SUMMARY

This report contains the results of a piece of research into the content and the working of the mandate regulation for the public prosecutor employees in the Office of the Public Prosecutor.

CRIMINAL PROCEDURE DECISIONS IN MANDATE

Within the Office of the Public Prosecutor numerous criminal powers of authority that the law assigns to the public prosecutor are actually carried out by public prosecutor employees, such as (police) public prosecutor secretaries and administrative juridical employees. They do this under the construction of mandate, that is to say that they practice the previously nominated powers of authority in the name of, and under the responsibility of, the public prosecutor. Elements are regulated in Article 126 of the Act of Judicial Organisation (Act RO) and the accompanying Decision of 11th May 1999.

The topical question within the Office of the Public Prosecutor and the Ministry of Justice is how the offices of the public prosecutor have given form and content to mandate: how are these issues organised and to what degree is the observance of them supervised? To what degree are the regulations which derive from the law and jurisprudence maintained? Are there bottlenecks in the practical application and what does this signify for the regulations? Finally, there is the question as to which lessons are to be learnt from the research, particularly taking into account the intention to (partially) remove of the powers of authority from the Act OM - pecuniary sanctions (refer to Chapter 3).

IMPLEMENTATION OF RESEARCH

Commissioned by the Scientific Research and Documentation Centre (WODC) of the Ministry of Justice, the research was conducted at the start of 2007 by B&A in cooperation with the Erasmus University Rotterdam. The research contains an analysis of mandate regulations from five offices of the public prosecutor, the Central Processor of the Office of the Public Prosecutor (CVOM) and the Central Judicial Debt-Collection Office (CJIB), the distribution of a questionnaire to public prosecutors and general solicitors and the conducting of interviews with the management in the office of the public prosecutor, (police) public prosecutor secretaries and administrative, judicial employees from the above-named organisations. (refer to Chapter 4).

MOST IMPORTANT RESULTS

Almost all of the offices of the public prosecutor have at their disposal one or more mandate decisions put fairly recently in writing and undersigned by the management of the office of the public prosecutor. In the mandate decision, the powers of authority of the public prosecutor for the most common punishments are assigned to the (police) public prosecutor secretaries and administrative, judicial employees, according to a

1 Stb. 1999, 194 and 197.
system in which the more radical and complex authorities are assigned to the more heavily qualified employees. The mandate decision also contains regulations about those cases in which consultations must be conducted in advance and in which powers of authority are excepted.

Accordingly, the modal regulation of the Prosecutor General is followed along the main points. However, a number of aberrations are noticeable in the realms of specifications, the administrating of the powers of authority and the formulation of regulations, including their range and breath. Furthermore, the mandate decisions taken about general affairs satisfy the requirements which can be derived from legislation and jurisprudence. However, in some cases, there is mention of the mandating of the powers of authority to matters which, in our opinion, are inappropriate, in terms of the nature of the cases or the regulation upon which the power of authority is based. It concerns the power of authority to take decisions about sequestration, the changing from an alternative sanction and a work punishment into an imprisonment and the forfeiting and returning of a driving license.

In daily practice, the mandate decision does not really appear to be much of an issue within the researched organisations. The respondents were indeed familiar with the fact that, within their organisation, they worked to mandate, but they only knew the regulation along its main points and the regulations were even less well known. In fact, the set of tasks deriving from the description of the function and the description of the work processes is more a guide for implementing the function.

Moreover, there is none, or hardly any, explicit or structural supervision held for the compliance to the mandate regulation, neither from the management of the office of the public prosecutor, nor from individual public prosecutors. However, within the offices of the public prosecutor, the necessary control mechanisms exist, within which compliance to mandate is an implicit part. Furthermore, there is mention of consultation on an ad hoc basis about the settlement of cases which fall within mandate. Nevertheless, in practice the public prosecutor employees appear to remain mainly within the limits of their mandate, also as a result of the set of tasks that is assigned to them. In the research no instances emerged more than incidental breaches of the mandated powers of authority.

Finally, it appears that in practice one is able to manage well within the present system for mandate; the legal system and the mandate decisions based on the model are clear. Moreover, from the point of view of management and operational management, the construction of mandate is satisfactory. Mandate functions in practice as the formal juridical regulation for the organisation model, with a strong function differentiation and specialisation, employed by the Public Prosecutor. However, one is reticent about the degree to which the Act OM - pecuniary sanctions (refer to Chapter 5).
CONCLUSION
The following conclusions may be drawn from the research. (refer to Chapter 6).

1. In a formal juridical sense, mandate is, in general, adequately organised in the researched offices of the public prosecutor. In the main, the regulations satisfy the requirements which can be derived from legislation and jurisprudence and the organisation model of the Prosecutor General.

2. Within the researched offices of the public prosecutor, the way in which mandate is organised, whereby a distinction is made in the fundamentality and complexity of the power of decision and the type of function and whereby regulations for consultation have been formulated, is adequate in our opinion. The employees of the office of the public prosecutor appear to be well able to practice their assigned powers of authority.

3. The way in which mandate is organised seems to be also very useful for the mandating of cases which could be processed on the basis of the Act OM - pecuniary sanctions.

4. Mandate appears to be an essential regulation for the present system of division of work (differentiation in function and specialisation) within the Office of the Public Prosecutor. Without the construction of mandate, the Office of the Public Prosecutor would work less efficiently and less cost consciously.

5. On further reflection, we noted a number of discrepancies from the model arrangement and from the legal regulations. It is recommended that the Prosecutor General looks into some of these matters more closely and removes these discrepancies.

6. In practice, mandate does not appear to be much of an issue within the researched offices of the public prosecutor. Only the main points are known and there is no explicit supervision given concerning the compliance to the mandate decision. Yet, in practice, it works and there appears to be no mention of more than incidental exceeding of one’s authority of mandate.

In light of the previous conclusions it is recommended that the management of the offices of the public prosecutor give more attention to (observance of) the mandate regulation, for instance, in introduction and settling-in programmes, internal trainings and in functioning and assessment talks. Furthermore, in this respect, it is recommended checking whether compliance to mandate can be (better) secured by means of regulations in the ICT.