The deprivation of criminal assets

Evaluation of new Dutch legislation; final report

Summary

In March 1993 new legislation came into force in the Netherlands, increasing the statutory powers of police and judicial authorities to deprive criminals of their illicit earnings. Both the range of criminal offences to which the deprivation order is applicable and the scope for seizure were extended considerably. Furthermore, a new type of investigation, the criminal financial investigation, was introduced.

As requested by the Minister of Justice the Research and Documentation Centre (WODC) evaluated the effects of the new legislation. The data were collected through questionnaires, open interviews and case studies. The public prosecution department's policy makers made a great effort to stimulate a proceeds-based approach amongst the public prosecutors. The research has made clear that it is their intention to extend the scope of the legislation to all profitable crimes. The latter contradicts the tenor of the political debate in which the legislation was seen primarily as an additional instrument to combat organised crime. Judges are inclined to agree with the political viewpoint and reject the line of policy of the public prosecution department. Consequently, judges are rather ambivalent to the legislation as a whole.

Despite the fact that within the public prosecution department the use of the new legal instruments was much encouraged, this was not reflected in daily practice. Since 1995 the demand for a deprivation order has stabilised at about half the target number. Moreover the level of demands varies greatly from district to district. Most cases in which the new statutory powers have been used are drug- or theft-related. A major gap exists between the demands of the public prosecutors and the court orders. So far, only one deprivation order has been executed that exceeds the amount of 1 million guilders. Between 1993 and 1997 20 million guilders were labelled as proceeds of deprivation orders. This amounts to 18% of the anticipated proceeds for the same period. The research reveals both that the expectations with regard to the potential of the legislation were far too high and that the enforcement of the law has been defective. Of course, the required change of mentality towards a proceeds-based approach takes a while. Also the implementation process has been frustrated by the lack of knowledge within the public prosecution department on financial affairs and civil law. Furthermore, the public prosecutors lack sufficient support. Finally, pressure on the individual prosecutors from their superiors to start working with the new legislation is practically non-existent.

Within the police force the attitude towards the use of the new legislation is also rather indifferent. The police management has adopted a strategy concerning 'financial policing' and regards the deprivation of criminal assets as an integral aspect of this broad concept. However, a specific strategy with regard to the deprivation of illegally obtained income has not been developed. So far, only the financial support units within the police force are active in this area. Within the training programmes insufficient attention is being paid to the proceeds-based approach. Similar to the public prosecution department, the level of knowledge amongst police officers on financial affairs and civil law is low.

The legislation has been met with a mixed reception. Most respondents criticise the impetuous introduction of the legislation and do not think that the legislator has been sufficiently specific. As a result, the actual work is characterised by uncertainty about the interpretation of a number of legal elements, one of the major issues being what constitutes illegally obtained advantage. Another source of anxiety, especially amongst judges and lawyers, is the lack of control on the various means of coercion, since the law makes no provision for the deployment of a neutral examining magistrate.

It was to be expected that criminals would anticipate the new legal instruments. Criminals tend to use corporate bodies and straw men to prevent seizure of their assets by the judicial authorities. Due to jurisprudence of the Dutch Supreme Court the possibilities for dismantling constructions which conceal the ownership of criminal assets turn out to be less promising than expected.

Het vermogen te ontnemen; evaluatie van de ontnemingswetgeving - eindrapport

J.M. Nelen, V. Sabee

The Hague, WODC, 1998

Onderzoek en beleid, no. 170