of the programme period. The trainers note their assessment of the performance of the tasks in each result area on the form. They state their assessment, in their own words, of the level of the trainee judicial officer's performance, in part on the basis of the task criteria and competences specified in the study guide. The assessment is based on these aspects

determines the letter grade awarded to the trainee judicial officer's performance.

### **Meetings and interviews**

The meetings and interviews constitute the leitmotif of the study programme. Each new programme period begins with an interview, followed by review interviews mid-way and at the end of the programme period. These are supplemented with progress meetings which are scheduled, as required, in consultation between the trainer and judicial officer. In essence, all meetings and interviews review of the trainee judicial officer's learning process. The review interview at the end of each programme period also constitutes the prelude to the selective assessment.

### **Forming an assessment**

The trainer conducting the review interview assesses the manner in which the tasks were performed, in general initially based on the trainer's feeling or ideas about the manner in which the trainee judicial officer has performed the tasks. This approach to the assessment is justifiable in view of the experience possessed by the trainers/assessors, since their subconscious wealth of knowledge and experience enables them to interpret situations in an adequate manner. The trainer can then analyse this intuitive assessment to determine the reasons for their assessment. These reasons can then be explained to the trainee judicial officer: they can also result in specific actions to be taken in the learning process. The trainer conducting the review interview uses the task criteria and competences to indicate which issues offer scope for improvement and which knowledge and skills need to be developed further. The review interview, for the reason stated above, offers the trainer scope to begin the (educational and selective) assessment by giving an initial and general impression of the trainee judicial officer's performance of the tasks. The trainer then continues by stating the specific conduct that has been observed, whether this conduct is appropriate and, when the conduct is inappropriate, the alternatives that were available or the form of conduct that was desirable. The assessment also takes account of the number of tasks performed by the trainee judicial officer (the experiential standard). The aforementioned elements of the assessment constitute the trainer's ultimate assessment.

### **Explanatory notes to the meetings and interviews**

#### **Intake interview**

Each programme period begins with an intake interview in which the trainer(s) and trainee judicial officer make each other's acquaintance and discuss the learning process on the basis of the current documents in the trainee judicial officer's development dossier. They then look ahead to the coming programme period and, in part on the basis of the study guide, discuss what is expected of the trainee judicial officer during the programme period. The trainer(s) and trainee judicial officer use the development dossier to discuss any points for development, where relevant, that may require specific attention in the coming programme period. These points and supplementary agreements on the trainee judicial officer's learning and development process, where relevant, are then noted on the intake form. The trainee judicial officer is also notified which assessors have been assigned to the coming programme period.

#### **Feedback meetings**

Feedback, an important factor in the learning process, is the provision of factual information about a task that has been carried out. This feedback needs to link up to the task criteria so that trainee

judicial officers understand why they have or have not done something properly. Feedback needs to be descriptive and without a value judgement. Consequently, although feedback can include well-meant, specific compliments it also needs to include a statement of the reasons for the compliments. Information about progress to date – feedback – often results in an assessment, although assessment is only one element of feedback. It is also important to give directions for the future, i.e. feedforward. Feedback is a highly effective means of encouraging the learning process, provided that it is given in the correct manner and with appropriate content. This also implies, for example, that the tasks to be carried out by trainee judicial officers should not be overly complex for the stage of the study programme and that the required result should be clear. Feedback should be given as soon as possible after the completion of the relevant task since this ensures that the feedback is recognisable to the trainee judicial officer.

### **Progress meetings**

The mandatory review interviews are supplemented with progress meetings held between the trainee judicial officers and one or both trainers to give direction to and further the learning process. It can be important to hold progress meetings to prevent a situation in which solely feedback meetings are held, since feedback meetings often focus solely on the substantive elements of a demarcated task. Progress meetings can then be beneficial to ensure that sufficient attention is given to discussions of the trainee judicial officer's progress and, in particular, the learning process and the progress. The trainers use the progress meetings to coach the trainee judicial officers on their points for development. The number of these meetings depends on the duration of the programme period and the trainee judicial officers' needs and their development.

### **Mid-term review interview**

The trainee judicial officers and their trainers hold a review interview halfway through the programme period.

The objectives of this interview are to:

1. gain an insight into the trainee judicial officer's learning process and progress;
2. amend the learning assignment plan, where relevant;
3. make an inventory of and discuss possible bottlenecks and points for improvement;
4. promote the learning process.

The following information is noted on the review form:

1. any particulars, where relevant, about factors that could have an influence on the trainee judicial officer's performance in a specific period (such as special activities, the officer's private circumstances and illness);
2. an overall assessment of the judicial officer's performance;
3. an overall assessment of each task area together with a statement of the grounds for each assessment as based on the relevant experiential standards, task criteria and competences.

The interview is conducted on the basis of the attainment levels specified for the relevant programme period and the agreements reached between the trainee judicial officer and the trainer(s) as noted on the intake form. The reflection prior to this interview is based on the information the trainee judicial officer has collected in the learning assignment dossier. The trainee judicial officer and trainers prepare for the review interview on the basis of the tasks and the associated task criteria, competences and experiential standards listed on the review form. The trainer notes his or her assessment of the trainee judicial officer's performance in each task area together with the points requiring the trainee judicial officer's

attention during the next programme period. This assessment is based on the level the trainee judicial officer needs to attain at the end of the basic course.

The trainee judicial officer is offered an opportunity to respond to the assessment. The trainers draw up minutes of the interview, sign the minutes and ensure that the trainee judicial officer signs the minutes to indicate agreement with the contents. When trainee judicial officers cannot concur with the trainers' opinion of their performance then their comments can be attached to the minutes in an annex. The trainers retain a copy and the trainee judicial officers file the original in their development dossier.

### **Review interview at the end of the programme period**

The trainee judicial officers and their trainers hold an evaluative review interview at the end of each programme period (and at the end of the basic criminal law course). The objective of this interview is to gain an insight into the results achieved during the programme period as based on the attainment levels and the agreements the trainee judicial officers and their trainers made during the intake and mid-term review interviews. The reflection required for the interview is once again based on the learning assignment dossier and development dossier. Information about the full procedure governing the review interview at the end of the programme period is given in the above subsection on the mid-term review interview and in the following section on the assessment of trainee judicial officers.

### **Final interview at the end of the study programme**

The trainee judicial officers and their training consultants hold a final interview to conclude the study programme. The objective of the final interview is to evaluate the entire study programme and look ahead to the following learning process that begins when

the trainee judicial officers are appointed to their first position as judge or public prosecutor. The Justice Administration Council and Public Prosecution Service assume that all professionals continue to learn and make efforts to further their professional development. Within this context the first few years following the judicial officers' graduation can be regarded as essential for the acquisition of the expertise they need to work in autonomy at the required level.

The agenda for the final interview includes at least the following items:

1. a review of the trainee judicial officer's study programme, the conclusions and the implications for learning and development after the appointment to the first position;
2. The trainee judicial officer's experience of the study programme (the design, training and supervision), the conclusions and the trainee judicial officer's suggestions for improvements to the study programme;
3. feedback to the training consultant.

### **Kickoff meeting in the new position**

The graduate judicial officers discuss their strengths and points for development during the kickoff meeting for their new position and can, when so required, submit their development dossier compiled during the study programme to their supervisor and/or the officer who will supervise them in their work. This approach provides for a smooth transition from the study programme to the further learning process during the work. Novice judges and public prosecutors will acquire the necessary expertise much more rapidly when they engage actively in self-reflection. For this reason it is recommended that structural feedback meetings are scheduled. The supervisor and graduate judicial officer are jointly responsible for scheduling these feedback meetings.

## **Assessment of the trainee judicial officer**

**The previous section discussed the educational review that takes place in each programme period. This Section discusses the design of the selective assessment.**

### **From interviews to assessment**

Each period concludes with a review interview that constitutes the prelude to the formal (selective) assessment. This assessment should be a logical conclusion that is based on the last review interview and the feedback meetings: when review interviews and feedback meetings are conducted in the appropriate manner then trainee judicial officers will not be surprised about their assessment.

### **Statutory assessment framework**

The trainee judicial officers' progress in the sections of the court, the public prosecutor's office and the external traineeship parts of the programme is assessed in accordance with the regulations laid down in the *Beoordelingsvoorschrift burgerlijk Rijkspersoneel* ('State civil servants assessment regulations'), 1985 (see Article 25 of the *Besluit opleiding rechterlijke ambtenaren* ['Judicial Officers (Training) Decree']).<sup>12</sup> Article 2 of the *Beoordelingsvoorschrift* stipulates that assessments must relate to a period of at least six months. In view of this requirement the first assessment in the basic criminal law course takes place after the end of this programme period, i.e. once the trainee judicial officer has been at

work for six months.<sup>13</sup>

The assessment uses an assessment form prepared on the basis of the judge's job profile and public prosecutor's job profile, i.e. the assessment is based on the results areas, competences and essential skills listed on the assessment form. Use of the assessment form is mandatory.

The assessment authority for the training in the courts on behalf of the court administration, the public prosecutor's office and the external traineeship respectively is the president of the court, the chief public prosecutor and SSR's Board respectively. The assessments are carried out by the officers designated for that purpose, usually the trainers, after receiving advice from SSR's training consultants. However, the assessment can also be carried out by a supervisor (a member of the judiciary or the Public Prosecution Service): this varies between the courts and public prosecutor's offices. When a supervisor carries out the assessment then the trainers serve as joint assessors or provide the necessary information. The identity of the assessors is discussed during the intake interview at the beginning of the programme period.

### **Procedure**

The trainee judicial officer gives the training consultant notification of the name(s) of the trainers/assessors about eight weeks before the end of the programme period. When giving this notifica-

<sup>12</sup> The Protocol *beoordeling raio's* laid down in the Eindrapport Herziening Raio-opleiding, p. 99-100, has been included in this section.

<sup>13</sup> All trainee judicial officers are subjected to an assessment of their development during the criminal law course and not, pursuant to the Raio Modelplannen, 1998, solely when the trainee judicial officers' performance in this part of the course is inadequate.

tion the trainee judicial officer is offered an opportunity to inform the training consultant about issues that need to be discussed during the assessment interview, such as illness, private circumstances or special activities that may have had an influence on the trainee judicial officer's performance. Once the above information has been received the training consultant contacts the trainers to make an appointment for the formal assessment.

The assessors receive the assessment form about one week before the scheduled date of the assessment. A member of the SSR staff completes the form's cover sheet (personal details and study programme details) for as far as is possible prior to the issue of the form.

The procedure for the assessment of the external traineeship is explained below in a separate subsection.

### **Assessment form**

As indicated in the previous section (under Review interview at the end of the programme period), the trainee judicial officers and their trainers hold an evaluative review interview prior to the assessment at the end of the programme period). The objective of this interview is to gain an insight into the results achieved during the programme period. The reflection required for the interview is once again based on the learning assignment dossier and development dossier as based on the attainment levels and the agreements the trainee judicial officers and their trainers made during the intake and mid-term review interviews. This review interview simplifies the completion of the official assessment form. The form contains (to serve as a guideline) a brief list of the attainment levels of a number of task criteria together with the associated competences and/or relevant skills for the four result areas. The assessors then state their assessment, in their own words, of the level of the trainee judicial officer's performance, in part on the basis of the task criteria and competences specified in the study guide. These aspects will determine the letter grade to be awarded (A, B, C, D or E: a combination of two letters is not permitted).

### **The training consultant's role**

The training consultant holds the meeting with the assessors on the agreed date. The assessment form the assessors have (preferably) completed in advance is discussed. The assessors and the training consultant then jointly determine the (definitive) wording of the assessment and the letter grade to be stated on the assessment form. At the end of this meeting the assessors inform the trainee judicial officer of the result. When necessary the training consultant informs the trainee judicial officer about the (legal status) consequences of the assessment.

### **Assessment**

Once the assessment has been drawn up the assessment authority immediately places its (first) signature on the form, self-evidently solely when the assessment authority can concur with the assessment (see Article 6, *Beoordelingsvoorschrift*). A copy of the assessment form is then issued to the trainee judicial officer as soon as possible. The assessors discuss the assessment with the trainee judicial officer. When (one of the) the trainers are unable to hold this discussion they can deputise another officer. The trainee judicial officers can state their opinion of the assessment on the form. Trainee judicial officers who are unable to concur with the assessment or the reasons for the assessment can lodge their objection with the assessment authority within 14 days of the assessment. The assessment authority places its (second) signature on the form on the expiry of this 14-day period or earlier in the event that the trainee judicial officer concurs with the assessment (see Article 7, *Beoordelingsvoorschrift*). The trainee judicial officer re-

ceives a copy of the adopted assessment. The original is issued to SSR in *Zutphen*.

Trainee judicial officers who do not concur with the adopted assessment can lodge an objection (see Article 8, *Beoordelingsvoorschrift*).

Trainee judicial officers can move on to the next programme period solely when they have been awarded at least a satisfactory for all elements of the assessment. An assessment of any element on the assessment form with an unsatisfactory, i.e. an element awarded a letter of B or A, results in an ultimate assessment of all the work that can never exceed a B or A respectively.

### **Assessment of the external traineeship**

The external traineeship is also concluded with an assessment of the work, in this instance by the relevant training consultant. The training consultant explains the procedure to the trainee judicial judge at the beginning of the traineeship and then contacts the trainee judicial officer about the assessment in time at the end of the external traineeship. The external traineeship can be followed at a wide variety of locations, and for this reason it is not possible to specify the tasks and associated criteria that will be assessed in advance. The assessment will in any case focus on the competences required for the adequate fulfilment of the position of judge or public prosecutor. The assessment will also extend to the attainment levels specified in the proposal for the external traineeship. The SSR Board is the assessment authority for the external traineeship, not the president of the court or the chief public prosecutor. More information about the procedure for the assessment of the external traineeship and the various roles in the assessment is given in the curriculum for the external traineeship section.

### **Repeats**

When a programme period is concluded with a B grade then the course in the relevant section is extended by six months to offer the trainee judicial officer an opportunity to achieve the level required to continue to the next programme period. Repeats are not based at the same section of the court or public prosecutor's office. The trainee judicial officer is assigned to another section or public prosecutor's office and is assigned other trainers. Trainee judicial officers may repeat a maximum of one programme period during the study programme.

The training consultant makes the arrangements for a new training place and issues advice on the details of the course. The trainee judicial officers and the new trainers hold an intake interview to discuss the trainee judicial officers' points for development on the basis of their learning assignment dossier and development dossier. A new learning assignment plan is drawn up in consultation with the training consultant. The contents of this plan take account of the competences to be developed and are based all the training requirements specified in the learning assignment plan for the relevant programme period, although in proportion to the period of the repeat period. The training consultant's approval of the learning assignment plan is required.

A review interview is held mid-way through the repeat period and a (selective) assessment is carried out at the end of the period. Trainee judicial officers who achieve at least a satisfactory grade for all points return to their original district and continue the study programme. However, an unsatisfactory grade (an A or B) for one or more points results in the termination of the study programme and the dismissal of the trainee judicial officer.

### Premature termination

The study programme is terminated in the event that an A grade is awarded at the end of the programme period or in the event that a second B grade is awarded during the course of the study programme (either at the end of the repeat period or in an earlier programme period). Information about the consequences for the legal status is given in the trainee judicial officer regulations manual.

**Details of the curricula for the basic and advanced courses in each section of the court and the public prosecutor's office are given in the following sections of the study guide.**

## General information about the courses

### General courses

The SSR's courses are focused primarily on the acquisition of knowledge, attitude and training skills. The curriculum for each section of the court and the public prosecutor's office specifies the mandatory courses and the discretionary courses, where relevant, to be followed during the programme period. The dates on which the courses will be held and the contents of the courses are published on the trainee judicial officer website, [www.ssr.drp.minjus](http://www.ssr.drp.minjus) (accessible within the judicial section).

### Courses during the basic programme period

The curriculum for each programme period begins with a basic course. This is followed by a number of courses, skills and attitude training programmes tailored to the specific section of the court or public prosecutor's office.

SSR issues each trainee judicial officer written notification by no later than two months before the beginning of the new study year specifying the course obligations for the relevant year, together with the dates of the courses for which the trainee judicial officer has been registered. SSR registers the trainee judicial officers for these courses. Consequently, the trainee judicial officers do not need to register themselves. These courses are mandatory.

Information about the discretionary courses in a specific programme period is given in the relevant learning assignment plan.

### Courses during the advanced programme period

All trainee judicial officers taking part in the advanced programme period are under the obligation to follow the practical professional ethics course. SSR registers the trainee judicial officers for this course.

Trainee judicial officers opting for the judiciary are offered a package of (partially) discretionary courses in the permanent education package. The trainee judicial officers can list the courses they wish to follow on the same form in which they state their choice for the judiciary or the Public Prosecution Service. SSR then registers the trainee judicial officers for the courses.

Trainee judicial officers who opt for the Public Prosecution Service are under the obligation to follow the Public Prosecution Service's trainee judicial officer *licentievignet* licence courses (see the SSR4OM website). SSR registers the trainee judicial officers for these courses.

Information about the discretionary courses in a specific programme period is given in the relevant learning assignment plan.

### Public prosecutor's office courses

The Public Prosecution Service introduced a licensing system for 'gowned officers' on 1 January 2008. This system imposes specific, quantifiable requirements on officers fulfilling a large number of positions within the Public Prosecution Service.

The system is comprised of four general licences and 21 licences for expertise positions. A specific licence has been introduced for trainee judicial officers opting for the Public Prosecution Service. Trainee judicial officers must comply with the associated requirements by the end of the course. More information about the licensing system is available from the SSR's website, SSR4OM.

### External traineeship courses

SSR also organises courses for trainee judicial officers during the external traineeship. During this external traineeship the trainee judicial officers are under the obligation to comply with either the 30 hours' permanent education per annum stipulated for the judiciary or with the requirements imposed on the Public Prosecution Service's trainee judicial officer *licentievignet* licence scheme (see the SSR4OM website). SSR funds these courses. The trainee judicial officers bear the responsibility for registering for the courses they wish to follow during the external traineeship. They can register for these courses via the SSR's service desk. The training consultants review the trainee judicial officer's choice of courses on the basis of their individual points for development.

Trainee judicial officers can select courses from SSR's range of permanent professional development courses. Trainee judicial officers must register for these courses at the beginning of each study year by sending an e-mail to the service desk ([SSRservicedesk@ssr.nl](mailto:SSRservicedesk@ssr.nl)).

Trainee judicial officers who follow (part of) their external traineeship outside the Netherlands are also under the obligation to follow courses. Trainee judicial officers who are unable to follow (some of the) courses in the Netherlands must consult with their training consultant to determine how they can comply with their permanent education obligation.

SSR cannot guarantee that trainee judicial officers can follow the courses of their choice: courses can be full or be cancelled, depending on factors such as the number of registrations. Should a course be cancelled then SSR will inform all trainee judicial officers who registered for that course. The trainee judicial officers will then need to choose another course.

### Courses after a repeat period

When trainee judicial officers have repeated a programme period then the training consultant and trainee judicial officer will consult on the appropriate courses for the officer's points for development.

# Contacting SSR

## Online information

A great deal of information about SSR and the judicial officer study programme is available online at [www.ssr.nl](http://www.ssr.nl). The website, which was revamped in March 2010, is continually being updated and expanded.

[www.ssr.nl](http://www.ssr.nl) – which can also be accessed links on INTRO and Omtranet – contains a great deal of information of relevance to trainee judicial officers, such as news, general information about SSR, the course database and information about the study programme and the courses. Further information is available from the Mijn SSR protected section of the website. Trainee judicial officers and their trainers can apply for a password to enable them to work in this section of the website that is not accessible to the public. This section, which is equipped with extensive functions, also contains forms that can be stored in a portfolio for personal use. The users can also each other using the website's chat technology and consult with each other. The website also contains information about the user's course history.

Online version of the judicial officer study programme study guide  
The study guide for the judicial officer study programme is accessible online in Mijn SSR. Users logging in with their password can access all the forms required during the various programme periods. These forms can be downloaded, completed online, saved and sent to others.

## Contacting SSR

Trainee judicial officers may wish to make personal contact with SSR during their study programme. SSR has three counters for various categories of questions and issues:

for human resources management issues such as terms and conditions of employment, reporting sick and change of address: call Human Resources Management, +31 (0)575 59 53 21

for all information about the courses: call the SSR Service Desk, +31 (0)575 595 345 or send an e-mail to [ssrservicedesk@ssr.nl](mailto:ssrservicedesk@ssr.nl)

for all other issues relating to the course of the study programme: call the judicial officer training bureau, +31 (0)575 741 430 or +31 (0)575 595 358, or send an e-mail to [raio-opleidingsbureau@ssr.nl](mailto:raio-opleidingsbureau@ssr.nl)

Contacts from other than a judicial address are made via the aforementioned telephone numbers or via [www.ssr.nl](http://www.ssr.nl)



# **Curriculum, basic criminal law course**

**Duration: 6 months**

# Curriculum, basic criminal law course

**Duration: 6 months**

## Outline of the position

**The work of criminal court judges is of a more public nature than the work of other judges<sup>1</sup>, as is manifested by the open hearings, the presence of the media (press, radio, TV and the Internet) and public in the courtroom and the politicians' interest. Consequently, this imposes even more stringent requirements on the judge's performance at the hearings and the justification of the decision (in understandable language).**

Criminal court judges need to be able to comprehend the contents of a dossier (that may be bulky, disorderly and difficult to read) within a specific (often short) period of time, make a selection of the facts and circumstances that may be of relevance for any decision to be reached in the case and become familiar with these facts and circumstances to an extent that ensures that they have a ready knowledge of the details and can conduct the case at the hearing without (continually) needing to consult the dossier. In addition, criminal court judges need to be able to achieve a suitable equilibrium between the speed of the proceedings and the collection of the information required to make a decision of high-quality content: they are, in particular, expected to maintain this equilibrium when confronted with a high workload.

The judge's formal decision is reached in accordance with a rigid framework, beginning with the preliminary questions, such as the validity of the summons, continuing with an review as to whether the fact can be legally and convincingly proven, whether the fact constitutes an offence, whether the offender is punishable and concluding with the determination of an appropriate sanction. The proceedings at the hearing also follow this line, whereby a distinction is made between the discussion of the fact and the discussion of the personal circumstances. Criminal court judges need an adequate insight into local, national and international developments in rendering substantive judgements. This in turn requires a great political and social awareness.

## General information about this programme period

### Objective

The objective of the course is to provide the trainee judicial officer basic knowledge of the work in the criminal law section, both with respect to the judicial substance and the judge's attitude, and to

provide an insight into the performance of both the section's organisation and the criminal law chain. Since this is the first acquaintanceship with the court everything – the workplace, ambience and substance – will be new to trainee judicial officers. The initial impetus is imparted by developing judicial skills in chambers and learning how to formulate decisions. The course places the greatest emphasis on analysing cases, applying the law in practice in a specific case, reflecting on the judges' courtroom skills by acting as the court registrar at the hearings and learning how to formulate decisions.

### Supervision

Trainee judicial officers are, in principle, assigned to the hearings of the judge who is training them (hereinafter referred to as the 'judge-trainer'). When trainee judicial officers are assigned to hearings conducted by judges other than their trainer then the training tasks referred to below are carried out by the judge-trainer or are delegated to the judge with whom the trainee judicial officer is cooperating. Judge-trainers are expected to play an active role: they either delegate the tasks to another judge or carry them out themselves.

Trainee judicial officers who also carry out the tasks of a court registrar can also be supervised by a court registrar (hereinafter referred to as the court registrar-trainer) and at least one judge, both of whom must be certified trainers. More information about the supervision is given in the various result areas.

### Attainment levels

The assessment of trainee judicial officers during this programme period is based on the manner in which they perform their court registrar duties and on their development of a judicial attitude. The trainee judicial officers are able to analyse a criminal dossier of an average degree of complexity, draw up an official report, adopt a standpoint in chambers, motivate their standpoint and reach collegial decisions. In addition, they are able to formulate draft judgements, including what are referred to as 'PROMIS judgements' for cases of an average degree of complexity that are heard by a three-judge section and where the trainee judicial officers are, in particular, expected to be able to formulate sound grounds for proof and grounds for punishment. In addition, they must be able to disallow or allow the defence that is put forward on sound grounds. Trainee judicial officers also need to be able to detail the evidence in cases of an average degree of complexi-

<sup>1</sup> The outlines of the position and the result areas are inspired by Essentiële situaties die specifiek zijn voor de strafsector in het functieprofiel rechter and are largely derived from De strafrechter en Profiel, Deskundigheidsbevordering van de strafrechter (2008).

ty. The assessment of these attainment levels always takes account of the specified task criteria, competences and experiential standards. When trainee judicial officers perform solely duties of the court registrar – when they fulfil the role of the court registrar at hearings – then the tasks of the court registrar are also specified together with the associated task criteria. These then serve as the basis for the assessment of the relevant trainee judicial officers. The trainee judicial officer does not yet need to meet the standards specified for tasks or task criteria marked with an asterisk \*.

### Result areas

The above review of the general work of criminal court judges serves as the basis of the list of requirements imposed on the criminal court judge listed in the result areas of the following sections: each begins with a general introduction to the task and continues with a specification of the criteria governing the assessment of the task, the most important competences for the task and the associated specific knowledge.

Neither the learning capacity, self-reflection and other management competences nor what are referred to as “moral competences” are – where relevant – specified separately.<sup>2</sup> The general knowledge required for this course is listed below. This list does not include recent relevant criminal law information or (recent) case law: this specific knowledge is included in the relevant result areas.

### Knowledge

- Criminal Code, Code of Criminal Procedure and Code of Special Criminal Law
- Criminal Law
- International law
- Law of evidence and defence
- Legal search systems, also digital (for example, Intro landelijk/Porta iuris criminal law portal; Porta Europea; Council of Europe website)
- PROMIS Best Practices (can be consulted via Intro Landelijk)
- Design and content of (PROMIS) judgements
- The organisation's processes
- *Handboek deskundigen voor de strafrechter* ('Criminal court judges' expert manual')

### Types of cases

- The cases assigned to trainee judicial officers preferably exhibit an increasing degree of complexity. Factors that can determine the degree of complexity include:
- the number of suspects
- suspects with a disorder/handicap
- the number of facts
- confession/denial
- experts' reports
- examining witnesses/experts at the hearing
- aggrieved party/victim's statement
- legal complexity

### Result area: preparing for the hearing

#### Outline

Criminal court judges must be able to prepare their cases quickly and thoroughly: they need to be able to extract the essential factual and legal problems from the dossier and rapidly form a (sound) opinion without prejudice. They also need to form an impression of the manner in which the hearings may proceed and anticipate (on the basis of the contents of the dossier) as many potential pitfalls in the case and potential alternatives/scenarios as possible. This

requires good planning and proactive thinking. Criminal court judges inform and instruct the relevant officers (such as the ushers, security and the briefing judge) and, where possible, must be able to cooperate with and delegate to a member of the legal staff.

### Tasks

1. Analyse the criminal dossier
2. Think through the plan of approach and scenarios\*<sup>3</sup>

### Task criteria

*Re. 1 Analyse the criminal dossier*

- a. Check the dossier with respect to procedural issues (including the service of the summons or calling of those involved) and missing documents
- b. Record all relevant facts, in part in view of the legal framework and the procedural attitude of the suspect (confession/denial)
- c. Record all possible evidence
- d. Record all possible defence
- e. Record all relevant personal circumstances
- f. Take cognisance of relevant articles of acts, case law, literature and punishment orientation points

### Central competences

- Forming a judgement
- Prioritisation
- Problem analysis
- Cooperation
- Written fluency

### Orientation tasks

Complete preparation forms – to the extent that these forms are used – for cases heard by a single-judge section and by a three-judge section with the objective of practicing analysing the content of criminal dossiers and making a distinction between primary and secondary issues. The trainee judicial officer asks the judge whether there are any specific wishes with respect to the completion of the form.

### Experiential standard

See Result area: the hearing.

### Supervision

The court registrar-trainer gives the trainee judicial officer an explanation of (the design of) the preparation form and the manner in which a summary of the contents of the dossier and the initial impetus for the PROMIS proof and grounds are to be processed in the form. The judge-trainer gives the trainee judicial officer specific instructions on the completion of the preparation form.

### Specific knowledge

The court's standard preparation form  
Basics of the design and content of (PROMIS) judgements  
PROMIS Best Practices (can be consulted via Intro Landelijk)  
The court's PROMIS procedure.

### Result area: the hearing

#### Outline

Criminal court judges need to hold many reins during hearings: they are responsible for order in the courtroom, must manage the proceedings, maintain order, make use of various communication styles and be able to switch readily. They must also be able to listen carefully, enter into discussions and ask further questions

<sup>2</sup> Please refer to the Judicial Officer Section for an explanation of these competences.

<sup>3</sup> The trainee judicial officer does not perform this judicial task at this point. For this reason no task criteria are specified for this task. This information is enclosed in the advanced criminal law course curriculum.

separate from the documents in the dossier. They must also be able to conduct the hearing without continually paging through the dossier. It needs to be clear that the judge is in control, but without the judge being arrogant or exhibiting authoritarian conduct. Criminal court judges need to be able to apply the principle of the right to hear and be heard, state the problems and points that may be open to doubt and, consequently, for which a decision is required, collect as much information as possible about these points, conclude the discussion and then reach an adequate decision. As a result, criminal court judges need to call on their strength of character, self-knowledge and ability to adopt a flexible response to occurrences during the hearing: they need to be aware that their personal conduct/emotions and those of the parties to the proceedings and other parties involved can impede arriving at the truth and, when this is a risk, change their attitude. Criminal court judges need to be able to neutralise their personal emotions and the emotions of others, which also requires sensitivity. It is also essential that criminal court judges are able to find a suitable equilibrium between the time available for the hearings and the discussion of the case with the suspect – which points are or are not raised in view of the time available – and respond to the arguments put forward by the suspect, the counsel for the defence and the public prosecutor. This requires excellent communicative skills and prioritisation. Criminal court judges are watched closely by the public during hearings: this imposes stringent requirements on their performance at the hearing, approach to all those involved in the hearing and justification of (grounds for) their judgement.

#### Tasks<sup>4\*</sup>

1. Examine the suspect and discuss the content of the dossier with the suspect\*
2. Examine witnesses and/or experts and/or victims\*
3. Control the hearings\*
4. Announce (interlocutory) decisions\*

#### Central competences (possessed by the judge)

- Ability to listen
- Verbal fluency
- Problem analysis
- Cooperation
- Sensitivity
- Strength
- Self-confidence

#### Orientation tasks

At the beginning of the course the trainee judicial officers fulfil the role of court registrar at cases heard by a single-judge section (single judge in the criminal section): these hearings are straightforward and of value as an initial acquaintance with the criminal proceedings and the participants involved in the proceedings. The relatively large number of cases handled by the court give the trainee judicial officer a good look behind the criminal law and criminal prosecution scenes and the role of the criminal court judge. Preference is also given to assigning the trainee judicial officer the task of the preparation for these hearings: this unburdens the sessions judge and offers the trainee judicial officer an opportunity to practice in the summarising of dossiers in preparation for the work in the three-judge section.

During the course the trainee judicial officer also fulfils the role of court registrar in the three-judge section, when the trainee judicial officer should focus in making notes of all relevant facts and arguments. The trainee judicial officer also monitors the proceedings, such as procedural issues that need to be taken into account by

the judge and also provides substantive and procedural support. This offers the trainee judicial officer an opportunity to train in the distinction between primary and secondary issues and the application of criminal prosecution provisions. In conclusion, trainee judicial officers fulfilling the court registrar draw up the official report of the hearings.

#### Criteria for the orientation tasks

*Re. 1 Make notes during the hearing of the discussions and occurrences at the hearing*

- a. Make records of the procedural issues that arose during the hearing
- b. Make accurate records of the statements made by the suspect/witnesses/experts/victims during the hearing and the standpoints put forward by the Public Prosecution Service and the defence in a manner that is accessible to others
- c. Make records of the documents that were put forward

*Re. 2 Draw up an official report of the hearing*

- a. Include concise records of the relevant procedural issues and the statements made by the suspect/witnesses/experts/victims during the hearing and the standpoints put forward by the Public Prosecution Service and the defence in the official report
- b. Draw up an official report with a clear sequence and structure

*Re. 3 Give substantive and procedural support during the hearing of the cases*

- a. Draw the judge's attention to procedural issues and any omissions, where relevant, during the hearing

Central competences (possessed by the court registrar)

- Ability to listen
- Cooperation
- Written fluency
- Due care

#### Experiential standard

Recommended:

- fulfil the role of the court registrar during one half-day in a maximum of five (5) criminal cases heard by a single-judge section (in the initial phase of the course). It is also possible to opt for an alternative in which the trainee judicial officer fulfils the role of the court registrar in simple criminal cases heard by a three-judge section.
- detail the evidence in at least three (3) cases heard by a single-judge section.
- prepare at least eight (8) hearings of criminal cases conducted by a three-judge section and act as the court registrar at the hearings
- draw up the draft judgement in at least thirty-two<sup>5</sup> (32) hearings of criminal cases conducted by a three-judge section (abridged judgements ['head-tail judgements'] and the evidence in the event of an appeal in which the judgements are not formulated in accordance with the PROMIS procedure), of which at least twelve (12) are formulated in accordance with the PROMIS model. When courts employ the PROMIS model for all cases then the decision on the cases to be assigned to the trainee judicial officer for a PROMIS judgement will be made in chambers.
- It is recommended that at the end of the course the trainee judicial officer be allowed to carry out the examination in court, under the supervision of the trainee judicial officer's trainer, at a number of cases heard by a single-judge section (before the judge delivers the judgement).

<sup>4</sup> The trainee judicial officer does not perform these judicial tasks at this point. For this reason no task criteria are specified for these tasks. This information is enclosed in the advanced criminal law course curriculum.

<sup>5</sup> The calculation is based on a national average (obtained via the LOVS) and was carried out as follows: an average three-judge session results in 4 final judgements and, consequently, 8 three-judge sessions result in 32 final judgements.

The standard numbers of cases are based on cases of an average degree of complexity. The numbers should be adjusted upwards or downwards according when more cases are of a lower or higher degree of complexity.

### Supervision

The trainee judicial officer audits his or her first hearing as court registrar at a single-judge section and a three-judge section during a hearing handled by an experienced court registrar (preferably the court registrar-trainer). Trainee judicial officers who independently fulfil the role of court registrar at a single-judge section and a three-judge section for the first time are supervised by an experienced court registrar (preferably the court registrar-trainer). Thereafter the trainee judicial officer is supervised by the judge-trainer (with respect to the performance during the hearing) and the court registrar-trainer (with respect to the formulation of the official report). After the hearing the judge-trainer gives the trainee judicial officer feedback on the preparation forms drawn up by the trainee judicial officer. This feedback is based on the 'Analysis of the criminal dossier' task criteria. The judge-trainer completes the relevant feedback form.

## Result area: deliberation in chambers

### Outline

Once the hearings conducted by a three-judge section have been concluded the judges reach a decision on the cases they have heard. Discussion and counter-arguments are of great importance to the deliberation in chambers. Conversely, the judges need to listen to each other's arguments and be aware of their personal predispositions. This makes the necessary demands on the presiding judge and the judges. An experienced presiding judge may not be allowed to dictate his or her opinion: the judges need to be sure of themselves and be prepared to put forward and argue a different opinion. However, 'being sure of themselves' does not imply obstinacy or cocksureness: the judges will ultimately need to reach consensus on the judgement.

The trainee judicial officer – acting as the court registrar – is usually the first to present his or her viewpoint. The trainee judicial officer needs to state his or her opinion of the case, with grounds, and to listen carefully to the judges' reactions. The ultimate judgement is reached in dialogue with the judges.

One condition attached to the development of this judicial attitude is the presence of a constructive ambience in chambers, where bottlenecks are open to discussion and scope is offered for development. This constitutes a field of tension for trainee judicial officers since they both fulfil the court registrar in the three-judge section and are the subject of an assessment process: this is accompanied by the risk of their seeking approval/recognition from the presiding judge/judge-trainer rather than focusing on expressing their personal standpoint.

### Tasks

1. Present a legally correct analysis
2. Conduct a dialogue with the colleagues on the basis of their analysis
3. Adopt a collegial standpoint

### Task criteria

*Re. 1 Present a legally correct analysis*

- a. Demonstrate knowledge of the dossier
- b. Demonstrate knowledge of the literature and case law that has been studied

- c. Adopt a reasoned standpoint on the preliminary questions, the proof of the fact, the punishability of the fact, the punishability of the suspect and the punishment
- d. Respond to the substantiated standpoints of the Public Prosecution Service and the defence
- e. Use a clear sequence
- f. Formulate in an explicit, clear and grammatically-correct manner

*Re. 2 Conduct a dialogue with the colleagues on the basis of their analysis*

- a. Formulate in an explicit, clear and grammatically-correct manner
- b. Listen carefully to the colleagues and offer them scope to speak
- c. Ask questions to improve the understanding of the colleagues' arguments
- d. Demonstrate awareness of the personal actions and predispositions and open these to discussion

*Re. 3 Adopt a collegial standpoint*

- a. Weigh the information submitted in chambers
- b. Do so in a manner providing an insight into the weighing
- c. Arrive at an unequivocal and reasoned judgement
- d. Commit him or herself to the joint judgement

### Central competences

- Ability to listen
- Verbal fluency
- Forming a judgement
- Problem analysis

### Orientation tasks

The trainee judicial officers take active part in the deliberation in chambers since this enables them to find a balance between their personal, independent judgement and the interests of the others and society at large. Trainee judicial officers also need to learn to commit themselves to decisions made in chambers. The trainee judicial officers take minutes of the decisions made in chambers and the grounds for those decisions, ask the judges (again) in the event of doubt and ensure that this information is accessible to others in the event that, due to circumstances, the trainee judicial officers are not in a position to formulate the draft judgement.

### Experiential standard

See Result area: the hearing

### Specific knowledge

- Decision-making model
- Law of evidence

### Supervision

It is recommended that the judge-trainer discusses the procedure in chambers before the trainee judicial officer takes part in the first deliberation in chambers and gives the trainee judicial officer instructions on his or her role on chambers and the manner in which the evidence establishing proof and grounds for the punishment can be structured.

The judge-trainer assumes a primarily coaching role in chambers and ensures that the trainee judicial officer can grow in his or her role and is gradually given more scope to do so. The judge-trainer asks the trainee judicial officer structured questions to ensure that the trainee judicial officer carries out an appropriate analysis of the case and asks further questions as necessary. In other words, the judge-trainer offers the trainee judicial officer an opportunity to develop in an environment that provides scope for dialogue.

After the deliberation in chambers the judge-trainer gives the trainee judicial officer feedback and completes the requisite feedback form.

## Result area: judgement

### Outline

Although the judgements of three-judge sections have traditionally been relatively abridged and without a statement of the evidence (what are referred to as 'head-tail judgements'), it is now necessary for the courts to include more grounds in the judgement and to devote attention to the evidence establishing proof and grounds for the punishment. The fairly schematic criminal judgement is evolving in the direction of the civil law judgement in the sense that the debate during the trial – the substantiated standpoint of the public prosecutor, the suspect or counsel for the defence, the aggrieved party or the counsel for the aggrieved party – and the judge's weighing of the arguments on which the decision is based need to be assigned a more prominent position. This weighing of the arguments must be stated explicitly in the judgement: for example, the judgement must review the reliability of specific evidence or explain why the court has opted for one punishment/measure rather than another. PROMIS judgements are increasingly being formulated to accommodate the needs of the Public Prosecution Service, the defence, the victim and society and provide an improved insight into the judge's line of reasoning and the readability of the judgements.

### Tasks

1. Draft a (PROMIS) judgement
2. Select and detail the evidence
3. Assess drafts (judgement, evidence and the official report) drafted by the court registrar<sup>6</sup>

### Task criteria

*Re. Draft a (PROMIS) judgement*

- a. Formulate a (PROMIS) judgement on the basis of the decisions and considerations in chambers
- b. Formulate in an explicit, clear and grammatically-correct manner
- c. Use a logical structure and sequence
- d. Make a clear distinction between facts, the standpoints of the Public Prosecution Service and the defence and the court's judgement
- e. Ensure that the grounds always support the judgement and the grounds for diverging from the standpoint that is not adopted are stated

*Re. 2 Select and detail the evidence*

- a. Draw up a list of evidence on the basis of the judgement of the single judge in the criminal section or the deliberation of the case heard by a three-judge section in chambers and work out the evidence in detail
- b. Use a logical structure and sequence

### Central competences

- Prioritisation
- Cooperation
- Written fluency
- Due care

### Orientation tasks

Trainee judicial officers make solely notes of orally delivered judgements of cases heard by a single judge in the criminal section. These notes are made in an automated system (Compas) and contain only the most important elements of the verbal judgement. Since this task targets solely a limited learning goal the task is not detailed further in the form of task criteria. The resultant insight into the Compas system (and, within the near future, the GPS system) enables the trainee judicial officer to become familiar with a system that will be of much greater importance during the later Public Prosecution Service training.

The task criteria for the formulation of official reports have already been specified under Result area: the hearing.

### Experiential standard

See Result area: the hearing

### Supervision

The court registrar-trainer's supervision of the trainee judicial officer focuses primarily on the drafting of the judgment or the evidence review. The judge-trainer assesses the judgement or the evidence review and then discusses this with the trainee judicial officer as soon as possible to enable the trainee judicial officer to learn from the changes made by the trainer.

The judge-trainer subsequently completes the requisite feedback form.

### Specific knowledge

Basics of the design and content of (PROMIS) judgements  
PROMIS Best Practices (can be consulted via Intro Landelijk)  
Basic knowledge of the detailing of evidence

### Other orientation tasks

One or two-day auditing of the office of the examining magistrate prior to the time that the trainee judicial officer fulfils the role of court registrar at cases heard by a three-judge section to enable the trainee judicial officer to develop an eye for these criminal-law section aspects and see how declarations are materialised

Fulfil the role of court registrar at hearings in chambers on detention in custody or extraordinary hearings in chambers to enable the trainee judicial officer to gain an increased insight into the period of pre-trial detention or the period after the pronouncement of the final judgement

Brief acquaintanceship with the police, Public Prosecution Service, Probation Service, victim support and safe houses

Visit to a prison in the district to gain an increased insight of the other partners in the criminal law chain.

<sup>6</sup> The trainee judicial officer does not perform this judicial task at this point. For this reason no task criteria are specified for this task. This information is enclosed in the advanced criminal law course curriculum.

# Learning assignment plan basic criminal law course

**Duration: 6 months**

**This section of the study guide outlines the programme for each week of the basic course in the criminal court section.**

## **Week 1 General introduction**

*What Introduction to the trainee judicial officer course*

*Objective*

To make the acquaintanceship of the SSR and the Justice Administration Council and the Board of Procurators-General (the clients for the study programme), acquaintanceship with the course, acquaintanceship with colleague trainee judicial officers.

*What Introduction to the criminal law section course*

*Objective*

Gain an insight into the criminal law section's procedures and collect the information, basic knowledge and skills required to get off to a good start in the criminal law section, whereby particular attention will be devoted to the 'criminal evidence' subject and the development of judicial thinking leading to the formation of a judgement.

## **Week 2 Introduction to the court and public prosecutor's office at the relevant location**

*What Intake interview with trainer(s)*

*Objective*

To make the acquaintanceship of each other and of this section, to discuss the CVs, earlier learning and work experiences, the structure of the criminal law course, the attainment levels for this course (see the study guide) and reach agreement on expectations about conduct, supervision by the trainer(s), feedback, the review interview and the role played by the learning assignment dossier and development dossier. Important points are noted on the intake form enclosed in the development dossier. The trainee judicial officer has completed the CV form in the Development dossier prior to the interview.

*What Acquaintanceship meeting with the section chairman/team chairman*

*Objective*

To make the acquaintanceship of the section chairman/team chairman in their roles as manager, obtain clarity about the role of the section chairman/team chairman in the course, gain an im-

pression of the broader context of the area in which the trainee judicial officer works, exchange of expectations.

*What Acquaintanceship with colleagues*

*Objective*

To make the acquaintanceship of the colleagues at the workplace. These introductions can be initiated by the trainer or, self-evidently, by the trainee judicial officer.

*What Further acquaintanceship with the organisation and the working methods within the section/team*

*Objective*

To become familiar with the organisation of the sector/team, the administration, dossier routing and the sources of information.

## **Week 2 Introduction to the court and public prosecutor's office at the relevant location (continued)**

*What Preparations for the first single-judge criminal sessions*

*Objective*

To make thorough preparations for the presence at a single-judge criminal court in week 3-5 by auditing a hearing. This auditing is comprised of reading the case dossier, attending the hearing, taking part in the deliberation in chambers, where relevant, and assisting in making notes of the orally delivered judgement.

*What court registrar duty at a single-judge criminal court*

*Objective*

Working and learning to achieve the attainment levels (see study guide)

*What Preparation for a three-judge criminal section*

*Objective*

To make thorough preparations for the fulfilment of the role of court registrar at a three-judge criminal section in weeks 6-22 by carrying one audit of a hearing at a three-judge criminal section. This auditing is comprised of reading the dossier, attending the hearing, taking part in the deliberation in chambers and assisting in the formulation of the draft judgement.

## **Week 6-22 Working and learning**

*What Criminal evidence (theory and practice)*

*Objective*

To acquire a practical insight into and knowledge of criminal evidence and law of evidence

*What Effective formulation and justification of PROMIS judgements course*

*Defences in criminal law course*

*He who finds something has not looked properly course (about forming a judgement)*

*Objective*

To acquire the knowledge and skills required to carry out the tasks.

*What Performance of the court registrar's duties at a three-judge section (where relevant, supplemented by a small number of sessions at a single-judge criminal section)*

*Objective*

Working and learning to achieve the attainment levels (see study guide)

*What Detail three-judge sessions and appeals*

*Objective*

Preferably, begin with the formulation of abridged judgements and then continue to appeals and PROMIS judgements

*What Acquaintanceship with the office of the examining magistrate*

*Objective*

To obtain an insight into the office of the examining magistrate and comprehend the broader context of the work environment. One to two-day traineeship at the office.

*What Bringing suspects before the public prosecutor and examining them (optional)*

*Objective*

To explore the personal performance of these tasks. The assessment does not extend to the performance of these tasks. The relevant court decides whether the trainee judicial officer brings suspects before the public prosecutor and examines them in this week.

## **Week 23-26 Working and learning**

*What Communicative skills course*

*Objective*

To learn a variety of communicative styles and, consequently, increase the skills in conducting an interview during a hearing.

*What Course on EU law and its influence on the Dutch legal system*

*Objective*

To acquire the knowledge and skills required for the performance of the tasks in the criminal law section, civil law section, administrative law section and at the public prosecutor's office.

*What Detail last three-judge sessions and appeals*

*Objective*

To acquire sufficient experience in the detailing of hearings at a three-judge section and appeals.

*What Conduct cases heard by a single-judge criminal section under the supervision of the trainer (optional)*

*Objective*

To explore the independent personal performance of these tasks. The trainer sits next to the trainee judicial officer and makes the decisions. The assessment does not extend to the performance of these tasks. The relevant court decides whether the trainee judicial officer conducts cases heard by a single-judge criminal section in this week.

## **Week 7+20 Monitoring progress, results and the process**

*What Progress meetings with the trainer(s)*

*Objective*

The trainer(s) will hold a progress meeting, if so required, with the trainee judicial officer in week 7 and week 20. The objective of this meeting is to reflect on the progress in the learning process, discuss experiences and reach (supplementary) agreements to promote the trainee judicial officer's development. The progress form enclosed in the development dossier is used for this purpose.

## **Week 13+26 Review progress and results**

*What Review interviews with the trainer(s)*

*Objective*

The trainer(s) will hold a review interview with the trainee judicial officer in week 13 and week 26 to review the trainee judicial officer's progress relative to the attainment levels stated in the study guide. The trainee judicial officer's performance of each duty is discussed, together with a specific statement of the level of development. The learning assignment dossier serves as important input for this interview. Conclusions about the learning process and learning results are drawn during the interview. The review interview held in week 13 also encompasses the agreements on the nature of the work and the supervision of the work to be carried out later in the learning period necessary to promote the required development of the trainee judicial officer. The review interview held in week 26 discusses the major issues to be taken into account in the civil law course. The conclusions and agreements are recorded on the review form enclosed in the development dossier.

## **Week 27 Assessment**

*What Assessment*

*Objective*

Assess whether the results achieved by the trainee judicial officer are sufficient to continue to the civil law section.





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# **Curriculum, basic civil law course**

**Duration: 10 months**

# Curriculum, basis civil law course

## Duration 10 months

In many instances the most important duty of the civil court judge is to select, establish and appraise the legally relevant facts.<sup>1</sup> The majority of cases are still won or lost on the basis of the facts. Civil court judges emphasise this in their search for the material truth: they hold court appearances, request documents and ask questions to the parties in an endeavour to obtain the fullest possible insight into the case. However, civil court judges need to be aware (more than administrative court judges and much more than criminal court judges) that the proceedings were instituted because of a dispute between the parties, who need to collect the material and mark out their position. When viewed from this perspective, civil court judges continually alternate between the facts in the case dossier and the substantive law standards they wish to apply in the specific case. This requires the ability to switch rapidly between *abstract* and *concrete* thinking.

Civil law judgements are based on a fixed “decision-making framework” to a much lesser extent than in criminal law and administrative law, although the differences from administrative law judgements are smaller. The criminal court judge’s judgements are based on the rigid framework laid down in articles 348-350 of the Code of Criminal Procedure. Administrative law pivots on the relevant government agency’s decision: following an appeal the judge tests whether there are grounds to quash the decision. Consequently, the judgement is always based on a fixed point (of departure). Article 8:70 of the General Administrative Law Act lays down the four main judgements the judge can reach after an assessment of the (shortcomings, where relevant, of the) decision. Civil court judges have a much greater degree of freedom: the options available to reach a judgement and the range of judgements that can be given are “unlimited” although, self-evidently, within the limits of the dispute between the parties. This situation is enhanced by three circumstances.

Firstly, civil law is much “freer” than administrative law. Administrative law has pronounced stratified standards: virtually all questions of law are governed by rules, sub-rules and sub-sub-rules and, ultimately, a rule will almost always govern the precise question of law involved in the case brought before the court. This structure is much less prominent in civil law. As a result complex cases, in particular, are confronted with (statutory or case law) rules that do not offer clear guidance (they are too vague or “open”), conflict

with each other or – in exceptional situations – are simply lacking. Consequently, judges both need to have knowledge of the statutory and/or case law rules and to be able to interpret the rules flexibly and with a view to the problem at issue.

Secondly, civil law – once again, in comparison with administrative law – much more frequently addresses complex “stratified” or “interwoven” cases involving a number of points requiring a judgement.

Thirdly, the proceedings in civil law courts are not infrequently muddled or untidy. The detailing of the arguments is often marginal and, as a result, there are many open ends. This situation, in combination with the other factors reviewed above, results in the judge’s task of structuring the mess of factual and legal arguments and using the structure to find a solution for the dispute.

All the above imposes special requirements on the judge’s analytical capacity, intuition, creativity and inventiveness as manifested in the formation of a judgement.

## General information about this programme period

### Training in the civil law/sub-district law section

The expansion of the sub-district courts’ competence to € 25,000 that will come into force on 1 July 2011 gives rise to the question as to the best section for training trainee judicial officers: the civil law section or the sub-district law section? The following factors are of importance to answering this question (without an endeavour to be exhaustive).<sup>2</sup>

- The courts are no longer organised in a uniform manner: the civil law and sub-district law sections of small(er) courts have been (or soon will be) combined under one section chairman and/or work closely together, whilst this is much less or not the case at the larger courts.
- A shortage of suitable training cases – reasonably simple and straightforward – will develop in the civil law section.
- The civil law section has many years’ experience with training and attention is devoted to uniformity in the treatment and unity of law, which promotes the quality of the judicial substance.
- The civil law section places the primary emphasis on the official documents: the step-by-step development and formulation of a judgement in accordance with the relevant agreements.
- The sub-district law section places the primary emphasis on the

1 The outlines of the position and the result areas are inspired by the Algemeen deel in J.B.M. Vranken’s Asser series (Deventer 1995 and 2005) and are largely derived from H. Hofhuis, Essentiële situaties die specifiek zijn voor de sector civiel recht in het functieprofiel rechter.

2 These principles were discussed with trainers from a number of law sections (the civil law section and sub-district law sections) during an informal meeting chaired by M.A. van de Laarschot, Master of Laws, Chairman of the LOVCK civil law and sub-district law study group.

work during the hearing: cutting Gordian knots and settling cases in a rapid and practical manner, which requires great authority and self-confidence on the part of the relevant judge.

Some certified trainers in the sub-district law section have acquired experience in the civil law section and, consequently, are familiar with the “civil law method”.

Proceedings in the sub-district law section are carried out without mandatory legal representation, which can be an objection for training cases.

Sub-district law cases can be settled by the civil law section/business law section (pursuant to the sub-district law proceedings regime).

In view of the wide variety of court organisational forms, the experience in the sections and the circumstances in which the two sections carry out their work it is not possible to clarify the question as to where the course should take place, i.e. in the civil law section or sub-district law section. Consequently, this curriculum states solely the preconditions to be met by the course. These include at least the willingness to complete the framework of the course (as specified here) and, preferably, a combination of a certified trainer from the civil law and sub-district law sections: see the Supervision section below. For this reason, for the sake of convenience references to “civil law section” below can also encompass the sub-district law section.

### Objective

The objective of the course is to provide the trainee judicial officer an appropriate basic knowledge of the work in the civil law section, both with respect to the judicial substance and the judge’s attitude, and to offer an insight into the performance of the section’s organisation. In contrast to the criminal law course, which devoted only limited attention to the development of judicial skills – during the deliberation in chambers and the drafting of judgements – this course gives full attention to the development of these skills over the entire breadth: an initial impetus is given to the acquisition of court skills by carrying out inquiries and hearing appearances under supervision. Consequently, in principle the trainee judicial officer no longer acts as a court registrar.

The course places the main emphasis on learning how to analyse the case dossier and develop a structured judgement, whereby attention also needs to be devoted to the adoption of a practical approach to the case to provide for the requisite speed and vigorousness. This official skill is of great importance to the ability to hear appearances in the appropriate manner. The administrative law course will devote more attention to the work during the sessions and the development of a personal hearings style.

To achieve the course’s objective the trainee judicial officer will not only need to carry out the judicial duties reviewed above but also carry out a number of exploratory duties and attend a variety of forms of both substantive and organisational staff meetings. The structure of the course is summarised in the learning assignment plan at the end of this section.

### Supervision

Preference is given to the supervision of the trainee judicial officer by two trainers, one from the civil law section and one from the sub-district law section. This combination ensures that the trainee judicial officer becomes acquainted with both the “civil court method” (in other words, the procedure) and the “sub-district court method” (the practical angle of approach).

The trainers and legal staff can jointly serve as an ideal *vade mecum* for the trainee judicial officer. The trainers should adopt an accessible attitude, appreciate all the issues confronting the trainee judicial officer and not expect the trainee judicial officer to reinvent the wheel. Trainee judicial officers should not hesitate to ask questions. If necessary, they can draw up a brief memo explaining their question. In view of the above, it is unrealistic for the trainer to expect the trainee judicial officer to exhibit a certain degree of independence.

During this course the trainee judicial officer will conduct a hearing for the first time (under supervision). For this reason the trainee judicial officer needs to be able to carry out many audits and follow all the requisite skills courses before conducting a hearing. This will offer the trainee judicial officer the maximum possible opportunity for reflection.

### Types of cases

Preference is given to the assignment of cases in which written defence is submitted and the proceedings are undertaken by legal representatives. This is based on the understanding that in this stage of the course it will be difficult for the trainee judicial officer to distil the relevant arguments and defences from an account that usually lacks the legal or logical structure required to form a judgment.

The cases assigned to the trainee judicial officer will usually have a gradually increasing degree of complexity, beginning with defaults, followed by very simple defended cases (such as incidents), then basic cases and, finally a single somewhat complex case at the end of the course. The cases need to address various issues listed below (and not, for example, be related to solely to debt collection cases or cases with a single point at dispute).

Factors that can determine the degree of complexity of a case include:

- the number of legal problems (for example, solely unpaid invoices or also independent counterclaims);
- the number of defences/points at dispute;
- the clarity of the parties’ arguments;
- the scope of the dossier (thick/thin, many/few pieces of evidence, many/few procedural documents exchanged);
- the number of independent defendants;
- the quality of the procedural documents and the manner in which the case is conducted.

Subjects suitable for training purposes are:

- wrongful act with compensation
- fulfilment of a contract (purchase, travel, gift, commission, deposit, contracting for work: in principle, not labour or tenancy cases)
- other contractual claims (fulfilment of ancillary obligations such as the collection of penalties, fulfilment of guarantees, rectification of defects, additional work with respect to contracting for work)
- dissolution of contract with compensation
- claim for repayment (relating to the reimbursement of undue payments).

## Attainment levels

At the end of the basic civil law course the trainee judicial officer can analyse a defended business case of average complexity, formulate the judgement with a reasonable degree of independence and, as a beginner, conduct a hearing (inquiry or appearance), such whereby account is always taken of the specified task criteria, competences and experiential standards. The trainee judicial officer does not yet need to meet the standards specified for tasks, task criteria or competences marked with an asterisk \*. The experiential standard specified for each task should not be regarded as an absolute minimum or maximum. When the available cases diverge from the prescribed types then this will have an effect on the number of cases dealt with by the trainee judicial officer: complex cases can count for double. Conversely, a trainee judicial officer who has necessarily been assigned an excessive number of simple cases may be expected to deal with more cases than the prescribed maximum.

## Result areas

The above review of the general work of civil court judges serves as the basis of the list of requirements imposed on the civil court judge listed in the result areas of the following sections: each begins with a general introduction to the task and continues with a specification of the criteria governing the assessment of the task, the most important competences for the task and the associated specific knowledge. Neither the learning capacity, self-reflection and other management competences nor what are referred to as “moral competences” are – where relevant – specified separately.<sup>3</sup> The general knowledge required for this part of the course is listed below. This list does not include recent relevant civil law information or (recent) case law: this information is included in the relevant result area subsections.

### General knowledge

- Code of Civil Procedure, in particular the subjects required for the appropriate completion of the tasks listed in the course
- Civil Code, in particular the general law of property in books 3, 5, 6 and 7
- Communication styles
- Court processes (such as the procedures employed for the cause list, court registrar, civil court judge, etc.)
- Legal search systems (including digital search engines such as the national Handboek civiel ('civil law manual'), wizards, Portaal Juris, etc)
- National Handboek civiel ('civil law manual'), in particular the subjects required for the appropriate completion of the tasks listed in the course

## Result area: preparing for the hearing

### Outline

The judge should begin the preparations for a hearing (appearance or hearing of witnesses) by studying the dossier thoroughly to obtain an insight into the core of the dispute between the parties. The judge then needs to assess possible (relevant) situations that could arise during the appearance or hearing of witnesses. The preparations should encompass, as it were, the anticipation of the various situations, identification the objectives to be achieved and the formulation of appropriate answers. In addition, the prepara-

tions for the hearing of witnesses should include an examination of the dossier to determine which questions will need to be raised with the witness and the evidence that will need to be presented, etc. Ultimately, the preparations pivot on the wish, on the basis of an intellectual and professional inquisitiveness, to comprehend the (legal and factual) issues involved in the case, self-evidently with due regard for the limits of Article 24 of the Code of Civil Procedure.

### Tasks

1. Analyse the points of dispute
2. Think through the plan of approach and scenarios
3. Devise questioning strategies

### Task criteria

*Re. 1. Analyse the points of dispute (appearance)*

- a. Check the formalities (dossier complete, etc.)
- b. Select primary and secondary issues
- c. Extract the relevant factual/legal problems and points of dispute
- d. Verify that the legal reasoning is sound

*Re. 2. Think through the plan of approach and scenarios (appearance)*

- a. Determine which potential approaches come into consideration
- b. Anticipate potential complications
- c. Compare the advantages and disadvantages of the alternatives
- d. Comprehend the legal implications of the alternatives
- e. Make an efficient and purposive selection of the definitive plan of approach
- f. Make a convincing argument for this selection

*Re. 3. Devise questioning strategies (examining witnesses)*

- a. Check the formalities (witness summons, etc.)
- b. Gain an understanding of the proof that will need to be produced
- c. Devise meaningful open questions on the basis of the above
- d. Determine which evidence/statements included in the dossier will need to be presented
- e. Give careful consideration to the balance between quality and quantity (for example, the extent to which studies are carried out)

### Core competences<sup>4</sup>

- Forming a judgement
- Prioritisation\*
- Problem analysis
- Due care

### Orientation tasks

The preparation of inquiries and appearances to be audited by the trainee judicial officer. The trainee judicial officer prepares for the hearing as though he or she would conduct the hearing – what would I ask if I were hearing the case – with the objective of reviewing whether the judge conducting the hearing adopts a comparable approach or identifying the points in which the judge diverges from the approach. The trainee judicial officer draws up a questionnaire for the inquiry. The trainee judicial officer draws up concise notes for the appearance which includes a list of the points of dispute, the points for which a further explanation is required and the decision that the trainee judicial officer deems appropriate. The objective of these notes is to demonstrate that the trainee judicial officer has sufficient understanding of the case and to prepare for the consultation in chambers, where relevant.

<sup>3</sup> Please refer to the Judicial Officer Section for an explanation of these competences.

<sup>4</sup> An explanation of the meaning of the term marked by an asterisk is enclosed under Attainment levels.

## Experiential standard

See Result area: Hearings: inquiries and appearances.

## Supervision

The trainer discusses the notes for each hearing well before the hearing, gives any further explanation that may be necessary and/or asks the trainee judicial officer to carry out further studies.

## Specific knowledge/study tasks

See Result area: Hearings: inquiries and appearances.

## Result area: hearings - inquiries

See Result area: Hearings: inquiries and appearances

### Outline

The evidence of witnesses is indispensable evidence. Although civil proceedings – in contrast to criminal proceedings – do not attach priority to arriving at the truth, when hearing witnesses the judge's duty is to discover the facts that occurred in the past as precisely as possible. However, since a pure reconstruction is infeasible it is necessary to make choices. The questions to be answered are usually: What happened? What was agreed? Statements from persons who were involved or can explain the relevant documents are of importance to answering these questions. Consequently, the first-line judge's most important task is to determine precisely what happened in the past: as Paul Scholten has already written in his general section, "The law is to be found in the facts". The knack lies in collecting the facts during the hearing of the witnesses that are required to enable the law to speak. This means that the judge will also need to diverge from the questionnaire prepared for the hearing to communicate with witnesses in an appropriate manner and adopt the requisite communication styles. Attention needs to be given to many factors during the hearing: the witness' attitude and reliability, whether there are any conflicting witnesses, etc. As a result, judges need to call on their self-knowledge/empathy and ability to adopt a flexible response to occurrences during the hearing.

### Tasks

1. Open and close the inquiry (and the general course)
2. Examine witnesses
3. Draw up the official report

### Task criteria<sup>5</sup>

*Re. 1. Open and close the inquiry (and the general course) (in accordance with the examination of witnesses checklist)*

- a. Pay due regard to the required formalities (who has appeared, the objective/course of the case hearing, etc.)
- b. Adopt the appropriate tone
- c. Give the inquiry effective shape
- d. Deal with incidents in an appropriate manner
- e. Maintain control of the case\*
- f. Demonstrate a self-assured professional attitude in a manner that manifests genuine interest and respect
- g. Weigh speed and due care carefully against each other
- h. Close the inquiry in a manner fitting to the occurrences during the hearing

*Re. 2. Examine witnesses*

- a. Ask efficient questions
- b. Ask further specific questions to clarify vague statements or hints

- c. Confront the witness with emerged facts included in the dossier
- d. Recognise the information that is relevant
- e. Diverge from the questionnaire prepared for the hearing as required
- f. Give the witness an opportunity to explain
- g. Summarise the witness' statement correctly
- h. Return to something someone else said, as necessary
- i. Examine the witness in a manner that ensures that the witness feels understood
- j. Switch during the interview
- k. Respond to non-verbal signals
- l. Speak intelligibly and at the correct speed

*Re. 3. Draw up the official report*

- a. Lay down the information obtained during the hearing correctly
- b. Dictate a statement the witness can identify with
- c. Summarise the witness' statement clearly in writing
- d. Dictate a statement in a manner that does justice to the occurrences during the hearing
- e. Dictate a statement at a sufficient speed
- f. Draw up an official report with a clear construction and structure
- g. Reach clear and efficient agreements with the parties

### Central competences

- Ability to listen
- Verbal fluency
- Prioritisation\*
- Problem analysis
- Written fluency
- Sensitivity\*
- Strength\*
- Self-confidence\*

### Orientation tasks

Carry out audits (3) at inquiries conducted by different judges (preferably judges who give training) to gain an impression of the manner in which different judges perform the aforementioned tasks in practice. The trainee judicial officer, who does not act as a court registrar during the hearing, can sit in the court or behind the judge to follow the interaction between the judge and the persons in the court closely. The trainee judicial officer reports his or her findings during a meeting held after the hearing and discusses the findings with the relevant judge in a form of intervision setting. The judge explains the legal and communicative choices that were made and the reason for those choices. This approach provides the trainee judicial officer an insight into a range of hearing and communication styles.

The trainee judicial officer completes a reflection form after the meeting.

### Experiential standard

Recommended:

- begin with 3 audits of inquiries with an increasing degree of complexity
- continue with the trainee judicial officer conducting approximately 5 inquiries (half-days) under the trainer's supervision, beginning with a very simple case with a single issue for which evidence is to be submitted. Then proceed to basic cases with an increasing degree of complexity but without too many complications (emotions, "difficult" lawyers, people in court, interpreter).

### Supervision

The trainer discusses the course of the hearing with the trainee

judicial officer, in good time before the hearing, on the basis of the questionnaire drawn up by the trainee judicial officer, gives the trainee judicial officer practical tips and explains the procedure between the trainer and trainee judicial officer during the hearing. The trainer also states that the trainer will, should this be necessary, intervene or take over during the hearing. The trainer must also give the trainee judicial officer an opportunity to ask questions.

The trainer sits next to the trainee judicial officer during the hearing. The trainee judicial officer conducts the hearing under the supervision of the trainer. Consideration can also be given to assigning the administration of the oath to the trainee judicial officer to enable the trainee judicial officer to have the maximum possible control of the hearing. Once the trainee judicial officer has asked questions he or she offers the trainer an opportunity to ask supplementary questions. If necessary, the hearing is suspended to enable the trainee judicial officer to dictate the official report in the absence of the witnesses/parties.

The trainer holds a personal interview with the trainee judicial officer after the hearing, preferably immediately afterwards, to give effective feedback on the basis of the task criteria and competences. In conclusion, the trainer completes the relevant feedback form.

### Specific knowledge/study tasks

Recommended:

- National *Handleiding Bewijslevering* ('Furnishing Evidence Manual')
- SSR reader with hearing of witnesses checklist.

## Result area: hearings - appearances

### Outline

The verbal hearing of the post-defence appearance has acquired much greater importance in civil law proceedings during the past ten years and, in general, an appearance now takes place in about 80% of all defended cases. Judges adopt an increasingly active approach to appearances: they need to demonstrate to the parties that they understand the essence of the case, explore the problems and gaps, explore the various potential outline solutions and, in conclusion, be able to ensure that the parties accept the solution(s) discussed during the hearing. This in turn implies that the judge needs to think with the parties in an inventive manner, have the courage to ask further questions and confront the parties, treat the parties equally and encourage them to decide to reach a settlement or accept mediation. In some instances judges will also need to stick their neck out, in the sense that they express their provisional assessment of the case. However, at the same time they need to inspire confidence and remain credible in their role as impartial decision-maker should the parties nevertheless fail to reach agreement. These objectives can be in conflict with each other and, in any case, are often mutually incompatible. This requires capacities including self-assuredness, sensitivity and self-reflection. Moreover, creativity and flexibility are also important capacities. In principle, the hearing should follow the strategy determined in advance, although the judge should be open to new information, test the strategy against this information and amend the strategy as necessary. Where possible, the judge should seek practical solutions for the settlement of the dispute. The judge should also find a good balance between the speed with which the case is heard and the quality of the judicial substance of the judgement. For this reason the judge needs to be able to understand the essence of the parties' legal positions and give a clear and understandable explanation of the provisional judgement.

### Tasks

1. Open and close the hearing (and the general course of the hearing)
2. Hear the parties/lawyers
3. Give the provisional judgement
4. Initiate and draw up the settlement agreement
5. Draw up the official report

### Task criteria<sup>6</sup>

*Re. 1. Open and close the hearing (and the general course of the hearing)*

- a. Pay due regard to the required formalities (who has appeared, the objective/course of the hearing, etc.)
- b. Adopt the appropriate tone
- c. Give the hearing effective shape
- d. Deal with incidents in an appropriate manner
- e. Maintain control of the case\*
- f. Demonstrate a self-assured professional attitude in a manner that manifests genuine interest and respect
- g. Weigh speed and due care carefully against each other
- h. Close the hearing in a manner fitting to the occurrences during the hearing

*Re. 2. Hear the parties/lawyers<sup>7</sup>*

- a. Recognise the information of importance to the formation of the judgement
- b. Demonstrate knowledge of the dossier
- c. Ask efficient questions
- d. Give the parties an explanation to explain
- e. Test the information obtained, as necessary
- f. Play the role of an active listener: page through/read the dossier as little as possible
- g. Approach the parties in a manner that ensures they feel understood
- h. Go into the underlying interests/emotions, where relevant
- i. Follow the plan of approach drawn up in advance, but depart from the plan as necessary
- j. Make justifiable choices in the manner in which the case is conducted
- k. Speak intelligibly and not too fast

*Re. 3. Provisional judgement\**

- a. Determine which form of settlement is most appropriate to the dispute (judgment, compromise or mediation)
- b. Determine the points for which a judgment can be given
- c. Adopt a variety of angles of approach to the judgement
- d. Do justice to the parties' debate
- e. Give an adequate and justifiable/convincing provisional judgement
- f. Communicate at a level that is understandable to the parties
- g. Apply the law and case law in the correct manner
- h. Derive practical solutions
- i. Oversee the further procedure

*Re. 4. Initiate and draw up the settlement agreement*

- a. Initiate a settlement phase and encourage the parties to seek a settlement\*
- b. Achieve a settlement result that is to both parties' satisfaction\*
- c. Provide for the unequivocal formulation of the settlement agreement
- d. Provide for a correct legal formulation of the settlement agreement

<sup>6</sup> An explanation of the meaning of the term marked by an asterisk is enclosed under Attainment levels.

<sup>7</sup> In accordance with the specification of the "Examine witnesses" task criteria.

### Re. 5. Draw up the official report

- a. Lay down the information obtained during the hearing accurately
- b. Summarise the parties' statements clearly in writing
- c. Draw up a clear and practical official report
- d. Make clear and efficient agreements with the parties

### Central competences

- Ability to listen
- Verbal fluency
- Situational awareness\*
- Forming a judgement
- Problem analysis
- Written fluency
- Sensitivity\*
- Strength\*
- Self-confidence\*

### Orientation tasks

- Formulate orders to appear, with hearing agenda, with the objective of learning to anticipate the potential occurrences during a hearing [when the court issues an order to appear of this nature].
- Carry out audits (4) at appearances conducted by different judges (preferably judges who give training) to gain an impression of the manner in which different judges perform the aforementioned tasks in practice. The trainee judicial officer, who does not act as a court registrar during the hearing, can sit in the court or behind the judge to follow the interaction between the judge and the persons in the court closely.
- The trainee judicial officer reports his or her observations during a meeting held after the hearing and discusses the findings with the relevant judge in a form of intervision setting. The judge explains the legal and communicative choices that were made and the reason for those choices. When a settlement is not reached during the hearing then the trainee judicial officer formulates the judgement.
- The trainee judicial officer completes a reflection form after the meeting.

### Experiential standard

Recommended:

- begin with 4 audits of simple appearances with an increasing degree of difficulty.
- continue with 5 to 8 appearances under the trainer's supervision, beginning with a simple case with a single point at dispute and followed by basic cases without many complications (emotions, "difficult" lawyers, people in the court).

### Supervision

The trainer discusses the course of the hearing with the trainee judicial officer, in good time before the hearing, and on the basis of a note drawn up by the trainee judicial officer, gives the trainee judicial officer practical tips and explains the procedure between the trainer and trainee judicial officer during the hearing. The trainer also states that if necessary the trainer will intervene or take over during the hearing, for example to give a provisional judgement. The trainer must also give the trainee judicial officer an opportunity to ask questions.

The trainer sits next to the trainee judicial officer during the hearing. The trainee judicial officer conducts the hearing under the supervision of the trainer. The trainee judicial officer does not yet

need to give the provisional judgement in independence: this depends largely on the degree of complexity of the case and the course of the hearing.

The trainer discusses the course of the hearing with the trainee judicial officer shortly after – preferably, immediately after – the hearing and gives effective feedback on the basis of the task criteria and competences. The trainer completes the relevant feedback form.

### Specific knowledge/study tasks

Recommended:

- National *Handleiding Regie* ('Direction Manual') from the statement of defence
- SSR reader

## Resultat area: judgements

### Outline

Civil court judges spend (an important) part of their time on the written formulation of judgements. They need to understand the art of – and, if possible, gain pleasure from – formulating brief, concise and "attractive" grounds of the judgement that can and actually do substantiate the judgement. To avoid possible misunderstandings, this does not imply that civil court judges must always write their judgements: however, they do need to have a command of this official task. Civil court judges can formulate an appropriate judgement only once they have analysed the relevant facts in the dossier and the legal framework and, on the basis of an intellectual and professional inquisitiveness, wish to comprehend the (legal and factual) issues involved in the case. Although, as explained earlier, there is no fixed decision-making framework, the judgement does need to be based on a logical construction and a clear structure. The grounds should be compatible with the parties' debate and formulated in neutral terms, while the judgement needs to be both just, sustainable and practical.

### Tasks

Formulate judgements in defended cases heard by a single-judge section.

### Task criteria<sup>8</sup>

Design

- a. Order the relevant facts in a professional manner
- b. State solely the facts that have not been contradicted on grounds and, consequently, have been established and are required for the judgement
- c. Give the basis of the claim completely, correctly and concisely
- d. Give the essential defence completely, correctly and concisely (where relevant)

### Assessment

- a. Analyse the legal bases
- b. Assess the sustainable defence and draw the correct requisite conclusions
- c. Do justice to the parties' arguments and do not denaturalise them
- d. Use the facts in the dossier for the grounds of the judgement
- e. Draw up a logical construction and structure without skipping steps in the mental process
- f. Cut Gordian knots on the basis of arguments

8 An explanation of the meaning of the term marked by an asterisk is enclosed under Attainment levels.

- g. Decide on all relevant points at dispute
- h. Decide on the basis of established facts and circumstances
- i. Decide on the basis of the relevant legal frameworks
- j. Arrive at a judgement that is sustainable and practical
- k. Recognise where further proof is required
- l. Think through the consequences of the judgement\*
- m. Anticipate the consequences of the judgement\*
- n. Apply the law and case law correctly
- o. Draw up convincing grounds
- p. Formulate clearly and transparently
- q. Work carefully and precisely

### Judgement

- a. Give a feasible and complete operating part
- b. Calculate a correct order for costs

### Central competences

- Decisiveness
- Forming a judgement
- Situational awareness\*
- Prioritisation\*
- Problem analysis
- Written fluency
- Due care

### Orientation tasks

Attendance at a cause list hearing conducted by the sub-district court judge to become acquainted with the manner in which acts of procedure can be conducted and to become acquainted with an overall procedure.

Formulation of defaults/referrals with the objective of seeing many different cases within a short timeframe, learning to think on the basis of grounds for claims and acquiring experience with orders of (legal) costs.

### Experiential standard

Recommended:

- 10 defaults/referrals
- 5 (simple) contradicted incidents
- 20 to 25 judgements in defended actions on the merits heard by a single-judge section, preferably in cases in which the trainee judicial officer has already conducted or audited an appearance. The number depends partly on the degree of complexity of the cases: when a case is, in retrospect, regarded as too complex then the case counts for double. When many cases are drawn up after an appearance conducted or audited by the trainee judicial officer then the target of 25 is readily feasible. Begin with a very simple case with a single point at dispute and, at the end of the course, proceed to a somewhat complicated case (in accordance with the above description of types of cases).

### Supervision

Trainee judicial officers following the civil law judgement course learn how to draw up a judgement. It is the intention that the trainer's feedback is as compatible as possible with the content of the course.

It is recommended that the first 2/3 drafts are discussed in the court or at (regional) classes. Four trainee members of staff (trainee judicial officers and clerks of a comparable level) draw up a draft for a specific case. The trainer notes the relevant comments on these drafts. Copies of the assessed drafts are issued to the participants so that they can see each other's work with the trainer's annotations. The trainer discusses the case in the class, provides for interaction between the participants, discusses the legal

and practical aspects of the case and gives an explanation of the comments made about each draft. Adopting this approach ensures that the merits of a range of solution approaches are discussed.

The trainee judicial officers can raise questions with the trainer even before submitting their drafts. The degree of the trainer's control declines as the course progresses.

The trainer reads the entire dossier and makes as many comments as possible on the draft. The trainer discusses each draft during a personal meeting with the trainee judicial officer, preferably within two weeks of the submission of the draft and after the trainee judicial officer has had an opportunity to become reacquainted with the contents of the dossier. The trainer discusses the trainee judicial officer's questions, explains why an amendment is an improvement and explains the structure, etc. The trainer not only makes comments about the details in the draft, but also summarises (where possible) the most important learning points revealed by the contents of the draft in notes on the draft. Once the draft has been approved the trainer completes the feedback form submitted by the trainee judicial officer. When doing so the trainer also gives consideration to the manner in which comments made at an earlier stage have been processed.

### Specific knowledge/study tasks

Recommended:

- National *Handboek civiel rechtbanken* ('Civil law courts Manual'), Chapter 4
- J.P. Fokker, *De civiele uitspraak*, in: *Het civiele vonnis* (Zutphen 2004), p. 14-100, as well as Annex 1
- SSR reader, *Civiel bewijsrecht in de praktijk* ('Law of evidence, civil law, in practice')

### Supplementary orientational tasks

The trainee judicial officer's individual programme can, in consultation with the trainer, be supplemented with (one of) the following tasks. These tasks are related to a further exploration of the work in the section and to the development of a perception of the relevance of the section's work to society. The time at which a task of this nature is carried out is determined in mutual consultation. The decision to include these tasks depends on factors including the trainee judicial officer's background, the competences that have yet to be developed and the training programme.

The first (and second) week of the course will usually be suitable for audits (at Debt Rescheduling (Natural Persons) Act, bankruptcy and family hearings).

The last three weeks of the course are suited to the trainee judicial officer's fulfilment of the role of court registrar at interim measures hearings. The assessment will usually already have been drawn up before these last weeks. These last weeks of the course give the trainee judicial officer an opportunity to work on the tasks listed in the result areas.

Attendance at one or more Debt Rescheduling (Natural Persons) Act hearings

Attendance at one or more bankruptcy and petition hearings

Attendance at one or more family hearings (maximum of one week)  
Acting as the court registrar at hearings of arguments by a single-judge section

- Acting as the court registrar at a number of interim measures hearings and formulating the requisite judgements

Attendance at the various forms of staff meetings in the section.

The trainer always gives feedback and the trainee judicial officer completes a reflection form.

# Learning assignment plan basic civil law course

**Duration: 10 months**

**This section of the study guide outlines the programme for each week of the basic course in the civil law section.**

## **Week 1 Introduction to the section**

*What Intake interview with trainer(s)*

*Objective*

To make the acquaintanceship of each other and of this section, discuss earlier learning and work experiences, discuss the structure of this period, discuss the attainment levels for this period (see study guide), reach agreement on expectations about conduct, supervision by the trainer(s), feedback, the test interview and the role played by the learning assignment dossier and development dossier. Important points are noted on the intake form enclosed in the development dossier. The trainee judicial officer ensures that the development dossier with information about the previous period is placed at the disposal of the trainer(s) prior to the meeting. This enables the trainer(s) to become acquainted with the contents of the dossier and ensures that the developments in the previous period serve as the overture for this new training period.

*What Acquaintanceship meeting with the section chairman/team chairman*

*Objective*

Acquaintanceship with the section chairman/team chairman in their roles as manager, obtain clarity about the role of the section chairman in the course, gain an impression of the broader context of the area in which the trainee judicial officer works, exchange of expectations.

*What Acquaintanceship with colleagues*

*Objective*

Acquaintanceship with the colleagues at the workplace. These introductions can be initiated by the trainer or, self-evidently, the trainee judicial officer.

*What Further acquaintanceship with the organisation and the working methods within the section/team*

*Objective*

Become familiar with the organisation of the role and the court registrar, the dossier routing and the sources of knowledge that play

a role within the team, for example by means of an explanation by a member of the legal staff.

*What Orientation with respect to the family section, Debt Rescheduling (Natural Persons) Act audits, etc.*

*Objective*

Gain a perception of the relevance of the section's work to society.

## **Week 1-4 Orientation and learning**

*What Course: Contract Law and special contracts*

*Course: Civil law judgement I*

*Course: Wrongful acts and loss*

*Objective*

Acquisition of the knowledge and skills required to carry out the tasks within the section in an appropriate manner.

*What Audits of hearings (inquiries and appearances)*

*Objective*

Attendance at the hearings conducted by various trainers to make thorough preparations for the relevant courses. Working and learning to achieve the attainment levels (see study guide)

*What Drafting defaults, referrals and incidents*

*Objective*

Working and learning to achieve the attainment levels (see study guide).

## **Week 5-10 Working and learning**

*What Course: Conducting inquiries*

*Course: Law of evidence*

*Objective*

Acquisition of the knowledge and skills required to carry out the associated tasks.

*What Drafting judgements in defended actions*

*Objective*

Working and learning to achieve the attainment levels (see study guide). The trainee judicial officer is assigned straightforward cases by the designated judge (the judge with coordinating duties or the trainer).

*What Audits of inquiries and appearances*

*Objective*

Working and learning to achieve the attainment levels (see study guide).

### **Week 10-43 Working and learning**

*What Course: Hearing appearances*

*Objective*

Learn the background of hearing appearances, together with practicing with actors.

*What Drafting judgements in defended actions*

*Objective*

Working and learning to achieve the attainment levels (see study guide). The trainee judicial officer is assigned suitable cases by the designated judge (the judge with coordinating duties or the trainer): see Types of cases earlier in this Section.

*What Audits of inquiries and appearances*

*Objective*

Working and learning to achieve the attainment levels (see study guide).

*What Course: Self-reflection*

*Objective*

Reflection on personal experiences and the acquisition of insights on the basis of the reflection.

*What Carrying out inquires and hearing appearances*

*Objective*

Working and learning to achieve the attainment levels (see study guide).

### **Week 10+30 Monitoring progress, results and the process**

*What Progress meetings with the trainer(s)*

*Objective*

The trainer(s) will hold a progress meeting with the trainee judicial officer in week 10 and week 30, if so required. The objective of this meeting is to reflect on the progress in the learning process, discuss experiences and reach (supplementary) agreements to promote the trainee judicial officer's development. The progress form enclosed in the development dossier is used for this purpose.

### **Week 21+42 Review progress and results**

*What Review interviews with the trainer(s)*

*Objective*

The trainer(s) will hold a review interview with the trainee judicial officer in week 21 and week 42 to review the trainee judicial officer's progress relative to the attainment levels stated in the study guide. The trainee judicial officer's performance of each duty is discussed, together with a specific statement of the level of development. The learning assignment dossier serves as important input for this interview. Conclusions about the learning process and learning results are drawn during the interview. The review interview held in week 21 also encompasses the agreements on the nature of the work and the supervision of the work to be carried out later in the learning period necessary to promote the required development of the trainee judicial officer. The review interview held in week 42 discusses the major issues for the externship. The conclusions and agreements are recorded on the review form enclosed in the development dossier.

### **Week 43 Assessment**

*What Assessment*

*Objective*

Assess whether the results achieved by the trainee judicial officer are sufficient to continue to the administrative law section.





Pelro

# **Curriculum, basic administrative law course**

**Duration: 10 months**

# Curriculum, basic administrative law course

Duration: 10 months

## Outline of the position

The work of administrative court judges differs in a number of respects from that of criminal court judges and civil court judges. Administrative court judges review decisions: there is no administrative law dispute without a decision. This decision, made by an administrative body, always forms the demarcation of the administrative law dispute. In making a decision of this nature the administrative body unilaterally lays down binding rights and obligations on the citizen involved. The legitimacy of this decision lies in the fact that in applying administrative law the administrative body, by very definition, represents the general interest. Consequently, this does not involve two parties which each wish to protect their specific interest. For this reason the administrative body does not possess unlimited authority to make decisions, but may exercise the authority solely when the substantive legislature has granted the administrative body the relevant specific statutory authority. Consequently, in contrast to their civil court and criminal court colleagues, administrative court judges are not the first party to give a binding decision on the parties which lays down how their rights are enforced, but the second party. As a result, administrative court judges do not review directly whether a specific person is entitled to a benefit, permit or subsidy but rather whether the administrative body has made a legitimate decision (both with respect to the procedure and the substance) on the right to the benefit, permit or subsidy. The role of review judge is predominant for the administrative court judge. The administrative court judge can determine the content of the legal relationship between the administrative body and the citizen – within certain limits – only once the court has established that the administrative body has not made a legitimate decision.

Administrative law is comprised of an incredible quantity of substantive law: generally binding administrative law regulations govern every conceivable issue (for example, the fire resistance (expressed in minutes) of doors in a day nursery). Decisions are, as compared to civil law and criminal law, primarily controlled by special rights: general administrative law plays a relatively minor role. Moreover, the substantive legislation in administrative law is often politically sensitive and in a continual state of flux.

Administrative law cases often relate to disputes between three parties, for example about a building permit in which the administrator, the holder of the permit and the party contesting the permit in appeal are involved.

**The plaintiffs in proceedings before administrative court judges often appear without legal representation. The administrative bodies are usually represented by civil servants rather than by lawyers.**

Administrative court judges must have a feeling for the demarcation between executive power and judicial power, two powers of the Trias Politica. The legislative power assigns decision-making authority to the executive power (administrative bodies). These decisions can be reviewed by the judicial power (administrative court judges). However, the Trias politica is in a state of flux: the Trias politica is no longer regarded as a static equilibrium, but rather as a dynamic system of checks and balances. How can administrative court judges direct a conflict of the nature encountered in the appeal phase with due respect for the singularity and authority of the administrative body? This is the question to be addressed in every case. This question has come more to the forefront in recent years since administrative court judges – even though they are review judges – are, for a number of reasons, expected to direct disputes brought before the court towards a final decision whenever possible.

The role as review judge is governed by a stringent review model. Solely the decision being contested is to be reviewed and the administrative court judge must, in principle, restrict him or herself to reviewing to the decision on the basis of the arguments brought before the court. The judge reviews a decision that is the culmination of a frequently thorough decision-making procedure. This has consequences for the law of evidence: the facts have been established by the administrative body, and from this perspective the administrative court judge is also the review judge. This also has implications for the feasibility of making use of personal expertise (the administrative court judge does not carry out the work that should have been carried out by the administrative body), the decision modalities (when the administrative body possesses assessment discretion or policy discretion then the administrative court judge must not rashly “step into the administrative body’s shoes”). Administrative court judges, in addition to their role in reviewing decisions made by administrative bodies, increasingly seek a final settlement of the disputes. These two roles are occasionally at loggerheads. The administrative court judge will endeavour to uphold the legal effect of a decision to the maximum possible extent (when the procedure followed in making the decision is not valid but the substantive result is valid) or personally make a decision in

the case (when the substantive result needs to differ from the administrative body's decision). The administrative court judge can then make use of what is referred to as an 'administrative loop': the judge asks the administrative body to state the decision it would make if specific grounds for appeal were to succeed.

The above may imply (and, for this reason, is now made explicit) that the parties are not in an equal position: the administrative body is focused on making many decisions on the same subject (repeat player) while the citizen lodging the appeal may be a "one-shotter" – someone who has never previously lodged an appeal against a decision which has a personal effect on them. In addition, as indicated earlier, the administrative body can unilaterally make a binding decision on the citizen. The administrative court judge must always take account of the need for inequality compensation.

## General information about this programme period

### Objective

The objective of the course is to provide trainee judicial officers an appropriate knowledge of the work in the administrative law section, both with respect to administrative law and the appropriate attitude. The course is also designed to provide an insight into the section's working methods. Trainee judicial officers are expected to act with a slightly greater degree of independence (during the hearings and, in particular, in chambers) than in the civil law section.

Since legal representation is not mandatory in the administrative law section trainee judicial officers will regularly need to consult directly with the relevant citizens during the hearings: in contrast to the civil law section, no lawyer is available to give a further legal explanation. For this reason trainee judicial officers will need to call on their reading and analytical skills to extract the relevant grounds for appeal from amateurish notices of appeal. Trainee judicial officers opting to follow part of the course in the law of aliens will also be confronted with people from other cultures and, frequently, with communication via an interpreter – with all the concomitant problems. This makes great demands on the communicative skills: the trainee judicial officers will need to speak understandable Dutch, interpret the legal puzzle and use clear language in the judgement.

Consequently, the administrative law section enables the trainee judicial officers to begin to develop their personal "hearings style". However, self-evidently, they cannot exercise full discretion: they need to be friendly when possible, critical when necessary, direct the hearings tightly – or, conversely, loosely when possible – express inarticulate tension and alleviate tension when feasible.

The aspects of the administrative court judge's work reviewed in the above outline of the position give cause to the need to formulate a number of secondary learning goals for trainee judicial officers derived from these aspects.

Administrative court judges delegate a very great deal of their work: clerks usually formulate all draft judgements and, consequently, cooperation with the clerk is of great importance. For this reason the deliberation in chambers pivots on the explicit communication of the key grounds to the clerk. However, since in principle trainee judicial officers still personally formulate all judgements delegation is not a real issue. Nevertheless, during the basic course trainee judicial officers do receive an indication of when professional cooperation (in the form, for example, of calling on the knowledge

possessed by the staff lawyers and clerks) is appropriate.

A pitfall for trainee judicial officers is the idea that "I know nothing about administrative law and the administrative body talks about the subject very wisely". It is necessary to give due regard to the normative issue: the task of administrative bodies is to serve the general interest, a task which they normally fulfil with the appropriate neutrality and impartiality. However, in legal proceedings the administrative body's standpoint is no more and no less than the standpoint of one of the parties. The trainee judicial officers must possess the courage to break free from the absolute right of the administrative body. Administrative court judges are appointed to deliver a judgement, a task which trainee judicial officers must also be prepared to perform even when the judgement goes right against the carefully-considered arguments presented by the highly-experienced representatives of administrative bodies. Consequently, the development of professional courage and self-assuredness is one of the derivative learning goals of the course.

The structure of the course is summarised in the learning assignment plan at the end of this section.

### Supervision

Trainee judicial officers normally handle all phases of a case, from the preparations for the hearing right through to the formulation of the judgement. Consequently, the extent of the feedback will depend on the relevant action. The feedback forms are used as follows.

In practice, the observations on the preparations of the hearing and the hearing can often be listed on one form. Since the preparations for the hearing are often in the form of a (partial) draft judgement the observations on the deliberation in chambers and the judgement can also often be listed in the same form, in particular when the case is what is referred to as a "studio case".

In addition, trainee judicial officers following the basic course often conduct hearings of a number of cases (about four) which are very similar to each other (for example, medical occupational disability cases, what are referred to as "production-line cases"). It may then prove worthwhile to list the observations on the preparations for the cases on one form, the observations on the hearings on a second form and the observations on the judgements on a third form since the observations for each case will largely overlap with and be related to each other: it will then be valuable to make records of the overall observations on each phase of the case. In other words, the manner in which the observations are specified is a question of customisation.

### Types of cases

The cases assigned to trainee judicial officers have an increasing degree of complexity and, ideally, begin with social insurance cases that usually involve only a small number of points of dispute. Over the course of time trainee judicial officers will also be assigned construction cases which exhibit an increasing number of points of dispute, complexity of the regulations and degree of administrative discretion, etc. On occasion trainee judicial officers will also be assigned aliens cases, a segment of cases that involve some regulations and review frameworks that diverge from general administrative law. In addition, trainee judicial officers will often be assigned a number of cases from other segments. Trainee judicial officers should preferably not begin with the law of aliens in view of the divergences from general administrative law, although exceptions are feasible for reasons including the available training capacity. Irrespective of the sequence of the types of cases that

are selected, opting for a different sequence of the type of cases assigned to trainee judicial officers should not be a problem in view of the uniformity of administrative law.

The complexity of administrative law cases depends on at least the following (non-exhaustive) factors:

- the number of questions of law to be answered
- the degree of uncertainty or complexity of the applicable review framework
- the degree of uncertainty about the manner in which the case is presented and the parties' unfamiliarity with their position with respect to evidence
- the number of parties
- the newness of the regulations (and, with new regulations, a lack of useful appeal case law)

### Attainment levels

At the end of the basic period trainee judicial officers can, with a limited degree of supervision, successfully complete an administrative law case of average complexity conducted by a single-judge section, with due regard for the specified task criteria, competences and experiential standards. The required independence does not impede raising questions with and discussing issues with a staff lawyer, clerk or the trainer. The increasing degree of complexity enables trainee judicial officers to develop (at least) the following skills:

- analysing the case: how the factual points of dispute are interpreted in terms of legal issues;
- distinguishing between the primary and secondary issues;
- finding the relevant case law;
- communicating clearly during the hearing and in the judgement;
- recognising relevant learning issues;
- demonstrating an insight into the questions that must be asked during the hearing.

The sequence of cases trainee judicial officers are assigned in the various segments can, as indicated earlier under Types of cases vary according to the situation. For this reason the assessment will need to devote attention to programme periods in which cases are assigned on a more logical sequence as compared to the 'more difficult route'.

### Result areas

The above review serves as the basis for the following discussion of the levels administrative court judges will need to attain in the various result areas. Each discussion of a task begins with a general introduction and continues with a specification of the criteria governing the assessment of the task together with the most important competences required for the task, as well as an as complete as possible specification of the special knowledge that is required. Neither the learning capacity, self-reflection and other control competences nor what are referred to as "moral competences" are specified separately, although these are always required.

### General knowledge

General administrative law, in particular sections 1, 3 and 6 to 8 inclusive;

The outlines of substantive administrative law (in particular social insurance law, construction law and, depending on the precise content of the course, law of aliens);

Communication styles.

## Result area: preparing for the hearing

### Outline

Administrative court judges have usually received an instruction from the clerk when they make the preparations for the hearing.<sup>2</sup> The dossier needs to be read and studied thoroughly, whereby a fundamentally critical attitude is required: although the administrative body is highly experienced it is not, self-evidently, by definition in the right. Factual knowledge is important: the collection of the facts (with an inventory of the contested facts that shall need to be addressed during the hearing) is followed by a legal analysis to review how this complex of facts fits in the (usually fairly tight) legal framework. This analysis requires a thorough study of the relevant case law and, where necessary, the legal history.

Administrative court judges must (in analogy with civil court judges) supplement the legal grounds and may supplement the facts (they are not bound to the parties' presentation of the facts). Administrative law encompasses the extra-legal tenet of reviewing against public order, which occasionally gives cause to the need to raise points of dispute that were not put forward by the parties before the administrative court judge can address the points of dispute put forward by the parties.

A scenario approach to the case is also necessary. What new information can be introduced during the hearing? How does the administrative court judge insert this information? Is there a reason to appoint an expert after the hearing? Is the burden of proof made explicit, where relevant with an "order to produce proof" (an opportunity for a party to introduce proof after the hearing)? Is a settlement possible? Is mediation appropriate? How can a final judgement be reached? The final settlement of a dispute takes place in the present. Consequently, the administrative court judge will occasionally need to establish the facts at two different reference times and carry out a legal analysis. Will the formal administrative loop be applied? In other words, the administrative court judge needs to develop a vision of the case and its solution.

### Tasks

1. Analyse the factual points of dispute and their legal interpretation
2. Think through scenarios
3. Devise questioning strategies
4. Cooperate with the clerk<sup>\*1</sup>

### Task criteria

*Re. 1 Analyse the factual points of dispute and their legal interpretation*

- a. Check the completeness of the dossier
- b. Check the formalities
- c. Select the primary and secondary issues
- d. Extract the factual and legal points of dispute
- e. Place the dispute in the appropriate social context
- f. Check the correctness of the result

*Re. 2 Think through scenarios*

- a. Determine which potential approaches come into consideration
- b. Compare the advantages and disadvantages of the approaches
- c. Comprehend the legal implications of the various approaches
- d. Make an efficient and purposive selection of the definitive and, if feasible, final approach

*Re. 3 Devise questioning strategies*

- a. Determine the manner in which clarity can be obtained
- b. Give attention to "desirable answers" and focus the questions

<sup>1</sup> The trainee judicial officer does not carry out this task during the basic course. Consequently, no task criteria are specified for this task.

- and sequence of questions accordingly
- c. Give consideration to the party that must be questioned first as determined by the division of the burden of proof

### Central competences

- Situational awareness
- Forming a judgement
- Prioritisation
- Problem analysis
- Due care

### Orientation tasks

Carry out audits at three hearings conducted by different experienced judges, preferably the trainers. Although trainee judicial officers have acquired experience of hearings during the civil court period, beginning by carrying out audits before managing a hearing enables the trainee judicial officers to focus on the administrative court approach. It is recommended that trainee judicial officers begin by studying the dossier and then watching how an experienced judge approaches the case (before and during the hearing). It will also be useful to draw up a list of questions and discuss this with the trainer. The preliminary discussion with the trainer will also need to devote attention to issues such as the scenarios.

### Experiential standard

Trainee judicial officers deal with between 40 and 60 cases during the entire course, whereby the preparations, handling of the hearing and the formulation of the judgement count as one case. Cases withdrawn shortly before the hearing are also taken into account.

The course includes at least two segments (social insurance law, construction law, law of aliens). An excessively lop-sided assignment of cases is avoided. When trainee judicial officers handle many cases in a variety of segments or uncommon cases (when extra study is required for each segment) then this will have consequences for the standard number of cases and, as necessary, the assessment standard. When trainee judicial officers handle relatively many complex or extensive cases then this also has consequences for the assessment standard.

### Supervision

The trainer always discusses the instructions/draft judgement for each hearing well in advance, gives any further explanation that may be necessary and/or asks the trainee judicial officer to carry out further studies. The handling scenarios are also discussed.

Information about the use of the feedback form is given under the Supervision section of the "General information about this programme period" section.

### Specific knowledge/study tasks

- The section's court processes
- The substantive subsection
- The Procesregeling bestuursrecht ('Administrative law procedural regulations') 2008

## Result area: the hearing

### Outline

Although the dossier is often largely determinative in administrative law decisions, the hearing is nevertheless an essential element of the proceedings. Firstly, "being heard" is of importance to the parties' perception of receiving an honest trial and their accep-

tance of the judgement. The parties may – within reasonableness – bring forward all the points they consider to be of importance to the case. Secondly, surprise decisions must be avoided. For this reason good administrative court judges raise all the issues that can be of importance to their judgement with the parties during the hearing.

Administrative court judges conduct unusually "loose" hearings. Administrative court judges may ask any questions they wish within the demarcations of the case. Self-evidently, administrative court judges may not help one of the parties in their position (which would result in their loss of impartiality). However, they are offered a reasonable degree of discretion in deciding which questions they will ask during the hearing.

Administrative court judges direct the case, determine the manner in which the hearing is handled, ask further questions when points have not been clarified and offer the parties scope to make a contribution. Administrative court judges exhibit interest and, where relevant, empathy. Studies carried out in recent years have revealed that citizens need to be offered more scope to have their say. Until recently, hearings were conducted in the form of pleadings: however, the courts are now increasingly shifting towards a more active handling of the case in the hearing whereby the judge takes the lead and discusses the case with the parties rather than conducting cases on the basis of pleadings presented by the parties. In addition, administrative court judges prepare for the case by drawing up scenarios whereby they are at least able to conclude the hearing with a statement of the further course of the case, i.e. the formulation of a final judgement, an order to produce proof, the appointment of an expert, referral to mediation or an endeavour to arrive at a settlement. Administrative court judges deciding to apply a (formal or informal) administrative loop need to exercise explicit direction of the hearing.

Administrative court judges must use the appropriate language since they regularly communicate with parties acting without a legal representative and will then need to discuss legal issues in language that can be understood by legal laymen. Administrative court judges need to offer the parties scope to explain their case.

### Tasks3

1. Open the case to discussion
2. Allow the parties to plead their case
3. Ask questions
4. Offer the parties a second pleading
5. Close the hearing of the case

### Task criteria

#### *Re. 1 Open the case to discussion*

- a. Pay due regard to the required formalities (the sequence)
- b. Adopt the appropriate tone
- c. Maintain control
- d. Demonstrate a self-assured professional attitude in a manner that manifests genuine interest and respect

#### *Re. 2 Allow the parties to plead their case*

- a. Make sure that the parties are offered every opportunity (within reasonable limits) to say everything they find necessary
- b. Safeguard the interests of other parties
- c. Maintain control
- d. Be courteous to everyone

#### *Re. 3 Ask questions*

- a. Ask open questions to open everything required to clarify the case to discussion and ask any further questions that are necessary

- b. Avoid unnecessary questions about points that have already been clarified during the pleadings
- c. Safeguard the principle of hearing both sides of the argument
- d. Handle the questions in a strategic sequence
- e. Summarise answers adequately and then raise the summaries as questions to the opposite party or parties
- f. Able to diverge from the questions prepared in advance
- g. Make the information required for a sound judgement clear (make the parties' position with respect to furnishing proof clear to them)
- h. State the consequences of certain (proceedings) choices made by the parties
- i. Be courteous to everyone
- j. Speak intelligibly and not too fast
- k. Be prepared to pause to give consideration to an issue or to look up something
- l. Be prepared to "slacken the reins" when the parties immediately enter into contact with each other when this is beneficial to the handling of the case and be able to take back control of the hearing
- m. Demonstrate recognition of the relevant social issue
- n. Act effectively\*
- o. Make sure that everyone feels understood

*Re. 4 Offer the parties a second pleading*

- a. Make sure that all the relevant points have been discussed and that the court has asked all the necessary questions
- b. (Pay due regard to the required formalities (the sequence))
- c. Adopt the appropriate tone
- d. Maintain control
- e. Demonstrate a self-assured professional attitude in a manner that manifests genuine interest and respect

*Re. 5 Close the hearing of the case*

- a. Check (personally, or explicitly) to make sure that everything has been discussed
- b. State the further course of the case clearly
- c. State when the final judgement will be delivered, when possible

**Central competences**

- Ability to listen
- Verbal fluency
- Situational awareness
- Forming a judgement<sup>4</sup>
- Prioritisation
- Problem analysis
- Sensitivity
- Strength
- Self-confidence

**Orientation tasks**

See the previous result area on "taking part in" the hearings conducted by an experienced judge.

When trainee judicial officers handle cases at the hearings then the judge will normally also handle cases. It is recommended that the trainee judicial officers attend the entire handling of at least three hearings. The cases handled by the trainer can then be discussed during the meeting held after the hearings: why did the trainer select the specific approach?

Acting as the court registrar at a limited number of interim measure hearings can serve as excellent orientation, certainly when the trainee judicial officer subsequently formulates the judgement. However, the number of cases must be restricted.

**Experiential standard**

See the previous result area.

**Supervision**

Trainee judicial officers will generally open the case to discussion at the hearing, whereby the trainee judicial officers offer the trainer an opportunity to ask supplementary questions. The trainer will occasionally open the case to discussion at the hearing and then give an introduction which explains that the trainee judicial officer will conduct the hearing. Hearings conducted by trainee judicial officers need to offer them an acceptable opportunity to suspend the hearing, as the occasion arises, to discuss the best scenario with the trainer.

The trainer gives specific feedback after the hearing: what went well and what needs to be improved? The hearing needs to be discussed point by point ("you said this at that point: did you note how party X reacted?"). A general discussion ("everything went well") is not recommended. The discussions also review, where relevant, the manner in which the trainee judicial officer reflects on the manner in which the trainer handled the trainer's cases (see under orientation tasks).

Information about the use of the feedback form is given under the Supervision section of the "General information about this programme period" section.

**Result area: deliberation in chambers**

**Outline**

Administrative court judges retire to chambers to review the judgement to be delivered or give consideration to another modality appropriate to the case. Administrative court judges are open to information submitted by the court registrar. When it is decided to give judgement then the grounds supporting the judgement are discussed. When another modality is deemed to be appropriate then the type of modality is discussed: appointing an expert, asking questions to the parties, etc. When the appeal is upheld then it is necessary to review whether and, if so, how the dispute can be finally settled.

**Tasks**

Arrive at an (unequivocal) judgement and unequivocal instructions (for the clerk's formulation of the judgement).

**Task criteria**

- a. State, after consultation with the clerk, what needs to be done
- b. Discuss the decision to be reached in a logical sequence of reasoning
- c. Make the personal standpoint explicit and checks each logical step for agreement
- d. Be aware when it is necessary to "be influenced by" the contribution of others
- e. Discuss the next step to be taken and checks for agreement
- f. Give clear instructions to the clerk which explain what is expected from the clerk\* (in formulating the judgement)

**Central competences**

- Decisiveness
- Situational awareness
- Forming a judgement
- Problem analysis
- Cooperation
- Strength
- Due care

## Orientation tasks

Taking part in the deliberation in chambers conducted by an experienced judge (preferably, the trainer).

## Supervision

When trainee judicial officers conduct a case then the deliberation in chambers is held with the trainer and the court registrar. The trainee judicial officer takes the initiative in chambers. The trainer makes sure that the trainee judicial officer is offered every opportunity to begin by stating the trainee judicial officer's opinion. The trainer monitors the extent to which the clerk is involved in the deliberation, but does not exercise too much direction.

Information about the use of the feedback form is given under the Supervision section of the "General information about this programme period" section.

## Result area: judgement

### Outline

An administrative court judgement is comprised of a sound and compelling reasoning. The motivation supports the judgement. No hypothesis is left open. The issues are reviewed in a logical sequence, often based on the sequence in which the decision was made: the review begins with the conditions attached to the authority, continues with the exercising of the authority and then concludes with the specific modalities of the exercising of the authority. Formalities are discussed only when they result in problems or there are specific grounds or defences. The principle is that the pound of flesh is extracted from the loser. The judgement is formulated in concise, clear language. Administrative court judges often demonstrate their self-reliance and independence in their thinking in the formulation of their judgements. Administrative court judges apply the relevant legislation and case law in their judgements and give due regard to judicial policy.

### Tasks

1. formulate a judgement for a case heard by a single judge.
2. formulate a judgement for a case heard by a number of judges or studying a draft for a case heard by a number of judges and making any necessary corrections.

### Task criteria

Design

- a. Order the relevant uncontested facts in a professional manner
- b. Give a complete and correct reproduction of the grounds for appeal and the defence

### Assessment

- a. Assess the court's competence, where relevant
- b. Assess the allowance of the appeal, where relevant
- c. Assess the allowance of the objection, where relevant
- d. Assess the administrative body's formal authority, where relevant
- e. Assess the applicability of the conditions attached to the authority in concreto, where relevant
- f. Test the policy for reasonableness, where relevant
- g. Discuss the legal bases by testing the grounds for appeal against regulations and policy
- h. Do justice to the parties' arguments and pleadings and do not denaturalise them
- i. Review the issues in a logical sequence
- j. Recognise and discuss lack of proof

- k. Cut Gordian knots on the basis of arguments
- l. Arrive at a judgement that is readily sustainable and practical
- m. Apply the law, policy and case law correctly
- n. Draw up convincing grounds
- o. Formulate clearly and transparently
- p. Work carefully and precisely
- q. Check whether a surprise judgement in respect of all the above points has been avoided

## Judgement

- a. Deliver a feasible and complete judgement
- b. Apply articles 8:72 to 8:75 inclusive in the correct manner, i.e. use the correct decision-making elements (closed decision-making modalities)
- c. Calculate the correct order to pay the legal costs, court registry fees and compensation

## Central competences

- Decisiveness
- Situational awareness
- Forming a judgement
- Prioritisation
- Problem analysis
- Written fluency
- Due care

## Orientation tasks

It is recommended that trainee judicial officers read many judgements: as administrative law is characterised by the repeated application of the same authority, congruity with other judgements is of great importance to protect the general interest and principle of equality.

## Experiential standard

See the result area: Preparing for the hearing.

## Supervision

The trainer and the trainee judicial officer discuss the draft in great detail. The trainer gives specific feedback: what is good and what needs to be improved? The draft needs to be discussed point by point. The trainer approaches the draft from a training perspective and gives careful consideration to the shortcomings that are addressed with search suggestions and the shortcomings that are addressed with replacement texts.

Information about the use of the feedback form is given under the Supervision section of the "General information about this programme period" section.

## Specific knowledge/study tasks

D.A. Verburg, De bestuursrechtelijke uitspraak en het denkmodel dat daaraan ten grondslag ligt, Zeist/Zutphen 2008

## Supplementary orientation tasks

Trainee judicial officers take part in staff meetings, case law discussions and a working party (when a working party has been formed). If possible, the trainee judicial officers write a memo on a current administrative law issue at the end of the course in the section. This memo must provide an insight into the current legislation and case law and/or be suitable for incorporation in the section's policy. Consequently, the contents of the memo must make a tangible contribution and, if possible, impart an impetus to discussions that can result in an improvement in quality.

The trainee judicial officer's programme can, in consultation with the trainer, be supplemented with one or more of the following additional orientation tasks.

A traineeship in the administration department for a couple of days or a week will be of great value to gaining a feeling for the formalities, since trainee judicial officers will be usually be offered an opportunity to identify the shortcomings in the procedural issues within the administrative law section. Within this context the trainee judicial officers formulate a number of (for example, 5) extrajudicial judgements (application of Article 8:54 of the General Administrative Law Act).

Some courts work with a short traineeship (two days to a week) at the UWV. A traineeship of this nature is extremely useful since it provides an insight into the administrative bodies' work. Trainee judicial officers at courts working with this traineeship usually make the necessary arrangements for the traineeship.

The trainer gives feedback, if possible, and the trainee judicial officer completes a reflection form.

1. It is important to realise that working with the law of aliens can impose a heavy emotional burden on trainee judicial officers: it is certainly not easy to have to tell someone that they must go back to Sierra Leone, Iraq or Afghanistan. Conversely, the trainee judicial officers have already worked in the criminal court section and have become familiar with working with drastic judgements.
2. Trainee judicial officers do not work on the basis of instructions from the clerk: in a certain sense trainee judicial officers carry out the work of both clerk and judge.
3. This is the standard sequence. On occasion there is reason to diverge from this sequence, for example by beginning with a number of clarifying questions. This can result in a number of points becoming clear. Any divergence from the standard sequence must be communicated clearly ("you will be offered every opportunity to plead your case, but I need to begin by asking a number to gain a clear insight into the situation.").
4. As a form of result-orientation: understanding the possible courses the hearing can take, directing the hearing on the relevant course and asking the associated questions. In addition, where relevant, an ability to switch/improvise/adopt a flexible approach.

# Learning assignment plan

## Basic administrative law course

### Duration: 10 months

This section of the study guide outlines the programme in each week of the basic administrative law course.

#### Week 1 Introduction to the section

What Intake interview with trainer(s)

Objective To make the acquaintanceship of each other and of this specific section, discuss earlier learning experiences, discuss the structure of this course, discuss the attainment levels, reach agreement on expectations about conduct, supervision by the trainer(s), feedback, the review interview and the role played by the learning assignment dossier and development dossier. Important points are noted on the intake form enclosed in the development dossier. The trainee judicial officer ensures that the development dossier with information about the previous period is placed at the disposal of the trainer(s) prior to the meeting. This enables the trainer(s) to become acquainted with the contents of the dossier and ensures that the developments in the previous course serve as the prelude to this new programme period.

What Acquaintanceship meeting with the section chairman/team chairman

Objective note: If possible, this discussion is held earlier for scheduling reasons.  
Acquaintanceship with the team chairman in his/her role as manager, obtain clarity about the role of the team chairman in the course, gain an impression of the broader context of the area in which the trainee judicial officer will work, exchange of expectations.

What Acquaintanceship with colleagues

Objective Acquaintanceship with the colleagues at the workplace. These introductions can be initiated by the trainer or, self-evidently, the trainee judicial officer.

What Further acquaintanceship with the organisation and the working methods within the section

Objective Become familiar with the organisation of the role and the court registrar, the judicial support and the staff lawyers, etc. The discussion also extends to the dossier routing and the sources of knowledge that play a role within the section.

#### Week 1-3 Orientation and learning

What Auditing

Objective If possible, the trainee judicial officer attends a hearing conducted by an experienced judge (where possible, the trainer) during the first week (although this is occasionally complicated by the three-day Administrative law: reviews and judgements course). The trainee judicial officer is provided time to prepare for the hearing to ensure that the attendance is not a “blind visit” (see the orientation task under Result area: Preparing for the hearing).

What Traineeship with the administration (where relevant)

Objective Become familiar with the administrative processes, recognise the “formalities” (incompetences and disallowances), learn the “evident” judgements.

What Traineeship with the UWV (where relevant)

Objective Become familiar with the approach adopted by an administrative body. Become familiar with the singularity (positive and negative elements) of the “bureaucracy”: acting in the same manner in identical cases, providing legal certainty, acting systematically, repeatedly exercising an authority, etc., as well as simultaneously serving the “general interest” and playing the role of a party and, consequently, adopting a party’s position.

What Mandatory course

Administrative law: reviews and formulating judgements

Objective Acquisition of the knowledge and skills required to carry out the tasks.<sup>5</sup>

#### Week 4-21 Working and learning

What “Conducting” hearings

**Objective** The trainee judicial officer handles, for example, two cases during his or her first sitting and three or four cases at subsequent hearings. Fulltime trainee judicial officers conduct hearings about once a fortnight. Trainee judicial officers conducting hearings acquire experience in confronting parties, asking questions, developing a personal hearings style, “unravelling” the case and adopting a solution-oriented approach. The core points are analytical and communicative abilities.

**What** Formulating draft judgements

**Objective** Learn how to formulate the judgement in an understandable and “defensible” form (= a judgement that can be expected to be upheld in an appeal).

Gain an insight into the do’s and don’ts of formulating judgements, obtain feedback on the quality of the reasoning and on the ability to convey the intended message.

#### **Week 4-21 Working and learning (continued)**

**What** The following courses are followed from week 4 (depending on the case package):

For all trainee judicial officers:

Intervision (2 meetings)  
Communication styles (month 4)

Case package, General administrative law

a. Spatial administrative law (month 2)  
b. Work and Assistance Act (month 3)  
c. Employee insurance acts (month 4)

Case package, General administrative law in combination with Law of aliens:

a. Spatial administrative law

Choice from b or c (one course)

b. Employee insurance acts  
c. Work and Assistance Act

Two courses (discretionary) focused on the Law of aliens:

d. Introduction to the law of aliens, asylum seekers  
e. Introduction to the law of aliens, regular  
f. Deprivation of liberty  
g. European migration law

**Objective** Acquisition of the knowledge and skills required to carry out the tasks

#### **Week 22-42 Possible transfer to another team/another department/another section**

(repeat of learning assignment process in week 4-21 with the previous(e) team/department/section)

#### **Week 10+30 Monitoring progress, results and the process**

**What** Progress meeting with the trainer(s)

**Objective** The trainer(s) will hold a progress meeting with the trainee judicial officer in week 10 and week 30, if so re-

quired. The objective of this meeting is to reflect on the progress in the learning process: what are the learning moments and experiences? Agreements can be reached on the development. The progress form enclosed in the development dossier is used for this purpose. The trainer(s) need to attach importance to these meetings, since this can avoid the trainee judicial officer being surprised with the assessment. This can be avoided by providing good feedback in the preceding period!

#### **Week 21+42 Review progress and results**

**What** Review interview with the trainer(s)

**Objective** The trainer(s) will hold a review interview with the trainee judicial officer in week 21 and week 42. The objective is to discuss the trainee judicial officer’s progress relative to the attainment levels. The review form enclosed in the development dossier is used for this purpose. The trainee judicial officer’s performance of each duty is discussed, together with a specific statement of the level of development. The learning assignment dossier serves as important input for this interview. Conclusions about the learning process and learning results are drawn during the interview. The review interview held in week 21 also encompasses the agreements on the nature of the work and the supervision of the work to be carried out later in the learning period necessary to promote the required development of the trainee judicial officer. The review interview held in week 42 discusses the major issues for the external traineeship. The conclusions and agreements are recorded on the review form enclosed in the development dossier.

#### **Week 42 Assessment**

**What** Assessment

**Objective** Assess whether the results achieved by the trainee judicial officer are sufficient to continue to the public prosecutor’s office.

5. The administrative law: reviews and judgements course is comprised of three days of theory and a review day. Three draft judgements must be formulated for the review day. Time will need to be reserved for these draft judgements: the three draft judgements relate to “complete” cases and, consequently, will require the necessary time to prepare.





# **Curriculum, basic public prosecutor's office course**

**Duration: 12 months**

# Curriculum, basic public prosecutor's office course

**Duration: 12 months**

**Public prosecutors are responsible for the enforcement of criminal law legal order, a duty which results in a wide range of day-to-day activities. Public prosecutors manage the investigation of offences, handle criminal cases heard by single-judge and three-judge sections, maintain a wide variety of internal and external contacts, conduct administrative consultations, contribute to the formulation of policy, expertise and development of law, take part in projects, and counsel colleagues and public prosecutor's office staff. In other words, no two days are the same for public prosecutors and their agenda is, to some extent, unpredictable. For this reason public prosecutors are expected to exhibit flexibility and to be able to switch rapidly between the various tasks and duties and the various levels at which these tasks and duties are performed. Public prosecutors must be able to prioritise, make decisions rapidly and cope with pressures of time – and all without detriment to exercising due care. They also need to be able to cooperate and communicate with the wide range of persons and organisations that play a role in the criminal law system.**

**Public prosecutors, in contrast to judges, play a key role in criminal proceedings. Whilst judges examine and judge on the basis of the facts that are submitted to them, public prosecutors maintain direct contacts with the various parties involved in the proceedings: administrative decision-makers, investigating officers, legal assistance counsellors and members of the judiciary (such as the examining magistrates investigating criminal cases), as well as the suspects and the victims. For this reason public prosecutors need to make clear what they stand for both inside and outside the courtroom, which in turn requires an excellent ability to cooperate and situational awareness.**

**Public prosecutors also need to be able to cope with a wide range of social and, on occasion, political pressure: they always need to be aware that criminal law is at the centre of public attention and that they are the party that are expected to enforce criminal law by exercising the authority assigned to them by law. In conclusion, public prosecutors need to be true professionals in both substantive and procedural criminal law and a wide range of exceptional specialisms that transcend criminal law.**

Public prosecutors safeguard an independent judicial officer position within the hierarchical frameworks formulated by law and the policy frameworks. Public prosecutors participate in arriving at the truth in an impartial and objective manner, whereby they comply

in full with the statutory frameworks. They are on the watch for the exhibition of 'tunnel vision' by themselves and others, whereby they take express account of the interests of all the parties involved in criminal proceedings. Public prosecutors represent the interests of society without regard to their personal interests and without representing the interests of other parties. They endeavour to achieve personal improvement and the improvement of the organisation for which they are active.

Public prosecutors operate at an 'involved distance' within the criminal law chain: although they are involved in the activities of the partners in the chain and the participants in the criminal proceedings, they also remain their independence from these parties at all times, in particular with respect to the relationships with the police, victims and/or surviving relatives. Achieving this balance requires a great deal of empathy and a specific degree of independence and autonomy.

## General information about this programme period

### Preface

The entire course within the Public Prosecution Service – both the basic and advanced sections of the course – is based on the job profile of the district public prosecutor (hereinafter referred to as the 'public prosecutor'). This profile encompasses eight result areas that extend to areas that are not direct elements of the public prosecutor's "core business", such as the projects result area. The basic course focuses on the public prosecutor's core tasks, such as managing the investigation, making decisions on prosecution issues and acting at the hearings, etc. The public prosecutor's management tasks are primarily examined in an exploratory approach during the basic course. The training in the initial period is based on the job profile of public prosecutors involved in cases heard by a single-judge section and then expands to include a number of duties from the job profile of the district public prosecutor from week 27 (or earlier when the trainee judicial officer makes excellent progress).

Consequently, during the first six months the trainee judicial officers' cases are limited to all cases heard by a single-judge section – (the single-judge criminal section, sub-district court and minor offence section) to enable them to learn the 'profession' – repetitive cases that are dealt with in the customary manner. In the second six months of the course trainee judicial officers are also assigned regular (tailored) cases in the three-judge section. The trainee judicial officer's work will be limited to occasional

participation in the work involved within one of the specialisms in a public prosecutor's office (such as civil, economic fraud and environmental cases). Trainee judicial officers may, depending on the knowledge and experience they have developed earlier and/or their development, be assigned to more serious general criminal law cases towards the end of the course.

Trainee judicial officers at the public prosecutor's office adopt a different position from their position during the prior programme periods as members of the judiciary, since trainee judicial officers are assigned the role of magistrate from the beginning of the course, i.e. as deputy public prosecutor both at and outside the trial.

The course should offer scope for orientation tasks that are intended to enable trainee judicial officers to explore the duties of a public prosecutor and precede the independent performance of tasks. These exploration tasks can include, for example, involvement in a major investigation and tasks that are not directly related to the public prosecutor's tasks but which provide the important information required for (and which is a condition attached to) the performance of the duties of a public prosecutor in an adequate manner (the other orientation tasks). These latter tasks can include, for example, a traineeship with the police or the public administration. Each result area includes a specification of the relevant orientation tasks.

### Objective

The objective of the basic public prosecutor's office course is to provide trainee judicial officers the fullest possible insight into the work of public prosecutors by bringing them into contact with all the relevant result areas.

The course also needs to lay the firm criminal proceedings and criminal prosecution foundations that all trainee judicial officers require, irrespective of whether they ultimately opt for a career within the Public Prosecution Service or the judiciary.

The structure of the course is summarised in the learning assignment plan at the end of this section.

### Supervision

The trainer is an experienced public prosecutor with a demonstrable affinity with training and who has followed the training for trainers course. The trainer is responsible for the day-to-day training, serves as a vade mecum for all substantive questions and bears the primary responsibility for the preparation and completion of the programme period on the basis of the learning assignment plan, basic public prosecutor's office course enclosed at the end of this Section. Trainee judicial officers are assigned the same trainer(s) throughout the basic public prosecutor's office course.

The trainer ensures that the trainee judicial officer becomes acquainted with the organisation of the public prosecutor's office and the staff at the office. The trainer offers the trainee judicial officer every opportunity to copy his or her art and, consequently, shall continually need to tell the trainee judicial officer what the trainer thinks and decides, explain in advance, explain in retrospect and provide an insight into the trainer's considerations, objections, hesitation and uncertainty. In other words, the trainer will need to adopt an open and vulnerable stance towards the trainee judicial officer.

The trainer reserves time in his or her diary to answer the trainee judicial officer's questions, prepare for hearings and give feed-

back on the trainee judicial officer's activities, etc. The trainer checks the trainee judicial officer's writs of summons and other work, certainly at the beginning of the course, and always gives feedback. They also regularly attend (parts of) the trainee judicial officer's sittings. All work to be carried out by the trainee judicial officer – including the work assigned by others – is determined in consultation with the trainer and on the basis of the training programme. As the course continues the trainer gives the trainee judicial officer continually increasing scope to carry out work in autonomy, although the trainer also ensures that the trainee judicial officer runs the minimum possible underperformance risk. The trainer holds regular consultations with the trainee judicial officer's mentor and other officers involved in the course. When the trainer is expected to play a special role then this is specified for the relevant task.

### Type of work

The public prosecutor's offices in the Netherlands do not make a uniform distinction between the various types of cases. This study guide has adopted the classification made by the Public Prosecution Service, namely cases heard by a single-judge section, repetitive cases, standard cases and regular (tailored) cases. Cases heard by a single-judge section are heard by the single-judge criminal section, sub-district court and minor offence section. These are often repetitive cases that can be dealt with in the customary manner. Standard cases are understood as cases without an individual intake and with a completed investigation: these relate to most cases heard by a three-judge section. (Regular) tailored cases are cases focused on the general law theme and/or generic general law cases that can relate to all specialisms, i.e. cases that are not numbered amongst the extensive and complex (specialised and generalised) tailored cases that require a greater involvement of the public prosecutor and which are not prepared in a standard manner.

The work and the associated cases assigned to the trainee judicial officer have an increasing degree of complexity, preferably beginning with basic tasks and cases heard by a single-judge section – the sub-district court and minor offence sections and simple general criminal law cases heard by a three-judge section – and then continuing to repetitive cases, standard cases and, towards the end of the course, more complex work in regular (tailored) cases heard by a three-judge section. More information is given in the following result areas subsections.

Factors that can determine the degree of complexity of the work or a case include:

- the legal complexity
- the seriousness of the case
- cases dealt with in the customary manner or, conversely, tailored cases
- the degree of the underperformance risk to society
- the position with respect to evidence
- the number of suspects in the case
- the scope of the personal or social damage caused by the offence
- the severity of the punishment or the measure or their impact on the suspect or society
- the opportunity to control the investigation services
- the quality of the official reports and the other documents in the criminal proceedings
- the speed with which decisions need to be made

## Attainment levels

At the end of the basic public prosecutor's office course the trainee judicial officer is able to carry out the tasks of the public prosecutor in cases heard by a single-judge section in full autonomy, i.e. the trainee judicial officer can control the investigation required for the sub-district court and minor offence sections and simple general criminal law cases heard by a three-judge section in autonomy and can successfully complete these cases at the hearings. The trainee judicial officer can act at the hearings of regular (tailored) cases in reasonable autonomy.

The trainee judicial officer can carry out a number of the public prosecutor's more particular and complex actions in reasonable autonomy or with background support. The trainee judicial officer can also participate in simple projects and the associated consultations in a worthwhile manner.

The trainee judicial officer does not yet need to meet the standards specified for tasks, task criteria or competences marked with an asterisk \*.

The number of actions specified as the experiential standards in the result areas serve as rough guidelines: they are not specific targets that must be achieved in all circumstances – and certainly not the number of actions stated for tasks that depend on uncertain factors. The numbers cited under the result areas justify the expectation that trainee judicial officers have, as a result, acquired the experience required to perform tasks in that specific area in the appropriate manner.

## Result areas

The above review of the work of public prosecutors serves as the basis of the list of requirements imposed on the public prosecutor listed in the result areas of the following sections: each begins with a general introduction to the result area and continues with a specification of the tasks as derived from the job profile together with a summary of the criteria governing the assessment of the tasks, the most important competences required for the tasks and the specific knowledge required for the tasks.

### Result area: authority and direction of investigations

#### Outline

Public prosecutors exercise the authority and direction of the police and/or other investigation services, i.e. they control and direct specific investigations carried out by the police and other investigation services. They assess the specific situations and facts submitted to them. Speed is required in controlling the investigation services, speed which is achieved by obtaining an as complete as possible insight into the situation outlined by the services in as short a timeframe as possible. This speed also requires promptness of action in arriving at a decision after a careful consideration of the information, where trainee judicial officers need to learn how to cope with the limitations imposed on the police, in particular with respect to the available police staff capacity. Public prosecutors also need to offer the police scope to carry out a number of actions in autonomy, where they in effect exert control from a distance (at an involved distance).

In addition, public prosecutors monitor the quality of the investigation: they assess the legal feasibilities and infeasibilities, monitor compliance with the statutory limits and act as a legal consultant for the investigation services.

In conclusion, public prosecutors supervise the investigation organisations' compliance with the agreed policy relating both to the

number and types of cases.

#### Tasks

1. Exercise authority and direction of the police/investigation services\*
2. Control and direct the performance of specific investigations
3. Assess the situations and facts submitted by the police/investigation services
4. Decide on the application of and/or claim the imposition of coercive measures before the court
5. Convey the demarcations of investigations to the police/investigation services and supervise the fulfilment of the agreements reached within these demarcations
6. Monitor the quality of the work of the police/investigation services

#### Task criteria

*Re. 1 Exercise authority and direction of the police/investigation services<sup>1</sup>*

*Re. 2 Control and direct investigations*

- a) Make a clear analysis rapidly
- b) Assign priorities in the investigation and deployment of investigating staff
- c) Work in the customary manner, where relevant (fixed patterns)
- d) Give clear instructions to the investigating officers
- e) Formulate clear objectives
- f) Listen to the arguments of the investigating officers and weigh these against the personal assessment
- g) Exhibit respect for the investigating officers and their knowledge and experience
- h) Notify the supervisor of structural control problems
- i) Maintain involvement and distance in equilibrium. Make, notwithstanding the good relationship with (individual) investigating officers, decisions on the basis of the personal responsibility even when the investigating officers do not agree with the decisions
- j) Exhibit a self-assured attitude towards the investigating officers, but without appearing arrogant

*Re. 3 Assess the situations and facts submitted by the police/investigation services*

- a) Weigh situations and facts against each other within the agreed national, regional and/or policy frameworks
- b) Create solutions for investigation problems
- c) Make decisions on the investigation
- d) Search for, alongside confirmation, other hypotheses (falsification) in order to reach a better ultimate decision
- e) Demonstrate creativity and independence with respect to solutions and decisions
- f) Listen carefully and rapidly identify the core of the problem
- g) Involve the legal aspects, ethical and social considerations and sense of justice in the formation of an assessment, with awareness for the personal feelings
- h) Formulate the core of the facts and the cohesion between the facts in a legally justifiable, understandable and useable manner
- i) Respond adequately to unexpected twists
- j) Identify inconsistencies
- k) Estimate relevance correctly

<sup>1</sup> The trainee judicial officer does not perform this task of the public prosecutor at this point. For this reason no task criteria are specified for this task.

- Re. 4 *Decide on the application of and/or claim the imposition of coercive measures before the court*
- Be familiar with the regulations governing the imposition of coercive measures
  - Make rapid and carefully-considered decisions on the imposition of coercive measures with due regard for the balance between the social interests, interests of the investigation and the suspect's interests
  - Explain personal decisions clearly and correctly to the police, judge and suspect
- Re. 5 *Convey the demarcations of investigations to the police/ investigation services*
- Demonstrate knowledge of the national, regional and/or local policy frameworks governing the demarcations of investigations, the ability to apply the frameworks and the personal endorsement of the frameworks
  - Monitor the correct and efficient application of the frameworks
  - Convey the Public Prosecution Service's standpoint to the police/investigation services in a clear and loyal manner ('The Public Prosecution Service is one and indivisible')
- Re. 6 *Monitor the quality of the work of the police/investigation services*
- Adopt a critical attitude towards the products of the police/ investigation services and the personal organisation
  - Test these products against the relevant legal framework
  - Supervise compliance with the agreed quality frameworks and quality requirements
  - Give police officers and staff feedback on required improvements and changes
  - Adopt a critical attitude towards the personal quality and demonstrate this attitude within the organisation

### Central competences

- Decisiveness
- Ability to listen
- Situational awareness
- Forming a judgement
- Persuasiveness
- Problem analysis
- Cooperation

### Orientation tasks

- One-day traineeship at the office of the examining magistrate for the auditing of about 10 instances in which suspects are brought before the public prosecutor and witnesses are examined with the objective – in contrast to the basic criminal law course – to focus on the public prosecutor's role.
- Accompany an experienced colleague (as clerk) during a one-week roster or comparable roster. A one-week roster is understood as a total of five (5) working days.
- Attend one deliberation in chambers on detention in custody to learn how the regulations governing pre-trial detention are applied in practice.
- Accompany at least one major investigation whereby the trainee judicial officer is offered an opportunity to watch the public prosecutor at work and spar with the public prosecutor and, where relevant, carry out support work.
- Accompany an experienced public prosecutor during an evening defence counsel roster duty with the objective of experiencing how it is to make adequate decisions in a wide variety of cases

within a very short timeframe and, occasionally, at impossible times.

### Other orientation tasks

- At least two short "traineeships" (each of a maximum of one half-day) to watch the duties of various divisions of the police, such as the criminal intelligence unit, patrol division and incident room.
- A one-week traineeship with the detective force to gain an insight into the manner in which the police investigate more serious offences. This traineeship is literally an orientation traineeship for trainee judicial officers who have opted for the judiciary, but serves as excellent preparation for the advanced public prosecutor's office course for trainee judicial officers who have opted for the Public Prosecution Service since it will enable them to improve their management of investigations.
- A visit to the Probation Service (a maximum of one day) to gain an insight into the enforcement of sentences and the (option of) guidance by the Probation Service and its effects.
- A visit to a penal institution (a maximum of one day) to gain an insight into the enforcement of prison sentences.

### Experiential standard

Recommended:

- Work at least four (4) one-week rosters or comparable rosters, including the completion of cases originating in the relevant one-week rosters unless the cases are transferred to another department or officer. These cases can be taken into account in the experiential standard specified for the 'Handling criminal cases' result area. Four one-week rosters is understood as a total of 20 working days.
- The independent completion of at least eight (8) (minor) investigations relating to repetitive cases that can be dealt with in the customary manner
- The independent bringing of 20 suspects before the public prosecutor in cases relating to a variety of minor and more serious offences.

### Supervision

The trainer plays a central role in all these tasks and serves as master, mirror and coach, certainly at the beginning of the course. The trainer monitors the trainee judicial officer's development of 'involved distance' in relation to all parties involved in the investigation chain.

Records are made of the trainer's feedback on the requisite form included in the Learning assignment dossier.

### Specific knowledge/study tasks

Knowledge of the organisation's processes

Basic knowledge of coercive measures and special investigative powers

The Public Prosecution Service, police organisation and other relevant partners in the criminal law chain, such as the Probation Service.

The relevant Public Prosecution Service guidelines and directions.

### Result area: handling criminal cases

#### Outline

The duties of a public prosecutor handling criminal cases encompass the settlement of cases out of court, preparations for criminal cases and the handling of cases at hearings. Public prosecutors fulfilling these roles are, in the first instance, decision-makers:

they need to be able to use the available information and out-of-court settlement recommendation to make decisions on the further prosecution of suspects, on seizure, on the deprivation of illegally obtained advantage, compensation for victims and enforcement issues. However, they then also need to weigh the various interests against each other, such as the economic interests, social interests, the interests of an appropriate investigation and the interests of the suspects. When public prosecutors decide to prosecute then they also need to weigh the legal and judicial efficiency considerations and take account of the victims' interests when they formulate the writs of summons.

The handling of cases at hearings is one of the public prosecutor's most important activities and the activity that is most visible to society, since the various media report almost daily on the results of the Public Prosecution Service's work as seen at hearings. For this reason public prosecutors need to be good presenters and communicators: they need to be able to present their case in a manner that is clear to and persuasive for the general public and need to be self-assured without appearing to be arrogant and without rabble-rousing.

The public prosecutors' closing speech and demand for sentence position them as independent investigators of the factual and legal truth, and also emphasise that they are members of the Public Prosecution Service as manifested by their application of the framework and policy laid down by the Public Prosecution Service.

## Tasks

1. Make decisions to prosecute
2. Charge suspects with an offence in writs of summons
3. Prepare for hearings
4. Handle cases at hearings
5. Decide on the application of legal remedies and formulate appellant's letters
6. Decide/advise on enforcement issues with respect to criminal cases that have been handled

## Task criteria

### *Re. 1 Make decisions to prosecute*

- a) Assess whether specific facts constitute an offence
- b) Identify factual contrarities in a case dossier
- c) Assess the provability
- d) Assess a suspect's punishability
- e) Assess the relevance and organisational feasibility within the social context
- f) Make a readily-defensible selection from the various settlement modalities, such as dismissal, transaction, Public Prosecution Service settlement or summons to appear at a hearing, in part on the basis of the prevailing policy regulations and Public Prosecution Service systems such as BOS-Polaris
- g) Comprehend all the consequences of a decision
- h) Explain a decision in an understandable manner to all the parties involved in criminal cases, such as the police, victims and suspects
- i) Demonstrate that attention is given to the options for seizure and/or the deprivation of illegally obtained advantage, and takes the appropriate steps

### *Re. 2 Charge suspects with an offence*

- a) Formulate a legally correct writ of summons that does justice to the facts in the case dossier, the seriousness of the facts and the suspect's person
- b) Take account, when formulating writs of summons, of ju-

dicial efficiency issues by, for example, refraining from issuing an excessive number of writs of summons

- c) Make use, where relevant, of knowledge of the completion of seizure and the deprivation of illegally obtained advantage
- d) Assess the victims' interests and take these into account in the charges
- e) Be continually aware of personal feelings in criminal cases and can, as necessary, make these subservient to other interests or the feelings of others

### *Re. 3 Prepare for hearings*

- a) Assess the facts in terms of provability and worthiness of punishment
- b) Identify the strong and weak points of a case
- c) Anticipate possible defences
- d) Assess factual and legal aspects on the basis of legislation and regulations, case law, Public Prosecution Service policy and guidelines and other policy and guidelines
- e) Take ethnical and social considerations and sense of justice into account when forming an assessment
- f) Tailor the approach and the tone to be adopted to the nature of the case, taking account of the specific aspects of each case
- g) Prepare or complete case dossiers or make the arrangements for their preparation by other Public Prosecution Service staff
- h) Has an insight into the issues to be addressed in the closing speech, has prepared the closing speech and has prepared the manner in which the closing speech will be presented

### *Re. 4 Handling cases at hearings*

- a) Present the core of and cohesion between the facts to the judge, suspect and victims in a convincing, understandable and legally-justifiable manner
- b) Test statements for contrariness with established facts on the basis of ready knowledge of the case dossier
- c) Respond to factual and legal incidents in an adequate manner
- d) Estimate the relevance of variances to the further course of the case
- e) Ask efficient questions
- f) Form an opinion on situations that cannot be interpreted in an unequivocal (legal) manner within a short time frame
- g) Give a considered and convincing closing speech with a blend of legal quality, substantiation of the judicial finding of fact and social relevance
- h) Take account of the interests of those involved in the criminal case and sensitivities in the criminal case when giving the closing speech, avoiding rabble-rousing and empty rhetoric
- i) Formulate the demand for sentence within the prevailing statutory and policy frameworks, such as the Public Prosecution Service guidelines
- j) Exhibit involved distance, for example by supplementing attention for the victim's interests with attention for the suspect's person: hearings do not constitute personal 'wars' between public prosecutors and suspects
- k) Have respect for the judge and the other participants in criminal cases, such as lawyers, and demonstrate involvement in the proceedings at the trial
- l) Exhibit a self-assured attitude, but without appearing ar-

rogant

- m) Adopt the appropriate tone
- n) Play the role of an active listener: page through/read the dossier as little as possible

*Re. 5 Application of legal remedies*

- a) Make, within the agreed policy frameworks, a legally correct and socially acceptable decision on the application of legal remedies
- b) Formulate a legally correct appellant's letter that is restricted to points that need to be decided by a superior court
- c) Formulate the reasons why the public prosecutor disagrees with the judge's decision in a concise, clear and explicit manner

*Re. 6 Decide and advise on enforcement issues*

- a) Demonstrate legal and practical knowledge of the enforcement of sentences and measures
- b) Formulate the public prosecutor's standpoint, in a clear and explicit manner, on the enforcement of a sentence when this diverges from the customary form of enforcement

### Central competences

- Decisiveness
- Ability to listen
- Verbal fluency
- Situational awareness
- Forming a judgement
- Persuasiveness
- Problem analysis
- Written fluency
- Self-confidence

### Orientation tasks

- Audit two (2) Public Prosecution Service settlement hearings and/or Public Prosecution Service community rehabilitation hearings
- Attend part of a mega case or the handling of a major investigation team case at the hearing since these cases have a major impact on society and it is important that trainee judicial officers are confronted with these at an early stage.
- Attend four (4) juvenile hearings to become acquainted with juvenile criminal law.
- Pre-process at least 20 standard cases for the single-judge section and three-judge section. These cases should be varied both in terms of the seriousness and the substance (legal aspects). The pre-processing should include the formulation of the line of proof and the charge. Public prosecutors usually formulate the line of proof and charge solely for complicated and/or sensitive cases and or cases that are not dealt with in the customary manner (tailored cases): the public prosecutor assesses the clerk's formulation of the line of proof and charge in all other cases. Trainee judicial officers who begin by formulating the line of proof and charge acquire the knowledge and experience they will need later when assessing the clerk's work.
- Pre-process at least 10 tailored cases for the single-judge section and three-judge section. These cases should be varied both in terms of the seriousness and the substance (legal aspects).

### Experiential standard

- It is recommended that trainee judicial officers handle at least

the following:

- 2 Public Prosecution Service settlement hearings and/or Public Prosecution Service community rehabilitation hearings
- 8 Sub-district court hearings (including minor offence cases)
- 32 cases heard by a single-judge section, with a range of seriousness and substance
- 30 cases heard by a three-judge section (about 10 half-days' hearings at a three-judge section ), namely: 25 standard cases without an individual intake and with a completed investigation, 3 (three) standard cases on the basis of a personal investigation and two (2) complicated cases heard by a three-judge section on the basis of a personal investigation.

### Supervision

At the beginning of the course the trainer checks the writs of summons, pre-processing and other documents relating to the handling of criminal cases. The trainer also serves as the central vade mecum for all associated questions. In addition, the trainer assesses the trainee judicial officer's actions at the hearing and gives him or her useful tips for the improvement of these actions. To this end the trainer, and certainly at the beginning of the course, regularly attends the trainee judicial officer's hearings and regularly requests information from the judges hearing cases in which the trainee judicial officer acts. The trainer monitors the trainee judicial officer's development into an 'independent finder of the truth'. Records are made of the trainer's feedback on the requisite form included in the learning assignment dossier.

### Specific knowledge/study tasks

BOSPolaris (a punishment amount and prosecution system)

The Public Prosecution Service's hearings set

The regulations governing seizure, the simple deprivation of illegally obtained advantage and the enforcement of sentences and measures.

The relevant Public Prosecution Service guidelines and directions.

### Result area: victim contacts and information

#### Outline

The victim occupies a special position in criminal proceedings: public prosecutors need to give due consideration to this position. Public prosecutors are expected to be able to project themselves into the victim's position and to ensure that the victim has the feeling of being heard in the communications with the victim by providing him or her understandable and adequate information and, where required, by giving advice. Conversely, public prosecutors need to avoid becoming identified with the victim: they must maintain their role as 'independent finder of the truth' at all times.

#### Tasks

Arrange for and safeguard the position of the victim in the criminal case

#### Task criteria

- a) Demonstrate attention for the victim's position and interests during the investigation and the settlement of the criminal case
- b) Apply the legal and policy regulations governing victims
- c) Represent the victim's interests without identifying with the victim
- d) Provide for the provision of good, timely and adequate information to victims
- e) Give the victim an understandable but legally justifiable explanation

nation of the progress in the criminal case and the (intended) settlement of the case, whereby the victim receives an open and honest explanation of what is and is not feasible

- f) Give the victims understandable but legally justifiable advice on their rights and obligations in the criminal case. This advice is concise and realistic
- g) Give the victim room to have his or her say and exhibit understanding for the victim's position, but without unconditionally taking the victim's side

### Central competences

- Verbal fluency
- Situational awareness
- Persuasiveness
- Sensitivity
- Self-confidence

### Orientation tasks

Visit to the Victim Support Agency to gain an insight into the organisation of victim support in practice.

Attend three different forms of victim interviews conducted by experienced officers/trainers to gain an insight into the issues that can be addressed in a good victim interview.

Experiential standard

Recommended:

- conduct at least two victim interviews in simple cases

### Supervision

The trainer involves the trainee judicial officer in his or her personal victim interviews and allows the trainee judicial officer to conduct victim interviews under the supervision of the trainer or an experienced colleague public prosecutor. The trainer and trainee judicial officer subsequently reflect on the course of the interview, whereby the trainer gives directions for possible alternative approaches and gives consideration to the communication levels revealed during the interview.

Records are made of the trainer's feedback on the requisite form included in the learning assignment dossier.

### Specific knowledge/study tasks

Public Prosecution Service victim-care directions

## Result area networking

### Outline

Public prosecutors need to possess a large network of internal and external contacts if they are to be in command of the enforcement of criminal law legal order, since this requires effective communications with partners in a range of disciplines, in particular the participants in the criminal law chain.

### Tasks

Construct and maintain operational internal and external networks for investigation and prosecution

### Task criteria

- a) Make appointments with partners in the chain in autonomy
- b) Give valuable, concise feedback on the visits
- c) Communicate in a concise and effective manner with others than direct partners and staff
- d) Exhibit respect for other participants in the criminal law chain
- e) Present him or herself as a representative of the Public Prosecution Service

Public Prosecution Service

### Central competences

- Situational awareness
- Persuasiveness
- Cooperation
- Self-confidence

### Orientation tasks

Although the construction of a personal network is not absolutely necessary during the basic public prosecutor's office course it is necessary to experience this network by visiting partners in the criminal law chain with the trainer or other experienced public prosecutors and become acquainted with the work of these partners in the criminal law chain and with their importance to the chain. Consideration can be given to participation in consultations with various partners in the criminal law chain, in particular with the police. More opportunities are listed in the orientation tasks for other result areas.

### Supervision

The trainer uses his or her practice to enable the trainee judicial officer to experience the importance of a large network to the work of a public prosecutor. At the beginning of the course the trainee judicial officer takes part in the trainer's network whenever possible (and when worthwhile). The trainee judicial officer, with coaching from the trainer, subsequently begins to develop a personal network.

Records are made of the trainer's feedback on the requisite form included in the learning assignment dossier.

### Specific knowledge/study tasks

Knowledge of the police organisation.

## Result area: administrative consultations

### Outline

Public prosecutors hold frequent consultations with the local administration, police and (social) organisations on the formulation and implementation of policy measures relating to issues such as road traffic, the approach to specific districts or domestic violence to arrive at the harmonisation of the work of the participants in the criminal law chain. In addition, they also contribute to local policy-making and promote the harmonisation of the work of judicial and non-judicial organisations. Consequently, public prosecutors need to possess effective communication skills to convey the Public Prosecution Service's standpoint to the various disciplines and the 'strength' to abide by this standpoint.

### Tasks

1. Consult with external partners in the criminal law chain at case and policy level
2. Attend non-case-related consultations with external partners in the criminal law chain.

### Task criteria

*Re. 1 Consult with external partners in the criminal law chain at case and policy level*

- a) Set down the Public Prosecution Service's role explicitly in case-related consultations with partners in the chain
- b) Convey the Public Prosecution Service's standpoint in a loyal, clear and explicit manner to the partners in the chain and safeguard the Public Prosecution Service's interests

in these consultations

- c) Be aware of the relevant policy agreements
- d) Maintain involvement and distance in equilibrium
- e) Make decisions on the basis of the personal responsibility, even when the partners in the chain do not agree with the decisions
- f) Exhibit respect for the partners in the chain, their work and their responsibilities

*Re. 2 Attend non-case-related consultations with partners in the chain*

- a) Demonstrate knowledge of the policy frameworks governing the demarcations of the work, the ability to apply the frameworks and the personal endorsement of the frameworks
- b) Prepare for consultations to ensure that they are worthwhile
- c) Formulate the most important points for consultations in a clear, explicit and legally correct manner
- d) Propose potential outline solutions for problem issues
- e) Make brief and concise minutes of consultations

### Central competences

- Verbal fluency
- Situational awareness
- Organisational sensitivity
- Persuasiveness
- Cooperation
- Strength

### Orientation tasks

Trainee judicial officers do not initially take independent part in administrative consultations other than case-related consultations. Since administrative consultations are an important element of the public prosecutors' work trainee judicial officers will need to become acquainted with this result area by attending a number of consultations and supporting the relevant public prosecutor during the consultations.

Recommended:

- Regular attendance at consultations with the police on specific types of criminal cases
- Participation, together with the trainer or another experienced public prosecutor, in a variety of consultations with different parties in the chain which are focused on one or more general issues
- A visit to a municipal administration to gain an insight into the administration's role in the criminal law chain and in the maintenance of public order
- At least two (2) days' work at a front office
- Attendance at an event to see how the GBO ('joint administrative consultation') structure works (for example, TT Assen, Four Days Marches Nijmegen, high-risk football matches or dance parties)

### Supervision

Records are made of the trainer's feedback on the requisite form included in the learning assignment dossier.

### Specific knowledge/study tasks

Knowledge relating to the issues that are addressed in the aforementioned consultations in which the trainee judicial officer takes part.

## Result area: policy, expertise and development of law

### Outline

The Public Prosecution Service's duties and responsibilities in the criminal law chain encompass the full responsibility for the development, detailing and implementation of criminal law policy, whereby the public prosecutor makes use of a large number of sources of information, such as criminal trend analyses, threat trend analyses and administrative reports. The Public Prosecution Service has an insight into developments, identifies trends and makes decisions on their consequences for criminal procedure. The Public Prosecution Service uses this information, in cooperation with the partners in the chain, to assign priorities to the investigation and prosecution of offences, submit recommendations on preventive measures and develop or make a substantial contribution to the realisation and implementation of policy projects. These policy projects relate to issues such as prohibition orders, preventive searching, tackling hemp nurseries, and nudist recreation, etc.

The Public Prosecution Service also advises on new national and local legislation and regulations. The Public Prosecution Service, in conclusion, also develops knowledge and expertise in both general criminal law fields and specialised fields.

### Orientations tasks

This result area encompasses solely an orientation task for trainee judicial officers. It is recommended that, when feasible and under the supervision of the trainee judicial officer's trainer, the trainee judicial officer draws up a special policy memorandum. A note of this is made in the trainee judicial officer's learning assignment dossier.

### Central competences

- Situational awareness
- Organisational sensitivity
- Written fluency

## Result area: projects

### Outline

The Public Prosecution Service participates in a large number of local and regional non-case-related and strategic projects that have a relationship with criminal procedure, whereby the Public Prosecution Service often acts as a 'spider in the web'. All public prosecutors with some degree of experience will participate in these projects.

### Orientation tasks

This result area encompasses solely an orientation task for trainee judicial officers. It is recommended that trainee judicial officers, in consultation with their trainer, should at least become acquainted with a specific local project that links up with their personal experiential world. A note of this is made in the trainee judicial officer's learning assignment dossier.

### Central competences

- Situational awareness
- Organisational sensitivity

## Result area: intervention, causes and supervision

## Outline

Public prosecutors should ensure that their knowledge remains up to date and make a substantive contribution to the performance of their colleagues. Collegial intervision requires the willingness to reflect on the personal performance and the performance of others and the willingness to make use of the personal observations and observations of others in an endeavour to achieve improvements.

## Tasks

1. Participate in intercollegial intervision
2. Follow courses
3. Give feed back to public prosecutor's office clerks and administrative staff

## Task criteria

### Re. 1 *Participate in intercollegial intervision*

- a) Be open to feedback and demonstrate what is done with feedback in the personal performance
- b) Take the initiative to ask for feedback from colleagues, other staff, judges and partners in the chain
- c) Give positive and negative feedback and feedback on experiences directly to the relevant member of staff
- d) Adopt a positive critical attitude towards colleagues and the organisation and demonstrate this at the appropriate times, for example during team or public prosecutor's office meetings<sup>\*1</sup>
- e) Make a substantive contribution to the performance of colleagues\*

### Re. 2 *Follow courses*

- a) Take active part in and make adequate preparations for courses
- b) Take part in internal courses and/or meetings, where relevant
- c) Attend meetings such as punishment amount consultations and knowledge lunches whenever possible

### Re. 3 *Give feed back to public prosecutor's office clerks and administrative staff*

- a) Explain the expectations clearly to support staff
- b) Give positive and negative feedback and feedback on experiences directly to the relevant member of staff

## Central competences

- Organisational sensitivity
- Cooperation
- Strength
- Self-reflection

## Orientation tasks

Trainee judicial officers can explore the approach their colleagues at the public prosecutor's office adopt to their professionalisation. This can be achieved by holding discussions with colleagues at their workplace to review the manner in which they give shape to intervision, training and supervision.

## Experiential standard

The result area: Intersivision, training and guidance does not actually include individual tasks for trainee judicial officers, since trainee judicial officers following the public prosecutor's office course receive intensive training and supervision from their trainers, experienced colleagues and managers.

Recommended:

- Follow internal courses (suitable for trainee judicial officers)
- Attend meetings such as punishment amount consultations and knowledge lunches

## Supervision

See above under "Supervision", under "General information about the programme period", and under the various result areas.

Records are made of the feedback on the requisite forms included in the Learning assignment dossier.

## Specific knowledge/study tasks

None.

<sup>1</sup> The tasks indicated with an \* are not carried out during the trainee judicial officer course.

# Learning assignment plan

## Basic public prosecutor's office course

### Duration: 12 months

This section of the study guide outlines the programme for each week of the basic course in the public prosecutor's office.

#### Week 1-2 Introduction to the public prosecutor's office

**What** Intake interview with trainer(s)  
**Objective** To make the acquaintanceship of each other and of the public prosecutor's office, discuss earlier learning and work experiences, discuss the structure of this period, discuss the attainment levels for this period (see earlier in this section), reach agreement on expectations about conduct, supervision by the trainer(s), feedback, the review interview and the role played by the learning assignment dossier and development dossier. Important points are noted on the intake form enclosed in the development dossier. The trainee judicial officer ensures that the development dossier with information about the previous period is placed at the disposal of the trainer(s) prior to the meeting. This enables the trainer(s) to become acquainted with the contents of the dossier and ensures that the developments in the previous period serve as the overture for this new training period.

**What** Acquaintanceship meeting with the chief public prosecutor and the team leader  
**Objective** Acquaintanceship with the chief public prosecutor, as the senior manager, and the team leader as the day-to-day supervisor to obtain clarity about the role of the chief public prosecutor and the team leader in the course, gain an impression of the broader context of the area in which the trainee judicial officer works, exchange of expectations.

**What** Acquaintanceship with colleagues  
**Objective** Acquaintanceship with the colleagues at the workplace. These introductions can be initiated by the trainer or, self-evidently, by the trainee judicial officer.

**What** Further acquaintanceship with the organisation and the working methods within the department/team  
**Objective** Become familiar with the organisation of the public prosecutor's office, in particular the front office, administration, the dossier routing and the sources of information that play a role at the public prosecutor's office, for example by receiving an explanation from an administrative staff member and/or a public prosecutor's office clerk and by visiting a number of administrative departments to become familiar with their work. Become familiar with and receive training from the public prosecutor's office in the GPS ('integrated process system criminal law') (including BOS/Polaris).

**What** Acquaintanceship meeting with the chairman of the criminal law section, the head prosecutor and the contact prosecutor of the public prosecutor's office and the team  
**Objective** Become familiar with the broader context within which the trainee judicial officer operates and to exchange expectations.

#### Week 2-4 Orientation and learning

**What** Introduction course in the profession of public prosecutor  
 Charge method course  
**Objective** Acquisition of the knowledge and skills required to carry out the tasks within the public prosecutor's office in an appropriate manner.

**What** Audits of various public prosecutors at hearings conducted by a single-judge section  
**Objective** Attend hearings to obtain a feeling of the procedure and the public prosecutor's role. Observe the public prosecutor's approach to giving shape to the personal working method (to copy the art of role modelling)

**What** Prepare for and handle the first hearings conducted by a single-judge section

Objective Acquire the initial experiences and prepare for the charge method course and presentation at trials course

What Audit two Public Prosecution Service settlement hearings and/or Public Prosecution Service community rehabilitation hearings

Objective Explore Public Prosecution Service settlement within the context of the 'Settlement of criminal cases' result area

What Orientation tasks, focused on the police. Short "traineeships" (of a maximum of 2 half-days) with the police (for example, the incident room, criminal intelligence unit, patrol division and/or emergency aid)

Objective Acquire knowledge about this partner in the chain, make the acquaintance of the police, examine how information about courses is collected and develop a network

### Week 5-18 Working and learning

What Traffic regulations course (month 2)  
Presentation at trials course (month 3)  
as well as participation in professional development courses organised by the public prosecutor's office, local intervision, punishment amount consultations and knowledge lunches

Objective Acquisition of the knowledge and skills required to carry out the tasks.

What Prepare for and handle one Public Prosecution Service settlement hearing and/or one Public Prosecution Service community rehabilitation hearing

Objective Acquire knowledge of and experience in Public Prosecution Service settlement hearings.  
N.B. Trainee judicial officers have acquired experience in conducting hearings as a judge during the previous programme periods, whereby they also acquired experience in examining litigants. Consequently, trainee judicial officers may now be expected to possess the basic knowledge and experience required to 'handle' Public Prosecution Service settlement hearings. For this reason the programme does not include a course for this element. The trainee judicial officers are responsible for collecting the information required to conduct settlement hearings by attending settlement hearings and obtaining information from experienced clerks and the trainer.

What Intervision (1 meeting)

Objective Exchange and share experiences, knowledge and insights with colleagues.

What Audits of the work of various public prosecutors at hearings conducted by a single-judge section

Objective Attend hearings to obtain a feeling of the procedure and the public prosecutor's role. Observe the public prosecutor's approach to giving shape to the personal working method (to copy the art of role modelling)

What Pre-processing of standard cases heard by a single-judge court section

Objective Working and learning to achieve the attainment levels (see study guide).

What Prepare for and handle hearings conducted by a single-judge section

Objective Working and learning to achieve the attainment levels (see study guide).

What Orientation task: accompany (as clerk) with an experienced public prosecutor during a one-week roster (5 working days).

Objective Working and learning to achieve the attainment levels (see study guide). The trainee judicial officer selects suitable cases from the one-week roster and then prepares for and handles the settlement of the cases at the hearings. Involvement in bringing suspects before the public prosecutor and in demanding detention in custody under supervision.

What Orientation task: attend one deliberation on chambers on detention in custody

Objective Learn how the regulations governing pre-trial detention are applied in practice

What Orientation task: attend at least one juvenile court hearing

Objective Appreciate the importance of juvenile criminal law in the public prosecutor's work

### Week 18-26 Working and learning

What Search and seizure course (month 4)  
Dealing with pressure during the work course (month 5)  
as well as participation in courses organised by the public prosecutor's office, local intervision, punishment amount consultations and knowledge lunches

Objective Acquisition of the knowledge and skills required to carry out the tasks.

What Pre-processing of standard cases heard by a single-judge court section

Objective Working and learning to achieve the attainment levels (see study guide).

What Prepare for and handle hearings conducted by a single-judge section and one hearing conducted by a three-judge section

Objective Working and learning to achieve the attainment levels (see study guide).

What Orientation task: Accompany (as clerk) with an experienced public prosecutor during a one-week roster (5 working days).

Objective Working and learning to achieve the attainment levels (see study guide). The trainee judicial officer selects suitable cases from the one-week roster and then prepares for and handles the settlement of the cases at the hearings. Involvement in bringing suspects before the public prosecutor and in demanding detention under supervision.

What One-week roster. The first personal one-week roster before week 26, with an experienced colleague as backup.

Objective Working and learning to achieve the attainment levels (see study guide). The trainee judicial officer selects suitable cases from the one-week roster and then pre-

	<p>prepares for and handles the settlement of the cases at the hearings. Involvement in bringing suspects before the public prosecutor and in demanding detention under supervision.</p>		<p>three-judge section, of which some with (simple) deprivation aspects</p>
Objective	Working and learning to achieve the attainment levels (see study guide).	Objective	Working and learning to achieve the attainment levels (see study guide).
What	Accompanying an experienced public prosecutor during investigations.	What	Prepare for and handle hearings conducted by a single-judge court section which are of a special nature, such as theme hearings, fast track hearings and juvenile hearings.
Objective	Working and learning to achieve the attainment levels (see study guide).	Objective	Working and learning to achieve the attainment levels (see study guide).
What	Audit experienced public prosecutors during hearings conducted by a three-judge section.	What	Prepare for and handle standard hearings conducted by a three-judge section
Objective	Prepare for personally handling standard cases heard by a three-judge section during the 2nd half of this course	Objective	Working and learning to achieve the attainment levels (see study guide).
What	Orientation tasks	What	Accompany at least one major investigation (carry out support work)
	<ul style="list-style-type: none"> <li>- one-day traineeship at the office of the examining magistrate (audit bringing suspects before the public prosecutor and examining witnesses)</li> <li>- visits to a penal institution (maximum of 1 day) and to the Probation Service (maximum of 1 day)</li> </ul>	Objective	Acquire experience and collect knowledge
Objective	Collect knowledge about the Public Prosecution's partners in the chain. Reflect on the Public Prosecution Service's position in the criminal law chain. Build up a network.	What	Carry out a one-week roster (5 working days) in independence, with an experienced colleague as backup.
What	Orientation tasks:	Objective	Working and learning to achieve the attainment levels (see study guide). The trainee judicial officer selects suitable cases from the one-week roster and then prepares for and handles the settlement of the cases at the hearings.
	<ul style="list-style-type: none"> <li>- participate in various consultations with the local administration</li> <li>- work at a front office (2 days)</li> <li>- Attend a large event in the GBO ('joint administrative consultation') structure</li> </ul>	What	Attend victim interviews conducted by the trainee judicial officer's trainer or an experienced public prosecutor.
Objective	Gain an insight into the public administration's role in the criminal law chain and in the maintenance of public order	Objective	Working and learning to achieve the attainment levels (see study guide).
<b>Week 27-52 Working and learning</b>			
What	Participation in courses organised by the public prosecutor's office, local intervention, punishment amount consultations and knowledge lunches	What	Accompany an experienced public prosecutor during a (weekend) defence counsel roster to personally experience the content of a defence counsel roster duty.
Objective	Acquisition of the knowledge and skills required to carry out the tasks.	Objective	Working and learning to achieve the attainment levels (see study guide). Acquire experience.
What	Attend part of a mega case or the handling of a major investigation team case	What	Carry out relatively simple investigations with an experienced public prosecutor as backup.
Objective	Become acquainted with and experience the impact of cases of this nature on society and to take account of this impact when dealing with these cases	Objective	Working and learning to achieve the attainment levels (see study guide).
What	Orientation task: one-week traineeship with the detective force.	What	Accompany an experienced public prosecutor in a complex (tailored) investigation.
Objective	Gain an insight into the procedure used to investigate more serious offences. Build up a network.	Objective	Working and learning to achieve the attainment levels (see study guide).
What	Orientation task: become acquainted with a local, non-case-related project and the public prosecutor's role in these projects	What	Independently carry out bringing suspects before the public prosecutor, management of pre-trial detentions and attendance at hearings conducted by the examining magistrate
Objective	Gain an insight into the Public Prosecution Service's role in non-case-related and strategic projects	Objective	Working and learning to achieve the attainment levels (see study guide).
What	Pre-process and handle standard cases heard by a	What	Orientation tasks: participate in policy consultations and administrative consultations, prepare a policy memorandum and visit relevant partners in the chain.
		Objective	Collect knowledge about the Public Prosecution Service's partners in the chain. Experience administrative

consultations. Reflect on the Public Prosecution Service's position in the criminal law chain. Build up a network.

What Conduct victim interviews in simple cases in independence, under the supervision of an experienced public prosecutor

Objective Working and learning to achieve the attainment levels (see study guide).

#### **Week 12 and 36 Monitoring progress, results and the process**

What Progress meetings with trainer(s)

Objective The trainer(s) will hold a progress meeting with the trainee judicial officer in week 12 and week 36. The objective of this meeting is to reflect on the progress in the learning process, discuss experiences and reach (supplementary) agreements to promote the trainee judicial officer's development. The progress form enclosed in the development dossier is used for this purpose.

#### **Week 24 and 48 Review progress and results**

What Review interviews with trainer(s)

Objective The trainer(s) will hold a review interview with the trainee judicial officer in week 24 and week 48 to review the trainee judicial officer's progress relative to the attainment levels stated in the study guide. The review form enclosed in the development dossier is used for this purpose.

#### **Week 50 Assessment**

What Assessment

Objective Assess whether the results achieved by the trainee judicial officer are sufficient to continue to the advanced course.





# **Curriculum, advanced criminal law course**

**Duration: 10 months**

# Curriculum advanced criminal law course

**Duration: 10 months**

## Outline of the position

**The work of criminal court judges is of a more public nature than the work of other judges<sup>1</sup>, as is manifested by the open hearings, the presence of the media (press, radio, TV and the Internet) and public in the courtroom and the politicians' interest. Consequently, this imposes even more stringent requirements on the judge's performance at the hearings and the justification of the decision (in understandable language).**

Criminal court judges need to be able to comprehend the contents of a dossier (that may be bulky, disorderly and difficult to read) within a specific (often short) period of time, make a selection of the facts and circumstances that may be of relevance for any decision to be reached in the case and become familiar with these facts and circumstances to an extent that ensures that they have a ready knowledge of the details and can conduct the case at the hearing without (continually) needing to consult the dossier. In addition, criminal court judges need to be able to achieve a suitable equilibrium between the speed of the proceedings and the collection of the information required to make a decision of high-quality content: they are, in particular, expected to maintain this equilibrium when confronted with a high workload.

The judge's formal decision is reached in accordance with a rigid framework, beginning with the preliminary questions, such as the validity of the summons, continuing with an review as to whether the fact can be legally and convincingly proven, whether the fact constitutes an offence, whether the offender is punishable and concluding with the determination of an appropriate sanction. The proceedings at the hearing also follow this line, whereby a distinction is made between the discussion of the fact and the discussion of the personal circumstances. Criminal court judges need an adequate insight into local, national and international developments in rendering substantive judgements. This in turn requires a great political and social awareness.

## General information about this programme period

### Objective

Whilst the basic criminal law course placed the emphasis on acquiring judicial skills in chambers, analysing cases and learning how to formulate decisions, the trainee judicial officers are now ready to act as the junior judge at hearings: they have already,

under the supervision of their trainer, acquired some experience of hearings in the civil law and administrative law sections and have independently acted as the deputy public prosecutor right from the beginning of their public prosecutor's office course. Consequently, the trainee judicial officers are now deputy judges and are, as such members of the three-judge section.

Attention is devoted to the independent handling of cases at hearings, the assessment of drafts formulated by court registrars, professionalisation, communication techniques and dealing with complex cases and pressures of time. Efficiency considerations now also begin to play a role in the handling of hearings. In addition, the trainee judicial officers now also reflect on their personal formation of a judgement and decision-making.

The structure of the course is summarised in the learning assignment plan at the end of this section.

### Attainment levels

At the end of the advanced course the trainee judicial officer can carry out the following tasks (including the somewhat more complex tasks) in a great deal of autonomy, whereby account is taken of the specified task criteria, competences and experiential standards. A trainee judicial officer who does not need to follow an external traineeship is required to carry out the specified tasks in complete autonomy.

### Result areas

The above review of the general work of criminal court judges serves as the basis of the list of requirements imposed on the criminal court judge listed in the result areas of the following sections: each begins with a general introduction to the task and continues with a specification of the criteria governing the assessment of the task, the most important competences for the task and the specific knowledge.

Neither the learning capacity, self-reflection and other management competences nor what are referred to as "moral competences" are – where relevant – specified separately.<sup>2</sup> The general knowledge required for this part of the course is listed below.

### Knowledge

- Criminal Code, Code of Criminal Procedure and Code of Special
- Criminal Law
- International law
- Law of evidence and defence

<sup>1</sup> The outlines of the position and the result areas are inspired by Essentiële situaties die specifiek zijn voor de strafsector in het functieprofiel rechter and are largely derived from De strafrechter en Profiel, Deskundigheidsbevordering van de strafrechter (2008).

- Legal search systems, also digital (for example, Intro landelijk/ Porta Iuris criminal law portal; Porta Europea; Council of Europe website)
- PROMIS Best Practices (can be consulted via Intro Landelijk)
- Design and content of (PROMIS) judgements
- The organisation's processes
- Handboek deskundigen voor de strafrechter ('Criminal court judges' expert manual')

### Types of cases

The cases assigned to trainee judicial officers for hearing during the sessions (and, consequently, including the responsibility for the preparation of the cases) preferably exhibit an increasing degree of complexity. Factors that can determine the degree of complexity include:

- the number of suspects
- suspects with a disorder/handicap
- the number of facts
- confession/denial
- experts' reports
- examining witnesses/experts at the hearing
- aggrieved party/victim's statement
- legal complexity

## Result area: preparing for the hearing

### Outline

Criminal court judges must be able to prepare their cases quickly and thoroughly: they need to be able to extract the essential factual and legal problems from the dossier and rapidly form a (sound) opinion without prejudice. They also need to form an impression of the manner in which the hearings may proceed and anticipate (on the basis of the contents of the dossier) as many potential pitfalls in the case and potential alternatives/scenarios as possible. This requires good planning and proactive thinking. Criminal court judges inform and instruct the relevant officers (such as the ushers, security and the briefing judge) as necessary and, where possible, must be able to cooperate with and delegate to a member of the legal staff.

### Tasks

1. Analyse the criminal dossier
2. Think through the plan of approach and scenarios

### Task criteria<sup>3</sup>

Re. 1 Analyse the criminal dossier

- a. Check the dossier with respect to procedural issues (including the service of the summons or calling of those involved) and missing documents
- b. Record all relevant facts, in part in view of the legal framework and the procedural attitude of the suspect (confession/denial)
- c. Record all possible evidence
- d. Record all possible defence
- e. Record all relevant personal circumstances
- f. Take cognisance of relevant articles of acts, case law, literature and punishment orientation points

Re. 2 Think through the plan of approach and scenarios

- a. Determine which questions still need to be put to the suspect/witnesses/experts and at which time
- b. Determine which investigations still need to be carried out and at which time

- c. Make an efficient and purposive selection of the definitive plan of approach
- d. When doing so, give consideration to less obvious alternatives (out of the box thinking)
- e. Make a convincing argument for this selection
- f. Demonstrate awareness of the personal actions and predispositions and open these to discussion
- g. Inform and instruct all the relevant parties, where relevant (such as the ushers, security guards and the briefing judge)

### Central competences

- Forming a judgement
- Prioritisation
- Problem analysis
- Cooperation
- Written fluency

### Experiential standard

See Result area: the hearing

### Supervision

The trainee judicial officer discusses the cases to be heard during the sessions with the trainer before the sessions. During the course the emphasis shifts from a comprehensive discussion of cases to the preparation of cases in a lesser or greater degree of independence. The trainer always discusses the notes for each hearing well in advance, gives any further explanation that may be necessary and/or asks the trainee judicial officer to carry out further studies.

## Result area: the hearing

### Outline

Criminal court judges need to hold many reins during hearings: they are responsible for order in the courtroom, must manage the proceedings, maintain order, make use of various communication styles and be able to switch readily. They must also be able to listen carefully, enter into discussions and ask further questions separate from the documents in the dossier. They must also be able to conduct the hearing without continually paging through the dossier. It needs to be clear that the judge is in control, but without the judge being arrogant or exhibiting dicatorial conduct. Criminal court judges need to be able to apply the principle of the right to hear and be heard, state the problems and points that may be open to doubt and, consequently, for which a decision is required, collect as much information as possible about these points, conclude the discussion and then reach an adequate decision. As a result, criminal court judges need to call on their strength of character, self-knowledge and ability to adopt a flexible response to occurrences during the hearing: they need to be aware that their personal conduct/emotions and those of the parties to the proceedings and other parties involved can impede arriving at the truth and, when this is a risk, change their attitude. Criminal court judges need to be able to neutralise their personal emotions and the emotions of others, which also requires sensitivity. It is also essential that criminal court judges are able to find a suitable equilibrium between the time available for the hearings and the discussion of the case with the suspect – which points are or are not raised in view of the time available – and respond to the arguments put forward by the suspect, the counsel for the defence and the public prosecutor. This requires excellent communicative skills and prioritisation. Criminal court judges are watched closely

<sup>2</sup> Please refer to the Judicial Officer Section for an explanation of these competences.

<sup>3</sup> The task criteria are applicable to the three-judge sessions, the deliberation in chambers on detention in custody and the sessions of the single-judge criminal section (even though there are differences in the available time).

by the public (and the media) during hearings: this imposes stringent requirements on their performance at the hearing, approach to all those involved in the hearing and justification of (grounds for) their judgement.

### Tasks

1. Examine the suspect and discuss the content of the dossier with the suspect
2. Examine witnesses and/or experts and/or victims
3. Control the hearings
4. Announce (interlocutory) decisions

### Task criteria<sup>4</sup>

- Re. 1 Examine the suspect and discuss the content of the dossier with the suspect*
- a. Discuss essential passages of the dossier with the suspect (both with respect to the evidence and the suspect's personal circumstances)
  - b. Demonstrate knowledge of the dossier and hold interviews of the suspect without repeatedly paging through the documents
  - c. Use language that can be understood by the suspect
  - d. Ask relevant, open questions and ask further questions as required
  - e. Offer the suspect an opportunity to give an explanation and be open to information that the suspect has not given previously or gave in a different manner
  - f. Summarise correctly and check that the suspect has been correctly understood
  - g. Return to something someone the suspect said earlier, as necessary
  - h. Exhibit unprejudiced, sincere interest (respect)
  - i. Respond to non-verbal signals
  - j. Exhibit correct verbal and non-verbal conduct
- Re. 2 Examine witnesses and/or experts and/or victims<sup>5</sup>*
- a. Use language that can be understood by the witness/expert
  - b. Ask relevant, open questions and ask further questions as required
  - c. Give the witness/expert an opportunity to explain
  - d. Summarise correctly and check that the witness/expert has been correctly understood
  - e. Return to something the witness/expert said earlier, as necessary
  - f. Exhibit unprejudiced, sincere interest (respect)
  - g. Respond to non-verbal signals
  - h. Exhibit correct verbal and non-verbal conduct
- Re. 3 Control the hearings*
- a. Pay due regard to the required formalities
  - b. Weigh speed and due care carefully against each other
  - c. Adopt an independent position and treat all parties to the proceedings equally
  - d. When doing so, give consideration to less obvious interventions (out of the box thinking)
- Re. 4 Announce (interlocutory) decisions*
- a. Announce decisions in language that can be understood by the suspect
  - b. Include the standpoints put forward by the Public Prosecution Service and the defence in the decision
  - c. Finish with a clear conclusion

<sup>4</sup> The task criteria are applicable to the three-judge sessions, the deliberation in chambers on detention in custody and the sessions of the single-judge criminal section (even though there are differences in the available time, the handling and the decision).

### Central competences

- Ability to listen
- Verbal fluency
- Problem analysis
- Cooperation
- Sensitivity
- Strength
- Self-confidence

### Experiential standard

Recommended:

- one three-judge sessions a week (two half-days), at least in the weeks in which there are no deliberations in chambers on detention in custody or sessions of a single-judge criminal section
- at most eight (8) deliberations in chambers on detention in custody
- at most five (5) sessions of a single-judge criminal section

### Supervision

In principle, the trainee judicial officer is assigned to sessions conducted by the trainer. When trainee judicial officers (as presiding judge for the case) are assigned to sessions conducted by judges other than their trainer then the training tasks referred to below are carried out by the judge-trainer or are delegated to the judge with whom the trainee judicial officer is conducting the sessions. Where possible, the trainee judicial officer is assigned to a PROMIS section. Preference is given to the assignment of one trainee judicial officer to a specific session of a three-judge section. During the second half of the advanced course the trainee judicial officer is offered an opportunity to independently conduct sessions of the single-judge criminal section under the supervision of the judge-trainer. The trainer has a special supervisory role during the preparations for the sessions of the single-judge criminal section, the hearings and the settlement of the cases. The trainer will attend the sessions of the single-judge criminal section in the courtroom. The trainee judicial officer makes the decisions in independence, when possible with the decisions that have been discussed thoroughly with the judge-trainer before the sessions. The trainee judicial officer can suspend a hearing when confronted with an unexpected situation, request the public to leave the courtroom and then discuss the problem with the trainer. It is necessary to ensure that the public in the courtroom does not have the impression that the trainee judicial officer does not arrive at the decisions in independence. For this reason it is recommended that the hearing be suspended so that the courtroom can be cleared and the judge-trainer can join the trainee judicial officer in chambers without being seen.

The trainer discusses all cases to be handled by the trainee judicial officer with the trainee judicial officer before the sessions. In addition, in principle the trainee judicial officer's performance at the sessions is discussed immediately after the conclusion of the sessions.

All feedback is based on the task criteria and competences whenever possible. The trainer subsequently completes the requisite feedback form.

### Result area: deliberation in chambers

#### Outline

Once the hearings conducted by a three-judge section have been concluded the judges reach a decision on the cases they have heard. Discussion and counter-arguments are of great importance to the deliberation in chambers. Conversely, the judges need to

listen to each other's arguments and be aware of their personal predispositions. This makes the necessary demands on the presiding judge and the judges. An experienced presiding judge may not be allowed to dictate his or her opinion: the judges need to be sure of themselves and be prepared to put forward and argue a different opinion. However, 'being sure of themselves' does not imply obstinacy or cocksureness: the judges will ultimately need to reach consensus on the judgement.

The junior judge is usually the first to present his or her viewpoint. The trainee judicial officer needs to state his or her opinion of the case, with grounds, and to listen carefully to the judges' reactions. The ultimate judgement is reached in dialogue with the judges.

One condition attached to the development of this judicial attitude is the presence of a constructive ambience in chambers, where bottlenecks are open to discussion and scope is offered for development. This constitutes a field of tension for trainee judicial officers since they both fulfil the role of fully-fledged judge in the three-judge section and are the subject of an assessment process: this is accompanied by the risk of their seeking approval/recognition from the presiding judge/judge-trainer rather than focusing on expressing their personal standpoint.

### Tasks

1. Present a legally correct analysis
2. Conduct a dialogue with the colleagues on the basis of their analysis
3. Adopt a collegial standpoint

### Task criteria

- Re. 1 Present a legally correct analysis*
- a. Demonstrate knowledge of the dossier
  - b. Demonstrate knowledge of the literature and case law that has been studied
  - c. Adopt a reasoned standpoint on the preliminary questions, the proof of the fact, the punishability of the fact, the punishability of the suspect and the punishment
  - d. Respond to the substantiated standpoints of the Public Prosecution Service and the defence
  - e. Use a clear sequence
  - f. Formulate in an explicit, clear and grammatically-correct manner
- Re. 2 Conduct a dialogue with the colleagues on the basis of their analysis*
- a. Formulate in an explicit, clear and grammatically-correct manner
  - b. Listen carefully to the colleagues and offer them scope to speak
  - c. Ask questions to improve the understanding of the colleagues' arguments
  - d. Demonstrate awareness of the personal actions and predispositions and open these to discussion
- Re. 3 Adopt a collegial standpoint*
- a. Weigh the information submitted in chambers
  - b. Do so in a manner providing an insight into the weighing
  - c. Arrive at an unequivocal and reasoned judgement
  - d. Commit him or herself to the joint judgement

### Central competences

- Ability to listen
- Verbal fluency
- Forming a judgement
- Problem analysis

### Experiential standard

See Result area: the hearing

### Result area: judgement

#### Outline

Although the judgements of three-judge sections have traditionally been relatively abridged and without a statement of the evidence (what are referred to as 'head-tail judgements'), it is now necessary for the courts to include more grounds in the judgement and to devote attention to the evidence establishing proof and grounds for the punishment. The fairly schematic criminal judgement is evolving in the direction of the civil law judgement in the sense that the debate during the trial – the substantiated standpoint of the public prosecutor, the suspect or counsel for the defence, the aggrieved party or the counsel for the aggrieved party – and the judge's weighing of the arguments on which the decision is based need to be assigned a more prominent position. This weighing of the arguments must be stated explicitly in the judgement: for example, the judgement must review the reliability of specific evidence or explain why the court has opted for one punishment/measure rather than another. PROMIS judgements are increasingly being formulated to accommodate the needs of the Public Prosecution Service, the defence, the victim and society and provide an improved insight into the judge's line of reasoning and the readability of the judgements.

#### Tasks

1. Draft a (PROMIS) judgement
2. Select and detail the evidence
3. Assess drafts (judgement, evidence and the official report) drafted by the court registrar

#### Task criteria

- Re. 1 Draft a (PROMIS) judgement*
- a. Formulate a (PROMIS) judgement on the basis of the decisions and considerations in chambers
  - b. Formulate in an explicit, clear and grammatically-correct manner
  - c. Use a logical structure and sequence
  - d. Make a clear distinction between facts, the standpoints of the Public Prosecution Service and the defence and the court's opinion
  - e. Ensure that the grounds always support the judgement and the grounds for diverging from the standpoint that is not adopted are stated
- Re. 2. Select and detail the evidence*
- a. Draw up a list of evidence on the basis of the judgement of the single judge in the criminal section or the deliberation of the case heard by a three-judge section in chambers and work out the evidence in detail
  - b. Use a logical structure and sequence
- Re. 3. Assess drafts (judgement, evidence and the official report) drafted by the court registrar*
- a. Read the draft
  - b. Propose changes that result in a legal improvement of the draft
  - c. Propose changes that result in a textual improvement of the draft
  - d. Discuss these with the court registrar who prepared the draft, where relevant

## Central competences

- Prioritisation
- Cooperation
- Written fluency
- Due care

## Experiential standard

See Result area: the hearing

In principle, the trainee judicial officer does not formulate the drafts but assesses the drafts prepared by the court registrar. However, for the purposes of the course it is worthwhile to allow the trainee judicial officer to formulate (part of) a PROMIS judgement for suitable cases and, a few cases, to detail the evidence and disallow the defence with reasons. The above cases are selected on the basis of cases that may be expected to be of clear learning value to the trainee judicial officer or cases that are too complicated for the court registrar.

## Supervision

The trainer discusses the judgements/evidence reviews that have been drawn up by the trainee judicial officer and the manner in which the trainee judicial officer has made notes on the drafts prepared by the court registrar. All feedback is based on the task criteria and competences whenever possible.

The trainer subsequently completes the requisite feedback form.

- 1 The outlines of the position and the result areas are inspired by Essentiële situaties die specifiek zijn voor de strafsector in het functieprofiel rechter and are largely derived from De strafrechter en Profiel, Deskundigheidsbevordering van de strafrechter (2008).
- 2 Please refer to the Judicial Officer Section for an explanation of these competences.
- 3 The task criteria are applicable to the three-judge sessions, the deliberation in chambers on detention in custody and the sessions of the single-judge criminal section (even though there are differences in the available time).
- 4 The task criteria are applicable to the three-judge sessions, the deliberation in chambers on detention in custody and the sessions of the single-judge criminal section (even though there are differences in the available time, the handling and the decision).
- 5 The task criteria are also applicable to the examination of the victim, although account needs to be taken of the fact that the position of victims who are not witnesses is different.

# Learning assignment plan

## advanced criminal law course

### Duration: 10 months

This section of the study guide outlines the programme for each week of the advanced course in the criminal court section.

#### Week 1-2 Introduction to the sector/team

**What** Intake interview with trainer(s)

**Objective** To make the renewed acquaintanceship of each other and of this specific section/team, discuss earlier learning and work experiences, discuss the structure of this period, discuss the attainment levels for this period (see the study guide), reach agreement on expectations about conduct, supervision by the trainer(s), feedback, the review interview and the role played by the learning assignment dossier and development dossier. Important points are noted on the intake form enclosed in the development dossier. The trainee judicial officer ensures that the development dossier with information about the previous period is placed at the disposal of the trainer(s) prior to the meeting. This enables the trainer(s) to become acquainted with the contents of the dossier and ensures that the developments in the previous period serve as the overture for this new programme period.

**What** Acquaintanceship meeting with the section chairman/team chairman

**Objective** To make the acquaintanceship with the team chairman in his/her role as manager, obtain clarity about the role of the section chairman/team chairman in the course, gain an impression of the broader context of the area in which the trainee judicial officer works, exchange of expectations.

**What** Acquaintanceship with colleagues

**Objective** To make the acquaintanceship of the colleagues at the workplace. These introductions can be initiated by the trainer or, self-evidently, by the trainee judicial officer.

**What** Further acquaintanceship with the organisation and the working methods within the section/team

**Objective** Become familiar with the organisation of the sector/

team, in particular the administration, dossier routing and the sources of knowledge that play a role within the sector/team.

#### Week 1-7 Working and learning

**What** The trainee judicial officer fulfils the role of junior judge in the deliberations in chambers on detention in custody and is a member of the criminal law chambers (with special duties in criminal cases). The trainee judicial officer prepares the cases in both instances.

**Objective** Working and learning to achieve the attainment levels (see study guide).

**What** Mandatory courses

Intention and guilt course (month 1)

Judicial finding of fact course (month 2)

**Objective** Acquisition of the knowledge and skills required to carry out the tasks.

#### From Week 8 Working and learning

**What** Participation in the three-judge section as junior judge (and presiding judge for the case) and a one-week period with the office of the examining magistrate in which the trainee judicial officer examines a number of witnesses, brings suspects before the public prosecutor, carries out searches and issues orders.

**Objective** Working and learning to achieve the attainment levels (see study guide).

**What** Handle cases at sessions of the single-judge criminal section (of an increasing degree of complexity) in the presence of the judge-trainer

**Objective** Working and learning to achieve the attainment levels (see study guide).

**What** Mandatory courses:

Forms of participation course (month 3)

Basic financial investigation course (month 4)

International cooperation in criminal cases course (month 4)

Civil action in criminal proceedings course (month 4-6)

European criminal law course (from entry group 2008-II) (month 5)

Practical professional ethics course (month 6)

ECHR in criminal law course (from entry group 2008-II) (month 7)

Discretionary courses: 6 half-days (in consultation with the training consultant)

Objective To acquire the knowledge and skills required to carry out the tasks.

#### **Week 10+30 Monitoring progress, results and the process**

What Progress meetings with the trainer(s)

Objective The trainer(s) will hold a progress meeting, if so required, with the trainee judicial officer in week 10 and week 30. The objective of this meeting is to reflect on the progress in the learning process, discuss experiences and reach (supplementary) agreements to promote the trainee judicial officer's development. The progress form enclosed in the development dossier is used for this purpose.

#### **Week 21 + 42 Review progress and results**

What Review interviews with the trainer(s)

Objective The trainer(s) will hold a review interview with the trainee judicial officer in week 21 and week 42 to review the trainee judicial officer's progress relative to the attainment levels stated in the study guide. The trainee judicial officer's performance of each duty is discussed, together with a specific statement of the level of development. The learning assignment dossier serves as important input for this interview. Conclusions about the learning process and learning results are drawn during the interview. The review interview held in week 14-15 also encompasses the agreements on the nature of the work and the supervision of the work to be carried out later in the learning period necessary to promote the required development of the trainee judicial officer. The review interview held in week 31-33 discusses the major issues for the externship. The conclusions and agreements are recorded on the review form enclosed in the development dossier.

#### **Week 42 Assessment**

What Assessment

Objective Assess whether the results achieved by the trainee judicial officer demonstrate the ability to perform as a novice judge in (virtual) autonomy.





Pebo

# **Curriculum, advanced civil law course**

**Duration: 10 months**

# Curriculum

## advanced civil law course

### Duration: 10 monthes

In many instances the most important duty of the civil court judge is to select, establish and appraise the legally relevant facts.<sup>1</sup> The majority of cases are still won or lost on the basis of the facts. Civil court judges emphasise this in their search for the material truth: they hold court appearances, request documents and ask questions to the parties in an endeavour to obtain the fullest possible insight into the case. However, civil court judges need to be aware (more than administrative court judges and much more than criminal court judges) that the proceedings were instituted because of a dispute between the parties, who need to collect the material and mark out their position. When viewed from this perspective, civil court judges continually alternate between the facts in the case dossier and the substantive law standards they wish to apply in the specific case. This requires the ability to switch rapidly between **abstract** and **concrete** thinking.

Civil law judgements are based on a fixed “decision-making framework” to a much lesser extent than in criminal law and administrative law, although the differences from administrative law judgements are smaller. The criminal court judge’s judgements are based on the rigid framework laid down in articles 348-350 of the Code of Criminal Procedure. Administrative law pivots on the relevant government agency’s decision: following an appeal the judge tests whether there are grounds to quash the decision. Consequently, the judgement is always based on a fixed point (of departure). Article 8:70 of the General Administrative Law Act lays down the four main judgements the judge can reach after an assessment of the (shortcomings, where relevant, of the) decision. Civil court judges have a much greater degree of freedom: the options available to reach a judgement and the range of judgements that can be given are “unlimited” although, self-evidently, within the limits of the dispute between the parties. This situation is enhanced by three circumstances.

Firstly, civil law is much “freer” than administrative law. Administrative law has pronounced stratified standards: virtually all questions of law are governed by rules, sub-rules and sub-sub-rules and, ultimately, a rule will almost always govern the precise question of law involved in the case brought before the court. This structure is much less prominent in civil law. As a result complex cases, in

particular, are confronted with (statutory or case law) rules that do not offer clear guidance (they are too vague or “open”), conflict with each other or – in exceptional situations – are simply lacking. Consequently, judges both need to have knowledge of the statutory and/or case law rules and to be able to interpret the rules flexibly and with a view to the problem at issue.

Secondly, civil law – once again, in comparison with administrative law – much more frequently addresses complex “stratified” or “interwoven” cases involving a number of points requiring a judgement.

Thirdly, the proceedings in civil law courts are not infrequently muddled or untidy. The detailing of the arguments is often marginal and, as a result, there are many open ends. This situation, in combination with the other factors reviewed above, results in the judge’s task of structuring the mess of factual and legal arguments and using the structure to find a solution for the dispute.

All the above imposes special requirements on the judge’s analytical capacity, intuition, creativity and inventiveness as manifested in the formation of a judgement.

### General information about this programme period

#### Training in the civil law/sub-district law / court of appeal section

A variety of sections offer trainee judicial officers an opportunity to increase the depth of their understanding of the work of civil court judges, namely the civil law section, sub-district law section or a court of appeal. In view of the wide variety of court organisational forms and the circumstances in which the civil law and sub-district law sections carry out their work it is not possible to clarify the question as to where the course should be followed, in the civil law or sub-district section: both are feasible, and the selection also depends on the competences to be developed.<sup>2</sup>

Specific reasons will be needed to justify a decision to increase the depth of understanding at a court of appeal, since the working methods of courts of appeal differ to some extent of those of the primary courts: fewer hearings are conducted, the formation of judgements is of a less practical nature (and certainly in comparison with the working methods of the sub-district courts) and cases are usually settled by a number of judges in accordance with the appeals system.

The selection must always be based on the achievement of the

<sup>1</sup> The outlines of the position and the result areas are inspired by the Algemeen deel in J.B.M. Vranken’s Asser series (Deventer 1995 and 2005) and are largely derived from H. Hofhuis, Essentiële situaties die specifiek zijn voor de sector civiel recht in het functieprofiel rechter. The outline of the position has already been specified in the basic civil law curriculum. The contents are repeated here since the advanced course is based on these outlines of the position and result area

course's attainment levels, namely the ability of the civil court judge to pronounce judgement on the basis of the required professional competence in the associated tasks. There can be cause to assign a trainee judicial officer to a court of appeal when particular attention needs to be given to the development of the analytical or writing skills or to a sub-district court when attention needs to be devoted to the development of hearing skills (the development of speed and/or cutting Gordian knots, or acquiring self-confidence). However, the preconditions – certified trainers and the availability of suitable cases (not too specialised, of sufficient variation and with an increasing degree of complexity, etc.) – will always need to be met. A trainee judicial officer wishing to follow a course at a court of appeal will first need to reach agreement with the SSR training consultant. The trainee judicial officer's development dossier will always play an important role in this decision. If so required, the training consultant can also consult with the basic course trainer(s). An assessment will then be made in consultation with the training consultant to determine whether the trainee judicial officer can follow a traineeship at a court of appeal and, if so, during which period, as well as the consequences this will have for the learning assignment plan. The trainee judicial officer should be appointed to the position of deputy justice.

The following sections of this curriculum state solely the preconditions to be met by the course. These include at least the willingness to complete the framework of the course (as specified here) and supervision by a certified trainer. For this reason, for the sake of convenience references to "civil law section" below can also encompass the sub-district law section.

### Objective

While the basic phase placed the primary emphasis on acquiring the official skills required for the formulation of judgements and imparting an initial impetus to conducting a hearing, the advanced course devotes more attention to professionalisation, hearing communication techniques, dealing with complexity, speed and pressures of time (time management). In contrast to the basic course, the trainee judicial officer can now conduct cases without a legal representative and further develop his or her judicial intuition.

Since the trainee judicial officers have been appointed to the position of deputy justice they sign the official reports of the hearings and the judgements.

In addition, since the trainee judicial officers develop into a case manager they should also be aware of their choice of approach and the manner in which the case is settled. This relates to questions such as: is an interlocutory judgement, final judgement, order to produce evidence or an appearance, a decision, settlement or mediation most appropriate to the case? The answers to these questions are determined by both official and efficiency considerations. In addition, the trainee judicial officer now also needs to reflect on the personal formation of judgements and decision-making.

The structure of the course is summarised in the learning assignment plan at the end of this section.

### Types of cases

The cases assigned to the trainee judicial officer preferably have an increasing degree of complexity, starting with basic cases at the beginning and proceeding to more complex cases mid-way through the period. Factors that can determine the degree of complexity of a case include:

- the number of legal problems (for example, solely unpaid in-

- voices or also independent counterclaims);
- the number of defences/points at dispute;
- the clarity of the parties' arguments;
- the scope of the dossier (thick/thin, many/few pieces of evidence, many/few procedural documents exchanged);
- the number of independent defendants;
- the quality of the procedural documents and the manner in which the case is conducted.

Subjects suitable for training purposes are:

- the general law of property in books 3, 5, 6 and 7 (the entire book and, consequently, also insurance, labour and tenancy law)
- international private law cases without an excessive degree of complexity

### Attainment levels

At the end of the advanced course the trainee judicial officer can carry out the following tasks (including the somewhat more complex tasks) with a great deal of autonomy, whereby account is taken of the specified task criteria, competences and experiential standards. The experiential standard specified for each task should not be regarded as an absolute minimum or maximum. When the available cases diverge from the prescribed types then this will have an effect on the number: complex cases may then count for double. Conversely, a trainee judicial officer who has necessarily been assigned an excessive number of simple cases may be expected to deal with more cases than the prescribed maximum.

### Result area

The above review of the general work of civil court judges serves as the basis of the list of requirements imposed on the civil court judge listed in the result areas of the following sections: each begins with a general introduction to the task and continues with a specification of the criteria governing the assessment of the task, the most important competences for the task and the associated specific knowledge. Neither the learning capacity, self-reflection and other management competences nor what are referred to as "moral competences" are – where relevant – specified separately.<sup>3</sup> The general knowledge required for this part of the course is listed below.

#### Knowledge

- Code of Civil Procedure
- Civil Code, in particular the general law of property in books 3, 5, 6 and 7 (including insurance law)
- International Private law
- European law
- Knowledge of communication styles
- In addition, the specific knowledge stated in the basic course's various result areas.

### Result area: preparing for the hearing

#### Outline

The judge should begin the preparations for a hearing (appearance or hearing of witnesses) by studying the dossier thoroughly to obtain an insight into the core of the dispute between the parties. The judge then needs to assess possible (relevant) situations that could arise during the appearance or hearing of witnesses. The preparations should encompass, as it were, the anticipation of the

various situations, identification the objectives to be achieved and the formulation of appropriate answers. In addition, the preparations for the hearing of witnesses should include an examination of the dossier to determine which questions will need to be raised with the witness and the evidence that will need to be presented, etc. Ultimately, the preparations pivot on the wish, on the basis of an intellectual and professional inquisitiveness, to comprehend the (legal and factual) issues involved in the case, self-evidently with due regard for the limits of Article 24 of the Code of Civil Procedure.

### Tasks

1. Analyse the points of dispute
2. Think through the plan of approach and scenarios
3. Devise questioning strategies

### Task creteria

- Re. 1. *Analyse the points of dispute (appearance)*
- a. Check the formalities (dossier complete, etc.)
  - b. Select primary and secondary issues
  - c. Extract the relevant factual/legal problems and points of dispute
  - d. Verify that the legal reasoning is sound
- Re. 2. *Think through the plan of approach and scenarios (appearance)*
- a. Determine which potential approaches come into consideration
  - b. Anticipate potential complications
  - c. Compare the advantages and disadvantages of the alternatives
  - d. Comprehend the legal implications of the alternatives
  - e. Make an efficient and purposive selection of the definitive plan of approach
  - f. Make a convincing argument for this selection
- Re. 3. *Devise questioning strategies (examining witnesses)*
- a. Check the formalities (witness summons, etc.)
  - b. Gain an understanding of the proof that will need to be produced
  - c. Devise meaningful open questions on the basis of the above
  - d. Determine which evidence/statements included in the dossier will need to be presented
  - e. Give careful consideration to the balance between quality and quantity (for example, the extent to which studies are carried out)

### Central Competences

- a. Forming a judgement
- b. Prioritisation
- c. Problem analysis
- d. Due care

### Orientation tasks

The preparation of inquiries and appearances to be audited by the trainee judicial officer. The trainee judicial officer prepares for the hearing as though he or she would conduct the hearing – what would I ask if I were hearing the case – with the objective of reviewing whether the judge conducting the hearing adopts a comparable approach or identifying the points in which the judge diverges from the approach. The trainee judicial officer draws up a questionnaire for the inquiry. The trainee judicial officer draws

up concise notes for the appearance which includes a list of the points of dispute, the points for which a further explanation is required and the decision that the trainee judicial officer deems appropriate. The objective of these notes is to demonstrate that the trainee judicial officer has sufficient understanding of the case and to prepare for the consultation in chambers, where relevant.

### Experiential standard

See Result area: Hearings: inquiries and appearances.

### Supervision

The trainer always discusses the notes for each hearing well in advance, gives any further explanation that may be necessary and/or asks the trainee judicial officer to carry out further studies. During the course the emphasis shifts from a comprehensive discussion of cases to the preparation of cases in a lesser or greater degree of independence. Self-evidently, the trainer is always available to answer questions.

### Specific knowledge/study tasks

See Result area: Hearings: inquiries and appearances.

### Result area: hearings - inquiries

The evidence of witnesses is indispensable evidence. Although civil proceedings – in contrast to criminal proceedings – do not attach priority to arriving at the truth, when hearing witnesses the judge's duty is to discover the facts that occurred in the past as precisely as possible. However, since a pure reconstruction is infeasible it is necessary to make choices. The questions to be answered are usually: What happened? What was agreed? Statements from persons who were involved or can explain the relevant documents are of importance to answering these questions. Consequently, the first-line judge's most important task is to determine precisely what happened in the past: as Paul Scholten has already written in his general section, "The law is to be found in the facts". The knack lies in collecting the facts during the hearing of the witnesses that are required to enable the law to speak. This means that the judge will also need to diverge from the questionnaire prepared for the hearing to communicate with witnesses in an appropriate manner and adopt the requisite communication styles. Attention needs to be given to many factors during the hearing: the witness' attitude and reliability, whether there are any conflicting witnesses, etc. As a result, judges need to call on their self-knowledge/empathy and ability to adopt a flexible response to occurrences during the hearing.

### Tasks

1. Open and close the inquiry (and the general course)
2. Examine witnesses
3. Draw up the official report

### Task creteria

- Re. 1. *Open and close the inquiry (and the general course) (in accordance with the examination of witnesses checklist)*
- a. Pay due regard to the required formalities (who has appeared, the objective/course of the hearing, etc.)
  - b. Adopt the appropriate tone
  - c. Give the inquiry effective shape
  - d. Deal with incidents in an appropriate manner
  - e. Maintain control of the case
  - f. Demonstrate a self-assured professional attitude in a manner that manifests genuine interest and respect

1 Please refer to the Judicial Officer Section for an explanation of these competences

- g. Weigh speed and due care carefully against each other
- h. Close the inquiry in a manner fitting to the occurrences during the hearing

*Re. 2. Examine witnesses*

- a. Ask efficient questions
- b. Ask further specific questions to clarify vague statements or hints
- c. Confront the witness with emerged facts included in the dossier
- d. Recognise the information that is relevant
- e. Diverge from the questionnaire prepared for the hearing as required
- f. Give the witness an opportunity to explain
- g. Summarise the witness' statement correctly
- h. Return to something someone else said, as necessary
- i. Examine the witness in a manner that ensures that the witness feels understood
- j. Switch during the interview
- k. Respond to non-verbal signals
- l. Speak intelligibly and at the correct speed

*Re. 3. Draw up the official report*

- a. Lay down the information obtained during the hearing accurately
- b. Dictate a statement the witness can identify with
- c. Summarise the witness' statement clearly in writing
- d. Dictate a statement in a manner that does justice to the occurrences during the hearing
- e. Dictate a statement at a sufficient speed
- f. Draw up an official report with a clear construction and structure
- g. Reach clear and efficient agreements with the parties

**Central competences**

- Ability to listen
- Verbal fluency
- Prioritisation
- Problem analysis
- Written fluency
- Sensitivity
- Strength
- Self-confidence

**Orientation tasks**

Carry out audits at inquiries appearances conducted by different judges (preferably judges who give training) to refresh the impression of the manner in which different judges can perform the aforementioned tasks in practice.

**Orientation standard**

Recommended:

- begin with 2 audits of inquiries with an increasing degree of complexity to refresh the memory.
- continue with 10 to 15 inquiries (half-days). The number depends partly on the number of appearances: the total should amount to between 30 and 35 hearings. The emphasis of the work during the hearings will need to be placed on the appearances. The intention is that the trainee judicial officer conducts as any appearances as possible in the assigned cases, where relevant also extending to the provisional examination of witnesses.

**Supervision**

The trainee judicial officer conducts the cases during the hearings. In the beginning the trainer sits behind the bench next to the trainee judicial officer and later on in the course in the courtroom. Near the end of the course the trainee judicial officer may also conduct cases in the absence of the trainer, depending on the need as assessed by the trainer in consultation with the trainee judicial officer.

The trainer's presence in the courtroom should not be regarded as an affidavit of indigence: it is intended to offer the trainee judicial officer an opportunity to receive feedback throughout the course and, consequently, continue the trainee judicial officer's development.

The trainer discusses the course of the hearing with the trainee judicial officer after the hearing and gives the trainee judicial officer specific learning points. The trainer completes the relevant feedback form.

**Result area: appearances**

**Outline**

The verbal hearing of the post-defence appearance has acquired much greater importance in civil law proceedings during the past ten years and, in general, an appearance now takes place in about 80% of all defended cases. Judges adopt an increasingly active approach to appearances: they need to demonstrate to the parties that they understand the essence of the case, explore the problems and gaps, explore the various potential outline solutions and, in conclusion, be able to ensure that the parties accept the solution(s) discussed during the hearing. This in turn implies that the judge needs to think with the parties in an inventive manner, have the courage to ask further questions and confront the parties, treat the parties equally and encourage them to decide to reach a settlement or accept mediation. In some instances judges will also need to stick their neck out, in the sense that they express their provisional assessment of the case. However, at the same time they need to inspire confidence and remain credible in their role as impartial decision-maker should the parties nevertheless fail to reach agreement. These objectives can be in conflict with each other and, in any case, are often mutually incompatible. This requires capacities including self-assuredness, sensitivity and self-reflection. Moreover, creativity and flexibility are also important capacities. In principle, the hearing should follow the strategy determined in advance, although the judge should be open to new information, test the strategy against this information and amend the strategy as necessary. Where possible, the judge should seek practical solutions for the settlement of the dispute. The judge should also find a good balance between the speed with which the case is heard and the quality of the judicial substance of the judgement. For this reason the judge needs to be able to understand the essence of the parties' legal positions and give a clear and understandable explanation of the provisional judgement.

**Tasks**

1. Open and close the hearing (and the general course of the hearing)
2. Hear the parties/lawyers
3. Give the provisional judgement
4. Initiate and draw up the settlement agreement
5. Draw up the official report

**Task criteria**

*Re. 1. Open and close the hearing (and the general course of the hearing)*

- a. Pay due regard to the required formalities (who has appeared, the objective/course of the hearing, etc.)
  - b. Adopt the appropriate tone
  - c. Give the hearing effective shape
  - d. Deal with incidents in an appropriate manner
  - e. Maintain control of the case
  - f. Demonstrate a self-assured professional attitude in a manner that manifests genuine interest and respect
  - g. Weigh speed and due care carefully against each other
  - h. Close the hearing in a manner fitting to the occurrences during the hearing
- Re. 2. Hear the parties/lawyers<sup>4</sup>*
- a. Recognise the information of importance to the formation of the judgement
  - b. Demonstrate knowledge of the dossier
  - c. Ask efficient questions
  - d. Give the parties an explanation to explain
  - e. Test the information obtained, as necessary
  - f. Play the role of an active listener: page through/read the dossier as little as possible
  - g. Approach the parties in a manner that ensures they feel understood
  - h. Go into the underlying interests/emotions, where relevant
  - i. Follow the plan of approach drawn up in advance, but depart from the plan as necessary
  - j. Make justifiable choices in the manner in which the case is conducted
  - k. Speak intelligibly and not too fast
- Re. 3. Provisional judgement*
- a. Determine which form of settlement is most appropriate to the dispute (judgment, compromise or mediation)
  - b. Determine the points for which a judgment can be given
  - c. Adopt a variety of angles of approach to the judgement
  - d. Do justice to the parties' debate
  - e. Give an adequate and justifiable/convincing provisional judgement
  - f. Communicate at a level that is understandable to the parties
  - g. Apply the law and case law in the correct manner
  - h. Derive practical solutions
  - i. Oversee the further procedure
- Re. 4. Initiate and draw up the settlement agreement*
- a. Initiate a settlement phase and encourage the parties to seek a settlement
  - b. Achieve a settlement result that is to both parties' satisfaction
  - c. Provide for the unequivocal formulation of the settlement agreement
  - d. Provide for a correct legal formulation of the settlement agreement
- Re. 5. Draw up the official report*
- a. Lay down the information obtained during the hearing accurately
  - b. Summarise the parties' statements clearly in writing
  - c. Draw up a clear and practical official report
  - d. Make clear and efficient agreements with the parties

## Central competences

- Ability to listen

- Verbal fluency
- Situational awareness
- Forming a judgement
- Problem analysis
- Written fluency
- Sensitivity
- Strength
- Self-confidence

## Orientation tasks

Carry out audits at inquiries and appearances conducted by different judges (preferably judges who give training) to refresh the impression of the manner in which different judges can perform the aforementioned tasks in practice.

## Experiential standard

Recommended:

- begin with 2 audits of appearances with an increasing degree of complexity to refresh the memory.
- continue with conducting 20 to 25 appearances whereby it is, in principle, assumed that an appearance requires one half-day. Two appearances in one half-day count as one appearance. The number is partly dependent on the number of inquiries: when the trainee judicial officer conducts fewer (half-day) inquiries then the number is compensated by conducting more (half-day) appearances. The total should amount to between 30 and 35 half-day hearings. The emphasis of the work during the hearings will need to be placed on the appearances, i.e. basic cases without too many complications (emotions, "difficult" lawyers and people in court) and with increasing complexity towards the end of the course. The trainee judicial officer formulates as many judgements for the trainee judicial officer's appearances as possible.
- 2 hearings of arguments as judge (when cases are available and suitable). In principle, the trainee judicial officer formulates the judgements.

## Supervision

In the beginning the trainer sits behind the bench next to the trainee judicial officer and later on in the course in the courtroom. Near the end of the course the trainee judicial officer may also conduct cases in the absence of the trainer, depending on the need as assessed by the trainer in consultation with the trainee judicial officer.

The trainer's presence in the courtroom should not be regarded as an affidavit of indulgence: it is intended to offer the trainee judicial officer an opportunity to receive feedback throughout the course. When the trainer is not in the courtroom the trainer must always be available for questions.

The trainer discusses the course of the hearing with the trainee judicial officer after the hearing and gives the trainee judicial officer specific learning points. The trainer completes the relevant feedback form.

## Result area: judgements

### Outline

Civil court judges spend (an important) part of their time on the written formulation of judgements. They need to understand the art of – and, if possible, gain pleasure from – formulating brief, concise and "attractive" grounds of the judgement that can and actually do substantiate the judgement. To avoid possible misunderstandings, this does not imply that civil court judges must always write their judgements: however, they do need to have a

\* In accordance with the specification of the "Examination of witnesses" task criteria.

command of this official task. Civil court judges can formulate an appropriate judgement only once they have analysed the relevant facts in the dossier and the legal framework and, on the basis of an intellectual and professional inquisitiveness, wish to comprehend the (legal and factual) issues involved in the case. Although, as explained earlier, there is no fixed decision-making framework, the judgement does need to be based on a logical construction and a clear structure. The grounds should be compatible with the parties' debate and formulated in neutral terms, while the judgement needs to be both just, sustainable and practical.

### Tasks

Formulate judgements in defended cases.

Task criteria

Design

- a. Order the relevant facts in a professional manner
- b. State solely the facts that have not been contradicted on grounds and, consequently, have been established and are required for the judgement
- c. Give the basis of the claim completely, correctly and concisely
- d. Give the essential defence completely, correctly and concisely (where relevant)

### Assessment

- a. Analyse the legal bases
- b. Assess the sustainable defence and draw the correct requisite conclusions
- c. Do justice to the parties' arguments and do not denaturalise them
- d. Use the facts in the dossier for the grounds of the judgement
- e. Draw up a logical construction and structure without skipping steps in the mental process
- f. Cut Gordian knots on the basis of arguments
- g. Decide on all relevant points at dispute
- h. Decide on the basis of established facts and circumstances
- i. Decide on the basis of the relevant legal frameworks
- j. Arrive at a judgement that is sustainable and practical
- k. Recognise where further proof is required
- l. Think through the consequences of the judgement
- m. Anticipate the consequences of the judgement
- n. Apply the law and case law correctly
- o. Draw up convincing grounds
- p. Formulate clearly and transparently
- q. Work carefully and precisely

### Judgement

- a. Give a feasible and complete operating part
- b. Calculate a correct order for costs

### Central competences

- Decisiveness
- Situational awareness
- Forming a judgement
- Prioritisation
- Problem analysis
- Written fluency
- Due care

### Experiential standard

Recommended:

- 30 to 35 judgements in defended cases heard by a single-judge section, whereby the number is partly dependent on the degree

of complexity. When many cases are drawn up after an appearance conducted or audited by the trainee judicial officer then the target of 35 is readily feasible. The trainee judicial officer begins with a very simple case (to refresh the memory), followed by cases with a single point at dispute, then cases with a number of points at dispute and, at the end of the course, somewhat more complicated cases.

- participation delivering judgments in 2 or 3 cases

### Supervision

The trainer always reads the draft judgments. The trainer reads the entire dossier and makes as many comments as possible on the draft. The trainer discusses each draft during a personal meeting with the trainee judicial officer, preferably within two weeks of the submission of the draft and after the trainee judicial officer has had an opportunity to become reacquainted with the contents of the dossier. The trainer discusses the trainee judicial officer's questions, explains why an amendment is an improvement and explains the structure, etc. The trainer not only makes comments about the details in the draft, but also summarises (where possible) the most important learning points revealed by the contents of the draft in notes on the draft. Once the draft has been approved the trainer completes the feedback form submitted by the trainee judicial officer. When doing so the trainer also gives consideration to the manner in which comments made at an earlier stage have been processed.

# Learning assignment plan

## advanced civil law course

### Duration: 10 months

This section of the study guide outlines the programme for each week of the advanced course in the civil law section.

#### Week 1-2 Introduction to the sector/team

What Intake interview with trainer(s)

Objective To make the renewed acquaintanceship of each other and of this specific section/team, discuss earlier learning and work experiences, discuss the structure of this period, discuss the attainment levels for this period (see study guide), reach agreement on expectations about conduct, supervision by the trainer(s), feedback, the review interview and the role played by the learning assignment dossier and development dossier. Important points are noted on the intake form enclosed in the development dossier. The trainee judicial officer ensures that the development dossier with information about the previous period is placed at the disposal of the trainer(s) prior to the meeting. This enables the trainer(s) to become acquainted with the contents of the dossier and ensures that the developments in the previous period serve as the overture for this new training period.

What Acquaintanceship meeting with the team chairman.

Objective Acquaintanceship with the team chairman in his/her role as manager, obtain clarity about the role of the team chairman in the course, gain an impression of the broader context of the area in which the trainee judicial officer works, exchange of expectations.

What Acquaintanceship with colleagues

Objective Acquaintanceship with the colleagues at the workplace. These introductions can be initiated by the trainer or, self-evidently, the trainee judicial officer.

What Further acquaintanceship with the organisation and the working methods within the section/team

Objective Become familiar with the organisation of the sector/team, in particular the administration, dossier routing and the sources of knowledge that play a role within the sector/team.

What Mandatory course  
Civil law judgment II

Objective Acquisition of the knowledge and skills required to carry out the tasks.

#### From Week 3 Working and learning

What The trainee judicial officer conducts a wide variety of cases, both with respect to the legal areas and the manner in which the proceedings are conducted. The trainee judicial officer participates in reading the judgements and takes part in a variety of the court organisation's tasks.

Objective Working and learning to achieve the attainment levels (see study guide).

#### From Week 3 Working and learning (continued)

What Mandatory courses:  
Practical professional ethics  
Referral to mediation  
European private law  
ECHR in civil law  
Current issues in civil law  
Current issues in legal actions  
Discretionary courses (2 two-day courses selected in consultation with the trainer)

Objective Acquisition of the knowledge and skills required to carry out the tasks.

#### Week 10+30 Monitoring progress, results and the process

What Progress meetings with the trainer(s)

Objective The trainer(s) will hold a progress meeting with the trainee judicial officer in week 10 and week 30, if so required. The objective of this meeting is to reflect on the progress in the learning process, discuss experiences and reach (supplementary) agreements to promote the trainee judicial officer's development. The progress form enclosed in the development dossier is used for this purpose.

#### Week 21+42 Review progress and results

What Review interviews with the trainer(s)

Objective The trainer(s) will hold a review interview with the trainee judicial officer in week 21 and week 42 to review

the trainee judicial officer's progress relative to the attainment levels stated in the study guide. The trainee judicial officer's performance of each duty is discussed, together with a specific statement of the level of development. The learning assignment dossier serves as important input for this interview. Conclusions about the learning process and learning results are drawn during the interview. The review interview held in week 21 also encompasses the agreements on the nature of the work and the supervision of the work to be carried out later in the learning period necessary to promote the required development of the trainee judicial officer. The review interview held in week 42 discusses the major issues for the externship. The conclusions and agreements are recorded on the review form enclosed in the development dossier.

#### **Week 42 Assessment**

What Assessment

Objective Assess whether the results achieved by the trainee judicial officer demonstrate the ability to perform as a novice judge in virtual autonomy.



Peter

# **Curriculum, advanced administrative law course**

**Duration: 10 months**

# Curriculum, advanced administrative law course

**Duration: 10 months**

## **Outline of the position**

The work of administrative court judges differs in a number of respects from that of criminal court judges and civil court judges. Administrative court judges review decisions: there is no administrative law dispute without a decision. This decision, made by an administrative body, always forms the demarcation of the administrative law dispute. In making a decision of this nature the administrative body unilaterally lays down binding rights and obligations on the citizen involved. The legitimacy of this decision lies in the fact that in applying administrative law the administrative body, by very definition, represents the general interest. Consequently, this does not involve two parties which each wish to protect their specific interest. For this reason the administrative body does not possess unlimited authority to make decisions, but may exercise the authority solely when the substantive legislature has granted the administrative body the relevant specific statutory authority. Consequently, in contrast to their civil court and criminal court colleagues, administrative court judges are not the first party to give a binding decision on the parties which lays down how their rights are enforced, but the second party. As a result, administrative court judges do not review directly whether a specific person is entitled to a benefit, permit or subsidy but rather whether the administrative body has made a legitimate decision (both with respect to the procedure and the substance) on the right to the benefit, permit or subsidy. The role of review judge is predominant for the administrative court judge. The administrative court judge can determine the content of the legal relationship between the administrative body and the citizen – within certain limits – only once the court has established that the administrative body has not made a legitimate decision.

Administrative law is comprised of an incredible quantity of substantive law: generally binding administrative law regulations govern every conceivable issue (for example, the fire resistance (expressed in minutes) of doors in a day nursery). Decisions are, as compared to civil law and criminal law, primarily controlled by special rights: general administrative law plays a relatively minor role. Moreover, the substantive legislation in administrative law is often politically sensitive and in a continual state of flux.

Administrative law cases often relate to disputes between three parties, for example about a building permit in which the adminis-

trator, the holder of the permit and the party contesting the permit in appeal are involved.

The plaintiffs in proceedings before administrative court judges often appear without legal representation. The administrative bodies are usually represented by civil servants rather than by lawyers.

Administrative court judges must have a feeling for the demarcation between executive power and judicial power, two powers of the Trias Politica. The legislative power assigns decision-making authority to the executive power (administrative bodies). These decisions can be reviewed by the judicial power (administrative court judges). However, the Trias politica is in a state of flux: the Trias politica is no longer regarded as a static equilibrium, but rather as a dynamic system of checks and balances. How can administrative court judges direct a conflict of the nature encountered in the appeal phase with due respect for the singularity and authority of the administrative body? This is the question to be addressed in every case. This question has come more to the forefront in recent years since administrative court judges – even though they are review judges – are, for a number of reasons, expected to direct disputes brought before the court towards a final decision whenever possible.

The role as review judge is governed by a stringent review model. Solely the decision being contested is to be reviewed and the administrative court judge must, in principle, restrict him or herself to reviewing to the decision on the basis of the arguments brought before the court. The judge reviews a decision that is the culmination of a frequently thorough decision-making procedure. This has consequences for the law of evidence: the facts have been established by the administrative body, and from this perspective the administrative court judge is also the review judge. This also has implications for the feasibility of making use of personal expertise (the administrative court judge does not carry out the work that should have been carried out by the administrative body), the decision modalities (when the administrative body possesses assessment discretion or policy discretion then the administrative court judge must not rashly “step into the administrative body’s shoes”). Administrative court judges, in addition to their role in reviewing decisions made by administrative bodies, increasingly seek a final settlement of the disputes. These two roles are occasionally at loggerheads. The administrative court judge will endeavour to up-

hold the legal effect of a decision to the maximum possible extent (when the procedure followed in making the decision is not valid but the substantive result is valid) or personally make a decision in the case (when the substantive result needs to differ from the administrative body's decision). The administrative court judge can then make use of what is referred to as an 'administrative loop': the judge asks the administrative body to state the decision it would make if specific grounds for appeal were to succeed.

The above may imply (and, for this reason, is now made explicit) that the parties are not in an equal position: the administrative body is focused on making many decisions on the same subject (repeat player) while the citizen lodging the appeal may be a "one-shotter" – someone who has never previously lodged an appeal against a decision which has a personal effect on them. In addition, as indicated earlier, the administrative body can unilaterally make a binding decision on the citizen. The administrative court judge must always take account of the need for inequality compensation.

## General information about this programme period

### Objective

While the basic course placed the primary emphasis on acquiring the official skills and developing the personal hearings style, the advanced course also focuses on professionalisation, communication techniques, and dealing with complexity and pressures of time. Greater demands are also placed on the trainee judicial officer's scenario approach and handling: trainee judicial officers must be able to select the most appropriate handling manner: resolve the case or ask further questions, appoint an expert, settlement, mediation of a judgment? The analysis of the dossier, full handling of the case at the hearing and the formulation of a conclusive and "readily defensible" judgment (in the sense of a judgement that can be expected to be upheld in an appeal) remain important.

The objective of the course is to provide trainee judicial officers an appropriate knowledge of the work in the administrative law section, both with respect to administrative law and the appropriate attitude. The tension between respect for the administrative singularity and the "good measure of self-assuredness" is of particular importance with respect to attitude. Trainee judicial officers are expected to act with a slightly greater degree of independence (during the hearings and the formulation of the judgements) than in the basic part of the course since advanced course trainee judicial officers judges have been appointed to the position of deputy justice and handle the cases with a reasonable degree of autonomy. The advanced course trainee judicial officers no longer act as court registrar.

The structure of the course is summarised in the learning assignment plan at the end of this section.

### Supervision

Trainee judicial officers normally handle all phases of a case, from the preparations for the hearing right through to the formulation of the judgement. Consequently, the extent of the feedback will depend on the relevant action. The feedback forms are used as follows.

In practice, the observations on the preparations of the hearing and the hearing can often be listed on one form. Since the preparations for the hearing are often in the form of a (partial) draft judgement the observations on the deliberation in chambers and the

judgement can also often be listed in the same form, in particular when the case is what is referred to as a "studio case".

In addition, trainee judicial officers following the basic course often conduct hearings of a number of cases (about four) which are very similar to each other (for example, medical occupational disability cases, what are referred to as "production-line cases"). It may then prove worthwhile to list the observations on the preparations for the cases on one form, the observations on the hearings on a second form and the observations on the judgements on a third form since the observations for each case will largely overlap with and be related to each other: it will then be valuable to make records of the overall observations on each phase of the case. In other words, the manner in which the observations are specified is a question of customisation.

### Types of cases

Trainee judicial officers are initially assigned simple cases and (fairly rapidly) move on to cases of average complexity followed by cases that are more complex but are not amongst the most complex cases. The cases assigned to trainee judicial officers during the advanced part of the course are, preferably, of a different nature from those assigned in the basic course. Civil servant cases, administrative law penalty cases and a range of smaller types of cases are all suitable. In addition, some of the cases will relate to the segments the trainee judicial officers became familiar with during the basic part of the course.

This specification is based on (1) cases to be handled by a single-judge section and (2) a continual package throughout the advanced course. The trainee judicial officer is also assigned cases handled by a three-judge section during this phase which can include cases of the greatest degree of complexity (with due regard for the trainee judicial officer's learning situation). The structure of the increasing degree of complexity (and the intensity of the supervision) can be different when trainee judicial officers switch to another team or department during the advanced course.

The complexity of administrative law cases depends on at least the following (non-exhaustive) factors:

- the number of questions of law to be answered
- the degree of uncertainty or complexity of the applicable review framework
- the degree of uncertainty about the manner in which the case is presented and the parties' unfamiliarity with their position with respect to evidence
- the number of parties
- the newness of the regulations (and, with new regulations, a lack of useful appeal case law)

### Attainment levels

At the end of the advanced course period the trainee judicial officers can carry out the following tasks (including the somewhat more complex tasks) in almost full autonomy, whereby account is taken of the specified task criteria, competences and experiential standards. A trainee judicial officer who does not need to follow an external traineeship is required to carry out the specified tasks in complete autonomy. The required "independence" does not impede raising questions with and discussing issues with a staff lawyer, clerk or the trainer.

### Result areas

The above review serves as the basis for the following discussion of the levels administrative court judges will need to attain in the

various result areas. Each discussion of a task begins with a general introduction and continues with a specification of the criteria governing the assessment of the task together with the most important competences required for the task, as well as an as complete as possible specification of the special knowledge that is required. Neither the learning capacity, self-reflection and other control competences nor what are referred to as “moral competences” are specified separately, although these are always required.

### General knowledge

- General administrative law, in particular sections 1, 3 and 6 to 8 inclusive;
- Outlines of substantive administrative law;
- Communication styles

## Result area: preparing for the hearing

### Outline

Administrative court judges have usually received an instruction from the clerk when they make the preparations for the hearing. The dossier needs to be read and studied thoroughly, whereby a fundamentally critical attitude is required: although the administrative body is highly experienced it is not, self-evidently, by definition in the right. Factual knowledge is important: the collection of the facts (with an inventory of the contested facts that shall need to be addressed during the hearing) is followed by a legal analysis to review how this complex of facts fits in the (usually fairly tight) legal framework. This analysis requires a thorough study of the relevant case law and, where necessary, the legal history.

Administrative court judges must (in analogy with civil court judges) supplement the legal grounds and may supplement the facts (they are not bound to the parties' presentation of the facts). Administrative law encompasses the extra-legal tenet of reviewing against public order, which occasionally gives cause to the need to raise points of dispute that were not put forward by the parties before the administrative court judge can address the points of dispute put forward by the parties.

A scenario approach to the case is also necessary. What new information can be introduced during the hearing? How does the administrative court judge insert this information? Is there a reason to appoint an expert after the hearing? Is the burden of proof made explicit, where relevant with an “order to produce proof” (an opportunity for a party to introduce proof after the hearing)? Is a settlement possible? Is mediation appropriate? How can a final judgement be reached? The final settlement of a dispute takes place in the present. Consequently, the administrative court judge will occasionally need to establish the facts at two different reference times and carry out a legal analysis. Will the formal administrative loop be applied? In other words, the administrative court judge needs to develop a vision of the case and its solution.

### Tasks

1. Analyse the factual points of dispute and their legal interpretation
2. Think through scenarios
3. Devise questioning strategies
4. Cooperate with the clerk

### Task criteria

- Re. 1 Analyse the factual points of dispute and their legal interpretation*
- a. Check the completeness of the dossier
  - b. Check the formalities

- c. Select the primary and secondary issues
- d. Extract the factual and legal points of dispute
- e. Place the dispute in the appropriate social context
- f. Check the correctness of the result

*Re. 2 Think through scenarios*

- a. Determine which potential approaches come into consideration
- b. Compare the advantages and disadvantages of the approaches
- c. Comprehend the legal implications of the various approaches
- d. Make an efficient and purposive selection of the definitive and, if feasible, final approach

*Re. 3 Devise questioning strategies*

- a. Determine the manner in which clarity can be obtained
- b. Give attention to “desirable answers” and focus the questions and sequence of questions accordingly
- c. Give consideration to the party that must be questioned first as determined by the division of the burden of proof

*Re. 4 Cooperate with the clerk*

- a. Respond to ideas from the clerk in an active and constructive manner
- b. Submit information that can be of importance to the clerk in good time
- c. Refer to the clerk's performance in a favourable manner but, as required, be critical about the clerk's performance whilst exhibiting due respect

### Central competences

- Situational awareness
- Forming a judgement
- Prioritisation
- Problem analysis
- Cooperation
- Due care

### Experiential standard

Trainee judicial officers deal with between 60 and 80 cases during the entire programme period, whereby the preparations, handling of the hearing and the formulation of the judgement count as one case. Cases withdrawn shortly before the hearing are also taken into account. The trainee judicial officers begin with a number of half hearings and proceed to full hearings as soon as possible.

In addition to cases in which the trainee judicial officers personally formulate the draft judgement/instruction the trainee judicial officers also handle a number of cases in which a clerk performs these tasks. This is important since the administrative law section delegates more than other sections. Consequently, cooperation with the court registrar and consultation with the court registrar on the form of the judgement is an important learning point for future administrative court judges. This will need to have taken place during at least two (full) hearings by the end of the advanced course, equivalent to a total of about twelve cases. The indicative norm of 60 to 80 cases can be increased when the clerk formulates a higher number of judgements. The proportion of judgements to be formulated by the trainee judicial officer and the judgements formulated by the clerk is determined in consultation between the trainer(s) and the trainee judicial officer, largely on the basis of the relevant trainee judicial officer's learning points:

trainee judicial officers who need to perfect their writing skills will formulate more judgements while the clerk will formulate more cases when trainee judicial officers need to perfect their cooperation competence. The trainee judicial officer's learning needs are determinative. The allocation of the formulation of the judgements/instructions has no influence on the depth in which the dossier is studied (the intensity is unchanged when the trainee judicial officer does not formulate the judgement/instructions) and no influence on the contemplation of the questions that will need to be raised.

In addition to handling cases heard by a single-judge section, advanced course trainee judicial officers also take part in a number of cases heard by a three-judge section: the role they play in these cases depends on a number of chance factors. The trainee judicial officer can formulate the judgement, the clerk can formulate the judgement or another member of the three-judge section can formulate the judgement. Preference is given to one of the first two aforementioned options. About 20 cases heard by a three-judge section is preferable, when feasible. Two factors play a role in cases heard by a three-judge section: cooperation (with the other two members of the three-judge section and the court registrar) and the formation of a personal judgement. The trainee judicial officer needs to stand by his or her personal standpoint and appreciate when "flexibility" is appropriate. Most trainee judicial officers find this difficult and, consequently, supervision (coaching) by the trainer is required. When advanced course trainee judicial officers are assigned a larger number of cases heard by a three-judge section then the total number of cases they are assigned should be lower than the indicative norm of 60 to 80 cases. Trainee judicial officers also need to "read" drafts formulated by colleague judges or colleague trainee judicial officers: is the trainee judicial officer able and willing to give criticism when this is appropriate?

As will be evident from the above, the number of cases assigned to individual trainee judicial officers can be somewhat higher or lower than the indicative norm of 60 to 80 cases: higher when the trainee judicial officer does not always formulate the judgement and lower when the trainee judicial officer is assigned a larger number of cases heard by a three-judge section.

### Supervision

The trainer always discusses the instructions/draft judgement for each hearing well in advance, gives any further explanation that may be necessary and/or asks the trainee judicial officer to carry out further studies. The handling scenarios are also discussed. Information about the use of the feedback form is given under the Supervision section of the "General information about this programme period" section.

### Specific knowledge/study tasks

- The section's court processes
- The substantive subsection
- The Procesregeling bestuursrecht ('Administrative law procedural regulations') 2008

## Result area: the hearing

### Outline

Although the dossier is often largely determinative in administrative law decisions, the hearing is nevertheless an essential element of the proceedings. Firstly, "being heard" is of importance to the parties' perception of receiving an honest trial and their accep-

tance of the judgement. The parties may – within reasonableness – bring forward all the points they consider to be of importance to the case. Secondly, surprise decisions must be avoided. For this reason good administrative court judges raise all the issues that can be of importance to their judgement with the parties during the hearing.

Administrative court judges conduct unusually "loose" hearings. Administrative court judges may ask any questions they wish within the demarcations of the case. Self-evidently, administrative court judges may not help one of the parties in their position (which would result in their loss of impartiality). However, they are offered a reasonable degree of discretion in deciding which questions they will ask during the hearing.

Administrative court judges direct the case, determine the manner in which the hearing is handled, ask further questions when points have not been clarified and offer the parties scope to make a contribution. Administrative court judges exhibit interest and, where relevant, empathy. Studies carried out in recent years have revealed that citizens need to be offered more scope to have their say. Until recently, hearings were conducted in the form of pleadings: however, the courts are now increasingly shifting towards a more active handling of the case in the hearing whereby the judge takes the lead and discusses the case with the parties rather than conducting cases on the basis of pleadings presented by the parties. In addition, administrative court judges prepare for the case by drawing up scenarios whereby they are at least able to conclude the hearing with a statement of the further course of the case, i.e. the formulation of a final judgement, an order to produce proof, the appointment of an expert, referral to mediation or an endeavour to arrive at a settlement. Administrative court judges deciding to apply a (formal or informal) administrative loop need to exercise explicit direction of the hearing.

Administrative court judges must use the appropriate language since they regularly communicate with parties acting without a legal representative and will then need to discuss legal issues in language that can be understood by legal laymen. Administrative court judges need to offer the parties scope to explain their case.

### Tasks<sup>2</sup>

1. Open the case to discussion
2. Allow the parties to plead their case
3. Ask questions
4. Offer the parties a second pleading
5. Close the hearing of the case

### Task criteria

- Re. 1 Open the case to discussion*
- a. Pay due regard to the required formalities (the sequence)
  - b. Adopt the appropriate tone
  - c. Maintain control
  - d. Demonstrate a self-assured professional attitude in a manner that manifests genuine interest and respect
- Re. 2 Allow the parties to plead their case*
- a. Make sure that the parties are offered every opportunity (within reasonable limits) to say everything they find necessary
  - b. Safeguard the interests of other parties
  - c. Maintain control
  - d. Be courteous to everyone
- Re. 3 Ask questions*
- a. Ask open questions to open everything required to clarify

the case to discussion and ask any further questions that are necessary

- b. Avoid unnecessary questions about points that have already been clarified during the pleadings
  - c. Safeguard the principle of hearing both sides of the argument
  - d. Handle the questions in a strategic sequence
  - e. Summarise answers adequately and then raise the summaries as questions to the opposite party or parties
  - f. Able to diverge from the questions prepared in advance
  - g. Make the information required for a sound judgement clear (make the parties' position with respect to furnishing proof clear to them)
  - h. State the consequences of certain (proceedings) choices made by the parties
    - i. Be courteous to everyone
    - j. Speak intelligibly and not too fast
    - k. Be prepared to pause to give consideration to an issue or to look up something
    - l. Be prepared to "slacken the reins" when the parties immediately enter into contact with each other when this is beneficial to the handling of the case and be able to take back control of the hearing
  - m. Demonstrate recognition of the relevant social issue
  - n. Act effectively
  - o. Make sure that everyone feels understood
- Re. 4 Offer the parties a second pleading*
- a. Make sure that all the relevant points have been discussed and that the court has asked all the necessary questions
  - b. Pay due regard to the required formalities (the sequence)
  - c. Adopt the appropriate tone
  - d. Maintain control
  - e. Demonstrate a self-assured professional attitude in a manner that manifests genuine interest and respect
- Re. 5 Close the hearing of the case*
- a. Check (personally, or explicitly) to make sure that everything has been discussed
  - b. State the further course of the case clearly
  - c. State when the final judgement will be delivered, when possible

### Central competences

- Ability to listen
- Verbal fluency
- Situational awareness
- Forming a judgement<sup>3</sup>
- Prioritisation
- Problem analysis
- Sensitivity
- Strength
- Self-confidence

### Experiential standard

See the previous result area.

### Supervision

The trainer discusses the cases with the trainee judicial officer before the hearing: initially case by case and, over the course of time (about mid-way through the period, depending on the trainee judicial officer's progress) solely when requested by the trainee judicial officer. The trainer initially attends the hearings "at the

back of the court". About mid-way through the period the trainer stops attending the hearings (although, self-evidently, the trainer remains accessible for questions). Hearings conducted by the trainee judicial officers need to offer them an acceptable opportunity to suspend the hearing as the occasion arises to discuss the best scenario with the trainer.

The trainer gives specific feedback after the hearing: what went well and what needs to be improved? The hearing needs to be discussed point by point ("you said this at that point: did you note how party X reacted?"). A general discussion ("everything went well") is not recommended. The trainee judicial officers handle the cases in almost complete autonomy from about mid-way through the period.

Information about the use of the feedback form is given under the Supervision section of the "General information about this programme period" section.

## Result area: deliberation in chambers

### Outline

Administrative court judges retire to chambers to review the judgement to be delivered or give consideration to another modality appropriate to the case. Administrative court judges are open to information submitted by the court registrar. When it is decided to give judgement then the grounds supporting the judgement are discussed. When another modality is deemed to be appropriate then the type of modality is discussed: appointing an expert, asking questions to the parties, etc. When the appeal is upheld then it is necessary to review whether and, if so, how the dispute can be finally settled.

### Tasks

Arrive at an (unequivocal) judgement and unequivocal instructions (for the clerk's formulation of the judgement).

### Task criteria

- a. State, after consultation with the clerk, what needs to be done
- b. Discuss the decision to be reached in a logical sequence of reasoning
- c. Make the personal standpoint explicit and checks each logical step for agreement
- d. Be aware when it is necessary to "be influenced by" the contribution of others
- e. Discuss the next step to be taken and checks for agreement
- f. Give clear instructions to the clerk which explain what is expected from the clerk (in formulating the judgment)

### Central competences

- Decisiveness
- Situational awareness
- Forming a judgement
- Problem analysis
- Cooperation
- Strength
- Due care

### Supervision

The trainee judicial officer directs the deliberation in chambers. The trainer records and comments on the manner in which the deliberation is conducted, including the manner in which the clerk is involved in the consultations. The trainee judicial officer actively

involves the clerk in the deliberation in chamber, certainly in cases in which the clerk formulates the draft judgement/instruction. Information about the use of the feedback form is given under the Supervision section of the “General information about this programme period” section.

## Result area: judgement

### Outline

An administrative court judgement is comprised of a sound and compelling reasoning. The motivation supports the judgement. No hypothesis is left open. The issues are reviewed in a logical sequence, often based on the sequence in which the decision was made: the review begins with the conditions attached to the authority, continues with the exercising of the authority and then concludes with the specific modalities of the exercising of the authority. Formalities are discussed only when they result in problems or there are specific grounds or defences. The principle is that the pound of flesh is extracted from the loser. The judgement is formulated in concise, clear language. Administrative court judges often demonstrate their self-reliance and independence in their thinking in the formulation of their judgements. Administrative court judges apply the relevant legislation and case law in their judgements and give due regard to judicial policy.

### Tasks

1. Formulate a judgement heard by a single-judge section and review a judgement formulated by the clerk.
2. Formulate a judgment for a case heard by a three-judge section or study a draft for a case heard by a three-judge section and make any necessary corrections.

### Task criteria (for both tasks)

#### Design

- a. Order the relevant uncontested facts in a professional manner
- b. Give a complete and correct reproduction of the grounds for appeal and the defence (in separate paragraphs or included in the review)

#### Assessment

- a. Assess the court's competence, where relevant
- b. Assess the allowance of the appeal, where relevant
- c. Assess the allowance of the objection, where relevant
- d. Assess the administrative body's formal authority, where relevant
- e. Assess the applicability of the conditions attached to the authority in concreto, where relevant
- f. Review the policy for reasonableness, where relevant
- g. Discuss the legal bases by reviewing the grounds for appeal against regulations and policy
- h. Do justice to the parties' arguments and pleadings and do not denaturalise them
- i. Review the issues in a logical sequence
- j. Recognise and discuss lack of proof
- k. Cut Gordian knots on the basis of arguments
- l. Arrive at a judgement that is sustainable and practical
- m. Apply the law, policy and case law correctly
- n. Draw up convincing grounds
- o. Formulate clearly and transparently
- p. Work carefully and precisely
- q. Check whether a surprise judgement in respect of all the above points has been avoided

### Judgement

- a. Deliver a feasible and complete judgement
- b. Apply articles 8:72 to 8:75 inclusive in the correct manner, i.e. use the correct decision-making elements (closed decision-making modalities)
- c. Calculate the correct order to pay the legal costs, court registry fees and compensation

With respect to a judgement formulated by the clerk

- a. Apply the aforementioned standards to the judgement
- b. Respect the clerk's personal writing style
- c. Be aware when intervention is appropriate
- d. Communicate with the clerk in an acceptable and convincing manner

### Central competences

- Decisiveness
- Situational awareness
- Forming a judgement
- Prioritisation
- Problem analysis
- Cooperation
- Written fluency
- Due care

### Orientation tasks

It is recommended that trainee judicial officers read many judgements: as administrative law is characterised by the repeated application of the same authority, congruity with other judgements is of great importance to protect the general interest and principle of equality.

### Experiential standard

See the result area: Preparing for the hearing.

### Supervision

The trainer and the trainee judicial officer discuss the draft. After a few weeks the trainer's role is primarily that of a “reader”. The trainer reads the drafts right through to the end of the period. The advanced course trainee judicial officer formulates the judgements in virtually complete autonomy from about mid-way through the course.

When the clerk formulates the judgement instead of the trainee judicial officer then the trainee judicial officer is the first to assess the draft formulated after the hearing against the aforementioned task criteria.

Information about the use of the feedback form is given under the Supervision section of the “General information about this programme period” section.

### Specific knowledge/study tasks

- D.A. Verburg, De bestuursrechtelijke uitspraak en het denkmodel dat daaraan ten grondslag ligt, Zeist/Zutphen: Kerckebosch/SSR 2008
- Participation in staff meetings, case law discussions and a working party (when a working party has been formed)

1 Trainee judicial officers do not work on the basis of instructions from the clerk: in a certain sense trainee judicial officers carry out the work of both clerk and judge.

2 This is the standard sequence. On occasion there is reason to diverge from this sequence, for example by beginning with a number of clarifying questions. This can result in a number of points becoming clear. Any divergence from the standard sequence must be communicated clearly (“you will be offered every opportunity to plead your case, but I need to begin by asking a number to gain a clear insight into the situation.”).

3 As a form of result-orientation: understanding the possible courses the hearing can take, directing the hearing on the relevant course and asking the associated questions. In addition, where relevant, an ability to switch/improvise/adopt a f

# Learning assignment plan

## advanced administrative law course

### Duration: 10 months

This section of the study guide outlines the programme for each week of the advanced course in the administrative court section.

#### Week 1 Introduction to the section

What Intake interview with trainer(s)

Objective To make the renewed acquaintanceship of each other and of this specific sector, discuss earlier learning experiences, discuss the structure of this programme period, discuss the attainment levels, reach agreement on expectations about conduct, supervision by the trainer(s), feedback, the review interview and the role played by the learning assignment dossier and development dossier. Important points are noted on the intake form enclosed in the development dossier. The trainee judicial officer ensures that the development dossier with information about the previous period is placed at the disposal of the trainer(s) prior to the meeting. This enables the trainer(s) to become acquainted with the contents of the dossier and ensures that the developments in the previous course serve as the prelude to this new programme period.

What Acquaintanceship meeting with the section chairman/team chairman

Objective note: If possible, this discussion is held earlier for scheduling reasons.

To obtain clarity about the role of the person involved in the trainee judicial officer's training. To obtain an impression of the broader context within which the trainee judicial officer operates and to exchange expectations.

What Acquaintanceship with colleagues

Objective Acquaintanceship with the colleagues at the workplace. These introductions can be initiated by the trainer or, self-evidently, the trainee judicial officer.

What Further acquaintanceship with the organisation and the working methods within the section

Objective Become (re) familiar with the organisation of the role and the court registrar, the judicial support and the

staff lawyers, etc. The discussion also extends to the dossier routing and the sources of knowledge that play a role within the section.

#### From Week 2 Working and learning

What "Conducting" hearings in a wide range of cases

Objective Working and learning to achieve the attainment levels (see study guide). This is carried out primarily in cases heard by a single-judge section, but also in cases heard by a three-judge section. The trainee judicial officer formulates the majority of the (draft) judgements, although in a smaller number of cases the trainee judicial officer works with an instruction/draft judgement formulated by the clerk.

What Mandatory courses

Referral to mediation (month 4)

European administrative law (from entry group 2008-II) (month 4-5)

Practical professional ethics (month 6)

ECHR in administrative law (from entry group 2008-II) (month 7)

6 half-days of discretionary courses: the following are recommended:

Rules of evidence, Scope of the case or Rules of policy

Objective Acquisition of the knowledge and skills required to carry out the tasks.

#### Week 10+30 Monitoring progress, results and the process

What Progress meetings with trainer(s)

Objective The trainer(s) will hold a progress meeting with the trainee judicial officer in week 10 and week 30, if so required. The objective of this meeting is to reflect on the progress in the learning process, discuss experiences and reach (supplementary) agreements to promote the trainee judicial officer's development. The progress form enclosed in the development dossier is used for this purpose.

#### Week 21+42 Review progress and results

What Review interviews with trainer(s)

Objective The trainer(s) will hold a review interview with the trainee

nee judicial officer in week 21 and week 42 to review the trainee judicial officer's progress relative to the attainment levels stated in the study guide. The trainee judicial officer's performance of each duty is discussed, together with a specific statement of the level of development. The learning assignment dossier serves as important input for this interview. Conclusions about the learning process and learning results are drawn during the interview. The review interview held in week 21 also encompasses the agreements on the nature of the work and the supervision of the work to be carried out later in the learning period necessary to promote the required development of the trainee judicial officer. The review interview held in week 42 discusses the major issues for the external traineeship. The conclusions and agreements are recorded on the review form enclosed in the development dossier.

#### **Week 42 Assessment**

What Assessment

Objective Assess whether the results achieved by the trainee judicial officer demonstrate the ability to perform as a judge in virtual autonomy.



Peko

# **Curriculum, advanced public prosecutor's office course**

**Duration: 10 months**

# Curriculum

## advanced public prosecutor's office course

### Duration 10 months

### Outline of the position

Public prosecutors are responsible for the enforcement of criminal law legal order, a duty which results in a wide range of day-to-day activities. Public prosecutors manage the investigation of offences, handle criminal cases heard by single-judge and three-judge sections, maintain a wide variety of internal and external contacts, conduct administrative consultations, contribute to the formulation of policy, expertise and development of law, take part in projects, and counsel colleagues and public prosecutor's office staff. In other words, no two days are the same for public prosecutors and their agenda is, to some extent, unpredictable. For this reason public prosecutors are expected to exhibit flexibility and to be able to switch between the various tasks and duties and the various levels at which these tasks and duties are performed. Public prosecutors must be able to prioritise, make decisions rapidly and cope with pressures of time – and all without detriment to exercising due care. They also need to be able to cooperate and communicate with the wide range of persons and organisations that play a role in the criminal law system. Public prosecutors play a key role in criminal proceedings. Whilst judges examine and judge on the basis of the facts that are submitted to them, public prosecutors maintain direct contacts with the various parties involved in the proceedings: administrative decision-makers, investigating officers, legal assistance counsellors and members of the judiciary (such as the examining magistrates investigating criminal cases), as well as the suspects and the victims. For this reason public prosecutors need to make clear what they stand for both inside and outside the courtroom, which in turn requires an excellent ability to cooperate and situational awareness.

Public prosecutors also need to be able to cope with a wide range of social and, on occasion, political pressure: they always need to be aware that criminal law is at the centre of public attention and that they are the party that are expected to enforce criminal law by exercising the authority assigned to them by law. In conclusion, public prosecutors need to be true professionals in both substantive and procedural criminal law and a wide range of exceptional specialisms that transcend criminal law.

Public prosecutors safeguard an independent judicial officer position within the hierarchical frameworks formulated by law and the policy frameworks. Public prosecutors participate in arriving at the truth in an impartial and objective manner, whereby they comply in full with the statutory frameworks. They are on the watch for the exhibition of 'tunnel vision' by themselves and others, whereby they take express account of the interests of all the parties involved in criminal proceedings. Public prosecutors represent the interests of society without regard to their personal interests and without representing the interests of other parties. They endeavour to achieve personal improvement and the improvement of the organisation for which they are active.

Public prosecutors operate at an 'involved distance' within the criminal law chain: although they are involved in the activities of the partners in the chain and the participants in the criminal proceedings they also remain their independence from these parties at all times, in particular with respect to the relationships with the police, victims and/or surviving relatives. Achieving this balance requires a great deal of empathy and a specific degree of independence and autonomy.

### Preface

The entire course within the Public Prosecution Service – both the basic and advanced sections of the course – is based on the job profile of the district public prosecutor (hereinafter referred to as the 'public prosecutor'). The first part of the basic public prosecutor's office course focused on the job requirements for public prosecutors handling hearings conducted by a single-judge section. During the second part of the course the trainee judicial officers have already learnt how to handle regular (tailored) cases in a reasonable degree of autonomy and become familiar with other (management) tasks included in the public prosecutor's job profile. The intention of the advanced course is to ensure that trainee judicial officers gain an appropriate and complete insight into the public prosecutors' various policy and management tasks. For this reason trainee judicial officers need to explore the entire range of these tasks. Since these tasks are so diverse and, moreover, can vary from court to court the trainee judicial officers need to ensure that they include appropriate records of the various orientation tasks they carry out in their learning assignment dossiers.

The elements of this advanced course are compatible with the Public Prosecution Service's licensing system: a licentievignet licence has been introduced for trainee judicial officers. Trainee judicial officers must comply with the associated requirements by the end of the course. More information about the licensing system is available on the SSR's website (under Opleidingen, Openbaar Ministerie ['Courses, Public Prosecution Service']).

### Objective

Whilst the basic course placed the primary emphasis on the acquisition of as complete as possible an insight into the work of public prosecutors, the advanced course focuses largely on attention to the professionalisation of the public prosecutor's core duties such as the management of investigations, decision-making on prosecution issues and handling cases at hearings, etc.

The advanced course also explores the public prosecutor's management tasks in greater detail and trainee judicial officers will increasingly participate in and, occasionally, carry out these tasks in independence. Consequently, the advanced course will broaden and deepen the trainee judicial officers' knowledge, skills, attitude and experience. For this reason it is recommended that trainee judicial officers are not assigned to the same section/department as in the basic course: they should switch to other sections/departments to enable them to become as familiar as possible with as many sections of the public prosecutor's office as possible. The intention of the advanced course is to ensure that trainee judicial officers develop their all-round substantive professionalism and, consequently, the trainee judicial officers will not specialise during this programme period: their work will inevitably be limited to occasional participation in the work involved within one of the specialisms in a public prosecutor's office (such as civil, economic fraud and environmental cases).

During this programme period the trainee judicial officers will increasingly independently fulfil the role of deputy public prosecutor.

The structure of the course is summarised in the learning assignment plan at the end of this section.

### Supervision

It is recommended that the trainee judicial officers are assigned another trainer than in the basic course, although they should be assigned the same trainer(s) throughout the course. The trainer complies with the same quality requirements as in the basic course. During the advanced course the trainer will not only fulfil the roles of coach and permanent contact person, but will also 'argue' with the trainer. The trainer will need to offer the trainee judicial officers an opportunity to develop into a public prosecutor who is able to act in autonomy: in other words, the trainer will need to offer the trainee judicial officer sufficient scope. The trainer also retains the primary responsibility for the course. The trainer and trainee judicial officer jointly specify a detailed programme on the basis of the learning assignment plan that also takes account of the trainee judicial officer's special interests and qualities.

The trainer gives the trainee judicial officer feedback on his or her activities during feedback meetings. The trainer holds regular consultations with the trainee judicial officer's mentor and other officers involved in the course.

### Type of work

The public prosecutor's offices in the Netherlands do not make a

uniform distinction between the various types of cases. This study guide has adopted the classification made by the Public Prosecution Service, namely cases heard by a single-judge section, repetitive cases, standard cases and regular (tailored) cases. Cases heard by a single-judge section are heard by the single-judge criminal section, sub-district court and minor offence section. These are often repetitive cases that can be dealt with in the customary manner. Standard cases are understood as cases without an individual intake and with a completed investigation: these relate to most cases heard by a three-judge section. (Regular) tailored cases are cases focused on the general law theme and/or generic general law cases that can relate to all specialisms, i.e. cases that are not numbered amongst the extensive and complex (specialised and generalised) tailored cases that require a greater involvement of the public prosecutor and which are not prepared in a standard manner.

During the advanced course the trainee judicial officer begins with simple duties to refresh his or her memory of the public prosecutor's duties and rapidly moves on to increasingly larger and more complex work and cases.

Specific factors that can determine the degree of complexity of the work or a case include:

- legal complexity
- the seriousness of the case
- cases dealt with in the customary manner or, conversely, tailored cases
- the degree of the underperformance risk to society
- the position with respect to evidence
- the number of suspects in the case
- the scope of the personal or social damage caused by the offence
- the severity of the punishment or the measure or their impact on the suspect or society
- the opportunity to control the investigation services
- the quality of the official reports and the other documents in the criminal proceedings
- the speed with which decisions need to be made

It is not the intention that the trainee judicial officers are assigned to a specialised department or section of the public prosecutor's office. However, they should become familiar with one or more of the Public Prosecution Service's duties, such as serious or supra-regional crime, major investigation team investigations and juvenile cases or fraud cases.

### Attainment levels

At the end of the advance public prosecutor's office course the trainee judicial officers are able to independently carry out the general tasks at the level of a novice public prosecutor, i.e. they are able to carry out large and complex (tailored) cases in autonomy and are able to manage the substance of the cases. They are also able to carry out in-depth, varied analyses of cases that cannot be dealt with in the customary manner due to the multiple, compound issues and multiplicity of the review framework. In addition, they are able to carry out a number of more specific actions of public prosecutors in autonomy, such as working defence counsel rosters and participating in local administrative consultations and special projects together with the associated consultations.

The number of actions specified as the experiential standards in

the result areas serve as rough guidelines: they are not specific targets that must be achieved in all circumstances – and certainly not the number of actions stated for tasks that depend on uncertain factors. The numbers cited under the result areas justify the expectation that trainee judicial officers have, as a result, acquired the experience required to perform tasks in that specific area in the appropriate manner.

At the end of the course the trainee judicial officer complies with the course requirements governing the issue of a licentievignet licence.

## Result areas

The above review of the general work of public prosecutors serves as the basis of the list of requirements imposed on the public prosecutor listed in the result areas of the following sections: each begins with a general introduction to the result area and continues with a specification of the tasks as derived from the job profile together with a summary of the criteria governing the assessment of the tasks, the most important competences required for the tasks and then concludes with the specific knowledge required for the tasks.

### Result area: authority and direction of investigations

#### Outline

Public prosecutors exercise the authority and direction of the police and/or other investigation services, i.e. they control and direct specific investigations carried out by the police and other investigation services. They assess the specific situations and facts submitted to them. Speed is required in controlling the investigation services, speed which is achieved by obtaining an as complete as possible insight into the situation outlined by the services in as short a timeframe as possible. This speed also requires promptness of action in arriving at a decision after a careful consideration of the information, where trainee judicial officers need to learn how to cope with the limitations imposed on the police, in particular with respect to the available police staff capacity. Public prosecutors also need to offer the police scope to carry out a number of actions in autonomy, where they in effect exert control from a distance (at an involved distance).

In addition, public prosecutors monitor the quality of the investigation: they assess the legal feasibilities and infeasibilities, monitor compliance with the statutory limits and act as a legal consultant for the investigation services.

In conclusion, public prosecutors supervise the investigation organisations' compliance with the agreed policy relating both to the number and types of cases.

#### Tasks

1. Exercise authority and direction of the police/investigation services<sup>1</sup>
2. Control and direct the performance of specific investigations
3. Assess the situations and facts submitted by the police/investigation services
4. Decide on the application of and/or claim the imposition of coercive measures before the court
5. Convey the demarcations of investigations to the police/investigation services and supervise the fulfilment of the agreements reached within these demarcations

6. Monitor the quality of the work of the police/investigation services

#### Task criteria

- Re. 1 Exercise authority and direction of the police and/or other investigation services
  - a) Make a clear analysis rapidly
  - b) Assign priorities in the investigation and deployment of investigating staff
  - c) Work in the customary manner, where relevant (fixed patterns)
  - d) Give clear instructions to the investigation services
  - e) Formulate clear objectives
  - f) Listen to the arguments of the investigation services and weigh these against the personal assessment
  - g) Exhibit respect for the investigating officers and their knowledge and experience
  - h) Notify the supervisor of structural control problems
  - i) Maintain involvement and distance in equilibrium. Make, notwithstanding the good relationship with (individual) police officers, decisions on the basis of the personal responsibility even when the police officers do not agree with the decisions
  - j) Exhibit a self-assured attitude towards the investigation services, but without appearing arrogant
  
- Re. 2 Control and direct investigations
  - a) Weigh situations and facts against the agreed policy frameworks
  - b) Create solutions for investigation problems
  - c) Make decisions on the investigation
  - d) Search for, alongside confirmation, other hypotheses (falsification) in order to reach a better ultimate decision
  - e) Demonstrate creativity and independence with respect to solutions and decisions
  - f) Listen carefully and rapidly identify the core of the problem
  - g) Involve the legal aspects, ethical and social considerations, sense of justice and awareness of the personal feelings in the formation of an assessment
  - h) Formulate the core of the facts and the cohesion between the facts in a legally justifiable, understandable and useable manner
  - i) Respond adequately to unexpected twists
  - j) Identify inconsistencies
  - k) Estimate relevance correctly
  
- Re. 3 Assess the situations and facts submitted by the police/investigation services
  - a) Be familiar with the regulations governing the imposition of coercive measures
  - b) Make rapid and carefully-considered decisions on the imposition of coercive measures with due regard for the balance between the social interests, interests of the investigation and the suspect's interests
  - c) Explain personal decisions clearly and correctly to the police, judge and suspect
  
- Re. 4 Decide on the application of and/or claim the imposition of coercive measures before the court
  - a) Be familiar with the regulations governing the imposition of coercive measures
  - b) Make rapid and carefully-considered decisions on the imposition of coercive measures with due regard for the balance between the social interests, interests of the investigation and the suspect's interests
  - c) Explain personal decisions clearly and correctly to the police, judge and suspect

<sup>1</sup> The trainee judicial officer does not perform this task of the public prosecutor at this point. For this reason no task criteria are specified for this task.

- Re. 5 Convey the demarcations of investigations to the police and/or investigation services
- Demonstrate knowledge of the national, regional and/or local policy frameworks governing the demarcations of investigations, the ability to apply the frameworks and the personal endorsement of the frameworks
  - Monitor the correct and efficient application of the frameworks
  - Convey the Public Prosecution Service's standpoint to the police and/or investigation services in a clear and loyal manner ('The Public Prosecution Service is one and indivisible')
- Re. 6 Monitor the quality of the work of the police/investigation services
- Adopt a critical attitude towards the products of the investigation services and the personal organisation
  - Test these products against the relevant legal framework
  - Supervise compliance with the agreed quality frameworks and quality requirements
  - Give police officers and staff feedback on required improvements and changes
  - Adopt a critical attitude towards the personal quality and demonstrate this attitude within the organisation

### Central competences

- Decisiveness
- Ability to listen
- Situational awareness
- Forming a judgement
- Persuasiveness
- Problem analysis
- Cooperation

### Orientation tasks

- Traineeship of a total of four (4) days with specialised units of the detective force, such as the criminal intelligence unit or juvenile and vice squad.
- Accompany an experienced public prosecutor and provide support in a specialised criminal investigation or a major investigation team investigation to experience the management of an investigation of a case of this nature and making adequate decisions.

### Experiential standard

Recommended:

- Supervise clerks in the pre-processing<sup>1</sup> of at least 20 regular standard cases to be heard by a three-judge section. These cases should be varied in terms of the substance, legal aspects and severity.
- Supervise clerks in the pre-processing of at least 10 regular tailored cases to be heard by a three-judge section. These cases should be varied in terms of the substance, legal aspects and severity.
- Independently work at least 6 one-week rosters or equivalent rosters or at least a number of one-week rosters that generate sufficient work. Including the completion of cases originating in the relevant one-week rosters unless the cases are transferred to another department or officer. These cases are taken into account in the aforementioned number of cases. '6 one-week rosters' is understood as a total of 30 working days: this relates to the stand-by rosters during office hours.

- Work at least two (2) weekend defence counsel rosters. 'Rosters' refers to stand-by rosters outside office hours, of which one with a backup and one in autonomy.
- The independent completion of at least 10 investigations.
- The independent bringing of suspects before the public prosecutor in standard and more complex cases.

### Supervision

The trainer plays a central role in all these tasks and serves as master, mirror, coach and 'opponent', certainly at the beginning of the course. The trainer monitors the trainee judicial officer's development of 'involved distance' in relation to all parties involved in the investigation chain with more intensity than in the basic course. The trainee also promotes and monitors the trainee judicial officer's development into an 'independent seeker of the truth'. Records are made of the trainer's feedback on the requisite form included in the learning assignment dossier.

### Specific knowledge/study tasks

- Comprehensive knowledge of the Public Prosecution Service, police organisation and other partners in the criminal law chain.
- The relevant Public Prosecution Service guidelines and directions.

## Result area: handling criminal cases

### Outline

The duties of a public prosecutor handling criminal cases encompass the settlement of cases out of court, preparations for criminal cases and the handling of cases at hearings. Public prosecutors fulfilling these roles are, in the first instance, decision-makers: they need to be able to use the available information and out-of-court settlement recommendation to make decisions on the further prosecution of suspects, on seizure, on the deprivation of illegally obtained advantage, compensation for victims and enforcement issues. However, they then also need to weigh the various interests against each other, such as the economic interests, social interests, the interests of an appropriate investigation and the interests of the suspects. When public prosecutors decide to prosecute then they also need to weigh the legal and judicial efficiency considerations and take account of the victims' interests when they formulate the writs of summons.

The handling of cases at hearings is one of the public prosecutor's most important activities and the activity that is most visible to society, since the various media report almost daily on the results of the Public Prosecution Service's work as seen at hearings. For this reason public prosecutors need to be good presenters and communicators: they need to be able to present their case in a manner that is clear to and persuasive for the general public and need to be self-assured without appearing to be arrogant and without rabble-raising.

The public prosecutors' closing speech and demand for sentence position them and independent investigators of the factual and legal truth, and also emphasise that they are members of the Public Prosecution Service as manifested by their application of the framework and policy laid down by the Public Prosecution Service.

### Tasks

1. Make decisions to prosecute in standard cases and tailored cases
2. Charge suspects with an offence in writs of summons. Weigh

<sup>1</sup> 'Pre-processing' refers to the preparations for a hearing that encompass at least the formulation of the line of proof and the writ of summons. Public prosecutors usually formulate the line of proof and writ of summons solely for cases that are not dealt with in the customary manner or are complicated or 'sensitive' cases. The public prosecutor assesses the clerk's formulation of the line of proof and charge in all other cases. Trainee judicial officers must, in analogy with the formulation of the charge, begin by acquiring the knowledge and experience they will need later when assessing the clerk's work.

legal and judicial efficiency considerations and assess the victims' interests: take these into account when making the decision to summons suspects

3. Prepare for hearings, assess the facts in terms of provability and worthiness of punishment, assess factual and legal aspects on the basis of legislation and regulations, case law, Public Prosecution Service policy and guidelines and other policy and guidelines, tailor the approach and the tone to be adopted to the nature of the case and orient the preparations to the judge
4. Handle standard and tailored cases heard by a single-judge section at the hearing and present criminal cases, the substantiation of the judicial finding of fact and the demand for sentence at the hearing in a clear and understandable manner
5. Decide on the application of legal remedies and formulate appellant's letters
6. Decide/advise on enforcement issues with respect to criminal cases that have been handled

### Task criteria

- Re. 1 Make decisions to prosecute in standard cases and tailored cases
- a) Assess whether specific facts constitute an offence
  - b) Identify factual contrarities in a case dossier
  - c) Assess the provability
  - d) Assess a suspect's punishability
  - e) Assess the relevance and organisational feasibility within the social context
  - f) Make a readily-defendable selection from the various settlement modalities, such as dismissal, transaction, Public Prosecution Service settlement or summons to appear at a hearing, in part on the basis of the prevailing policy regulations and Public Prosecution Service systems such as BOS-Polaris (a punishment amount and prosecution system)
  - g) Comprehend all the consequences of a decision
  - h) Explain a decision in an understandable manner to all the parties involved in criminal cases, such as the police, victims and suspects
  - i) Demonstrate that attention is given to the options for seizure and/or the deprivation of illegally obtained advantage, and takes the appropriate steps
- Re. 2 Charge suspects with an offence
- a) Formulate a legally correct writ of summons that does justice to the facts in a case dossier, the seriousness of the facts and the suspect's person
  - b) Take account, when formulating writs of summons, of judicial efficiency issues by, for example, refraining from issuing an excessive number of writs of summons
  - c) Make use, where relevant, of knowledge of the completion of seizure and the deprivation of illegally obtained advantage
  - d) Assess the victims' interests and take these into account in the charges
  - e) Be continually aware of personal feelings in criminal cases and can, as necessary, make these subservient to other interests or the feelings of others
- Re. 3 Prepare for hearings
- a) Assess the facts in terms of provability and worthiness of punishment

- b) Identify the strong and weak points of a case
- c) Anticipate possible defences
- d) Assess factual and legal aspects on the basis of legislation and regulations, case law, Public Prosecution Service policy and guidelines and other policy and guidelines
- e) Take ethnical and social considerations and sense of justice into account when forming an assessment
- f) Tailor the approach and the tone to be adopted to the nature of the case, taking account of the specific aspects of each case
- g) Prepare or complete case dossiers or make the arrangements for their preparation by other Public Prosecution Service staff
- h) Has an insight into the issues to be addressed in the closing speech, has prepared the closing speech and has prepared the manner in which the closing speech will be presented

- Re. 4 Handling cases at hearings
- a) Present the core of and cohesion between the facts to the judge, suspect and victims in a convincing, understandable and legally-justifiable manner
  - b) Test statements for contrariness with established facts on the basis of ready knowledge of the case dossier
  - c) Respond to factual and legal incidents in an adequate manner
  - d) Estimate the relevance of variances to the further course of the case
  - e) Ask efficient questions
  - f) Form an opinion on situations that cannot be interpreted in an unequivocal (legal) manner within a short time frame
  - g) Give a considered and convincing closing speech with a blend of legal quality, substantiation of the judicial finding of fact and social relevance
  - h) Take account of the interests of those involved in the criminal case and sensitivities in the criminal case when giving the closing speech, avoiding rabble-raising and empty rhetoric
  - i) Formulate the demand for sentence within the prevailing statutory and policy frameworks, such as the Public Prosecution Service guidelines
  - j) Exhibit involved distance, for example by supplementing attention for the victim's interests with attention for the suspect's person: hearings do not constitute personal 'wars' between public prosecutors and suspects
  - k) Have respect for the judge and the other participants in criminal cases, such as lawyers, and demonstrate involvement in the proceedings at the trial
  - l) Exhibit a self-assured attitude, but without appearing arrogant
  - m) Adopt the appropriate tone
  - n) Play the role of an active listener: page through/read the dossier as little as possible
- Re. 5 Application of legal remedies
- a) Make, within the agreed policy frameworks, a legally correct and socially acceptable decision on the application of legal remedies
  - b) Formulate a legally correct appellant's letter that is restricted to points that need to be decided by a superior court
  - c) Formulate the reasons why the public prosecutor disagrees

with the judge's decision in a concise, clear and explicit manner

- Re. 6 Decide and advise on enforcement issues
- Demonstrate legal and practical knowledge of the enforcement of sentences and measures
  - Formulate the public prosecutor's standpoint, in a clear and explicit manner, on the enforcement of a sentence when this diverges from the customary form of enforcement

### Central competences

- Decisiveness
- Ability to listen
- Verbal fluency
- Situational awareness
- Forming a judgement
- Persuasiveness
- Problem analysis
- Written fluency
- Self-confidence

### Experiential standard

It is recommended that trainee judicial officers handle at least the following:

- 20 cases heard by a single-judge section, with a range of seriousness and with special issues/themes
- 50 standard and tailored cases heard by a three-judge section (about 20 half-day's hearings at a three-judge section)
- 4 juvenile hearings.

### Supervision

The trainer regularly checks the writs of summons, pre-processing and other documents relating to the handling of criminal cases and discusses these with the trainee judicial officer. The trainer also serves as the central vade mecum for all associated questions. In addition, the trainer assesses the trainee judicial officer's actions at the hearing and gives him or her tips for the improvement of these actions. To this end the trainer regularly attends the trainee judicial officer's hearings and regularly requests information from the judges hearing cases at which the trainee judicial officer acts. Records are made of the trainer's feedback on the requisite form included in the learning assignment dossier.

### Specific knowledge/study tasks

The Public Prosecution Service's hearings set

The regulations governing seizure, the deprivation of illegally obtained advantage and the enforcement of sentences and measures.

The relevant Public Prosecution Service guidelines and directions.

## Result area: victim contacts and information

### Outline

The victim occupies a special position in criminal proceedings: public prosecutors need to give due consideration to this position. Public prosecutors are expected to be able to project themselves into the victim's position and to ensure that the victim has the feeling of 'being heard' in the communications with the victim by providing him or her understandable and adequate information and, where required, by giving advice. Conversely, public prosecu-

tors need to avoid becoming identified with the victim: they must maintain their role as 'independent finder of the truth' at all times.

### Tasks

Arrange for and safeguard the position of the victim in the criminal case

### Task criteria

- Demonstrate attention for the victim's position and interests during the investigation and the settlement of the criminal case
- Apply the legal and policy regulations governing victims
- Represent the victim's interests without identifying with the victim
- Provide for the provision of good, timely and adequate information to victims
- Give the victim an understandable but legally justifiable explanation of the progress in the criminal case and the (intended) settlement of the case, whereby the victim receives an open and honest explanation of what is and is not feasible
- Give the victims understandable but legally justifiable advice on their rights and obligations in the criminal case. This advice is concise and realistic
- Give the victim room to have his or her say and exhibit understanding for the victim's position, but without unconditionally taking the victim's side

### Central competences

- Verbal fluency
- Situational awareness
- Persuasiveness
- Sensitivity
- Self-confidence

### Orientation tasks

Attend two (2) victim interviews conducted by an experienced public prosecutor in a serious criminal case.

### Experiential standaard

Recommended:

- conduct at least two (2) victim interviews in a serious criminal case under the supervision of the trainer or an experienced public prosecutor
- conduct at least 4 (four) victim interviews in autonomy, of which two relate to tailored cases or otherwise more serious cases.

### Supervision

The trainer attends one or more victim interviews conducted by the trainee judicial officer and gives feedback on the interviews. The trainee judicial officer makes records of the victim interviews he or she conducted in his or her learning assignment dossier.

Records are made of the trainer's feedback on the requisite form included in the learning assignment dossier.

### Specification Knowledge/study tasks

Public Prosecution Service victim-care directions.

## Result area: networking

### Outline

Public prosecutors need to possess a large network of internal and external contacts if they are to be in command of the enforcement

of criminal law legal order, since this requires effective communications with partners in a range of disciplines, in particular with the participants in the criminal law chain.

### Tasks

Construct and maintain operational internal and external networks for investigation and prosecution

### Task criteria

- a) Make appointments with partners in the chain in autonomy
- b) Give valuable, concise feedback on the visits
- c) Communicate in a concise and effective manner with others than direct partners and staff
- d) Exhibit respect for other participants in the criminal law chain
- e) Present him or herself as a representative of the Public Prosecution Service

### Central competences

- Situational awareness
- Organisational sensitivity
- Persuasiveness
- Cooperation
- Self-confidence

### Orientation tasks

It is recommended that visits of a maximum of one day are made to:

- the Ministry of Justice and the National Office of the Public Prosecution Service
- the National Public Prosecutor's Office and Functional Prosecution Office
- a number of departments of the National Crime Squad at Driebergen
- a centre for the care and treatment of drug addicts, such as the Trimbos Institute

### Experiential standard

Recommended:

- participation, together with the trainer or another experienced public prosecutor, in a variety of consultations with different parties in the chain, in particular with the police. During the course the trainee judicial officer should also independently take part in consultations that impact his or her working areas.
- record the contacts in a suitable digital environment.

### Supervision

The trainer uses his or her practice to enable the trainee judicial officer to experience the importance of a large network to the work of a public prosecutor. Networking is ideally suited to combination with the tasks specified in the following result areas.

At the beginning of the course the trainee judicial officer takes part in the trainer's network whenever possible (and when worthwhile). The trainer demonstrates the manner the uses to make records of his or her network to the trainee judicial officer. The trainee judicial officer, with coaching from the trainer, subsequently begins to develop a personal network.

Records are made of the trainer's feedback on the requisite form included in the learning assignment dossier.

### Specific knowledge/study tasks

Knowledge of the police organisation and other partners in the chain.

## Result area: administrative consultations

### Outline

Public prosecutors hold frequent consultations with the local administration, police and (social) organisations on the formulation and implementation of policy measures relating to issues such as road traffic, the approach to specific districts or domestic violence to arrive at the harmonisation of the work of the participants in the criminal law chain. In addition, they also contribute to local policy-making and promote the harmonisation of the work of judicial and non-judicial organisations. Consequently, public prosecutors need to possess effective communication skills to convey the Public Prosecution Service's standpoint to the various disciplines and the 'strength' to abide by this standpoint.

### Tasks

1. Consult with external partners in the criminal law chain at case and policy level
2. Attend non-case-related consultations with partners in the chain

### Task criteria

- Re. 1 Consult with external partners in the criminal law chain at case and policy level
- a) Set down the Public Prosecution Service's role explicitly in case-related consultations with partners in the chain
  - b) Convey the Public Prosecution Service's standpoint in a loyal, clear and explicit manner to the partners in the chain and safeguard the Public Prosecution Service's interests in these consultations
  - c) Be aware of the relevant policy agreements
  - d) Maintain involvement and distance in equilibrium
  - e) Make decisions on the basis of the personal responsibility, even when the partners in the chain do not agree with the decisions
  - f) Exhibit respect for the partners in the chain, their work and their responsibilities
- Re. 2 Attend non-case-related consultations with partners in the chain
- a) Demonstrate knowledge of the policy frameworks governing the demarcations of the work, the ability to apply the frameworks and the personal endorsement of the frameworks
  - b) Prepare for consultations to ensure that they are worthwhile
  - c) Formulate the most important points for consultations in a clear, explicit and legally correct manner
  - d) Propose potential outline solutions for problem issues
  - e) Make brief and concise minutes of consultations

### Central competences

- Verbal fluency
- Situational awareness
- Organisational sensitivity
- Persuasiveness
- Cooperation
- Strength

### Orientation tasks

- Visit a meeting of a municipal council or a committee meeting related to a criminal case to gain an insight into the administra-

tion's role in the criminal law chain and in the maintenance of public order.

- Work at least one week at a front office or a 'neighbourhood judicial agency'.
- Attend an event to experience how the GBO ('joint administrative consultation') structure works (for example, TT Assen, Four Days Marches Nijmegen, high-risk football matches or dance parties)

### Experiential standard

Recommended:

- Regular consultations with the police on specific criminal cases.
- Participation, initially together with the trainer or another experienced public prosecutor but subsequently with an increasing degree of autonomy, in a variety of consultations with different parties in the chain which are focused on one or more general issues.
- Carry out support work relating to consultations with the local administration, police and (social) organisations on the formulation and implementation of policy measures relating to sub-issues such as road traffic, the approach to specific districts or domestic violence.

### Supervision

The trainee judicial officer receives a continually decreasing degree of supervision from the trainer or an experienced public prosecutor during the consultations with various institutions. More information is given in the 'Networking' result area.

Records are made of the trainer's feedback on the requisite form included in the learning assignment dossier.

### Specific knowledge/study tasks

Knowledge relating to the issues that are addressed in the aforementioned consultations in which the trainee judicial officer takes part.

## Result area: policy, expertise and development of law

### Outline

The Public Prosecution Service's duties and responsibilities in the criminal law chain encompass the full responsibility for the development, detailing and implementation of criminal law policy, whereby the public prosecutor makes use of a large number of sources of information, such as criminal trend analyses, threat trend analyses and administrative reports. The Public Prosecution Service has an insight into developments, identifies trends and makes decisions on their consequences for criminal procedure. The Public Prosecution Service uses this information, in cooperation with the partners in the chain, to assign priorities to the investigation and prosecution of offences, submit recommendations on preventive measures and develop or make a substantial contribution to the realisation and implementation of policy projects. These policy projects relate to issues such as prohibition orders, preventive searching, tackling hemp nurseries, and nudist recreation, etc.

The Public Prosecution Service also advises on new national and local legislation and regulations. The Public Prosecution Service, in conclusion, also develops knowledge and expertise in both general criminal law fields and specialised fields.

### Tasks

1. Attend consultations on policy-making and the development of law, such as special public prosecutor's office meetings or consultations with external partners
2. Determine the regulations governing the design of policy memoranda
3. Read a number of policy memoranda that could serve as examples
4. Formulate a memorandum on a special policy issue, new legislation or new regulations

### Task criteria

For all tasks:

- a) Formulate the most important objectives of new policy on a specific issue in a concise, clear and explicit manner
- b) State potential outline solutions for sub-issues and indicate the Public Prosecution Service's role in those solutions
- c) Comprehend new legislation and regulations and explain these clearly to others, including others outside the Public Prosecution Service
- d) Explore sub-issues as intended for this result area

### Experiential standard

Recommended:

- formulate at least one policy memorandum on a specific current issue
- participate in local administrative consultations
- support an experienced public prosecutor in his or her performance of tasks in this result area

### Central competences

- Verbal fluency
- Situational awareness
- Organisational sensitivity
- Written fluency

### Supervision

The trainee judicial officer receives a continually decreasing degree of supervision from the trainer or an experienced public prosecutor during the consultations with various institutions. More information is given in the 'Networking' result area.

Records are made of the trainer's feedback on the requisite form included in the learning assignment dossier.

### Specific knowledge/study tasks

None.

## Result area: projects

### Outline

The Public Prosecution Service participates in a large number of local and regional non-case-related and strategic projects that have a relationship with criminal procedure, where the Public Prosecution Service often acts as a 'spider in the web'. All public prosecutors with some degree of experience will participate in these projects.

### Tasks

1. Participate in largely local and regional Public Prosecution Service non-case-related projects
2. Participate in strategic and/or national Public Prosecution Ser-

vice projects, contribute expertise

### 3. Manage subprojects

- provide for subproject plans and the further design and detailing of subprojects;
- manage subproject processes and substance and assume the responsibility for the results, manage, coordinate and coach (internal and/or external) members of the project team;
- monitor the progress, quality, achievement of deadlines and organisation of the work that is carried out and the phases of the subproject

#### Task criteria

For all tasks:

- Set down the Public Prosecution Service's role explicitly
- Convey the Public Prosecution Service's standpoint in a loyal, clear and explicit manner and safeguard the Public Prosecution Service's interests in these consultations
- Be aware of the relevant policy agreements
- Demonstrate knowledge of the policy frameworks governing the demarcations of the work, the ability to apply the frameworks and the personal endorsement of the frameworks
- Make decisions on the basis of the personal responsibility
- Exhibit respect for the other organisations taking part in the project, their work and their responsibilities
- Prepare for consultations to ensure that they are worthwhile
- Formulate the most important points for consultations in a clear, explicit and legally correct manner, propose potential outline solutions for problem issues and draw up brief and concise minutes of consultations

#### Experiential standard

It is recommended that trainee judicial officers, in consultation with their trainer, take part in at least two (2) local projects that link up with their experience.

#### Central competences

- Situational awareness
- Organisational sensitivity

#### Specific knowledge/study tasks

- literature on projects and project-based working methods

### Result area: intervision, courses and supervision

#### Outline

Public prosecutors should ensure that their knowledge remains up to date and make a substantive contribution to the performance of their colleagues. Collegial intervision requires the willingness to reflect on the personal performance and the performance of others and the willingness to make use of the personal observations and observations of others in an endeavour to achieve improvements.

#### Tasks

- Participate in intercollegial intervision
- Follow courses
- Give feed back to public prosecutor's office secretaries and administrative staff

#### Task criteria

- Re. 1 Participate in intercollegial intervision

- Be open to feedback and criticism and demonstrate what is done with feedback and criticism in the personal performance
- Take the initiative to ask for feedback from colleagues, other staff, judges and partners in the chain
- Give positive and negative feedback and feedback on experiences directly to the relevant member of staff
- Adopt a positive critical attitude towards colleagues and the organisation and demonstrate this at the appropriate times, for example during team or public prosecutor's office meetings\*<sup>1</sup>
- Make a substantive contribution to the performance of colleagues\*

Re. 2 Follow courses

- Take active part in and make adequate preparations for courses
- Take part in internal courses and/or meetings, where relevant
- Attend meetings such as punishment amount consultations and knowledge lunches whenever possible

Re. 3 Give feed back to public prosecutor's office secretaries and administrative staff

- Explain the expectations clearly to support staff
- Give positive and negative feedback and feedback on experiences directly to the relevant member of staff

#### Central Competences

- Organisational sensitivity
- Cooperation
- Strength
- Self-reflection

#### Orientation tasks

Trainee judicial officers can explore the approach their colleagues at the public prosecutor's office adopt to their professionalisation. This can, for example, be achieved by holding discussions with colleagues at their workplace to review the manner in which they give shape to intervision, training and supervision.

#### Experiential standard

- Recommended:
- Follow internal courses.
- Attend as many meetings such as punishment amount consultations and knowledge lunches as possible.

#### Supervision

See the general tasks and the trainer's special tasks specified under the various result areas. Information about the progress meetings and review interviews is given in the following learning assignment plan.

Records are made of the trainer's feedback on the requisite form included in the learning assignment dossier.

#### Specific knowledge/study tasks

None.

<sup>1</sup> The tasks indicated with an \* are not carried out during the trainee judicial officer course.



# Learning assignment plan

## advanced public prosecutor's office course

### Duration: 10 months

This section of the study guide outlines the programme for the advanced public prosecutor's office course. During this phase the trainee judicial officer should follow the courses specified for the trainee judicial officer's licentievignet licence adopted by the Public Prosecution Service that the trainee judicial officer has not followed during the basic course. Since this is a customised programme these courses are not listed separately below. Information about the licensing system is available on the SSR's website (under Opleidingen, Openbaar Ministerie ['Courses, Public Prosecution Service']).

### Week 1: Introduction

(assuming that the trainee judicial officer is assigned another trainer and is based in another section/team than in the basic course. When this is not the case then a great deal of this introduction can be skipped. However, it will then be necessary to reach explicit agreement on the contents of the advanced traineeship in week 1 and complete the necessary preparations beforehand).

**What** Intake interview with trainer(s)  
**Objective** To make the acquaintanceship of each other and of specific aspects of the team, discuss earlier learning and work experiences, discuss the structure of this period, discuss the attainment levels for this period (see study guide), reach agreement on expectations about conduct, supervision by the trainer(s), feedback, the review interview and the role played by the learning assignment dossier and development dossier. Important points are noted on the intake form enclosed in the development dossier. The trainee judicial officer ensures that the development dossier with information about the previous period is placed at the disposal of the trainer(s) prior to the meeting. This enables the trainer(s) to become acquainted with the contents of the dossier and ensures that the developments in the previous period serve as the prelude to this new training period.

**What** Acquaintanceship meeting with the team leader  
**Objective** Acquaintanceship with the team leader in his/her role as manager, obtain clarity about the role of the team leader in the course, gain an impression of the broader context of the area in which the trainee judicial officer works, exchange of expectations.

**What** Acquaintanceship with colleagues  
**Objective** Acquaintanceship with the colleagues at the workplace. These introductions can be initiated by the trainer or, self-evidently, the trainee judicial officer.

**What** Further acquaintanceship with the organisation and the working methods within the department/section  
**Objective** Become further acquainted – to the extent that this is necessary – with the organisation of the department/section, in particular the administration, dossier routing and the sources of knowledge that play a role within the department/section.

### Week 2 - 44: Working and learning

**What** Introduction to the Public Prosecution Service as an organisation  
**Objective** Acquisition of the knowledge and skills required to carry out the tasks.

**What** Judicial finding of fact course (month 1)  
Intention and guilt course (month 2)  
Forms of participation course (month 3)  
The Public Prosecution Services' treatment of victims course (month 3)  
International cooperation in criminal cases course (month 4)  
Financial investigation course (month 4)  
European law course (from entry group 2008-II) (month 5)  
Practical professional ethics course (month 6)  
ECHR in administrative law course (from entry group 2008-II) (month 7)

Objective Acquisition of the knowledge and skills required to carry out the tasks.

What Mandatory courses for the licentievignet licence and participation in courses organised by the public prosecutor's office

Objective Acquisition of the knowledge and skills required to carry out the tasks.

What Pre-processing of standard and more complicated cases heard by a three-judge section, some of which with simple deprivation issues

Objective Working and learning to achieve the attainment levels

What Prepare for and handle hearings conducted by a single-judge court section which are of a special nature, such as theme hearings, fast track hearings and juvenile hearings.

Objective Working and learning to achieve the attainment levels

What Prepare for and handle standard and more complicated cases heard by a three-judge section.

Objective Working and learning to achieve the attainment levels

What Work weekend rosters in autonomy

Objective Working and learning to achieve the attainment levels  
The trainee judicial officer selects suitable cases from the one-week roster and then prepares for and handles the settlement of the cases at the hearings.

What Work weekend defence counsel rosters in autonomy, with an experienced public prosecutor as backup during the first roster.

Objective Working and learning to achieve the attainment levels

What Carry out standard investigations in autonomy. Carry out more complex (tailored) investigations with an experienced public prosecutor as backup.

Objective Working and learning to achieve the attainment levels

What Independently carry out bringing suspects before the public prosecutor, management of pre-trial detentions and attendance at hearings conducted by the examining magistrate

Objective Working and learning to achieve the attainment levels

What Accompany and support an experienced public prosecutor in major or specialised investigations.

Objective Working and learning to achieve the attainment levels

What Shorter and longer orientation tasks such as traineeships, participation in consultations, the formulation of a policy memorandum and visits to relevant partners in the chain.

Objective Collect knowledge about the Public Prosecution's most important partners in the chain. Reflect on the Public Prosecution Service's position in the criminal law chain. Build up a network.

What Independently conduct victim interviews in more complex cases.

Objective Working and learning to achieve the attainment levels

#### Every two months: monitoring progress, results and the process

What Progress meetings with trainer(s)

Objective The trainer(s) will hold a progress meeting with the trainee judicial officer in week 12 and week 36. The objective of this meeting is to reflect on the progress in the learning process, discuss experiences and reach (supplementary) agreements to promote the trainee judicial officer's development. The progress form enclosed in the development dossier is used for this purpose.

#### Week 16 - 32: Review progress and results

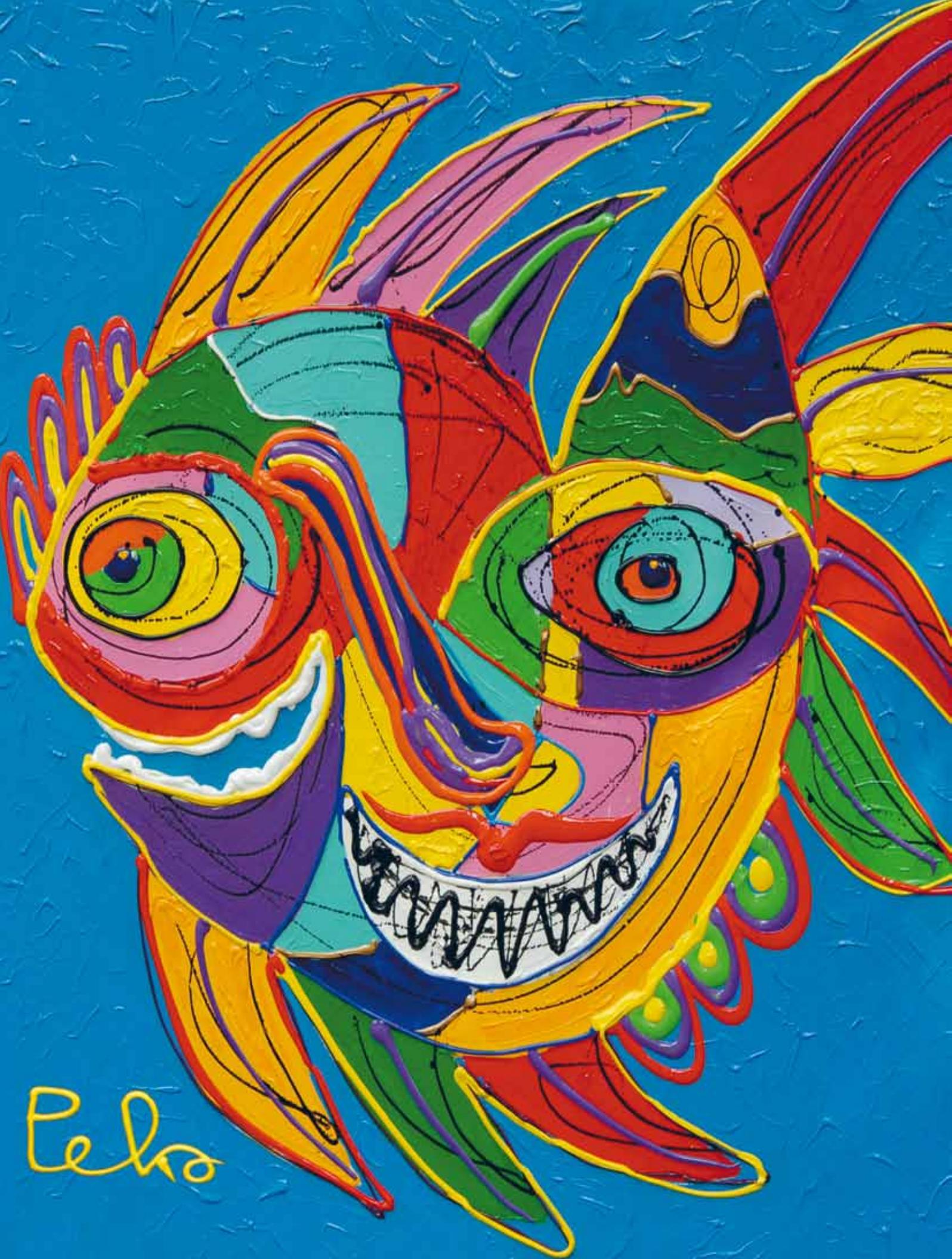
What Review interviews with trainer(s)

Objective The trainer(s) will hold a review interview with the trainee judicial officer in week 16 and week 32 to review the trainee judicial officer's performance relative to the attainment levels stated in the study guide. The review form enclosed in the development dossier is used for this review.

#### Week 42: Assessment

What Assessment

Objective A review interview is conducted with the trainee judicial officer. The review form enclosed in the development dossier is used for this review. The review form also serves as the assessment form.



Pelko

# **Curriculum, external traineeship**

**Duration: 2 years**

# Curriculum

## external traineeship

**Duration: 2 years**

### Preface

Trainee judicial officers will be able to fulfil the special and independent position of judge and public prosecutors in a more responsible manner when their legal vocational training is accompanied by a certain degree of (social) development outside the judicial organisation. For this reason trainee judicial officers conclude and complete their study programme with an external traineeship.

### Objective of the external traineeship

The objective of the external traineeship is to offer trainee judicial officers an opportunity to experience the interface between law and society outside the domain of the judicial organisation and see how the work of judges and public prosecutors is viewed from a different perspective. The trainee judicial officers become familiar with the standards and values of another vocational group and how to represent the interests of litigants in society.

Trainee judicial officers who adopt the role of one of the other participants in legal proceedings – preferably the role of lawyer – are offered an opportunity to experience the impact of decisions made by judges and public prosecutors from the relevant officer's perspectives. They obtain an improved insight into the developments resulting in a legal action, the choices (including the tactical choices) and considerations that are involved and the dilemmas that can play a role. They are confronted with the impact of judicial decisions, their intelligibility and their acceptability. During their external traineeships trainee judicial officers can learn how to deal with the (claim) conduct of litigants, be confronted with the associated emotions and the need to give personal account for their actions to one of the parties involved. Trainee judicial officers will become acquainted with issues such as the development and maintenance of a network, the negotiations on an intended result and the concomitant commercial choices.

Consequently, a broad range of skills are addressed during the external traineeship: these, together with the knowledge and experience acquired during earlier programme periods in the court and the public prosecutor's office will enrich the trainee judicial officers' ultimate fulfilment of their role as judge or public prosecutor.

### Roles during the external traineeship

The division of the roles during the external traineeship differs from the division referred to earlier (in the general section of the study guide). In addition, other persons are involved. For this reason a brief explanation of the roles is given below.

The **traineeship provider** is the law firm or institution where the trainee judicial officer follows the traineeship. The traineeship provider assigns the trainee judicial officer a permanent workplace supervisor who also serves as the contact person and informer for the SSR.

The **workplace supervisor** is the person who supervises the trainee judicial officer in practice/at the workplace. The workplace supervisor's task is comparable to the trainer at the courts, although the supervisors are not certified trainers as they have not followed the SSR's trainer training. The workplace supervisor should play a coaching role. The trainee judicial officers can draw the workplace supervisor's attention to useful literature<sup>1</sup> that will be of assistance in fulfilling this role. The workplace supervisor conducts the review interviews with the trainee judicial officers.

The **trainee judicial officer** ensures that the workplace supervisor is issued the study guide, including the development dossier, in good time.<sup>2</sup> The trainee judicial officer informs the training consultant about the review interviews that have been conducted.

The **mentor** is the president of the court in the district where the traineeship is located or, in the event of a traineeship with a police organisation, the chief public prosecutor and, in the event of a traineeship outside the Netherlands, the president of the court in The Hague. The trainee judicial officers are expected, in principle, to hold an acquaintanceship meeting with the president of the court in the district where the traineeship is located and the local chief public prosecutor before the traineeship begins.

The **SSR's training consultant** supervises the trainee judicial officers and the external traineeship. The trainee judicial officer informs the training consultant about the review interviews. The training consultant also carries out an assessment of the completed external traineeship.

<sup>1</sup> A useful handbook is available for the patron – and, more in general, for all lawyers engaged in training: De (pro)actieve patroon, Succesvol opleiden en begeleiden van juristen (The Hague, 2008) by H.F.M. van de Griendt, C.W.M. Dullaert and R.C.H. van Otterlo.

<sup>2</sup> Trainee judicial officers following an external traineeship outside the Netherlands consult with the training consultant on the manner in which the traineeship provider and workplace supervisor are informed about the contents of and method for the study guide. An English version of the study guide is under development.

The SSR's **Board** is the assessment authority.

## External traineeship places

### General

External traineeship places must comply with a range of conditions to guarantee their value. All trainee judicial officers following an external traineeship:

1. must carry out legal work of a fairly high level in autonomy;
2. must be able to acquire experience relating directly to or associated with legal proceedings;
3. must be able to work in a number of legal segments.<sup>3</sup>
4. preferably have contacts with litigants and, preferably, carry out work whereby they fulfil the role of a legal representative.

### Duration

In principle, external traineeships are for a period of two years. However, there can be reason to grant a trainee judicial officer a shorter external traineeship. Whether and, if so, the extent to which the traineeship is shortened depends on work experience acquired earlier. When a shorter traineeship has been granted then the main traineeship is of a period of at least one year. Information about the detailed regulations is included in the trainee judicial officer regulations manual<sup>2</sup>.

Trainee judicial officers can divide their external traineeship between two traineeship providers. In principle, the main traineeship should then be for a period of eighteen months and the second (secondary) traineeship should be for a period of six months.

### Main traineeship

The main traineeship is, in principle, followed in the legal profession in the Netherlands. It is also possible to follow the main traineeship at another institution, for example one of the international courts in Luxembourg, Strasbourg or The Hague, or at the legal department of a major concern or one of the lower authorities. The training consultant's approval of all traineeship places is required. A traineeship at the Court of Luxembourg is for a period of two years, when the trainee judicial officer must be available on a fulltime basis. A traineeship at the courts of Strasbourg and The Hague is of a period of one year, when the trainee judicial officer must also be available on a fulltime basis.

### Second traineeship

A second (secondary) traineeship can, for example, be followed at Parliament, the police, the National Criminal Investigation Service, the Probation Service, a social administration agency such as the UWV, a bank, the NFI or Eurojust.

### Traineeship at a law firm

A law firm at which a trainee judicial officer wishes to follow a traineeship must comply with a number of specific requirements. Firstly, at least five lawyers (with a traineeship statement) must be based at each office and two of those lawyers must have at least seven years' experience in legal practice.

Secondly, in principle each office may accommodate no more than one trainee judicial officer at the same time. Solely larger offices may, by exception, accommodate more than one trainee judicial officer at the same time. The law firm should preferably be cognisant with the legal profession competence profile as developed by the NOVA.

An interview with the local dean of the National Bar should be scheduled for the purposes of swearing in the trainee judicial officer.

### Selecting a traineeship place

The trainee judicial officer makes an appointment with the relevant training consultant well in advance of the beginning of the external traineeship (about 10 months in advance). During this meeting the trainee judicial officer's current learning process is reviewed on the basis of his or her development dossier to assess which points for attention are an issue and the best manner in which these can be addressed. A justifiable selection of a traineeship place is made by reviewing the following particular issues:

1. the trainee judicial officer's prior experience, where relevant
2. the trainee judicial officer's general progress in the study programme
3. the most important qualities and the identified development points
4. the personal characteristics of the trainee judicial officer of importance to the detailing of the traineeship
5. the most important ambitions to be fulfilled by the external traineeship
6. the required supervision
7. the need to follow the traineeship outside the trainee judicial officer's district to avoid a possible entanglement of interests.

The trainee judicial officer then uses the analysis carried out in cooperation with the training consultant and the resultant learning goals to explore the possibilities for a traineeship place, whereby a suitable traineeship place offers sufficient opportunities for the development of the issues identified by the trainee judicial officer and the training consultant and is compatible with the trainee judicial officer's personal learning style.

The training consultant can impose further conditions to be met by the traineeship place on the basis of the trainee judicial officer's personal characteristics and progress in the study programme.

Once the trainee judicial officer has identified a number of potential traineeship places he or she informs the training consultant of the options and requests provisional approval to work out one option in detail. The training consultant can reject a traineeship proposal that is not compatible with the trainee judicial officer's personal development even when the traineeship proposal meets the general traineeship objectives.

When the traineeship proposal relates to a new traineeship location (that has not been visited before) then the training consultant will visit the traineeship location before assessing the proposal.

Once provisional approval has been granted by the training consultant then the trainee judicial officer contacts the president of the court and the chief public prosecutor of the relevant district to learn of any objections to the proposed traineeship.

In conclusion, the trainee judicial officer has an exploratory discussion with the proposed law firm or institution to review both whether the law firm/institution is, in principle, prepared to provide a traineeship place and whether the law firm/institution offers sufficient opportunities to the trainee judicial officer to work on the development points discussed with the training consultant. For this reason the exploratory discussion should take place well before the traineeship is to begin, for example about seven months:

<sup>1</sup> Trainee judicial officers who have opted for a traineeship with the Public Prosecution Service may follow their entire traineeship at a criminal law office.

<sup>2</sup> See Section 44, <sup>1</sup> Trainee judicial officer regulations manual.

should the exploratory discussion fail to achieve the desired result then there will still be sufficient time to seek an alternative traineeship place that is suitable.

## Proposal for external traineeship

### Competences and the external traineeship

The details of the traineeship can vary, although all external traineeships are characterised by the opportunity they offer trainee judicial officers to view their future work from a different perspective and hold a mirror up to their face in an occasionally confrontational manner – which requires both strength and, in particular, a reflective capacity on the part of the trainee judicial officers. At the same time, the external traineeship is intended to prepare trainee judicial officers for their future position as a judge or public prosecutor. Consequently, the judge or public prosecutor job profile and the associated competences continue to play a role during the external traineeship. For this reason trainee judicial officers need to continue to work on the development of the competences required for their future position during the external traineeship. Pursuant to the objective of the external traineeship, at least the professionalisation result area and the associated management and moral competences will play a pivotal role during the external traineeship, in particular issues such as integrity, situational awareness, persuasiveness, prioritisation, cooperation, strength and self-reflection. In addition, the professional competences also need to be developed further during the external traineeship, in particular decisiveness, both communicative skills, listening, problem analysis and the formation of judgements.

The degree to which these competences will play a role in the external traineeship depends on the traineeship place, the tasks to be carried out during the traineeship and the trainee judicial officer's personal development as discussed with the training consultant.

### Tasks for the external traineeship

Substantive information about the tasks to be performed during the external traineeship and the associated competences that will need to be developed is one of the important elements of the proposal for the traineeship to be formulated by the trainee judicial officer. Since the tasks to be carried out during the external traineeship can vary greatly it is not possible to include a precise curriculum with explicit tasks, task criteria and attainment levels for the external traineeship in this study guide. However, this substantive information is required for the submission of a suitable traineeship proposal. During the study programme the trainee judicial officers have experienced how the judge profile or public prosecutor job profile has been used to give shape to their course at the relevant section of the court or public prosecutor's office. As a result, at this stage of the study programme trainee judicial officers may be expected to be able to collect the information about their traineeship place needed to, as it were, prepare a curriculum for their external traineeship.

### Job profile in the external traineeship

A job profile that the organisation offering the traineeship has introduced to serve as the basis of the performance of its tasks can be of use in collecting information for the curriculum: for example, the legal profession competence profile as developed by the NOvA is available at law firms, while some law firms have developed their own competence profile that is tailored more closely to their

firm's culture. Many other organisations now also make use of job profiles.

For this reason, during the exploratory discussion it will be worthwhile to ask whether an organisation coming into consideration for a traineeship place has drawn up a job profile. Once a traineeship place has been selected the trainee judicial officer requests a copy of the job profile and submits a copy of this study guide to the workplace supervisor to enable the supervisor to gain an insight into the procedure to be adopted during the external traineeship. The trainee judicial officer is then expected to cooperate with the workplace supervisor in the formulation of the outline curriculum and learning assignment plan for the traineeship proposal.

### Contents of the external traineeship proposal

The manner in which the information is included in the traineeship proposal should be as compatible as possible with the design of the curriculum and learning assignment plan for each section as enclosed in this study guide. For this reason the substantive sections of the traineeship proposal should be as similar as possible to those used in each subsection of the curriculum, namely an outline of the position, the tasks, orientation tasks, competences and experiential standards.<sup>1</sup> The most appropriate tasks to be performed by the trainee judicial officer can be selected on the basis of the aforementioned moral and professional competences and the relevant information contained in the development dossier.

The trainee judicial officer submits the traineeship proposal to the training consultant by no later than five months before the beginning of the traineeship. More information about the traineeship proposal is given in the design of the external traineeship section of the development dossier. When the external traineeship is comprised of two traineeships then the traineeship proposal contains a full specification of both traineeships. Both specifications must comply with the following requirements.

The proposal shall at least contain:

- I the following factual information:
  1. personal details, such as the names and addresses of the various persons involved
- II the following substantive information (which, in combination, largely form the curriculum):
  1. an outline of the organisation where the external traineeship is to be followed;
  2. an outline of the position fulfilled during the external traineeship;
  3. a specification of the orientation tasks to be performed, where relevant, before performing the actual tasks. Any specification of the orientation tasks needs to be accompanied by the objective of the tasks to make clear why they need to be performed;
  4. a specification of the various tasks that will be performed during the external traineeship;
  5. the required experiential standard: a rough estimate of the number of times a specific task will be performed as based on the duration of the traineeship;
  6. A specification of the underlying competences that will play a particular role during the performance of each task;
  7. the degree to which the trainee judicial officer must be

<sup>1</sup> A example for the legal profession is detailed in the 'raio' section of the SSR website.

able to perform the task in autonomy by the end of the traineeship. Self-evidently, trainee judicial officers are not expected to perform the tasks of, for example, lawyers in autonomy by the end of the traineeship;

8. the associated knowledge/study tasks.

- III a summary of the learning assignment plan<sup>1</sup>, comprised of:
1. a statement of the necessary (supplementary) courses (with a statement whether the cost of these courses will be borne by the traineeship provider);
  2. a statement of the supplementary learning activities as based on the trainee judicial officer's interests and development points (with a statement whether the concomitant costs will be borne by the traineeship provider): these can also be SSR courses;
  3. the planning for the intake interview, progress meetings and review interviews.
- IV a draft traineeship contract drawn up in accordance with the prescribed SSR model traineeship contract, trainee judicial officer study programme external traineeship (which can be downloaded from the 'raio' section of the SSR website).
- V a letter from the president of the court/chief public prosecutor
- a. traineeships in the legal profession: a letter from the president of the court and the chief public prosecutor from the court where the office is established in which they give their agreement to the traineeship;
  - b. traineeships at the police: a letter from the chief public prosecutor in the police region's district in which the chief public prosecutor gives agreement to the traineeship;
  - c. no permission is required when a president of the court or chief public prosecutor is not involved or when the traineeship will be followed outside the Netherlands.

### Adoption of the traineeship proposal

The training consultant determines whether the traineeship proposal contains the necessary factual and substantive information and assesses whether this information is compatible with the analysis carried out in advance with the trainee judicial officer and the learning goals formulated on the basis of the analysis. Solely complete traineeship proposals are assessed.

The training consultant gives the trainee judicial officer written notification of the approval of the traineeship proposal or of the information that needs to be supplemented by no later than four weeks after the receipt of the traineeship proposal. The trainee judicial officer amends the traineeship proposal as required.

Prior to the beginning of the traineeship the traineeship contract must be signed by all three parties involved, i.e. the trainee judicial officer, the traineeship provider and the SSR. When the traineeship is to be followed in the legal profession then arrangements must be made for a Verklaring Omtrent Gedrag ('Certificate of good conduct', VOG) by no later than one month before the beginning of the traineeship. This certificate is necessary then the trainee judicial officer is to be sworn in.

## Curriculum for the external traineeship

### Attainment levels

The traineeship proposal as specified above in subsections II and

III in effect lays down the curriculum and attainment levels for the external traineeship.

### Learning assignment dossier

Records, in analogy with the programme periods at the courts and the public prosecutor's office, also need to be made of the results from the external traineeship. These records, once again in analogy with the previous programme periods, are also made using the learning assignment dossier designed to file the work carried out by the trainee judicial officer and collect feedback on the trainee judicial officer's work. Since no feedback forms tailored to external traineeships are available the trainee judicial officer draws up the relevant forms (in consultation with the workplace supervisor and on the basis of the feedback forms used earlier in the trainee judicial officer's study programme). The trainee judicial officer and workplace supervisor consult on the times at which the feedback forms are to be used.

### Development dossier

The development dossier compiled by the trainee judicial officer during the programme periods at the courts and the public prosecutor's office is also used during the external traineeship, since it is also necessary to make records of the conclusions about the trainee judicial officer's progress and development during the external traineeship. The discussions held between the workplace supervisor and trainee judicial officer once again form the leitmotif of the external traineeship. Explanatory notes to these discussions are included in the general learning assignment plan section. These explanatory notes will not be duplicated here unless the procedure adopted during the external traineeship diverges from the general information.

### Intake interview

An intake interview is held at the beginning of the traineeship. The trainee judicial officer ensures that the workplace supervisor uses the relevant form. The intake interview includes a discussion of the most important conclusions from the prior learning process, in part on the basis of the other information included in the development dossier, as well as conclusions and agreements for the external traineeship (see the external traineeship intake interview form).

### Progress meetings

The first progress meeting is held three months after the beginning of the external traineeship. The primary objective of this meeting is to assess whether the mutual expectations are correct and to determine any issues that need to be adjusted. Further progress meetings are held at fairly regular intervals, for example once every three to six months, unless a scheduled progress meeting would coincide with a review interview. When frequent feedback meetings are held then these can also extend to a review of the trainee judicial officer's progress. The content of the meetings is recorded in brief minutes of the meetings that the trainee judicial officer can, as the occasion arises, send to the relevant training consultant for the purposes of information about the progress in the programme period (see the external traineeship progress meeting form).

### Review interview

The first review interview is conducted six months after the beginning of the external traineeship and is followed by further review

<sup>1</sup> The next section of the study guide contains information about the design of the SSR's training activities during the external traineeship.

interviews once every six months. Therefore a total of four review interviews are held during a two-year external traineeship. The trainee judicial officer ensures that these interviews take place. Minutes of all interviews are made using the review interview form developed for external traineeships. A review interview is conducted in the presence of the training consultant in the event of any problems or the threat of problems during the external traineeship. The trainee judicial officer contacts the training advisor about the need to attend a review interview well in advance. The trainee judicial officer also contacts the training consultant should it transpire that the traineeship provider does not wish to conduct review interviews with the trainee judicial officer: the training consultant can then take the necessary measures. The trainee judicial officer submits a copy of each completed review interview form to the training consultant to ensure that the training consultant is able to monitor the trainee judicial officer's development in the appropriate manner.

## **Assessment of the external traineeship**

### **Traineeship report**

The trainee judicial officer draws up a traineeship report by no later than one month before the end of the main traineeship (and the second traineeship, where relevant). This report is taken into account in the assessment of the trainee judicial officer. The trainee judicial officer's report includes information from the learning assignment dossier (such as the work carried out during the traineeship) and from the development dossier, other relevant information such as the trainee judicial officer's findings about the traineeship and, and above all, information about the manner in which the trainee judicial officer's perception of the performance of the duties of a judge or public prosecutor has been accentuated (in view of the aforementioned objective of the external traineeship). Since it is possible that there is an obligation of confidentiality the trainee judicial officer submits the traineeship report to the traineeship provider for approval. Once the traineeship report has been approved the trainee judicial officer submits the report to the relevant training consultant and sends a copy to the trainee judicial officer's mentor.

### **Assessment**

An assessment is made at the end of the external traineeship. The relevant training consultant contacts the trainee judicial officer for this assessment in good time. When the traineeship was divided into a main traineeship and a second (secondary) traineeship then the traineeships are assessed separately. The assessment of the second traineeship is carried out immediately after the end of the six-month period.

The traineeships are assessed by the training consultant, when the workplace supervisor(s) at the traineeship provider(s) provide the necessary information. The assessment is governed by the attainment levels as specified in subsections II and III in the traineeship proposal and the agreements reached between the trainee judicial officer and the workplace supervisor during the intake interview and the interim review interviews. The traineeship and the development dossier serve as the basis for reflection. The assessment is based on the content of the last review interview as laid down in the external traineeship review form. The content is "interpreted" in terms of the assessment form.

The SSR's Board is the assessment authority and ultimately

adopts the assessment (in accordance with articles 6 and 7 of the Beoordelingsvoorschrift burgerlijk Rijkspersoneel ['State civil servant assessment regulations'], 1985).

More information about the assessment procedure is given in the assessment of trainee judicial officers section.

### **Repeat**

When a trainee judicial officer does not achieve the attainment levels formulated in the traineeship proposal during the traineeship and the traineeship is awarded a score of B then the traineeship is extended by a period of six months. The training consultant consults with the trainee judicial officer and then determines the traineeship place for this additional six-month traineeship.



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