

ACADEMIC NEWS

Finding the truth in Dutch courtrooms How does one deal with miscarriages of justice?

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An important example

Nienke was only 10 years old when she was raped and murdered in a park in Schiedam. It happened on a sunny afternoon in June 2000. A man named Cees Borsboom (hereinafter CB) was arrested for these horrible crimes. Shortly after his arrest, he confessed to police officers, to a public prosecutor and to the investigative judge. Furthermore, he admitted having a sexual interest in children. After a while, CB withdrew his confessions. That is important, as the case against him had some remarkable elements. He did not, for instance, fit the description of the perpetrator given by the most important witness. This witness, a young friend of Nienke, was playing with her in the park when Nienke was attacked. He saw what happened and he also became a victim. The offender in fact seriously harmed the boy. The man described by this boy was certainly not CB. Furthermore, it should be noted that none of the DNA material found at the crime scene matched the DNA profile of CB. And his confessions at the early stage of the proceedings were made in rather vague terms, without giving any specific information and without his defence lawyer being present.

Nevertheless, CB was convicted by the district court and by the court of appeal. The Supreme Court (*Hoge Raad*) subsequently rejected the appeal on points of law. Doubts about his guilt nevertheless remained. The judgments were severely criticised in television programmes. A professor of law wrote a book about the case, arguably demonstrating that the wrong man had been convicted.¹ This criticism did not result in a review. Although various efforts were made, requests to reopen the case were dismissed. The Supreme Court firmly retained its position that no new elements had been introduced to decide that the threshold for reopening the case had been

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1 P.J. van Koppen, *De Schiedammer parkmoord. Een rechtspsychologische reconstructie*, 2003. The Supreme Court rejected a request for a review that was based on this book in a decision of 7 September 2004 (*LJN AQ9834*).

passed. That threshold, as it is understood by the Supreme Court, encompasses the requirement of a *novum*. To put it briefly, a *novum* is a new fact that was not apparent to the court that rendered a final judgment, and that, if it had been known at the time, would have resulted in another decision (in this case: the acquittal of CB).

In the summer of 2004, another man confessed totally unexpectedly that he was responsible for assaulting and murdering Nienke after having been arrested for another crime. This man exactly fitted the description that was given by Nienke's friend. His DNA profile matched the DNA evidence found at the crime scene. Shortly afterwards, CB was released from prison. The Supreme Court ordered a review of his case, as these new facts easily demonstrated that CB had been wrongfully convicted.

The case of the *Schiedammer parkmoord* is, in recent years, the ultimate Dutch example of a miscarriage of justice. The general reaction to this case was one of great concern and discomfort. The prosecution authorities initiated a thorough investigation, aimed at evaluating the work of police officers and prosecutors in this case and to learn lessons for future cases. The report of this investigation had far-reaching consequences for the debate on the criminal law system in general, and it is considered to be the starting point of the current initiatives to 'review the revision'.²

An incident or a major problem?

It is difficult to accept that an innocent man is convicted, especially in terrible cases like the rape and murder of a young girl. However, both the district court and the court of appeal, responsible for the wrongful conviction of CB, emphasised in public statements that this miscarriage should be seen as an isolated incident. The very same position was taken by respected scholars. The message is clear: there is no reason to think that many innocent people are in prison. We still can and should have confidence in the criminal law system. We still have to rely on the correct assessment of the facts by competent professional judges.³

To understand this firm belief in the current system, some characteristics of Dutch criminal proceedings need to be mentioned. I will restrict myself to a few and very general headlines. The starting point of the Dutch system is the idea that the establishment of truth – and thus the prevention of a miscarriage of justice – cannot be left to the prosecution department and to the defence. In Anglo-American systems, like in the UK and in the United States, these parties present their truth in a courtroom. In these countries, witnesses are for instance heard by the prosecutor and by the defence lawyer, not by the judge or jury. Cross-examination is a means to reveal the truth. In the Netherlands, however, truth finding is considered to be primarily and predominantly the task or duty of the presiding judge. It is the judge who interrogates the suspect and asks the questions to a witness. The prosecution and defence do have the right to pose questions to suspects and witnesses, but their questions are additional to those already posed by the judge. One has to bear in mind that the judge has already read the case file, so he/she will often want to verify and clarify facts and circumstances that are not already obvious. This also means that the hearing of witnesses in court is an exception.

2 F. Posthumus, *Evaluatieonderzoek in de Schiedammer parkmoord. Rapportage in opdracht van het College van Procureurs-Generaal*, to be found on <http://www.om.nl>.

3 See for instance Y. Buruma, 'Onschuldig!', 2005 *Delikt en Delinkwent* 68 and M.S. Groenhuijsen, 'Evaluatie van afgesloten strafzaken en de offensieve rol van de strafbalie', 2006 *Delikt en Delinkwent* 32.

The judge therefore has an active role and is responsible for establishing the substantive truth. This idea of truth is considered to be far better than negotiable truth, to be recognized, for instance, in the Anglo-American phenomenon of plea bargaining. The concept of an active judge, finding substantive truth in Dutch courtrooms, has major consequences. Firstly, a judge should not be hampered by too many formal restrictions in establishing the truth. Our rules of evidence are, as a consequence, rather minimal. In everyday practice, it is fair to say that in the vast majority of criminal cases it is not rules of evidence, but the personal conviction of the judge that is decisive. Furthermore, the concept of an active judge, responsible for finding the truth, makes it less important to attach much weight to enabling the defence to present its case. Consequently, a feature of the Dutch system is that the defence has no legal opportunity to call a witness of its own accord; the defence is deemed to ask the prosecution or the judge to call a witness for the defence. On the basis of the criteria laid down in the Code of Criminal Procedure, both the prosecution and the judge have a considerable margin of appreciation in deciding on this request.

One has to have faith in judges when giving them the task of finding the truth rather autonomously. However, certain developments have made this job far more difficult. One of the major developments was in fact created by case law of the Supreme Court, according to which statements made at the police investigation stage can be used as evidence at the trial. As a consequence, hearsay is allowed. *De auditu* statements can be used as evidence, even if the judge is not confronted with the witness himself at the trial.⁴ If there is no need to present all the evidence at the trial, truth finding in courtroom becomes essentially a matter of verifying the work that has been done by the police in the preliminary stage. This verification process is primarily based on the paperwork completed in the investigation stage. As already mentioned, judges decide in most cases on the basis of this *dossier*, with few questions being posed to the defendant and no witnesses being heard at the trial. Court proceedings in the Netherlands are very efficient, and indeed are mostly very dull. A judge summarizes the results of the police work and every now and then asks for an explanation from the defendant.

The current system is still based on the idea of an active judge, finding substantive truth without being confronted with formal obstacles. However, it follows from the *de auditu* case law that there is – at least – one huge material obstacle: judges have to rely on the work of police officers and the public prosecutor's office. So we are not actually asked to have confidence in judges; in fact, the public is asked to have confidence in the police and in the department of the public prosecutor. Most judgments rely to an important extent on the results of the work of these authorities. According to Dutch law, these officials deserve to be trusted. A provision in the Code of Criminal Procedure (*Wetboek van Strafvordering*; see Article 344, Paragraph 2) explicitly states that the evidence can be based solely on the report of a police officer.

Confidence in the system and in the authorities is accompanied by a restrictive revision system. Legal certainty is said to be important: every legal battle should end at a given time (*lites finiri oportet*). Besides, it is argued that reopening a case without new compelling evidence will arguably undermine the authority of the judiciary. And certainly, if one considers the case of the *Schiedammer parkmoord* as an isolated incident, there is no need to change the revision system.

What strikes me is the disbelief by the authorities, including judges, that they actually can be wrong. It is my firm belief that no judge – and no system – can avoid a miscarriage of justice. There is no need to conclude that, because of this risk, we should stop putting people behind bars after they have been found guilty. In most cases, there is no reason to think that the suspect has

4 The starting point being a decision by the Supreme Court on 20 December 1926, *NJ* 1927, 85.

been wrongfully accused. Guilt is often not that difficult to establish. The real issue is about the difficult cases. These difficult cases are probably rare, most likely only a small minority of all criminal cases. But at the end of the day, even a small minority can climb to an impressive number. If only one out of 1,000 cases is a difficult one, we have an awful lot of difficult cases every single year in the Netherlands. How can we be so sure that the wrongful conviction of CB was indeed one of a kind, a unique incident? How can any judge or system claim such a perfect score?

Responses from the judiciary and from the prosecution authorities

I recall the brave initiative of the prosecution authorities, shortly after the case of the *Schiedammer parkmoord*, to establish the Posthumus Committee. This committee, named after its chairman Frits Posthumus, thoroughly investigated the preliminary process in this case. What went wrong in the stages of the police investigation, the prosecution and the presentation of evidence by public prosecutors? It is important to understand that the Posthumus Committee had to restrict its investigation to the work of the police and the prosecution authorities. The committee did not go into failures that were possibly made by the judiciary. As the committee worked under the auspices of the (central) prosecution authorities, it was considered to be a breach of the concept of the *trias politica* if the judiciary were to be evaluated by Posthumus & co.

Both the district court and the court of appeal in this case are said to have conducted internal evaluations as to the question of what went wrong. The findings of these evaluations were, however, not made public. According to spokespersons representing the judiciary, this secrecy has to do with the idea that the system requires judges only to speak through their judgments. Both courts referred to the rule that discussions in chambers should remain confidential and that only the results of these debates are made public by the verdict of the court. That is not a very satisfactory explanation. The current President of the Supreme Court wrote in 2005 that this rule does not oppose a public account of the reasons for a conviction that turned out to be wrong, in order to learn lessons from the past. He underlined the importance of regaining public confidence in the criminal law system by openness and clarity.⁵

This attitude has not changed in recent years, even though more criminal cases have attracted public attention after serious doubts were raised about the correctness of the convictions. Most of them are murder cases, several of them are named after the village or city in which the murder was committed. For instance, in recent Dutch legal history the *Putten* murder case and the *Deventer* murder case have been in the public eye.

Again, the prosecution authorities reacted adequately. They did not walk away from the debate, but actually responded to it in various ways. One response was to establish a committee to evaluate closed criminal cases. This committee has no legal basis and is a provisory solution. It investigates – like its predecessor, the Posthumus Committee, did in the case of the *Schiedammer parkmoord* – whether serious flaws occurred in the investigation, prosecution or presentation of evidence in specific criminal cases.

In 2007 and 2008 three reports were presented by the committee on high-profile cases.⁶ The first report concerns the case of *Lucia de B.* This former nurse was convicted and sentenced to life imprisonment, after being found guilty of seven murders and three attempted murders in

⁵ G.J.M. Corstens, 'Rechterlijke dwalingen', 2005 *Nederlands Juristenblad*, p. 1733.

⁶ The reports can be found at <http://www.om.nl>

various hospitals.⁷ The second case investigated by the evaluation committee concerned a man who had been convicted of the large-scale sexual abuse of young children. The third report describes the case of *Ina Post*, a famous but older case about a caretaker who had been convicted of murdering an elderly woman. In all three reports major problems were assessed, giving rise to doubts about the actual guilt of those convicted. The committee did advise the prosecution authorities to initiate review proceedings; a request for a review in the case of *Lucia de B.* is currently (August 2008) waiting a decision by the Supreme Court. She has been released pending this decision.

Like the Posthumus Committee, the committee for the evaluation of closed criminal cases has no competence to investigate whether or not the judiciary had made any mistakes in a given case. And again it has to be observed that the judiciary itself did not openly demonstrate a determination to learn from the failures in other cases. Permanent training for judges is considered to be a first step, but that appears to be rather marginal. I have to admit that on a more general level the Council for the Judiciary (*Raad voor de Rechtspraak*) has initiated an investigation into the expertise of judges, but this is not an evaluation of what went wrong in the cases described above (or in other cases). It seems as if judges in the Netherlands continue to hold on to the idea that the public can still rely on their correct assessment of facts in criminal cases. After all, *Schiedam* was an isolated incident, was it not? Even if some new wrongful convictions are demonstrated, there is still no reason to be afraid that many innocent people are languishing in prison.

I do not feel comfortable with this silence on the part of the judiciary. The silence itself could be conceived as arrogance. That would, of course, be wrong. But conceptions – even if they are incorrect – have the power to create or deepen a gap between the judiciary and the public. In several cases, the public and lawyers have severely criticised judgments.⁸ These comments deserve to be the subject of a debate, but most members of the judiciary are not prepared to actually discuss the questions raised. Their arguments will sound familiar: as long as no *novum* is introduced, a case cannot be reopened, whereas legal certainty and the authority of the judiciary require that doubts should not be raised without a new fact from which it can be derived that the wrong man or woman has been convicted. Laymen should be silent, according to many lawyers, as they are not familiar with the law and the public debates on (final) judgments do undermine the public confidence in the administration of justice.⁹ This attitude does not seem to be a wise one, however. When serious arguments are presented in the public domain and the only reaction is that citizens must have confidence in the judiciary, citizens are left with unanswered questions. In present-day conditions, confidence in the judiciary will not benefit from avoiding discussions. Serious arguments deserve a serious reply, not silence.

Difficult cases: common problems and some improvements

The Posthumus Committee produced a very critical report on the *Schiedam* case. Three critical reports were presented by its successor, the committee for the evaluation of closed criminal cases. It is interesting to see whether, based on these four available reports, some conclusions can be

7 It should be noted that I act as the defence counsel for Lucia de B. starting from the proceedings before the court of appeal.

8 See for instance Ton Derksen, *Lucia de B. Reconstructie van een gerechtelijke dwaling*, 2007 and Ton Derksen, *Het OM in de fout*, 2008.

9 See for instance P.A.M. Mevis, 'De regie hersteld', 2007 *Nederlands Juristenblad*, p. 2811 and G.E. van Maanen, 'Een academisch volksgericht: de advertentie over de zaak Lucia de B', 2008 *Nederlands Juristenblad*, p. 19.

drawn. Do these cases have some elements in common that might explain the serious flaws? With some caution, I think we can identify some relevant factors.

First of all: all cases were really serious and complex. Three of them were murder cases, while one concerned the large-scale sexual abuse of minors. The evidence in these cases was not abundant. On the contrary: there was in fact little evidence.

Secondly: in two of these cases, the conviction was mainly based on a confession made in the preliminary stages of the proceedings. In the *Schiedam* case we know, by now, that the confessions by CB were false. In the case of *Ina Post* it has been demonstrated that her confessions to the police were most likely also false. Confessions shortly after an arrest, not corroborated by other evidence, might therefore be an important pitfall in criminal proceedings.

Thirdly: in some of these cases complex issues of expert evidence were raised. In the case of *Lucia de B.*, for instance, the courts (and the committee for the evaluation of closed criminal cases) were confronted with difficult questions concerning statistics. Long debates in the courtroom focused in the same case on medical and pharmaceutical matters. Dozens of experts were heard. And every expert gave his or her own opinion. That is another problem which is likely to occur in more difficult cases: how can a lawyer decide what the truth is, if even qualified experts have different opinions? How does one deal with these difficult cases?

Last but not least: in all of these four cases, the committee reported that from the early stages of the proceedings, the focus was on finding evidence against the suspect – and not on finding the truth as such. This phenomenon can be referred to as tunnel vision. This term means that there is not an open attitude towards material to corroborate the defence, as one is only searching for material against the defendant. One has a particular vision and one is not prepared to deviate from that vision.

Some risks that have the power to contribute to a miscarriage of justice can be adequately redressed. The pitfall of false confessions at the preliminary stage, for instance, will most likely be resolved if a suspect is allowed to have his defence lawyer present during interrogations. In most civilised countries, this right is self-evident.¹⁰ In the Netherlands, however, there has always been a great deal of resistance to this right. It is evident from some headlines that this position reflects both confidence in the police authorities and the lack of elaborated defence rights as key elements of the Dutch criminal law system that was described above.

A positive development in this respect might be the experiment that started in the summer of 2008, in which defence lawyers are invited to attend police interrogations of suspects in murder cases in Amsterdam and Rotterdam. This experiment has been criticized by defence lawyers because of the enforced restrictions that create a major obstacle to adequately assist defendants.¹¹ But it is at least something to start with.

Another improvement should focus on expert evidence. All parties in the criminal law system – the police, prosecution, defence, judiciary – often need experts to assess facts. But how can they evaluate the work of these experts? How does one deal with different expert opinions? There is no simple solution. Obviously, clear communication between lawyers and experts is a basic requirement: questions, answers and explanations should be in a clear language, and one should constantly be alert as to different interpretations of words, concepts, et cetera. The criminal law system should furthermore guarantee all parties an adequate opportunity to study and dispute (examine and challenge) expert evidence. There is room for improvement in this

¹⁰ Ed Cape *et al.* (eds.), *Suspects in Europe. Procedural Rights at the Investigative Stage of the Criminal Process in the European Union*, 2007.

¹¹ W.J. Jebbink, 'Wat de Schiedammer parkmoord niet leert. De huidige voorstellen tot registratie van verhoren en tot toelating van de raadsman bij verhoor zullen het gebruik van valse verklaringen niet voorkomen', 2008 *Nederlands Juristenblad*, pp. 564-568.

respect.¹² The defendant and his lawyer are, as a rule, not involved in the appointment of experts or in drafting the questions (and, thereby, in assessing the scope of the investigation or research). Neither does the defence have a general right to seek a second opinion. Detailed rules are lacking, with the exception of some specific areas of expertise (like DNA evidence). Finally, most defendants have no funds available to hire an expert, either for carrying out an investigation or for assisting the defence in understanding and challenging evidence produced by the police and prosecution authorities.¹³ Some of these problems, but not all of them, are addressed in a bill that was introduced in 2007.¹⁴ I consider it to be an important improvement that the defendant, as a rule, will be informed about the deployment of experts and about the scope of their work, but I still miss adequate legislation on second opinions and on financial resources.

A final piece: review of the revision

When it is acknowledged that no system can avoid a miscarriage of justice, there should always be a way out for those who are wrongfully convicted. Two questions, that are closely connected, are important in the current discussion on the ‘review of the revision’. The first question relates to the restrictive revision system: should the law offer a broader opportunity to reopen a case, for instance if a recent development that does not qualify as a *novum* renders the conviction unsafe? And secondly: should there be a permanent provision to investigate – like the Posthumus Committee and the committee for the evaluation of closed criminal cases – if there is good reason to doubt a final judgment and to file a petition to reopen the case?

As to the first question, it is observed that legal certainty and the authority of the judiciary are served by a restrictive revision system. Legal battles should end and both the parties and society should have confidence in the ability of the judiciary to assess the facts, sometimes with the help of others (like experts). These arguments are not convincing. It is not the system itself, but truth and justice that should be predominant in shaping a revision system. As to confidence in the judiciary, it seems wise to acknowledge the reality that mistakes cannot be avoided and to be modest as to lawyers’ skills to assess the facts in difficult cases.

Especially in these cases, the requirement of a *novum* protects, as a rule, the final judgment: in those complex cases the personal conviction of a judge will be decisive.¹⁵ A precise and balanced evaluation of such a case and a final judgment by an academic – like that of Van Koppen in the *Schiedammer parkmoord* case – will not be considered a *novum* in current case law, even if it demonstrates a real possibility of a wrongful conviction. Only a new fact, and not a new argument based on the existing case file, qualifies as a *novum*.¹⁶ In today’s society, this restriction will not put an end to public debate. If doubts about guilt remain, it is wise to broaden the scope of the revision system in order to adequately investigate new arguments, new lines of approach or new facts. Easier access to the revision system is to be preferred above the rather obligatory communication on legal certainty and confidence in the judiciary.

12 See for instance J.M. Reijntjes, ‘Deskundigen en tegenspraak. Over het toetsen van deskundigenbewijs in strafzaken’, in: F. Hutsebaut & J.M. Reijntjes, *Deskundigen en tegenspraak in het Belgische en Nederlandse strafrecht*, 2007, pp. 93-196.

13 The Code of Criminal Procedure contains a general provision (Art. 591), according to which the defence can ask for the reimbursement of costs incurred for the benefit of the investigation. There is, however, no right to reimbursement. Besides, this provision is grafted onto standard amounts that often do not reflect the actual amounts to be paid to experts.

14 See Reijntjes, *supra* note 12 and M.J. Dubbelaar & J.F. Nijboer, ‘De procespositie van deskundigen eindelijk wettelijk verankerd’, 2008 *Delikt en Delinkwent* 2.

15 T.M. Schalken in an annotation under the Supreme Court decision of 27 June 2000, *NJ* 2000, 503 (on the *Putten* murder case).

16 See for instance the Supreme Court decision of 17 February 2004, *NJ* 2004, 333.

In a recent draft, published in the summer of 2008, a new criterion for revision has been introduced. The main argument for the proposed reform in the draft explanatory memorandum is that the current system does not offer an opportunity to mark new scientific perceptions, for instance as a result of scientific developments, as a valid reason to reopen the case. Because judges in an increasing number of cases have to rely on experts and because experts can be wrong, the precondition of a new fact will be dropped. A (new) report by an expert will, according to the proposed reform, qualify as a *novum*. In more general terms, it is said that not only a new fact but also a new source of evidence (like a report or a book) could be the basis of a revision, if it reveals a serious suspicion that the accused would not have been convicted if this information was presented to the judge.

As to the second question, the legislator acknowledges in the draft explanatory memorandum that current legislation does not offer adequate facilities to properly investigate new facts or arguments. A major problem in this respect is that the former defendant has to establish such a new fact or argument without having any (formal) authority to initiate an investigation or research. Instead of the provisory committee for the evaluation of closed criminal cases, under the central prosecution authorities, both the Supreme Court and its main adviser – the *procureur-generaal*¹⁷ – should be able to initiate and direct any further investigation. As a consequence, mistakes or failures by the judiciary can be taken into account. That is an important advantage compared to the Posthumus Committee and its successor.

In a recent debate, it has been argued that it is not the Supreme Court or its *procureur-generaal* that should be responsible for a new investigation that might lead to a revision, but an independent board. Inspiration for that idea can be found in the British Criminal Cases Review Commission.¹⁸ After several miscarriages of justice in the UK – like in the cases of the *Birmingham Six*, the *Maguire Seven* and the *Guildford Four* – an independent body was created to investigate every closed case that might have resulted in an unsafe conviction in England, Wales and Northern Ireland (its Scottish counterpart is the Scottish Criminal Cases Review Commission). Not only lawyers are represented in this commission, but also laymen and experts in different areas. The reports of the Criminal Cases Review Commission are very influential. Closed cases can be reopened, on the basis of these reports, if there is a good possibility that there has been a wrongful conviction. New evidence is not required. It is generally accepted that these reforms – the introduction of an independent Criminal Cases Review Commission and a less restrictive revision system – were very important in restoring public confidence in the administration of justice. The basic assumption of those in favour of a more or less similar review board in the Netherlands – taking into account the different legal systems and cultures – is rather simple: what was helpful in Great Britain, might also work in the Netherlands. In the proposed bill, such a review commission has been dismissed. According to the explanatory memorandum, a new board or commission would lead to more bureaucracy.

Instead it is proposed that the *procureur-generaal* can, on his own initiative or at the request of counsel for the convicted person, initiate a further investigation if there is reasonable doubt about the conviction in a closed case but not enough material to start revision proceedings. This investigation can be considered as a gateway to the revision proceedings, enabling the

17 According to Dutch law, the *procureur-generaal* has an independent position at the Supreme Court. His task, powers and responsibilities differ from those of the (central) prosecution authorities.

18 See, among others, C.H. Brants, *Rapport ten behoeve van de minister van Justitie betreffende Criminal Cases Review Commission*, Utrecht: Willem Pompe Instituut voor Strafrechtswetenschappen 2006; C.H. Brants & A.A. Franken, 'Over de Criminal Cases Review Commission en de Commissie evaluatie afgesloten strafzaken', 2006 *Delikt en Delinkwent* 51 and H.F.M. Crombag, 'Wie geven wij het allerlaatste woord?', 2007 *Nederlands Juristenblad*, pp. 2426-2431.

defence to further substantiate doubts about guilt. If a request for such an investigation is made, the *procureur-generaal* can either ask for an opinion from an advisory committee as to the question whether a further investigation is necessary, or direct an investigation team consisting of police officers who were not involved in the original case. The advisory committee will not only have lawyers as members, but also (forensic) experts. This advisory committee should be resorted to by the *procureur-generaal* if the former defendant has been convicted and sentenced to a term of imprisonment of 10 years or more.

Epilogue

Lawyers are confronted with an intense debate in society on miscarriages of justice. Cases that are perceived as wrongful convictions will undoubtedly continue to be discussed in the public domain every now and then. That is inevitable, as no system and no judge can prevent mistakes. Although each professional in the legal system has a responsibility to contribute to finding the truth, one is bound by legal and human restrictions. Some legal restrictions can – and in my view: should – be reconsidered, like the current rules on expert evidence and on the role of defence lawyers during the interrogation of the suspect by police officers.

However, it is also a matter of professional attitude. The prosecution authorities have showed an impressive ability to respond to the public debate by introducing the committee for the evaluation of closed criminal cases. The silence on the part of the judiciary on the contrary is not an adequate response and could even be perceived as arrogance.

The legislator is considering a review of the revision system. Although one could imagine that other choices in reforming this system could have been made, the recent draft can be considered to be a major improvement. A criminal law system should have adequate facilities to reconsider cases in which wrongful convictions might have occurred. The draft bill recognizes that it benefits law and society if doubts can be investigated and discussed. It reflects the idea that our knowledge and our judgments are by definition liable to flaws. That seems to me a healthy assumption for each law system.