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NETHERLANDS REGISTER OF COURT EXPERTS (NRGD)

2018 ANNUAL REPORT



PREFACE

The Netherlands Register of Court Experts (NRGD) will be assigned more tasks. Aside from the increase in the number of certified fields of expertise within criminal law, the NRGD has received a request from the Board of the Dutch Association for Medical Specialist Reporting (NVMSR), which represents medical specialists active in the fields of administrative and civil law, to include around one hundred medical specialists in the register. The Board of Court Experts is willing to include this group of medical specialists in the register. The possibilities of including the group in the register are being discussed with the Ministry of Justice and Security.

The NRGD continues to work actively, both on national and international levels, as a bridge-builder between forensic science and law. The organisation is contributing to the development of ISO standards for forensic examination, from the crime scene to the courtroom. These standards will simplify the exchange of forensic evidence between countries. The NRGD advised on defining the ministerial vision for forensic science in the Netherlands and on introducing a training and education programme for forensic physicians.

Furthermore, the autonomous growth of new fields of expertise and maintenance of the existing fields of expertise require increased efforts. The in proportion large number of re-registrations of experts in Forensic Psychiatry and Psychology that have failed to result in an unconditional registration gives cause for concern. The NRGD and the Netherlands Institute of Forensic Psychiatry and Psychology (NIFP) are discussing this concern.

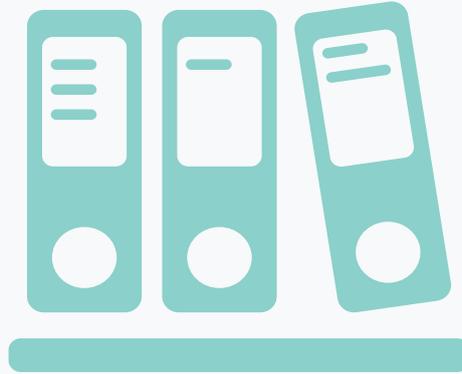
At the end of the first decennial, the NRGD continues to contribute actively and passionately to optimising forensic expertise within the justice system. The structural increase in the budget awarded by the Ministry of Justice and Security halfway 2019 is a token of recognition and strengthens the NRGD's capacity to invest in the quality assurance of forensic expertise.

Eric Bakker, chairman, Board of Court Experts

Els van Nieuwkerk, NRGD policy officer, on procedures:

The NRGD embraces thorough and efficient procedures. We have therefore developed policy on the recognition of forensic training programmes, such as the NIFP behavioural expert training programme, and the accelerated route for applying for registration following an earlier rejection or an expired registration. This policy simplifies the intake in the register.

This annual report provides a broad overview of the NRGD's activities in 2018. For additional information, please visit www.NRGD.nl, where you can also subscribe to the NRGD newsletter.



ABOUT THE NRGD

The Netherlands Register of Court Experts (NRGD) strengthens the quality of the contribution made by court experts within and outside the Netherlands. It standardises fields of expertise, monitors developments and provides advice. The NRGD also promotes the exchange of knowledge between forensic science and law.

The NRGD brings together forensic science and the justice system. The NRGD sets quality standards for fields of expertise and assesses experts. Certified experts contribute to a diligent and better justice system. The NRGD offers quality assurance in the deployment of forensic knowledge, from DNA to gigabytes and from handwriting to firearms. Quality is maintained by national and international; knowledge exchange, monitoring developments, certification and accreditation.

Nick Laan, NRGD policy officer, on joining the NRGD

I recently joined the NRGD. It's completely different than what I had imagined. I previously worked for the Court, under the instructions of a judge and together with a court clerk. At the NRGD, you work towards a common purpose as a team. It's a small institute with a broad work field. Our team of five policy officers is engaged in monitoring all fields of expertise and in adding new fields of expertise. There are a considerable number of new fields, and the general opinion is that they should also be included in the NRGD to ensure the same level of quality. I have a PhD in Fluid Dynamics, which I applied to bloodstain pattern analysis, a field of expertise we would like to add to the NRGD register. That's what I'll be working on. It's a great prospect. However, I can already see constraints in how I manage my time. That means we'll need to make choices.



2018 RESULTS

Results and new developments in 2018

- Expansion of the register into administrative and civil law.
- NIFP initiated the NRGD certification procedure for the NIFP training programme for new experts.
- Standardisation of the procedure for the Gunshot Residue field of expertise initiated.
- Cooperation with the National Police Force strengthened.
- Standardisation of DNA Activity Level Reporting initiated.
- Implementation of accelerated route after rejection, as well as for registrations that have expired by operation of law.
- First legal psychologists accepted to the register.
- First phase of digital registration of experts completed.
- Advice issued on the policy stance of the Minister of Justice and Security regarding the 'Vision for forensic investigation'.
- Ad-Hoc expertise project initiated.
- Expert meeting held on clinical and forensic autopsies.
- Start NRGD 2020 programme.

Figures

Between 2010 and 2018, the NRGD received about 1,800 forensic expert registration/re-registration applications. In 2018 the NRGD processed 205 applications divided over ten fields of expertise, of which 31 applications (15%) were rejected.

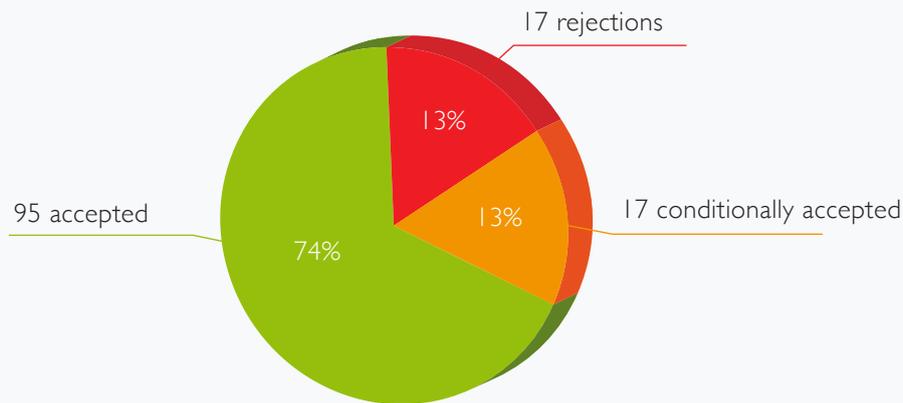
The Forensic Psychiatry, Psychology and Special Education field of expertise, accounts for the largest number of registration applications. A total of 168 applications were submitted for this field of expertise, of which 21 (13%) were rejected. A total of 129 re-registration applications were received. Seventeen (13%) of the re-registration applications for the Forensic Psychiatry, Psychology and Special Education field of expertise resulted in a conditional registration. In another 17 cases, the re-registration application was rejected.



Processing time

The average processing time decreased over the course of the year to 3.9 months by actively monitoring processing times, combined with a new case-oriented management system.

Forensic Psychiatry, Psychology and Special Education re-registrations



Els van Nieuwkerk, NRGD policy officer, on Forensic Psychiatry, Psychology, Special Education and procedures:

In view of the large number of rejected applications among behavioural experts, the NRGD is endeavouring at an earlier stage to keep track of, and in touch with experts who do not meet the standards. Together with the NIFF, we are therefore looking at how we can improve the training programme for reporting officers and supervisors in addition to feedback on reports plus assistance for rejected and conditionally registered reporting officers.

The appeal to the Council of State marked the first appeal case for the NRGD at the highest Court. As an administrative lawyer, I am interested in the Council of State's opinion on our procedures. So, we were really pleased that the Council of State 'approved' the NRGD's procedures in its judgment.

Objection, appeal and complaints

The NRGD received a notice of objection 11 times in 2018, one of which was declared inadmissible, six unfounded and one was withdrawn. The appeal to the Council of State marked the first appeal case for the NRGD.

The remaining three objections were still pending on the 1st of January 2019. This also applies to one appeal to a lower court and one appeal to a higher court.



Certification and registration

- Completion of the first phase of registration for the fields of expertise of Legal Psychology and Digital Forensic Investigation.
- Accelerated submission protocol following rejection. The NRGD has created the opportunity to submit a new application at an earlier stage, following a rejection. Subject to certain conditions, from now on, an expert can submit an application with three rather than ten reports.
- Competencies were defined for the DNA Activity Level Reporting field of expertise.
- Start of the standardisation of the Gunshot Residue (GSR) field of expertise.
- Start of the Ad-Hoc expertise project.
- Expert meeting on DNA Activity Level Reporting.
- ISO standards were drawn up for forensic investigation.

Fields of expertise

Sinds zijn oprichting in 2010 heeft het NRGD in overleg met deskundigen uit de praktijk tien deskundigheidsgebieden genormeerd:

- Forensic Psychiatry, Psychology and Special Education
- DNA Analysis and Interpretation (source level)
- Handwriting Examination
- Drugs
- Forensic Toxicology
- Forensic Weapon and Ammunition Examination
- Assessment against the Weapons and Ammunition Act (Wet wapens en munitie)
- Forensic Pathology
- Digital Forensics
- Legal psychology

Naoual Saghir and Emilie Coelingh Bennink, NRGD data management officers, on applications:

We check each application. We then endeavour to process correct and complete applications based on a standard procedure as far as this is possible. The new IT management system supports our work. This frees up time to deal with applications that require special attention. This is not simple automated work. The procedures allow for customization of the applications.

In 2018, the NRGD worked on the standardisation of the DNA Activity Level Reporting and Gunshot Residue (GSR) fields of expertise. The competencies were defined for the DNA Activity Level Reporting field of expertise. The standardisation of GSR was initiated.

NRGD active within the administrative and civil branches of law

The dilemmas facing the judiciary in criminal justice are by no means unique. The quality of experts is equally important in both administrative and civil justice. Since the start of the NRGD, administrative law judges expressed the need for, and insisted on a single register for all branches of law: the NRGD could function as one register for the entire judicial system.

The NRGD is in deliberation with the Dutch Association for Medical Specialist Reporting (NVMSR). This association of specialists who are engaged in administrative and civil reporting has asked the NRGD to consider how medical specialists can be accommodated in the register. The Ministry of Justice and Security supports this development.

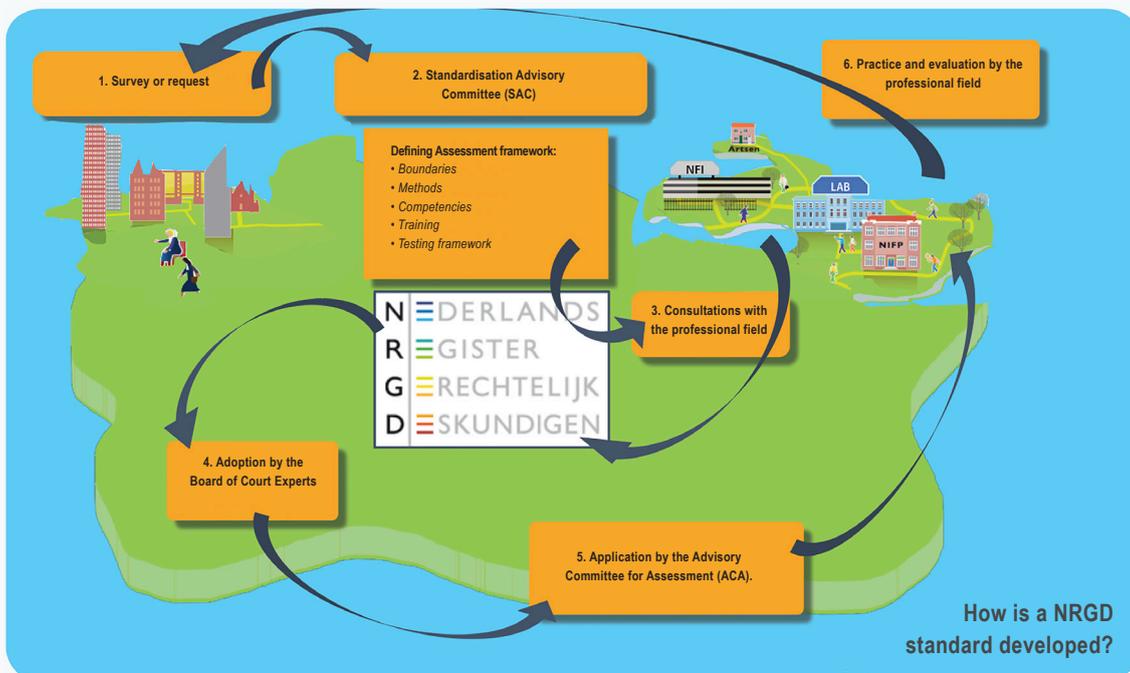


Dyon Deckers, policy officer, on new branches of law:

The NVMSR focuses primarily on reporting under social insurance law and on personal injury. The central question is whether a person is fully or partially incapacitated for work. Eight years ago, there already was a need for clarity on standardisation. How do you translate medical knowledge into the correct legal framework? How do you report this clearly from a medico-legal perspective in a report? The NRGD contributed ideas when the quality system was set up at that time. We now have sufficient experience to venture outside criminal law. It's a natural moment for both sides to proceed with NRGD registration. I believe it is important that we should eventually transition to a single register for all branches of law. Expertise plays a role not just in criminal justice but also in administrative and civil justice. The NRGD is steadily evolving in the direction of a single register for the judicial system.

Standardisation

The NRGD develops standards as a quality assurance instrument. But how are those standards developed? What steps are involved in the process, starting from 'the desire for standardisation' to developing a quality instrument that can be applied in practice?





ADVICE

Ad Hoc experts

The Minister of Justice and Security has requested the NRGD to develop a standardisation system for Ad Hoc experts. In 2018, the organisation began to implement a quality assurance action plan for these specialised experts who are sporadically deployed in the courtroom.

Nathalie Raats and Nick Laan, NRGD policy officers, on Ad Hoc experts

Experts who have never, or infrequently, reported in court sometimes appear in criminal proceedings and are suddenly put on the spot. An Ad Hoc expert is not accustomed to operating in a forensic context, but has expertise in a specialised field. Like an expert on tides, for example, who can calculate where a body landed in the water. The police have an expertise broker, who mediates in finding and in deploying these specialists during the investigative stage.

The primary aim of the Ad Hoc project is to provide courts, the Netherlands Public Prosecution Service and the legal profession with the tools to verify whether these experts actually have the requested subject-matter expertise. We also offer Ad Hoc experts a reporting template as a tool so that they know whether they are informing the court in the correct manner. Furthermore, an e-module is being developed to prepare experts for their role in the Dutch legal context.

National Police Force quality programme

At the end of 2018, the National Police Force invited the NRGD to contribute to the further development of the police force's quality management system¹.

¹ <https://nrgd.nl/actueel/interview>



Nathalie Raats, NRGD policy officer, on the police force

The recalibration of the quality management system is one aspect of the reorganisation of the police force in the Netherlands. The police requested us to contribute ideas on how this should be implemented. The time is ripe for recalibration, all the more given that digital forensics is becoming an increasingly larger branch alongside traditional forensic investigation. When entering a crime scene for example, you should not only focus on detecting and collecting trace evidence, but should moreover be aware that your telephone sends signals to a WiFi router and leaves traces behind, which can disturb the crime scene.

Vision for the future of forensic investigation

In 2013, the Winsemius Committee² recommended that research should be conducted on relevant developments every three years. The first research report of the Netherlands Forensic Institute (NFI), the Police, the Netherlands Public Prosecution Service and private institutes was discussed by the House of Representatives in 2017³ and resulted in the decision to develop a vision for the future of forensic investigation. The NRGD participated in the supervisory committee and working group that was established for this purpose and issued advice. The vision was published in November 2018⁴. An important element of this vision entails developing a quality system, from the crime scene to the courtroom.

Autopsy Task Force

In February 2018, the Minister of Justice and Security presented the report *De dood als startpunt*⁵, ('Death as a starting point') compiled by the Autopsy Task Force. The NRGD acted as adviser to the Task Force, which formulated recommendations for the clinical and forensic autopsy chain on behalf of the ministries of Justice and Security, Health, Welfare and Sport, and Education, Culture and Science. A broad expert meeting chaired by the NRGD was held on clinical and forensic autopsies in early July 2018.

Michel Smithuis, managing director, NRGD on the Autopsy Task Force

The NRGD provided the Task Force with background information on the importance of proper training for forensic physicians, which has been the topic of ongoing discussion for more than 20 years. In the Netherlands these physicians are usually the first at the crime scene to establish the manner of death. They receive currently an eight-week training programme without an examination which was well below par. A two-year training programme has now been developed that may be further expanded to four years. This development is a huge leap forward compared to the past. On top of that, the inclusion of practical experience and examinations offers better safeguards. I hope and believe that we have provided sufficient additional arguments to invest in the training programme. A successfully completed training programme might culminate in entry in the NRGD register.

ISO standards for forensic investigation

At the end of November 2018, the NRGD took part in an international ISO meeting on additional standards for forensic investigation, from the crime scene to the courtroom^{6/7}. The Netherlands recognises the importance of good standards and through two committees chaired by the NRGD actively contributes to developing standards for analysis and interpretation. A third committee is working on a reporting standard.

2 Future organisation of forensic investigation. Advisory report to the Minister of Justice and Security, 11 September 2013.

3 Forensic Investigation and Innovation Expert Group, Three-year survey, 30 March 2016.

4 The vision was jointly drawn up by the Netherlands Public Prosecution Service, the Police, the NFI, the NRGD, the Forensic Laboratory for DNA Research (FLD) at Leiden University Medical Centre and Eurofins/TMFI.

5 See: *De dood als startpunt* ('Death as a starting point'). Clinical and Forensic Autopsy Task Force, 2 February 2018.

6 The International Organization for Standardization (ISO) is an independent, non-profit body that sets international standards.

7 ISO standards provide a framework for quality policy as well as for the standardisation of organisations and processes (www.iso.org).

7 See: www.NRGD.nl for the meeting report.



Michel Smithuis on ISO standards

Specific forensic ISO standards are crucial for the Netherlands. Being a small country, we are faced with a considerable amount of cross-border crime. The first ISO standard for crime scene investigation was published in 2018. When the ISO Technical Committee decided to continue to work on developing forensic standards for analysis and interpretation, we offered to lead the project. International experts who draft the standards and the broad Dutch ISO Committee are investing a significant amount of time in this project. It occasionally leads to animated discussions given that countries have different ideas about the level and pace of standardisation. For the forensic field, these standards serve as a benchmark for further improvement or harmonisation.

Counter-expertise

Technical evidence is becoming an increasingly important factor in the chain of evidence. In view of the small size of the Netherlands, the NFI plays a principal role in forensic investigation. The defence must though also be able to reassess the evidence critically with the assistance of counter-experts. Moreover, the Netherlands Public Prosecution Service has a regular need for a second opinion. In conclusion, counter-expertise 'keeps the NFI on its toes', according to the Winsemius Committee. The quality of private providers of counter-expertise can be safeguarded by including the same quality assurance requirements, like accreditation and NRGD certification. Despite the financing from the one-stop shop funds, the number of experts outside the NFI and NIFP is extremely limited, as the NRGD register shows. Moreover, the continuation of these existing registrations are compromised because too few cases are transferred to non-NFI experts. A similar problem applies to behavioural experts. It appears to be difficult to find experts who are willing to work for the defence. In 2018, the NRGD reiterated its request to address this.

Knowledge sharing

In order to establish an individual's involvement in criminal cases, not only is it important to know from whom the DNA originates, but also how the trace material ended up at the crime scene. This is referred to as DNA activity level reporting. What makes this field of expertise complex is that contextual information must be included in the investigation. Often, experimental research is also included in these kinds of investigations. The NRGD organised an expert meeting on this theme in January 2018. It was a successful day with more than 30 experts and jurists from the Netherlands and abroad attending. Among the topics discussed was whether the DNA Activity Level Reporting field of expertise is sufficiently mature to proceed with standardisation. The key questions raised were as follows:

- Establishing the scientific basis for DNA activity level reporting: is there a sufficient scientific basis, or can it be further developed? What can or should an expert do if there is no, or hardly any scientific research available?
- Do sufficient training programmes exist? If not, how can experts expand their knowledge?
- What do we mean by 'activity level reporting'?
- What competencies should a DNA expert have at the activity level? And how do these competencies relate to DNA expertise at the source level?
- How do we bridge the knowledge gap between experts and users?
- How do experts ensure sufficient transparency in activity level reports?
- What is the role of experts, judges and lawyers in formulating hypotheses?

It emerged from the expert meeting that there is sufficient consensus on the direction and on proceeding to expand the register with the DNA Activity Level Reporting field of expertise. The NRGD will formulate proposals for developing the standardisation of this field of expertise.



Professional meeting on Digital Forensics

Crime is digitalising as evidenced by internet fraud, the distribution of child abuse material and hacking. Moreover, this is changing the nature of proof, requiring the courts to assess the value of data from Wi-Fi modems, from signals received and transmitted by base stations, and from on-board computers in cars.

The NRGD connects law and science. The second professional gathering on Digital Forensics for experts and judges took place in Maastricht in January 2018. The NRGD organises these gatherings to enable experts and users to exchange knowledge and experiences. After judges in Amsterdam had been given the opportunity to put all their questions on digital crime, digital investigation and evidence to digital forensic experts at the previous meeting, during the second meeting 45 Maastricht colleagues were offered the opportunity to talk to experts from the National Police Force and the Netherlands Forensic Institute (NFI).

The NRGD aims to promote digital awareness through these types of gatherings. In association with the NRGD, the Training and Study Centre for the Judiciary and the Netherlands Public Prosecution Service (SSR) will examine how their training programmes can respond to these developments.

EAFS: Forensic investigation at the European level

At the end of August 2018, the NRGD took part in the eighth edition of the European Academy of Forensic Science Conference (EAFS) in Lyon. The NRGD's contribution consisted of a presentation on DNA reporting entitled '*Standardising DNA reporting on activity level: a challenging opportunity*'. In addition, the NRGD talked about the following topics: '*Developments towards a European Forensic Science Area 2020; stimulating quality assurance for individual experts*' and '*The 9-year Odyssey of the Netherlands Register of Court Experts (NRGD)*'.

NRGD at the Digital Forensic Research Workshop (DFRWS) Conference 2018

In March 2018, NRGD board member and digital forensic investigator Dr Hans Henseler presented his paper '*Educating Judges, Prosecutors and Lawyers in the Use of Digital Forensic Experts*', which he wrote in conjunction with the policy officers of the NRGD. The paper predicts a digital explosion of evidence in court cases in the near future and informs criminal defence lawyers on what they can expect from a digital forensic expert and exactly what questions they should or should not ask a forensic expert.

NRGD and the GDPR

In order to perform its duties, the NRGD processes personal data. The secure and careful handling of personal data is essential in the NRGD's efforts to promote quality. This awareness of data privacy issues has increased with the commencement of the General Data Protection Regulation (GDPR). While there are obviously matters that still need to be arranged, NRGD was in control at the end of 2018. NRGD was able to achieve this by working in affiliation with KleinLef (an coalition currently comprising 34 public-sector organisations with each up to 500 employees) and the Ministry of Justice and Security. The NRGD currently serves as chair of KleinLef.



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