EVALUATIE SUPERSNELRECHT
(EVALUATION OF SUPER EXPEDITED PROCEEDINGS)

Margje van Weerden, Annemieke Benschop,

Nienke Liebregts, Tom Blom & Dirk J. Korf

SUMMARY

This study was conducted by the department of Criminal Law and the Bonger Institute of Criminology, Faculty of Law, University of Amsterdam, and was commissioned by the Research and Documentation Centre (WODC) of the Netherlands Ministry of Security and Justice.

Full report (in Dutch) available at www.uva.nl/bonger and www.wodc.nl.

Van Weerden M.J., Benschop A., Liebregts N., Blom T. & Korf D.J. (2016) *Evaluatie Supersnelrecht*. Amsterdam: Rozenberg Publishers.

Summary

This research concerns the evaluation of super expedited proceedings ('super-snelrechtprocedures') in the Netherlands. Super expedited proceedings are defined as criminal proceedings in which the case is tried in court within the period of 'inverzekeringstelling' (the first three days of detention in police custody). At the end of the court session, the judge will deliver the verdict. If a prison sentence is imposed, preventive custody will be ordered. This way, the sentence will be served immediately. For the application of super expedited proceedings, it is necessary for the suspect to waive his right to be summoned at least three days before the court hearing (the statutory term of summons in cases before the police court).

1 Research question and methodology

The central research question is: '**How do the super expedited proceedings function in the various districts and how could they possibly be improved**?' This research question can be divided into 10 sub-questions, both of a quantitative and a qualitative nature.

The quantitative questions have been answered on the basis of an analysis of a data file of all cases in the Netherlands in the period 2009-2015, in which police custody was ordered and the first court hearing took place within three days after the first interrogation. In addition, a short postal survey was conducted among all courts in the Netherlands.

The qualitative questions required an analysis of all relevant case law on art. 6 ECHR, the normative framework of this research. Subsequently, interviews were conducted with eight examining judges, six public prosecutors, nine lawyers, ten police officers, five employees of 'Slachtofferhulp' (a victim aid organization) and four suspects. In addition, the researchers attended and observed ten court sessions of super expedited proceedings.

2 Numbers and distribution over the country

The analysed data show that approximately **15,000** super expedited proceedings were instituted in the Netherlands during the period 2009-2015. Up to and including 2013 the amount of super expedited proceedings increased annually from approximately 1,200 in 2009 until approximately 3,000 in 2013; this growth stagnated in 2014-2015. Regarding the distribution over the country, both the analysis of the quantitative data and the survey of all districts show super expedited proceedings are generally a 'Randstad' phenomenon (the conurbation in the west of the Netherlands, comprising Amsterdam, Rotterdam, The Hague and Utrecht). 99% of all super expedited proceedings take place in this area, with

district The Hague taking the lead, followed by Amsterdam, and then Rotterdam. 'Midden-Nederland' (which includes Utrecht) is placed fourth, but at a large distance. The coordinating examining judge of the Midden-Nederland court explained that super expedited proceedings were reintroduced in his district in May 2015.

The most important reason for courts *not* to organize super expedited proceedings on a regular basis, is the lack of sufficiently suitable cases to consistently 'fill' the meeting days for these proceedings.

3 Indictment and course of the proceedings

The super expedited proceedings that took place in the researched period mainly concerned theft, mostly shoplifting. In 4% of all super expedited proceedings in the period 2009-2015 the case was adjourned. Until 2012 this percentage was around 5% and after 2012 it slightly decreased to 3%. The reason most frequently cited for adjournment of the case was incompleteness of the file or the investigation. This was the case in 2% of all super expedited proceedings. Regarding the judgments: in most super expedited proceedings (96%) the judge immediately pronounced the judgment at the very first meeting. This typically concerned a conviction (91% of all super expedited proceedings), mostly imprisonment (86%) or, much less, community service (10%).

Appeals against these judgments by Prosecution Counsel were very rare. In 11% of all super expedited proceedings from 2009-2015 the suspect appealed. That is approximately the same as the national appeal percentage of 13% in 'ordinary' police court cases.

4 Selection of cases for super expedited proceedings

The interviews with the professional parties to the proceedings showed that the selection is made by the Public Prosecutor. In making this selection s/he uses criteria which correspond with the criteria of the 'Menukaart Supersnelrecht', the most important policy instrument regarding the application of super expedited proceedings. S/he obtains advice from the police, the 'Reclassering' (the after-care and resettlement organization) and 'Slachtofferhulp' (the victim aid organization), but not from defence counsel. Only in Amsterdam are defence counsel consulted by telephone. The interviews with the police confirm this.

The 'Menukaart' lays down seven categories of cases which lend themselves to disposal by super-expedited proceedings. The first two categories concern cases in which the suspect is a repeat offender or does not have a permanent home or address. The data and observations of the court sessions show that these types of suspects indeed often appear in super expedited proceedings. The other categories of cases are not well represented.

The fourth category concerns 'events and demonstrations'. The super expedited proceedings right after the turn of the year belong to this category. These 'new year' proceedings showed more variety in indictments (e.g. indictments for vandalism and resistance ('wederspannigheid')), but this is a very small percentage of the total annual amount of super expedited proceedings.

5 Requirements of art. 6 ECHR

The ECHR case law shows that the utilization of super expedited proceedings does not violate art. 6 ECHR, as long as all necessary safeguards are in place. For the defence, art. 6 §3 sub b ECHR is most relevant, 'the right to adequate time and facilities'. With respect to this normative framework the researchers conclude the following issues need attention.

1. The way the right to be summoned within the legal term of 3 days is waived

The right to adequate time and facilities is secured in national law by the minimum term of summons. To be judged in super expedited proceedings, the suspect needs to waive this term. The ECHR case law requires this waiver to be established in an unequivocal manner, to be surrounded by minimum safeguards which are in accordance with the importance of the waived right, and not to be at odds with any public interest. Furthermore the suspect needs to be well informed at the moment of the waiver; s/he needs to know what right s/he is waiving and what the possible consequences might be. The moment and way of waiving varies with every district. It is unclear which information is provided before the suspect waives the legal term of summons. Regarding this variety in practices, it is questionable whether in all cases the waiver meets the strict requirements of the ECHR, given in particular that super expedited proceedings often concern vulnerable suspects (e.g. homeless, psychiatric patients, addicts).

2. The legal consequences of the lack of a valid waiver are not unequivocal

If the right to be summoned within the legal term has not been waived, or if the waiver appears to be invalid, it is not always clear what the legal consequences are. Sometimes it means the case will be adjourned; sometimes an arraignment ('voorgeleiding') is conducted instead of the planned court session.

3. Lack of uniformity in the way adjournment requests are being judged

The case law of the ECHR shows that a complaint about a lack of adequate time will not be valid, if the defence has had both a de facto and a de iure possibility to request an adjournment of the court session and has not used this power. This implies as well that in spite of a short time frame for the defence to prepare the case, the requirements of art. 6 §3 sub b ECHR could still be met by simply adjourning the case if the defence so re-

quires. In light of both this case law and the doubts regarding the way in which suspects are informed of the consequences of waiving the minimum term of summons, a generous policy on adjournments is highly recommended. Therefore, we researched how examining judges deal with requests for adjournment during super expedited proceedings. The interviewed judges gave very divergent answers to this question. These differences could lead to inequality and might hinder the defence in developing a strategy.

4. Assistance of an interpreter during the preparatory conversation between suspect and lawyer
It seems difficult for defence counsel to arrange an interpreter to be present during the preparatory conversation (between the defence council and his client, right before the court hearing) at such short notice. It is not always possible or desirable to use the services of the interpreter who has been called on to translate in court. In these cases in which the defence counsel needs to arrange his/her own lawyer at short notice or is obliged to use the services of a court interpreter, a tension exists between this practice and the right to adequate time to use all facilities necessary for an effective preparation of the defence.

Regarding the position of the *victim* the researchers conclude it is to be prevented that super expedited proceedings take place at such short notice that victims who would like to exercise their right to speak in court or their right to file a claim, will not have a reasonable opportunity to do so. The data show that the indictment in super expedited proceedings usually concerns shoplifting; in those cases, the victim does not have a right to speak (art. 51e §1 of the Dutch Code of Criminal Procedure). The interviewed prosecutors declared to obtain advice from Slachtofferhulp (the victim aid organization) during the selection process. Slachtofferhulp contacts the victim to assess if a possible claim could be filed in time. If not, this will serve as a contra-indication to super expedited proceedings. Whether the victim is able to attend the court session, is not taken into account.

6 Experiences and improvements

The measure and way in which the various actors ('ketenpartners') can influence the decision-making during the selection process, varies between districts. The question of how much 'space' is still available at the court session (how many cases could still be planned) also plays a role in this process.

The professional parties to the proceedings all say that the main advantages of super expedited proceedings are that unnecessary 'double' court sessions are being skipped and that a verdict is issued within such a short term after arrest, providing clarity to all parties involved. The police officers who have been interviewed indicated they are used to the time pressure. Less experienced prosecutors sometimes put them under unnecessary time

pressure requiring unreasonable or redundant additional research. At the same time, it is true that the case cannot be tried as super expedited proceedings if the police are not ready. The police further emphasized the advantages of rapid completion of the case, as long as the speed doesn't undermine the diligence of the procedure. The interviewed suspects stated that slight pressure had been exercised on them to agree with super expedited proceedings, but were mainly positive about this instrument. The interviewed employees of Slachtofferhulp (the victim aid organization) indicated that victims appreciate the speedy completion of the procedure; this strengthens their feeling of justice.

The following possible improvements emerged from the interviews.

1. Sharper selection of cases

Both judges and prosecutors indicated that the selection of cases for super expedited proceedings could be improved. Sometimes cases are brought before the court in super expedited proceedings, although the case does not seem fit to be dealt with expeditiously. On the other hand, many cases that are suited to these proceedings are not dealt with in this manner; from that perspective, the super expedited proceedings are underused.

2. Introduction of super expedited appeal proceedings

If the suspect appeals, the case will not be heard by the Court of Appeals in a super expedited manner, but at ordinary pace. This implies that the suspect will have already served his sentence by the time the Court of Appeal issues its verdict.

3. Timely information for and consultation of the lawyer

Defence counsel would like to be involved in the selection procedure and receive the file at an earlier stage in order to be able to properly advise their clients on the question of whether they should waive their rights to be summoned within the legal term.

4. Reduce the hassle for the police

The interviewed police recommended the following improvements: more efficient decision-making, less administration and improved accessibility of lawyers and involved organizations.