UNIVERSITY OF AMSTERDAM

UvA-DARE (Digital Academic Repository)

Women judges in the Netherlands

Dijksterhuis, B.M.

Publication date
2013

Published in
Gender and judging

Link to publication

Citation for published version (APA):
Dijksterhuis, B. M. (2013). Women judges in the Netherlands. In U. Schultz, & G. Shaw (Eds.), *Gender and judging* (Onati International Series of Law).

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: https://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, P.O. Box 19185, 1000 GD Amsterdam, The Netherlands. You will be contacted as soon as possible.

UvA-DARE is a service provided by the library of the University of Amsterdam (https://dare.uva.nl)

Download date:15 Sept 2026

3.2

Women Judges in the Netherlands

BREGJE DIJKSTERHUIS

Abstract

This chapter addresses two central questions concerning judges and gender: what is the situation of women judges in the Netherlands, and do women judge differently from men? The discussion of the first question starts with a statistical profile of the distribution of women throughout various levels of the internal hierarchy of the current Dutch judiciary. Although vertical segregation continues to persist, the share of women in the Dutch judiciary has increased to such an extent that today parity of numbers has been achieved. This so-called feminisation of the judiciary has led to a debate inside and outside the judiciary that will be analysed in this chapter.

Furthermore, this chapter contributes to the debate on possible gender-based differences in judges' decision-making processes based on original data obtained during my six years of PhD studies. I was granted access to the normally closed two-yearly meetings of the Dutch Judicial Alimony Commission, where 24 member judges of all district courts and middle level courts discuss maintenance issues and develop guidelines to apply in the judicial decision-making process. By observing the discussions I gained an understanding of how both male and female judges determine their position in the political and gender-sensitive field of maintenance.

1. INTRODUCTION[1]

IN THE DUTCH civil law system, there are 19 districts courts. Each district court is made up of a maximum of five sectors, which always include administrative law, civil law (including family law) and criminal law. Appeals against judgments of district court judges in civil and criminal law cases can be brought at the competent middle level courts, five in total. Appeals against administrative law judgments go to one of the competent specialised administrative law tribunals. Appeals in civil, criminal and tax

[1] My thanks for comment go to Jonathan Soeharno and for editing advice to Sarah Brants and Marjolijn Dijksterhuis.

law cases are lodged at the Supreme Court of the Netherlands.[2] Simpler cases are dealt with by single judges and more complex cases by three-judge sections.

I will first give an overview of the distribution of women within and across the various branches of the Dutch legal profession. Next, I analyse the debate in the media on the quantitative feminisation of the judiciary. The third section discusses to what extent female judges affect the content and outcome of judicial work (Schultz, 2003b: 313–14). I focus on divorce law, more specifically maintenance law.[3]

2. FEMALE PARTICIPATION IN THE DUTCH LEGAL PROFESSION

2.1. The Distribution of Women in the Judiciary

In the 1910s and 1920s demand for the appointment of female judges in the Netherlands had risen. The public prosecutor of the Supreme Court at the time wrote in a letter to the Dutch Parliament that although there were no formal obstacles, there were other objections: women would be more emotional than male judges and influenced by their feelings. Moreover, they were 'not normal during their menstrual period, which would make them unsuitable as a judge'.[4]

It was not until 1947 when the Netherlands had to deal with a serious shortage of judges that the first female judge was appointed, but only after the Minister of Justice had given his consent (Sloot, 1980: 1186; de Groot-van Leeuwen, 2009: 25). In 1991, De Groot concluded—on the basis of her empirical research on the Dutch judiciary—that many more women had finished their education to become judges but they hardly ever occupied top positions. She argued that this was not only due to the fact that they were female, but rather that many women limited their career possibilities by opting for part-time work (1991: 148). She also showed that in the 1980s and 1990s the participation of women in the Dutch judiciary increased steadily. In 1985, 16 per cent of the judges were women, and by 1995 the share of female judges had risen to 34 per cent (De Groot, 2003: 342). A milestone was reached in 2008 when, for the first time, female judges outnumbered male judges (1207 women compared with 1190 men). Currently, female judges are still in a majority, and this majority is growing fast with each

[2] See: <www.rechtspraak.nl/information+in+english.>

[3] This was the subject of my PhD study, which provides original data. I observed the meetings of the Judicial Alimony Commission and conducted semi-structured interviews with judges and other key persons within the group of Dutch maintenance judges (Dijksterhuis, 2008).

[4] W Sorgdrager, 'Strafklimaat harder ondanks feminisering' *Volkskrant* (5 September 2009).

age group (60–70 years: 30 per cent; 50–60 years: 45 per cent; 40–50 years: 60 per cent; up to 40 years: 76 per cent).[5]

There are two points of access to the Dutch judiciary: the first option is a six-year judicial training programme. Lawyers can apply directly after graduation from law school, but the selection is very strict. The second route is to enter the judiciary after six years of legal experience in one of the different branches of the legal profession, followed by a one-year judicial training programme also based on selection. An interesting question remains whether recruitment to the two programmes shows the same trend of feminisation, and if it is the case, whether this has led to a diversity policy to recruit more male judges. Data from previous years (2001–08) show that the proportion of women selected for the six-year judicial training programme varied between 70 per cent and 90 per cent of the total number (every year around 60) of the total. Peaks can be found around 2003 (87 per cent); 2005 (85 per cent); 2006 (89 per cent); and 2008 (85 per cent). These are future judges so one can assume that the increase of female judges will go on. Remarkably, in 2009 and 2010 the share of women dropped to 65 per cent and 62 per cent respectively.[6] An obvious explanation might be that the judiciary is aiming at recruiting more male judges, but the Coordinator Recruitment of Judges at the Council for the Judiciary rejected this claim although admitting that attention is paid to this issue of feminisation and, in the short or long term, a policy to counteract this trend will be developed. There are no data available on the distribution of women in the one-year judicial training programme; but it seems that mainly women apply. This was confirmed by the Coordinator Recruitment of Judges at a large district court who stated that currently most candidates entering the judiciary after six years of legal experience are women in their thirties and forties.

2.2. Career Opportunities

In spite of holding a majority in the Dutch judiciary, women judges are still a minority in leading positions in the judiciary. The position of judge at the Supreme Court represents the peak of a judicial career academically speaking, while that of president of the court is the highest managerial position in the judiciary.[7] In 2010, 20 per cent of the Supreme Court judges were female (total number of women: six). Equally, only a very small percentage of female judges, 12 per cent (total: three) are presidents of a district court or a middle level court. Compared with 1995, when seven per cent of

[5] Internal data of the Council for the Judiciary.
[6] All data: Council for the Judiciary.
[7] Those managers also exert a few judicial functions.

women (total: seven) occupied top positions in the judiciary, the number of female judges in these top positions has only slightly improved (De Groot, 2003: 343). The lower manager position of president of the sector is also mainly occupied by male judges, but women have their share with a reasonable 29 per cent (total: 21). Among senior court judges whose task is to improve the quality of judgments within the courts, the share is 40 per cent (total: 371).

Table 1: Distribution of women in the Dutch court hierarchy, 2010

Positions	**Women total number**	**Women %**
Supreme court judges	6	19
Special judicial colleges	65	50
Middle level judges	182	40
District court judges	989	54
Judges working part-time	**Women total number**	**Women %**
Supreme court judges	unknown	unknown
Special judicial colleges	56	47
Middle level judges	157	38
District court judges	837	51

Distribution of women in key positions (managers) in the Dutch court hierarchy, 2010

Positions	**Women total number**	**Women %**
Vice-president and President Supreme Court	0	0
President of the court	3	12
President of the sector (civil/criminal etc)	21	29
Senior court judges (district courts and middle level)	371	40
Judges working part-time	**Women total number**	**Women %**
Vice-president and President Supreme Court	0	0
President of the court	3	11
President of the sector (civil/criminal etc)	20	28
Senior court judges (district courts and middle level)	324	37

The percentage of female judges in district courts is 65 per cent (total: 989), compared with 45 per cent at the middle level courts (total: 182). Thus, male judges are still dominating the middle level courts. This is likely to change, as the number of female judges in the middle level courts has increased in the last few years. In 2008, for example, the female contribution within the district courts was 53 per cent (total: 921) compared with 38 per cent (total: 186) within the middle level courts (Raad voor de Rechtspraak, 2009). This trend of quantitative feminisation in the middle level courts will most probably go on. Compared with the situation in 1995, when female judges occupied only 23 per cent of the middle level position (total: 165), the situation of women has improved considerably.

To conclude, women are still clearly in the minority with regard to managerial positions in the judiciary as well as judges in the Supreme Court, while the situation at middle level is much more favourable—a development that is expected to continue. Overall, in all positions the share of women has increased.

2.3. The Debate in the Media on Quantitative Feminisation of the Judiciary

Feminisation of the judiciary seems to be a positive development at first sight, but has found its critics and has led to a debate within and outside the judiciary. The debate takes place in the national media, among researchers, judges and other stakeholders involved.

In 1994, judges and researchers were interviewed for the first time in one of the main Dutch national newspapers *De Volkskrant* on the subject of feminisation of the judiciary.[8] Male judge Bert van Delden, at that time president of the district court Den Haag and later the first president of the Council for the Judiciary, argued that women did not sentence differently from men, even in sexual offences. But his female colleague, senior judge J van den Steenhoven-Drion, expressed a different opinion:

> In the sixties, rapists were let off with a suspended prison sentence. I blamed the male administration of justice. This supposedly mild sentencing practice changed when women got their share in the judiciary, although changing views in society and rejuvenation of the judiciary are also important factors.[9]

Van den Steenhoven-Drion was appointed as one of the first Dutch female judges in 1975. She had applied for the position because it permitted her

[8] G van der Wal, 'Mevrouw de rechter' *Volkskrant* (2 April 1994); 'Vrouwen te soft om rechter te zijn' *Telegraaf* (1 September 2009).

[9] Ibid.

to work part-time. Her appointment, she suggests, was due to a general shortage of judges. In the *Volkskrant* of 1994 Van den Steenhoven-Drion explains that most letters are still addressed to 'Sir ', and she adds: 'Power is associated with men'. Leny de Groot-van Leeuwen, professor of sociology of law, argues in the same article: 'I am deeply convinced that it is not a single characteristic that determines the judicial culture or judicial judgments. People's acts are determined by many factors'.[10]

In spring 2009, the discussion on the feminisation of the judiciary in the media continued. The immediate cause was the annual report of the Council for the Judiciary, which stressed that since 2008 women in the judiciary outnumbered men (Council for the Judiciary, 2009). In the national newspaper *Parool*, attorneys and legal scientists were interviewed on the matter.[11] Male criminal attorney, Theo Hiddema, stated that female judges deliver judgments of the same quality as men do and added: 'The difference is that women are a bit more precise and stick to the files more than men do. Women work consistently, item by item, towards a verdict'. Interestingly enough, he indicates that women also work more efficiently: 'When a female judge is judging, you are sure to be home early, because the potatoes are waiting' (ibid). A rather left-handed form of praise. Although Hiddema himself did not consider the feminisation of the judiciary a problem, he claimed that some of his clients, especially the more 'macho' immigrant clients, found it hard to accept being judged by a woman. This applied particularly to sexual offences. If they were sentenced by an all-female three-judge bench, they considered that to be the reason for their conviction. According to Theo de Roos (male professor of criminal law) feminisation has changed the judicial culture: 'Twenty or thirty years ago, the atmosphere in the judiciary with all those men in ivory towers was more stiff and formal than it is today. Women have contributed a great deal to this process' (ibid). Marijke Malsch (female researcher and deputy judge) from the Dutch Institute for the Study of Crime and Law Enforcement finds these sentiments understandable, regardless of whether they are just or unjust. She warns of the consequences of a continuation of the fast increase of the proportion of female judges:

> It should not matter whether the judge is male or female, but in reality it does. People should recognize themselves in judges. Courts should consider this. It is questionable whether three female judges should be appointed in a sexual offence with a male suspect.[12]

[10] Ibid.
[11] J Salden, 'De rechter is steeds vaker een mevrouw' *Parool* (22 May 2009).
[12] Ibid.

In June 2008, the local television programme *rtvnoord* broadcast a case where gender ('being a woman judge') played a role in judging and even led to an official challenge of the capability of the judges. The attorney of a suspect of a sexual offence in Groningen raised objections because the public prosecutor, the judge and the clerk of the court were female. His argument was that these women would not be able to judge his client impartially. The court rejected this argument because the Constitution does not allow for discrimination.

In September 2009, Joost Eerdmans, a male former member of the House of Commons, continued the discussion on feminisation in the media, in articles on 'women are too soft to be judges' and 'Eerdmans starts a civil initiative against injustice on the part of women judges'. According to him, criminal courts paid too little attention to victims, for which he blamed female judges. Women judges' personalities, so he argued, caused them to be more lenient towards criminals and to value social rehabilitation higher than reprisal. Their female qualities were empathy, mercifulness, indulgence, tolerance, the taking of balanced decisions and searching for win/win solutions.[13] To solve these 'problems' in criminal law, Eerdmans established the 'Civilian Committee against Injustice'. In *Pauw and Witteman*, the national television current affairs programme, the famous Dutch male criminal lawyer, Gerard Spong, debated with Eerdmans on this issue. Spong argued that Dutch sentences were more severe than those in surrounding countries, thereby demonstrating that Dutch judges were not soft.

Winnie Sorgdrager, the first female chief public prosecutor at any court (in 1994) and the first female Minister of Justice (from 1994 to 1998) contributed to the discussion in the national newspaper *Volkskrant*.[14] Sorgdrager argued that Eerdman's assumption was incorrect. Since the 1980s, punishments issued by judges had become increasingly severe. At the same time, the number of female judges had increased. According to her, sentences had been independent of the gender of the judge. However, Sorgdrager did think that suspects seemed to prefer a three-judge mixed-gender bench to an all-female one. Other voices joined in the debate: I pleaded in the national newspaper *NRC* for more judges, either men or women, with female qualities, such as empathy.[15] In the current affairs TV-programme *Buitenhof* on 4 April 2010, Professor of Medical Didactics, Gerda Croiset, gave a critical view on the feminisation of social professions such as medicine, the judiciary and education.

In the media discussion on the feminisation of the judiciary, three dominant strands can be identified. Each strand is part of, or is linked to,

[13] J Eerdmans, 'Eerdmans begint burgercomité tegen onrecht' *Volkskrant* (31 August 2009); Vrouw minder geschikt als strafrechter' *Volkskrant* (5 September 2009).

[14] Sorgdrager, above (n 4).

[15] B Dijksterhuis, 'Stel juist meer feminiene rechters aan' *NRC* (11 September 2009).

broader discussions in society. The first that can be identified is 'gender perspective in judging'. This debate concerns the question whether typical female qualities can affect legal work. The perception of femininity with regard to judges plays a role in this debate. The view of Eerdmans is similar to that of the public prosecutor of the Supreme Court, expressed in 1921, that typical female qualities do affect judgments and that women's sentences were softer than those of their male colleagues.[16] Van Delden, De Groot-Van Leeuwen and Hiddema held against Eerdmans and expressed the dominant view in the discussion that women do not sentence differently from men. Remarkably, this debate on gender perspectives in judging focuses completely on criminal law and fits into a broader debate on the frequently heard call of society for more severe punishments. Another aspect—the impact of women judges' working style and culture on the judiciary—is also repeatedly mentioned, especially by male contributors to the discussion.

The second strand of the debate concerns the perceived relation between the gender of judges and the legitimacy of judgments. The central question in this debate is whether clients or suspects accept judgments when judge(s), public prosecutor, and/or the clerk of the court are female and, whether or not the judiciary should show diversity and mirror the gender composition of society. The majority of researchers and judges share the opinion that although it should not matter by whom you are judged, in practice it does. It is considered to be better for the image of the judiciary and the legitimacy of judgments that three-judge benches consist of female and male judges or, in case of a single-judge section, at least one of the professional actors, either the judge, the public prosecutor or the clerk of the court should be a man. This is especially true with regard to sexual offences. Also ordinary citizens perceive gender to be of influence on the judicial process and question the legitimacy of judgments, thereby supporting Hiddenma's and Sorgdrager's observations. The fact that in 2008 the sex of a judge led to a request to challenge the judge's authority is a striking signal of the reality of this perception. Hiddema has, as described, also raised the issue of ethnicity in this context, especially concerning immigrants from 'macho cultures' and calls for further socio-legal research.[17] This debate fits into a broader discussion on the question whether judges are or should be mirroring the population in terms of gender, race, political views etc. Within the Dutch judiciary, the political discussion currently focuses especially on the distribution of different ethnicities within and across the judiciary (Raad voor de Rechtspraak, 2007).

[16] Sorgdrager, above (n 4).

[17] In cooperation with students, I am conducting fieldwork that should give an answer to the question whether suspected persons, especially immigrants, find it hard to accept if they are judged by women only.

The third strand of the debate concerns 'feminisation of the judiciary as a trend', the question whether feminisation of the judiciary is a social problem including the danger of discrimination against the female part of the judiciary. There is the danger that media attention might have the effect of a self-fulfilling prophecy, with the public and also suspects ending up believing in the problematic nature of a feminised judiciary—the so-called spiral of amplification (Brants and Brants, 1991).

2.4. Diversity Policy in Favour of Male Judges?

A committee established by the Council for the Judiciary in 2007 to make recommendations for the improvement of the six-year judicial training programme concluded: 'The composition of the judiciary should be better connected with society: The judiciary should ensure a balanced composition of men and women, autochthonous people and immigrants'. In his preface, the chairman of the committee and president of one of the district courts phrased it as follows:

> We would want the candidates for the six-year judicial training programme to represent society. This is a utopian dream as the population at law faculties is totally out of balance in terms of the proportion of men and women. There are fewer men available and competition among legal professions is strong (Werkgroep Verbetermogelijkheden Werving Raio's, 2007).

The Council for the Judiciary's reflections on a special policy to recruit more men raises the question to what extent it is legally possible in the Netherlands to pursue a diversity policy or even an affirmative action policy. Recently, the Dutch Equal Treatment Commission made an important decision in the field of medicine. Professor of Medical Didactics, Gerda Croiset, set the stage for this judgment with her remark that when a male and a female student are equally suitable, the man should be recruited for the medical college.[18] The Dutch Equal Treatment Commission passed a judgment on 23 October 2007:

> According to section 141 paragraph 4 of the Treaty establishing the European Community affirmative action policy it is possible to prevent or compensate for disadvantages regarding sex. The Dutch government did not apply this exception of the anti-discrimination principle symmetrically. According to Dutch legislation, affirmative action policy is only permitted with regard to women. The reason is that the legislation is only meant to remove invisible barriers. Affirmative action policy is a temporary measure that ends when a certain number is reached (Judgment 2007-185).

[18] 'Meer vrouwen, minder aanzien' *Trouw* (6 November 2007).

According to the Dutch Equal Treatment Commission, there are no invisible barriers for men. The decreasing share of men is due to a lack of interest and not discrimination. In that case an affirmative action policy meets legal barriers.

3. GENDERED JUDGING

3.1. A Successful Methodological Approach

> In the Judicial Alimony Commission there were four archetypes of judges: First, the male judges who were female friendly. Secondly, there were the tough male judges who thought that women should earn their own living. They considered all expenses of the men who were obliged to pay maintenance as relevant, with the result that hardly anything was left for maintenance payments. Those male judges were the minority. Third, there were the female judges who fought for the interests of women. The fourth type were the women judges who said: come on and work. In the Judicial Alimony Commission we told each other maliciously that it was clear which judge had to pay maintenance himself. Some men even left the family law court when they had to pay maintenance themselves.
>
> Interview with a middle level judge, former member of the Judicial Alimony Commission (Dijksterhuis, 2008: 79).

The question remains whether women judges' decision-making differs from that of men. More specifically, in how far 'typical female' qualities, such as intuitiveness, empathy, emotionality, sensitivity, context-relatedness, being cooperative, being non-authoritarian and less set on competition can affect judicial work (Schultz, 2003b: 313–14). These qualities are related to the identity of the judge. According to Schultz, there are complex patterns of identity such as the cool and tough female lawyer and the motherly woman judge concerned with individuals' welfare (Schultz 2003a: viii). To what extent do Dutch female judges provide 'women's other voice', which Gilligan highlighted, in the field of alimony? To what extent are fundamental changes being brought about by the growing numbers of female judges in family law in the Netherlands? I have dealt with this question in divorce law, and more specifically maintenance (Dijksterhuis, 2008). This area deals with the redistribution of both ex-partners' incomes after the divorce. Those receiving alimony are mostly women and children, while those who pay alimony are usually men. In other words, this area of law is very suitable for research on the influence of gender on judicial decision-making. In maintenance cases in Poland and Brazil, female judges have been observed to be more inclined than male judges to be harsh on housewives, as presumably they apply their own personal standards as professional women (Schultz and Shaw, 2003: 1v; Fuszara, 2003: 376–77; Botelho Junqueira, 2003: 445–49). German

divorce proceedings give similar impressions. The explanation according to Schultz is that professional women feel less sympathetic towards women who expect someone else to make a living for them (Schultz, 2003b: 315). Overall, international socio-legal fieldwork indicates that gender-specific features can be shown to exist in terms of judges' behaviours and working styles, but in most countries there is not sufficient hard evidence to prove that they affect the actual outcome of particular cases (Schultz and Shaw, 2003: 1vi; Schultz 2003b: 315)

My PhD study contributes to the methodological discussion with examples taken from maintenance law. Schultz emphasises the difficulties of researching gendered judging. Perceptions and constructions are basically individual and difficult to measure (Schultz, 2003b: 316). This methodological problem can be partly solved when judges are forced to express their opinions. I used an effective method to learn more about gendered judging. Over a period of six years, I had access to the closed meetings of the Dutch Judicial Alimony Commission, 'Werkgroep Alimentatienormen'. Twice a year, 24 member judges, women and men, of the 19 district courts and the five middle level courts, discussed maintenance issues and developed guidelines to apply in the judicial decision-making process. At the meetings in 2002 and 2003, women and men were equally represented. In 2004, 2005, 2006 and 2007, women in the Judicial Alimony Commission (total: 24) outnumbered men, varying from 54 to 63 per cent. The opinion of judges sitting in chambers was thus transferred to a broader national level. By observing the discussions I gained an understanding of how judges determined their position in the field of maintenance cases, in which gender-issues play an important role.

I will give a short overview of this typical phenomenon of national judicial cooperation in the field of maintenance law. In the past, Dutch family law judges were bound by only two criteria when determining maintenance. These legal criteria were the 'capacity' of the party obliged to make maintenance payments, and the 'neediness' of the party with the right to receive maintenance. Therefore, legislation gave the judge great discretionary freedom and little to go on. As a result, the amounts of alimony awarded by judges varied enormously. The judiciary felt obliged to solve this problem, and in 1975 the Commission was formed. Its 'alimony guidelines' gave judges something to hold on to when calculating the amount of alimony. The aim of these guidelines was to limit the role of discretion (which in some cases was mere 'guesswork') thus increasing the uniformity of judicial decisions. These guidelines are still in force today and a permanent Commission is charged with updating and revising them. It is important to stress that the alimony guidelines are used in all courts, even though formally they have no binding effect on the judges as they are not considered to be law based on Article 79 of the Dutch Judiciary Act. As such, the Supreme Court cannot test a ruling of a lower court against them.

In my research, I explored the history, evolution and actual practices of this Judicial Alimony Commission over a period of 32 years (1975–2007) (Dijksterhuis, 2008). Through the detailed presentation of complex cases, I investigated and analysed the dilemmas that judges face when producing such guidelines (Dijksterhuis, 2008: 223–24). In my fieldwork, I used a multiple method research approach. First, I attended and observed nine Judicial Alimony Commission meetings, where member judges discussed and evaluated existing guidelines and other related issues. Secondly, I conducted 54 semi-structured interviews with family law judges and other actors involved. Thirdly, I conducted a thorough analysis of all relevant historical documents concerning the Judicial Alimony Commission, such as meeting reports since 1975.

My study focused on the way in which national judicial cooperation works. Here I took a closer look at the influence gender might have on the decision-making process in the Judicial Alimony Commission. The Judicial Alimony Commission has developed more than a hundred potential criteria for the legal criterion 'capacity' of the party obliged to make maintenance payments, and the 'need' of the one who had the right to receive maintenance. Questions that were discussed in the Judicial Alimony Commission were: What part of the income should the man give to his ex-partner and children? To what extent should the alimony award be reduced when a man who is obliged to make maintenance payments finds a new partner? Should a man pay maintenance when he is seriously in debt? These issues contain a very strong gender aspect.

3.2. Gendered Judging in the Field of Alimony: The Results

A female middle level judge and member of the Judicial Alimony Commission in the 1990s expressed her ideas on female judges in one of my interviews as follows:

> We tried for years to appoint female judges as chairmen in the Judicial Alimony Commission and did so with success. We thought it was prudent. The ones who determine the law are men. For example, the length of alimony is restricted by the legislator. Most of the few women in Parliament are emancipated women, who consider it ridiculous that women receive alimony for 20 years. Female member judges of the Judicial Alimony Commission were of course emancipated women too. But we also saw daily in the courtroom the disasters happening to women.

Thus, in her view female judges were more suitable in looking after the interests of women who had the right to receive alimony.

It is indeed true that so far all chairmen of the Judicial Alimony Commission have been women, except for the current one. But a substantial proportion of female members in the Commission did actually not

support alimony guidelines that were favourable to women and children; rather the reverse was true. The Commission used a technical and pragmatic approach on political issues with regard to maintenance and rationally calculated the level of alimony, using guidelines that judges found easy to apply (Dijksterhuis, 2008: 207–08). A male Supreme Court Judge and former member of the Commission put it as follows:

> The task of the judges in the Judicial Alimony Commission is to distribute the income fairly between men on the one hand and women and children on the other. This should be done in a very pragmatic way. The current Commission chairman claimed: I cannot judge which alimony system is the more just. All I can consider is which system is easier for a judge to apply.

Interestingly, on different occasions the Commission discussed the question whether the system should be altered so as to benefit women and children. I moreover observed that in meetings judges hardly ever expressed their personal views on the different aspects of maintenance. In interviews the middle level court judge and chairman in the 1990s indicated that her personal opinion about women receiving maintenance differed from her professional opinion:

> I am a working woman, I am financially independent. Actually in my opinion other women should do the same. But at the same time, many women of my age do not do that. In that case men have to pay the full price in accordance with the alimony guidelines. I do not ask: why were you not working? Such views are personal and are not relevant in my work as a judge. And moreover: I do not even think that when I see such a woman in front of me. Though I do think: if you had worked, you would not be in such trouble. And she added: People can act as if they are neutral, although they have their personal opinions. That is the reason why I am a big supporter of three-judge benches and of a Judicial Alimony Commission that filters out the personal aspect from judicial decisions.

The Commission's current chairman emphasised that his personal opinion often differed from his professional one in that it favoured men, but that he kept the two separate on principle. Only one female district court judge explicitly expressed her personal opinion as a point of professional reference:

> There was always a never-ending discussion about the question if the child's need should be related not only to the income of the man but also to that of the woman if she starts working some time after the divorce. In the district court we decided that that should be the case. I totally agreed with that decision. That also had to do with my personal situation. I started working when I was older. It would be strange if only the income of my husband were relevant.

An exception to the general abstinence regarding the voicing of personal views occurred when judges discussed the problem of high childcare costs,

partly based on their own experiences. But in most cases they took their experiences in the courtroom as their tacit point of reference to determine their position on alimony guidelines.

The result of the pragmatic approach was that judges did not sufficiently take into account any longer-term political consequences of their guidelines. For a long time, the Judicial Alimony Commission failed to notice that the system favoured the (mostly male) partner who is obliged to make maintenance payments, and disadvantaged the (female) partner and children who receive maintenance payments. Although this could be considered as a political choice, hardly any political discussion had taken place in the Judicial Alimony Commission, with the result that gradually the system developed in a way that was basically against the interests of women and children.

One explanation might be that the Commission's female members, that is over half of the total, simply did not stand up for women and children. Although in their daily work they experienced that the guidelines resulted in poor alimony payments, they did not raise the issue for discussion. This was the view of attorney Van Oldenborgh who was directly involved in the development of the judicial alimony guidelines:

> The major objection against the Judicial Alimony Commission is that a discussion about the philosophy behind the system never took place. It was as if those judges all felt very sorry for those poor guys that had to pay such tremendous maintenance. In my opinion, the Judicial Alimony Commission was too 'men-friendly'.

There were also other reasons to explain the Commission's disregard for the recipients of maintenance payments (mostly women). One practical argument which judges mentioned was that in the majority of cases, alimony did not make a big difference for the women and children: regardless of any alimony payments they would still depend on the National Assistance Act, due to their low income. In other words, the judges focused on the interests of ex-partners and their children instead of on those of the taxpayer in general. A female district court judge and member of the Commission in the 1980s confirmed this in interview:

> Many judges in the Judicial Alimony Commission were of the opinion that the men had to pay less alimony when a woman depended on the National Assistance Act. In that situation the men often also had a low income. We thought that the public could bear that.

Most judges also found it undesirable if the alimony payments were such a big part of the men's income that they lost the motivation to work or that they became unable to pay their debts.

In 1996, a male district judge and at the time Commission secretary pleaded for a drastic reform of the alimony guidelines, as they were unjust to women and children. He wrote an article in *The Dutch Lawyer's Journal* (Ten Hoeve, 1996) but tried unsuccessfully to persuade his fellow judges in the Commission. His explanation:

> What happens at the moment is that the most powerful in the divorce procedure, namely the ones that have to pay alimony, are spared. That is a safe choice for the judges because it prevents many conflicts. The powerful group with the money offers greater resistance. Those men hire more expensive attorneys than their wives can afford. Most people in the Judicial Alimony Commission identify with the winners: the ones that earn the money and are obliged to pay alimony.

From 2002 onwards, a male middle level court judge and former member of the Commission published several articles in different Dutch legal journals also arguing for a reform in favour of women and children (Van Teeffelen, 2002). Although his proposal was briefly discussed by the Commission, he hardly received a response. Apart from these spontaneous calls for an evaluation of the current guidelines, three judges (two female, one male) seized the opportunity of new legislative proposals to call for a reform. In fact, the legislator had criticised the unjustness of the alimony guidelines and requested that chairmen should take action. Remarkably, only the male chairman and district court judge succeeded in 2007 in convincing the majority of the Judicial Alimony Commission to agree with the proposed reform. At long last, the maintenance payment guidelines were adjusted in favour of women and children.

Overall, this debate about maintenance payments shows that it is too simple to categorise judges as female or male-friendly according to their sex. Rather, as in Poland, Brazil and Germany, Dutch female family judges do not provide women's 'other voice'; they neither judge women's claims more harshly, nor do they offer special support for them. The few calls to change the alimony guidelines in favour of women and children came mostly from male judges. Over the years, the Alimony Guidelines had developed in a way favourable to men. But it was not the gender and values of the judges, but their technical professional perspective that appears to have been the most influential factor. In interviews, the Commission's influential chairpersons made sharp distinctions between their personal and their professional opinion. The same applied to judges' pronouncements at Commission meetings where they hardly ever expressed their values and their professional attitude always seemed to be decisive.

To conclude: although the quantitative feminisation of the Dutch judiciary has been looked at with fear by the media, this trend did not lead to a qualitative feminisation. Until now even in the 'gendered' family law a unique female sound in the Dutch Judiciary has not been found.

4. REFERENCES

Boigeol, A (2003) 'Male Strategies in the Face of the Feminisation of a Profession: The Case of the French Judiciary' in U Schultz and G Shaw (eds), *Women in the World's Legal Professions* (Oxford, Hart Publishing).

Botelho Junqueira, E (2003) 'Women in the Judiciary: A Perspective from Brazil' in U Schultz and G Shaw (eds), *Women in the World's Legal Professions* (Oxford, Hart Publishing).

Brants, C and Brants, K (1991) *De sociale constructie van fraude* (Arnhem, Gouda Quint).

De Groot-van Leeuwen, L (1991) *De rechterlijke macht in Nederland: samenstelling en opvattingen van de zittende en staande magistratuur* (Arnhem, Gouda Quint).

—— (2003) 'Women in the Dutch Legal Profession (1950–2000)' in U Schultz and G Shaw (eds), *Women in the World's Legal Professions* (Oxford, Hart Publishing).

—— (2009) 'Vrouwen in de rechterlijke macht. Van eigen hoekje naar de top' in M De Boer and W Marjan (eds), *Vrouw & recht. De beweging, de mensen, de issues*. ijers (Amsterdam, AUP).

De Groot-van Leeuwen, L, van Rossum, SU and Schuyt, KJM (1996) 'De aanloop tot de rechterlijke macht; verslag van een enquete onder raio's' 5a *Trema* 107.

Dijksterhuis, B (2008) *Rechters normeren de alimentatiehoogte. Een empirisch onderzoek naar rechterlijke samenwerking in de Werkgroep Alimentatienormen (1975–2007)* (Leiden, Leiden University Press).

Fuszara, M (2003) 'Women Lawyers in Poland under the Impact of Post-1989 Transformation' in U Schultz and G Shaw (eds), *Women in the World's Legal Professions* (Oxford, Hart Publishing).

Gilligan, C (1981) *In a Different Voice: Women's Conception of the Self and Morality* 47 *Harvard Educational Review* 481.

—— (1982) *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, Harvard University Press).

Malsch, Marijke (1989) *Lawyers' Predictions of Judicial Decisions: A Study on Calibration of Experts* (Leiden, Leiden University Press).

Raad voor de Rechtspraak (2007) *Hoofdlijnen personeelsbeleid Rechtspraak* (2008–11).

—— (2009) *Jaarverslag 2008* (Den Haag).

Schultz, U (2003a) 'Introduction' in U Schultz and G Shaw) (eds), *Women in the World's Legal Professions* (Oxford, Hart Publishing).

—— (2003b) 'Women Lawyers in Germany—Perception and Construction of Femininity' in U Schultz and G Shaw (eds), *Women in the World's Legal Professions* (Oxford, Hart Publishing).

Schultz, U and Shaw, G (2003) (eds), *Women in the World's Legal Professions* (Oxford, Hart Publishing).

Sloot, BP (1980) 'Officiële uitsluiting van vrouwen in juridische beroepen' 45/46 *NJB* 1186.

—— (2004) 'Moeten rechters lijken op de Nederlandse bevolking? Over de wenselijkheid van descriptieve representatie door de rechterlijke macht' 2 *Trema* 49.

Sullerot, E (1968) *Histoire et sociologie du travail féminin* (Paris, Gonthier).

Ten Hoeve, P (1996), 'Trematologie, een beetje een zwartboek eigenlijk.' *NJB* 793.

Van Teeffelen, P (2002) 'Zijn we met de Tremanormen op de goede weg?' *FJR* 130.

Werkgroep Verbetermogelijkheden Werving Raio's (2007) *Eindrapport* (Den Haag).