

## 8. Responsible partnership with private actors in criminal law enforcement

Paul Mevis, Professor of Criminal Law and Criminal Procedure

Pieter Verrest, Professor of Criminal Law and Criminal Procedure

Sanne Struijk, Associate Professor, Department of Criminal Law

### Introduction

The wider umbrella of the research covers the possible shift in theory and practice from protecting public-law interests through the deployment of private actors. This project begins on the basis of criminal law. In current criminal law only public law enforcement takes priority. Nevertheless, that exclusiveness can no longer be taken for granted. This fact makes it relevant as such to study all aspects (in theory and practice) of more private forms of law enforcement. Within this overall goal of the research project, the key question is the conditions under which the government seek responsible partnerships with private actors. The exclusiveness of public law enforcement can also no longer be taken for granted in the broader field of public law, including administrative law. In relation to the control of insurance fraud, for example, there is a partnership covenant in which the Public Prosecution Service prosecutes without prior police investigation: this is left to the (private) branches.

In the project, a number of comprehensive substantive conditions for responsible public-private partnerships in law enforcement will/must be developed first. This particularly concerns the questions of the standards for determining the extent to which there are good reasons for such partnerships. Which arguments broadly determine the need for or desirability of a partnership with private actors? Is that purely a matter of efficiency and if so, in order to realise which objectives? And how can that need and desirability be empirically assessed, in the sense of prediction or control?

Secondly, the project must also address the limits of transferring government tasks to a partnership with private actors. After all, even when such a partnership exists, the government always remains responsible for the enforcement of criminal law (including protecting the fundamental rights of citizens). Yet, as for the exclusive right of using violence, the situation is different because under specific circumstances, the government may take its distance to a certain degree. This also applies for constitutional and administrative law, regarding the deployment of armed security officers. This calls for adequate rules and control mechanisms.

Thirdly, the project will devote attention in a general sense to the determination and design of the legal position of private actors with which the government works as a partner and for which it must also be possible to set requirements and demand assurances.

Summarizing, the essence of the project is a search for a responsible public-private partnership within criminal law enforcement: will enforcement be left entirely to private actors within a criminal law setting of control or will private actors, as part of a partnership agreement, be involved in the execution and design of the government task? How can all the relevant interests involved be protected? Which examples of conscious and adequate involvement of private parties, companies in particular, exist in the performance of public

tasks? As criminal law is not unique in that regard, there are ample grounds and possibilities for inter-disciplinary research in this project.

## PhD project

In the PhD study, exploratory research will first be conducted into a number of concrete cases in which partnerships with private actors could make an attractive and responsible contribution to criminal law enforcement. Two examples of such cases are private security on board of Dutch maritime vessels and public-private cooperation within the prison system. Yet, other cases exist and are possible to include in this study. The abovementioned general aspects will be defined in specific terms for the relevant case or, vice versa, will be deduced from this.

Secondly, a legal framework will be developed on the basis of both the different case positions and a theoretical framework. As a result, the necessary conditions for a partnership with private actors described above will be developed in such a manner that offers legislators and policy-makers adequate guidance regarding the question whether partnership with a private actor is legitimate for certain parts of criminal law. This therefore concerns the provision of a decision-making model based on the specific research of the PhD student, derived from the general themes described above.

The third and last part of the PhD study will consist of the application of the developed framework to the concrete case positions. The aim is to fully complete the framework for these case positions, so that a legal business case arises.

## Empirical research

As already mentioned, the PhD study will start with exploratory research into a number of concrete cases concerning criminal law enforcement. Naturally that study also covers the research into what is known about the relevant case in empirical and quantitative terms. As for the example of private security on board of Dutch maritime vessels, it is important to note that no experience has yet been gained with the relevant regulation in the Netherlands, as the regulation has yet to enter into force (and will do so in the near future). However, experiences in other countries with different legal systems do exist and are essential here. In the context of this project, collaborations with other scientists already exist in order to conduct a comparative study of the regulation and practice in a number of other countries and to organize an international conference.

The second example of public-private partnership – the involvement of private actors within the prison system – also has an empirical and a quantitative component. Due to the capacity shortage within the Dutch prison system, the use of public-private partnership has already been considered since the start of this millennium. This is mainly positioned as cost-efficient. Experiences in other countries with such public-private partnerships show that it indeed may generate substantial cost savings. However, given the current emphasis in Dutch detention policy on effectiveness and efficiency, the question arises which components and tasks of the prison service could still involve the need and desirability for (further) cost savings.

As a result of this approach, the PhD study will thus also contain an empirical component in addition to a normative component. By investigating and analyzing what is known about public-private partnership in empirical and quantitative terms, the study may contribute to developing a model for a responsible partnership.