Redaksioneel

Groter billikheid in die strafregspleging

Die posisie van aangeklaagdes in die howe wat vanweë armoede sonder regsverteenwoordiging verskyn, veral dié wat gevangenisstraf opgelê word, het oor die jare wye aandag in oorsese lande geniet, soos onder meer blyk uit Arthur Chaskalson SC se bydrae elders in hierdie uitgawe. En soos verder blyk uit dié bydrae het hierdie aangeleentheid in resente tye ook in ons howe daadwerklike aandag ontvang. Ook die Algemene Balieraad van Suid-Afrika het deur middel van 'n spesiale komitee wat hy vir dié doel aangewys het, en andersins, reeds veel gedoen om 'n oplossing vir die probleem te vind.

Soos opgemerk sal word, opper Chaskalson 'n voorstel wat daarop neerkom dat 'n skema uitgewerk word waarvolgens jong gegradueerde regsgeleerdes aangewend word om onder toesig van ervare praktisyns namens armlastiges in strafhowe te verskyn. Hierdie voorstel verdien ernstige oorweging. Insgelyks verdien 'n stelsel van sogenaamde ''public defenders'' soos onlangs in die vooruitsig gestel deur die Minister van Justisie ernstige oorweging. Ons het egter 'n belangrike voorbehoud – soos ook deur Chaskalson uitgewys: Enige stelsel waarop besluit mag word, moet nie tot gevolg hê dat minderwaardige regshulp aan arm persone verleen word nie. Ons kan dus nie die idee geopper in die Julie 1990-uitgawe van *De Rebus*, naamlik dat persone ''met byvoorbeeld 'n tegnikondiploma in strafreg en -prosedure'' toegelaat word om as onafhanklike praktisyns in landdroshowe te verskyn, steun nie. Sodanige persone sal normaalweg nie oor voldoende kennis of ervaring beskik om aangeklaagdes in enige hof te verdedig nie, en dit sal verkeerd wees om 'n stelsel te aanvaar wat daartoe mag lei dat die minderbevoorregtes in ons samelewing deur onbevoegde persone in die howe verdedig word.

Origens behoort stappe gedoen te word wat sal verseker dat voorsittende beamptes in laerhowe die hoogste mate van beroepsvaardigheid handhaaf en die vertroue van die algemene publiek geniet, onder andere deur hulle van die Staatsdiens te ontkoppel en op 'n onafhanklike grondslag te laat aanstel en funksioneer, wat sal meebring dat private regspraktisyns ook sal kwalifiseer vir aanstelling in hierdie howe. 'n Grootskeepse proses van dekriminalisasie en afwending vanaf die strafproses behoort ook van stapel gestuur te word.

Indien hierdie maatreëls deurgevoer word, behoort dit veel daartoe by te dra om groter billikheid in ons strafregspleging te vestig.

Bespoediging van strafhofverrigtinge

Die relatief stadige verloop van strafhofverrigtinge en die vertragings wat meermale daarmee gepaard gaan, is 'n probleem waarmee daar in menige Westerse lande geworstel word. Ook in Suid-Afrika is hierdie probleem reeds dikwels ondersoek en aangespreek. In die vroeë sewentigerjare was die Botha-kommissie van ondersoek onder meer hiermee belas en in 1977 is die huidige Strafproseswet, bevattende talle wysigings van die vorige Wet wat bereken was om gemelde probleem die hoof te bied, deurgeloods. En tans is die Suid-Afrikaanse Regskommissie weer eens besig om min of meer dieselfde terrein te dek.

Dit is prysenswaardig dat die wetgewer nie sy pogings om die betrokke wetsbepalings steeds te verbeter, verslap nie. Praktiese ervaring in die

Editorial

Greater fairness in the criminal justice system

The plight of accused persons who are, owing to indigence, obliged to appear in court without legal representation, especially those who receive terms of imprisonment, has received wide attention abroad over the years, as appears from the article by Arthur Chaskalson SC which appears elsewhere in this issue. This article indicates further that in recent times the matter has also engaged the active attention of our courts. The General Council of the Bar of South Africa has also done much to find a solution to the problem, by means of a special committee formed for this purpose, and other ways as well.

It will be observed that Chaskalson proposes that a scheme be devised whereby young law graduates, under the supervision of experienced practitioners, are to be used to appear in criminal cases on behalf of impoverished accused persons. This proposal deserves serious consideration. The system of so-called "public defenders" as recently proposed by the Minister of Justice likewise merits serious consideration. We do however have an important reservation – as also pointed out by Chaskalson: Any system decided upon should not have the result that inferior legal assistance is provided to poor persons. We can therefore not support the idea broached in the July 1990 edition of *De Rebus*, namely that persons "with say, a technikon diploma in criminal law and procedure" be allowed to appear as independent practitioners in magistrates' courts. Such persons will not normally have sufficient knowledge or experience to defend accused persons in any court, and it would be wrong to accept a system which might lead to under-privileged persons in our society being defended by those who are not competent to do so.

Furthermore, steps ought to be taken which will ensure that presiding officers in the lower courts maintain the highest standards of professionalism and that they engender public confidence, *inter alia* by detaching them from the public service so that they are appointed and will function on an independent basis. The consequence of this will *inter alia* be that private practitioners will also qualify for appointment to these courts. A large-scale process of decriminalisation and diversion from the criminal process should also be set in motion.

If these measures are given effect to, they should make a considerable contribution towards greater fairness in our system of criminal justice.

Expediting criminal proceedings

The relatively slow progress of criminal proceedings and the delays which are often associated with them are problems many Western countries are struggling to solve. In South Africa as well, this problem has often been investigated and addressed. In the early seventies it was included in the terms of reference of the Botha Commission, and the current Criminal Procedure Act, which was passed in 1977, contained numerous amendments of the previous Act which were aimed at combating the problem. And now the South African Law Commission is once again covering more or less the same field.

It is praiseworthy that the legislature is not flagging in its continued effort to improve these legislative provisions. Practical experience in the courts

howe dui egter daarop dat oplossings vir die probleem eerder by die toepassers van die Wet as by die inhoud daarvan gesoek moet word. Kortom, indien voorsittende beamptes, staatsaanklaers, regspraktisyns, polisie-ondersoekbeamptes en alle ander instansies betrokke by die funksionering van die howe, hulle bevoegdhede en werksaamhede nougeset en flink uitoefen en verrig, sal hofverrigtinge vlotweg verloop en sal dit nie nodig wees om ons wette kort-kort te probeer hersien nie.

Dit wil ook voorkom asof die owerhede wat met die regsadministrasie belas is, nie genoegsame aandag op administratiewe vlak aan die probleem skenk nie. Onder andere behoort empiriese navorsing op 'n deurlopende grondslag oor die oorsake van vertragings in die howe ingestel te word en behoort praktiese stappe gedoen te word om 'n herhaling van vertragings te voorkom.

'n Oplossing vanuit 'n ander hoek word in die bydrae 'Kostebevele in strafsake' wat elders in hierdie uitgawe verskyn, aangesny. Die skrywer doen aan die hand dat 'n stelsel van kostebevele in strafverhoorsake by ons howe ingevoer word. Indien die voorstel aanvaar word, sal 'n voorsittende beampte by magte wees om, by wyse van 'n gepaste kostebevel, óf die Staat óf die verdediging ten opsigte van ongeregverdigde vertragings te penaliseer. Die wete dat sulke bevele aan die einde van of tydens die verhoor gemaak kan word, behoort 'n heilsame uitwerking op alle betrokkenes – ook op die voorsittende beampte – te hê. 'n Verbandhoudende voorstel is te vinde in die artikel 'Justice delayed is justice denied: Proposed law reform' wat in die Oktober 1989-uitgawe van hierdie tydskrif verskyn het. Daardie voorstel kom daarop neer dat waar die Staat onnodiglik gesloer het om 'n aangeklaagde voor die hof te bring of die vervolging onnodiglik vertraag het, die verhoorhof in bepaalde gevalle by magte moet wees om die aangeklaagde sonder meer te ontslaan, en dat hy daarna nie weer weens dieselfde aanklag vervolg kan word nie. Aanvaarding van hierdie voorstel behoort insgelyks goeie resultate af te werp.

Samevattend: in plaas daarvan om te konsentreer op wysigings van losstaande bepalings van die Wet wat allerlei ondergeskikte prosedures reguleer, behoort gekonsentreer te word op maatreëls wat die toepassers van die Wet sal verplig om toe te sien dat strafhofverrigtinge bespoedig word. Anders gestel: in plaas daarvan om die teks van 'n opvoering herhaaldelik te wysig in 'n poging om die vertoning te verbeter, moet die akteurs verplig word om beter spel te lewer. Ons het min twyfel dat so 'n benadering goeie vrugte sal afwerp. ■

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indicates, however, that the solution to the problem lies rather with those who apply the Act than with its content. In brief, if presiding officers, prosecutors, legal practitioners, investigating officers and all others concerned with the functioning of the courts exercise their functions and perform their duties in a conscientious and energetic manner, court proceedings will run smoothly and it will not be necessary to try to revise our legislation every now and then.

It also appears as if the authorities concerned with the administration of justice do not give sufficient attention to the problem at the administrative level. Amongst other things ongoing empirical studies should be carried out into the causes of delays in court, and practical steps should be taken to prevent the recurrence of delays.

A solution from another angle is proposed in the article entitled 'Kostebevele in strafsake' which appears elsewhere in this issue. The author suggests that a system of costs orders be introduced in criminal proceedings in our courts. If this proposal is accepted then the presiding officer will be empowered to penalise either the State or the defence by means of an appropriate costs order for causing unjustified delays. The knowledge that such orders can be granted during the course of a trial or at its conclusion ought to have a beneficial effect on all concerned – the presiding officer included. A related proposal is to be found in the article entitled 'Justice delayed is justice denied: Proposed law reform' which appeared in the October 1989 issue of this journal. That proposal was to the effect that, where the State unnecessarily delays bringing an accused before the court or unnecessarily delays the prosecution, the trial court should, in specific cases, have the power summarily to discharge the accused and that the accused may not thereafter be prosecuted on the same charge. Acceptance of this proposal ought likewise to have favourable results.

To sum up, instead of concentrating on individual provisions of the Act which regulate certain minor procedures, we should concentrate on measures which will oblige those who apply the Act to ensure that criminal proceedings are expedited. Put differently, instead of continuously changing the text of a play in an attempt to improve the performance, the actors should be obliged to improve the acting of their roles. We have little doubt that this approach will bear fruit. ■