Quality of Judicial Organisation and Checks and Balances
TABLE OF CONTENTS

Acknowledgements v
List of abbreviations xv

PART I: INTRODUCTION 1

Chapter 1: Introduction 3
1.1. Professional bureaucracy 3
1.2. Article 6(1) European Convention on Human Rights 5
1.3. Concept for a thesis 7

Chapter 2: From constitutional theory to quality norms: A theoretical framework 9
2.1. Introduction 9
2.2. Constitutional theory 13
2.2.1. Separation of powers and checks and balances 13
2.2.2. The new judiciary 15
2.3. Legitimacy and the judiciary 19
2.4. Organisation and the judiciary 22
2.5. Quality theory 25
2.5.1. Quality organisations 25
2.5.2. Quality defined 28
2.6. Quality of the judiciary: Main problem question 29
2.6.1. Introduction 29
2.6.2. Main problem questions 33

Chapter 3: Research methodology 35
3.1. Research decisions 35
3.2. Relevance of research 36
Table of contents

3.3. Research design 37
  3.3.1. Literature research 37
  3.3.2. Research methodology design 38
3.4. Interviews 40
3.5. Interview methodology in the Netherlands 42
3.6. Interview methodology in France 45
3.7. Analysis methodology of interviews 48
3.8. The interview process and respondents 49
3.9. Transcription and analysis 50
3.10. Comparison and conclusions 50

PART II: THE NETHERLANDS 51

Chapter 4: Constitutional law and practices 53
  4.1. Power defined 53
  4.2. Trias Politicas 54
  4.3. Judicial independence and integrity 58
  4.4. Conclusions 62

Chapter 5: The institutional context of the Dutch judiciary 65
  5.1. Courts in the Netherlands 65
    5.1.1. Competences 65
    5.1.2. Separate jurisdictions 67
  5.2. Members of the judiciary 68
    5.2.1. Training and selection 68
    5.2.2. Judicial career 71
  5.3. Conclusions 72

Chapter 6: The organisers and policy 75
  6.1. Recent history of organisational change 75
  6.2. Central administration in relation to local court administration and recent measures taken 77
    6.2.1. Local court administration 77
    6.2.2. Judges versus managers and politics 78
    6.2.3. Council for the Judiciary 78
  6.3. Finance 79
  6.4. Planning and control 81
  6.5. Policies 83
  6.6. Conclusion 85
9.2.2. Ministry of Justice and the Council for the Judiciary 168
9.2.3. Finance 171
9.2.4. Quality policy 175
9.2.5. Analysis: Ministry of justice and Council for the Judiciary 179
9.3. Council for the Judiciary 180
9.3.1. Role of the Council for the Judiciary 180
9.3.2. Council for the Judiciary and the courts 181
9.3.3. Council for the Judiciary and the Ministry of Justice 182
9.3.4. Financing 183
9.3.5. Quality of justice 189
9.3.6. Analysis: Council for the Judiciary 193
9.4. Conclusions 193

PART III: FRANCE 197

Chapter 10: Constitutional law and practices 199

10.1. Historical development of the judiciary in France 200
10.2. Powers defined 202
10.3. Trias Politicas 204
10.3.1. Ordre judiciaire 204
10.3.2. Ordre administratif 207
10.4. Judicial independence and integrity 209
10.5. Conclusion 212

Chapter 11: Institutional context of the French judiciary 215

11.1. Basic organisation and structure of the courts 216
11.1.1. Ordinary jurisdiction 216
11.1.2. Administrative jurisdiction 222
11.1.3. Separate jurisdictions 224
11.2. Members of the judiciary 224
11.2.1. Training and selection 224
11.2.2. Careers 225
11.3. Conclusion 227

Chapter 12: The organisers and policy 229

12.1. Central administration in relation to local court administration and recent measures taken 229
12.1.1. Local court administration 229
12.1.2. Judges versus managers and politics 232
12.2. Finances 233
12.2.1. National policy 233
12.2.2. Planning and control 236
<table>
<thead>
<tr>
<th>Chapter 14: Analysis: Quality of organisation</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>14.4.5. Analysis: Quality of organisation</td>
<td>293</td>
</tr>
<tr>
<td>14.5. Conclusions</td>
<td>294</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 15: Administration of Justice: Macro-level analysis (ordinary jurisdiction)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>15.1. Administration of justice</td>
<td>297</td>
</tr>
<tr>
<td>15.1.1. Legislator and courts</td>
<td>297</td>
</tr>
<tr>
<td>15.1.2. Ministry of Justice and courts</td>
<td>298</td>
</tr>
<tr>
<td>15.1.3. Courts of Appeal and Courts of first instance</td>
<td>301</td>
</tr>
<tr>
<td>15.1.4. Analysis: Administration of justice</td>
<td>304</td>
</tr>
<tr>
<td>15.2. Finances</td>
<td>305</td>
</tr>
<tr>
<td>15.2.1. Distribution processes</td>
<td>305</td>
</tr>
<tr>
<td>15.2.2. Process</td>
<td>306</td>
</tr>
<tr>
<td>15.2.3. New financial law</td>
<td>308</td>
</tr>
<tr>
<td>15.2.4. Analysis: Finances</td>
<td>310</td>
</tr>
<tr>
<td>15.3. Conclusions</td>
<td>310</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 16: Responsibility of judges: Micro level analysis (administrative jurisdiction)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.1. The roles and responsibilities of judges</td>
<td>313</td>
</tr>
<tr>
<td>16.1.1. Introduction</td>
<td>313</td>
</tr>
<tr>
<td>16.1.2. Main role and responsibility of judges</td>
<td>313</td>
</tr>
<tr>
<td>16.1.3. Legal quality and efficiency</td>
<td>315</td>
</tr>
<tr>
<td>16.1.4. Individual judges within the court organisation</td>
<td>318</td>
</tr>
<tr>
<td>16.1.5. Analysis: The roles and responsibility of judges</td>
<td>319</td>
</tr>
<tr>
<td>16.2. Managing judges</td>
<td>320</td>
</tr>
<tr>
<td>16.2.1. Introduction</td>
<td>320</td>
</tr>
<tr>
<td>16.2.2. Managing judges</td>
<td>321</td>
</tr>
<tr>
<td>16.2.3. Organisational instruments to aid judges in their responsibilities</td>
<td>323</td>
</tr>
<tr>
<td>16.2.4. Analysis: Managing judges</td>
<td>327</td>
</tr>
<tr>
<td>16.3. Judicial independence</td>
<td>329</td>
</tr>
<tr>
<td>16.4. Conclusions</td>
<td>330</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 17: Court organisation: Meso level analysis (administrative Jurisdiction)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>17.1. Court management</td>
<td>331</td>
</tr>
<tr>
<td>17.1.1. Quality of management</td>
<td>331</td>
</tr>
<tr>
<td>17.1.2. Court managers</td>
<td>332</td>
</tr>
<tr>
<td>17.1.3. Analysis: Court management</td>
<td>334</td>
</tr>
<tr>
<td>17.2. Quality of organisation</td>
<td>334</td>
</tr>
<tr>
<td>17.2.1. Case management</td>
<td>335</td>
</tr>
<tr>
<td>17.2.2. Analysis: Case management</td>
<td>339</td>
</tr>
<tr>
<td>17.3. Quality managers and indicators</td>
<td>340</td>
</tr>
</tbody>
</table>
17.3.1. Local courts and quality policy 340
17.3.2. Policy on quality in the courts 342
17.3.3. Analysis: Quality of organisation 343
17.4. Conclusions 343

Chapter 18: Administration of Justice: Macro level analysis (administrative jurisdiction) 345

18.1. Separation of powers 345
18.1.1. Horizontal separation of powers 345
18.1.2. Vertical separation of powers 346
18.1.3. Analysis: Separation of powers 347
18.2. Administration of justice: The Council of State and the courts 348
18.2.1. Analysis: Administration of justice 350
18.3. Finances 351
18.3.1. Process 351
18.3.2. Financial processes and judicial independence 353
18.3.3. Analysis: Finances 355
18.4. Conclusions 355

PART IV: CONCLUSIONS 357

Chapter 19: Comparative analysis 359

19.1. The role and responsibility of judges 359
19.1.1. Operation of judicial independence and accountability 359
19.1.2. Implementation of quality measures 362
19.1.3. Conclusions 365
19.2. Quality of court organisation 366
19.2.1. Policies 366
19.2.2. Quality assurance 367
19.2.3. Total quality management 370
19.2.4. Quality standards and learning organisation 371
19.2.5. Conclusions 372
19.3. Judicial organisation and the separation of powers 373
19.3.1. Judicial organisation 373
19.3.2. Political level 375
19.3.3. Conclusions 377

Chapter 20: Conclusions 379

20.1. Introduction 379
20.2. The role and responsibility of judges: problem questions 381
20.2.1. How does judicial independence and accountability operate at the level of the judicial office? 381
20.2.2. What can be done to improve the performance of judges, both in terms of productivity, efficiency and quality? 383
20.2.3. How does this affect judicial independence and accountability? 384
20.3. Court organisation: problem questions 384
20.3.1. In what way have quality theories affected the court organisation? 384
20.3.2. What steps are being taken to bring the organisation closer to the people through quality policies? 387
20.3.3. Do quality standards breach judicial independence at the level of the court? 388
20.4. Administration of Justice: problem questions 389
20.4.1. How do separation of powers and judicial independence operate at the institutional level? 389
20.4.2. Can quality theory be applicable at this level to facilitate hard political accountability? 391
20.5. Conclusions 391

Samenvatting 395
Résumé 401
Bibliography 407
Index 417
Curriculum vitae 425