Solution focus in the Netherlands

Recent developments in Dutch criminal, civil and administrative law

Dineke de Groot & Andrea Zwart-Hink
Amsterdam Centre for Comprehensive Law
Does TJ Effect Dutch Law and Practice?

• TJ is part of the Comprehensive Law Movement


• Do recent court innovation initiatives in the Netherlands in the areas of criminal, civil and administrative law comply with this ambition or ideas of the Comprehensive Law Movement / Therapeutic Jurisprudence?
FRAME: PRINCIPLES OF CONFLICT RESOLUTION

- Right of access to the courts
  - Voluntariness
  - Transparency
  - Accessibility (financial restrictions, availability of legal assistance)

- Fair trial
  - Hearing
  - Equality of arms
  - Public nature of court sessions / Confidentiality
  - Procedure within a reasonable time
  - Etc.
DEVELOPMENTS IN CRIMINAL LAW

- Restorative justice initiatives
- Victim – offender mediation
Restorative justice

Focuses on the needs of victims, offenders and the involved community,
NOT on satisfying abstract legal principles or punishing the offender.
Restorative justice

Past
Victim did not take an active role in the process, other than reporting the crime or giving evidence in court.

Developments since 1980’s

- Victim Support Netherlands (Slachtofferhulp Nederland)  
  *Offers practical, emotional and legal support to victims*
- 1992: Victim Support Act: right to join criminal proceedings as a civil party to claim damages
- 2005: Introduction of the victim’s right to speak
- 2011: Act on the strengthening of the position of the victim in criminal procedure
Victim – offender mediation (pilot)

The department of justice and the criminal court in Amsterdam have experimented with mediation in criminal law cases in 2010/2011.

- 26 cases (both adult and juvenile offenders)
- 17 cases (65%) led to an agreement between victim and offender
Victim – offender mediation

Implemented in 2012:

Article 51h Code of Criminal Procedure
Stimulates victim – offender mediation
DEVELOPMENTS IN CRIMINAL LAW

Evaluation in the context of therapeutic jurisprudence

Position of victims has changed:
- victims now have a strong position in criminal procedures
- increased attention for victims non-pecuniary needs
- Victim Support Netherlands offers practical, emotional or legal support

Offenders:
- are encouraged to take responsibility for their actions and to repair the financial or emotional harm they have done.
Evaluation in the context of therapeutic jurisprudence

Questionable effects:

- Offenders engage for strategic reasons
- Inequality
- Mediation prior to trial infringes with the presumption of innocence
DEVELOPMENTS IN CIVIL AND ADMINISTRATIVE LAW

• Recent initiatives in The Netherlands to improve facilities for dispute resolution in civil and administrative cases

• Relation to ambitions of the Comprehensive Law Movement (including TJ)?
DEVELOPMENTS IN CIVIL LAW

• Court annexed mediation

• The use of mediation and negotiation skills by judges

• Tailormade dispute resolution
The 7-i-model offers with 7 viewpoints an instrument to get an integral picture of a conflict:

**Issues**  what is at stake?

**Individuals**  who are concerned?

**Interdependency**  dependent relations?

**Interaction**  behavior, communication

**Implications**  of the conflict (what if it is not solved)?

**Institutions**  interests in surroundings of the conflict

**Interventions**  already tried / to undertake

(Giebels & Euwema, Conflictmanagement, 2006, p. 21 e.v.)
DEVELOPMENTS IN CIVIL LAW

• The judge as a conflict manager

• Litigation / conciliation

• Access to justice; drastic cutbacks

• Innovation: digitizing; time to confirm the mix of negotiation/adjudication
DEVELOPMENTS IN ADMINISTRATIVE LAW

- Administrative law: e.g. social security, tax law, environmental law, property development law
- Tailor made dispute resolution
- Project ‘A pleasant contact with the authorities’
‘a pleasant contact with the authorities’

- Administrative bodies use mediation techniques in the case of complaints or objections:
  - quick and personal contact (by telephone) with citizens
  - open, honest and interested attitude
  - use of communication techniques

- Trend from procedure focused to solution focused
NEW CASE MANAGEMENT

• Courts in first instance
  • early oral hearing
  • active judges
  • responsibility of parties to contribute to dispute solving
  • discussion about factual and legal aspects / interests
  • final solutions
  • tailor made
  • in due time
• Pilots successful; national implementation (evaluation!)
CONCLUSION

• Developments in dispute resolution in The Netherlands show a relation to the ambition of the Comprehensive Law Movement including TJ in the drive in different areas of law to mix dispute resolution mechanisms in order to combine the best of two worlds, negotiation and adjudication.