

# Summary Annual Report 2008

➤ The Annual Report 2008 of the Netherlands Bar Association is titled 'An economic order' (*Een economische orde*). There is a reason for it. Netherlands lawyers make an important contribution to the development of national and international economic activities. They support companies and individuals, but they also help those who cannot find the gate to justice by themselves. In doing so, they perform an important task in a democratic state under the rule of law. And a reliable rule of law is a condition for a sustainable economy.

## Core values of the legal profession

In 2008, the Association paid a lot of attention to the draft of a new Counsel Act. It includes six core values, which form the basis of the practice of the legal profession. The Netherlands Bar Association endorses the legal basis of five core values, to wit: partiality, independence, confidentiality, expertise and honesty. The sixth core value is stated in the draft as follows [translated literally]: 'the lawyer shall take the general interest of a proper administration of justice into account'. In its advice of 27 May 2008, the Association advised the Netherlands State Secretary for Justice against the inclusion of this core value in the Act. Because, according to the Association, the sixth core value already forms an integral part of the professional rules and views currently in force. In other words, in the legal profession, a lawyer always contributes to the general interest of a proper administration of justice. The Association regularly talks with its members and civic

and political organisations about the way in which a lawyer can and must give substance to his public responsibility.

## Effective management

The General Council endeavours to pursue a policy that provides a framework with regard to the development of the entire profession. The Council submits that policy to the Board of Representatives, which includes more than ninety members. The President attaches much value to these four-yearly consultations with the Board, but the present set-up complicates effective management. In the new Counsel Act, consideration has to be given to the modernisation of management and supervision. Even more than at present, the Association ought to take up a leading and decisive position in society and politics.

## Principal points of the policy

The task of the Association is clearly described in the Counsel Act. The General Council and the Supervisory Board stimulate the supervision of a proper practise of law and take measures that may contribute to it. In order to establish what exactly is meant by the professional competence of lawyers, the General Council had an investigation carried out involving the entire Bar Association in 2008 for the purpose of setting out clearly what lawyers already do about bringing the professional competence to the required standard and keeping it there. The results of that investigation are to be expected in 2009 and will be used in the further elaboration of the concept of professional competence.

The new Regulations for administration and finances have to contribute to the improvement of the practise of law .

## Training

In 2008, the General Council and the Board of Representatives discussed what the relationship is between the obligatory vocational training and the initiation of in-house training. In 2008, several firms jointly started their own training course. The discussion focused on the question whether exemption should be granted from certain subjects of the main-stream vocational training. In principle, every trainee lawyer has to follow professional training, irrespective of the specialisation he wishes to practise in future. This means that the training has to be of a high level and offer added value to every type of firm.

## Access to justice

In the coalition agreement, the Netherlands State Secretary for Justice was confronted with a 50-million-euro task set to her for legal aid in respect of a budget of 400 million euros. In 2008, she presented her ideas, complying with the task set. The Association seconded several of the ideas, e.g. the plan to avoid conflicts between the government and the people as much as possible by a more pro active way of acting by the government. But the Association strongly opposed the plans to reduce the income limits for certain legal areas, due to which a large group of people would no longer be eligible for legal aid. The Association also considered the idea of not providing crime suspects with legal assistance until a later stage to be an unacceptable

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*'Als de advocaat niet bestond, dan moest hij vanmiddag nog worden uitgevonden.'*

change for the worse of the safeguarding of legal rights.

Through targeted action, the Save the Legal Aid Committee (*comité Red de rechtshulp*) at least managed to prevent a reduction of income limits. Furthermore, the General Council has ordered an investigation into the obstacles that private persons and entrepreneurs come across when looking for a lawyer. In this respect, it is not only the price of the lawyer that matters. The investigation intends to make clear whether there is an access-to-justice problem. It will be finished by mid-2009.

### Supervision, the right of complaint and disciplinary rules

In a letter of 5 November 2008 to the Netherlands House of Representatives, the Secretary of State proposed a new system of legal disciplinary rules, comparable to the medical disciplinary rules. The proposal still shows lacks of clarity, e.g. as to whether a judge can be the chairman of a board. The General Council and the Secretary of State consult to find solutions.

### Enforcement

In 2008, the General Council presented the local presidents a new supervision model, based on differentiation, risk analysis and 'rewarding' lawyers who have their practice in order. In 2009, the General Council will elaborate this supervision system further, together with the Supervisory Councils. Furthermore, the Netherlands Prevention of Money-Laundering and Terrorist Financing Act (*Wet ter voorkoming van witwassen en financieren van terrorisme* -

*Wwft*) entered into force on 1 August 2008. This Act obliges lawyers who grant a certain type of services to initiate a client assessment and to report unusual transactions.

The Complaint and Dispute Settlement Scheme for the Legal Profession Directive (*Richtlijn Klachten- en Geschillenregeling Advocatuur*) urgently recommends lawyers to provide for an internal complaints procedure. In accordance with that Directive, the Disputes Committee for the Legal Profession may be requested to render a decision in the case where a law firm cannot manage to settle a dispute with a client by itself. At present, 1016 law firms are affiliated (in 2007: 901).

### Communication

The General Council wants a visible, self-confident and accurate image of the Bar Association among the public and opinion leaders. Besides, it attaches value to an effective communication with its own followers. For that reason, a special communications project was started in 2008. Round-table conferences between lawyers and also talks with the people regarding their opinion about the Netherlands legal profession were part of the project. Furthermore, a qualitative test was carried out into the information position of the lawyer in respect of contents and coherence of the corporate media of the Association (the professional magazine 'Advocatenblad' ('Lawyers' Magazine'), the digital newsletter 'Orde van de Dag', [www.advocatenorde.nl](http://www.advocatenorde.nl)).

### International

The Association maintained its

international contacts in 2008. It pleaded for the closing down of Guantánamo Bay and it signed the 'Convention between Lawyers of the World', which argues for the protection of human rights.

Furthermore, the General Council took part in meetings of international law societies and participated in an active manner in the European umbrella organisation CCBE.

### Current issues within the scope of criminal law

On 1 July 2008, an experiment was initiated in two court districts to allow a counsel to the police questioning in cases of suspicion of homicide. By the end of 2008, the ECHR rendered two comparable decisions about the role of the counsel before and during police questioning (Salduz and Panovits). Those decisions will have consequences for law practice in the Netherlands. The General Council will define its position based on the advice given by the Advisory Committee on Criminal Law. Another important development concerns the taping of confidential conversations that pursuant to Netherlands law have to be destroyed. A number of major criminal proceedings failed in 2008 because of taping of confidential conversations, found in the criminal files. Together with the Netherlands Bar Association, the Netherlands Board of Procurators General submitted a proposal to the Minister to introduce a system of number identification, through which a conversation with a counsel would be recognised and not be added to the file. <<<

*'De advocaat moet goed zijn opgeleid, hij moet onafhankelijk zijn van financiële kwesties, hij moet onafhankelijk zijn van de staat en de overheid en hij moet vrij zijn in de uitoefening van zijn beroep.'* DR. NORBERT WESTENBERGER (VICE-PRESIDENT BRAK)