SUMMARY:

This report describes a research project on the possibility of integrating the justice of the peace (*vrederechter*) in Belgium and France into the Dutch legal system. The central questions are: how does the justice of the peace function in actual practice in the countries referred to, and can such an institution be realised in the Netherlands, and if so, in what form? The research project has been inspired by political interest in the concept of the justice of the peace and by the desire on the part of both the judiciary and the Minister for Legal Protection to arrive at a 'socially effective administration of justice'. Hence, experiments have been conducted in the Netherlands with forms of accessible and low-threshold jurisdiction ('community courts' or *buurtrechters*) for several years. These experiments will be evaluated at a later date; therefore, this research project describes them without including results. The description of the Dutch situation is based on desk research, interviews with those involved in the experiments and on an expert meeting.

Desk research, interviews and an expert meeting were also used for the research project's part on comparative law. On the basis hereof, the developments regarding the justice of the peace in Belgium and France are presented. First, the situation in France is described. The image emerging here is that as of 1 January 2020 the *juge d'instance*, the French judge who – together with the *juge de proximité* for 'small claims' – comes closest to the position of a justice of the peace, will be abolished and will be replaced by the so-called *juge du contentieux de la protection* as part of the *tribunal de proximité*. For the time being, it is not clear how this will work out. In any case the conclusion had to be drawn that, as things stand, France does not have a justice of the peace, who may serve as a model for integration into the Dutch legal system. For that reason, the description of the French system focuses on a historical description of the developments (starting with the introduction of the justice of the peace in 1790) and on the considerations that played a role here and from that time onwards. This reveals that from the start the justice of the peace has played a double role: on the one hand the judicial role (the authority to take a decision) and on the other hand the mediatory/conciliatory role.

We also see this double role when we look at the Belgian justice of the peace, where this institution still applies, and in imitation thereof, or so it seems, in experiments with community courts in the Netherlands. The description of the justice of the peace in Belgium shows, unlike in France, a lively practice, which can serve as an example for the Dutch judicial system. The description comprises both the rules and regulations regarding the Belgian justice of the peace (law in the books) and the way these are applied in practice (law in action). By means of empirical research in the form of interviews with the judges involved and an expert meeting, a summary of the strengths and weaknesses was made, as well as an analysis whether and to what extent the practice of the Belgian justice of the peace results in what in the Netherlands has become known as 'socially effective administration of justice'. It is our impression that, despite a reduction of the number of locations, the Belgian justice of the peace can rightfully be called a 'proximity judge' (*nabijheidsrechter).* The tasks of the justice of the peace primarily concern matters that affect the daily lives of all citizens. The justice of the peace's profile corresponds with this. Justices of the peace are judges, often experienced ones, who operate in an emphatical, communicative, interactive and solution-oriented way and who are in touch with local issues. The organisation of the hearings is also in line with the parties' background in the type of cases involved. This applies in particular to the reconciliation procedure before the justice of the peace, which is free of charge and informal.

The comparison between the Belgian justice of the peace and the Dutch subdistrict court judge (*kantonrechter*) shows that the justice of the peace operates in a more pragmatic, more informal and more solution-oriented way than the subdistrict court judge. This can be partially explained by past interventions in the organisation of the subdistrict court judge's jurisdiction and by the drive to increase the scale and efficiency of jurisdiction in the past ten years. In the present situation there is a group of persons seeking justice that, for lack of self-help skills combined with the existing thresholds for court access, is not or insufficiently served by the present judicial system. Not only does this have negative consequences for the individuals belonging to this group, it also has an impact on society. In Belgium, the justice of the peace plays an important role in keeping this group on board, both in society and in the constitutional state. This added value can be regarded as a guiding principle in favour of the decision to realise the introduction of a Dutch version of the justice of the peace: the 'proximity judge'. For other groups it may largely suffice to reduce the common barriers, such as court fees and the availability of legal aid. However, the need of the

group referred to goes beyond that, and neither the existing system nor those who offer jurisdictional alternatives (ADR) can fill this need completely.

Once the decision is taken to integrate a 'proximity judge', it is advisable not to copy the model of the Belgian justice of the peace, but to opt for a scenario that is more in line with the present Dutch reality. In this scenario, the starting point is the existing subdistrict court judge; in a few steps, the approach and practice of this court are adjusted toward an envisaged desirable situation derived from the Belgian justice of the peace. This option simplifies the legislative process and enables a gradual implementation of the desired change. An additional advantage is that the evaluation of the experiments and pilots of the Dutch judiciary can be taken into account. The legislative proposal for a Judicial Procedure Experiments Act (*Wet Experimenten Rechtspleging*), which is still to be submitted to the House of Representatives, offers good possibilities to test the effects of various versions based on this evaluation.

A version that is to be explored in any case is the introduction of a reconciliation procedure before the subdistrict court judge. This has attracted political interest and is also regarded as an important extension in this research project. In this procedure, presenting a case has no prescribed form and is free of charge, the course of the hearing is very informal and strongly focuses on reaching a solution, which is then laid down in a report. The introduction of such a procedure requires serious consideration. Unlike in Belgium, however, it is recommended to tie this procedure in with the 'normal' procedure on the merits before the subdistrict court judge, should the reconciliation not lead to any result. In this way, the judiciary's conflict-solving capacity for this category of cases, and thus its social effectiveness, can be strengthened considerably. As this 'transfer' gives rise to several procedural questions and practical complications, it is recommended to first explore the effects hereof as part of the Judicial Procedure Experiments Act. A matter that requires consideration is whether a scheme where the same judge who conducts the reconciliation proceedings also takes a decision in the procedure on the merits may lead to a less responsive attitude of the parties. Questions may also arise as regards the court's (perceived) independence and impartiality. Separating the two roles may, however, quickly affect speed and effectiveness. It is important to arrive at an acceptable middle course with procedural guarantees, in which the parties receive sufficient information on the procedural phases and the litigants' roles. To attain the envisaged effects of the reconciliation procedure, it is recommended to make access to this procedure in the Netherlands free of charge or to limit

the maximum court fee to the presently lowest subdistrict court category (the rate of which will be reduced in the near future, as announced by the Minister for Legal Protection).

For the sake of its recognisability and to distinguish it from the present subdistrict court judge's practice, it is recommended to refer to the envisaged new judicial practice as (the subdistrict court judge as) a 'proximity judge'. The decision in favour of such an integration must be based on a clear vision on the significance of the role of courts in society and on a consistent policy as regards access to a court. The credibility of this policy will require an explicit distancing from past policy on certain points, as this latter policy strongly promoted centralisation and efficiency in the judicial organisation and stimulated court alternatives instead of promoting access to a court. The change of policy will have to be credible in order to be successful.

This research project analysed both the costs and the benefits of introducing a 'proximity judge'. Costs will rise as, compared to the present subdistrict court judge's practice, the average time the subdistrict court judge will be required to spend per case will increase. Especially the number of hearings and the average duration of those hearings will increase. In addition, an increase in the number of cases can be expected and cases will be dealt with by (more expensive) experienced subdistrict court judges, in line with the Belgian justice of the peace's profile. Another cost factor relates to the number of hearing locations, the hearing days and the opening hours for the 'proximity judge', including the accompanying costs of support, security, etc. In view of the significance of proximity, also geographically, for the cases in question (the importance of the judge being embedded in the local community) and the fact that in the Netherlands travel distances to hearing locations are considerably longer than in other countries, a substantial increase in the number of hearing locations will be inevitable. Alternatively, options for a 'mobile proximity judge', which would be in line with the new Belgian option for the justice of the peace to hold hearings '*sous l'arbre*', must be explored.

These increased costs are accompanied by benefits for society, e.g. the (general) interest of an accessible and low-threshold administration of justice, which contributes to maintaining peace in society. Moreover, it was found that in the Belgian situation the justices of the peace often are not only successful in ending the conflict between the parties by means of a reconciliation or a decision, but they also deal with the underlying problem, which often is of a non-legal and more social nature. They maintain contacts with

other authorities that may play a role in finding a socially effective solution for problems, and these authorities in turn refer to the justices of the peace. Apart from putting a swift end to conflicts, they thus fulfil a bridging role vis-à-vis groups in society that, in general, have little faith in the social and legal system. The experiments with ‘community courts’ show similar benefits.

The conclusion is, that the introduction of a ‘proximity judge’ may contribute substantially to the realisation of a socially effective administration of justice. We recommend a phased introduction, so that it will be possible to build upon the experiments carried out by the Dutch judiciary in recent years. The aim should be to make the subdistrict court judge's practice more pragmatic, informal and solution-oriented in the years to come, also in view of the possibilities offered in this respect by the forthcoming Judicial Procedure Experiments Act. This may culminate in the introduction of a new reconciliation procedure, which, unlike in Belgium, is more in line with the normal subdistrict court judge’s procedure on the merits.