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Onderzoek en beleid

The Dutch criminal justice system

Organization and operation

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Second revised edition

BJu | Boom Juridische uitgevers

Justitie

Wetenschappelijk Onderzoek- en Documentatiecentrum
2003

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ISBN 90-5454-303-5

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Preface

The Dutch criminal justice system for some time has been famous for its mildness. This mildness, which has been reflected for example in a strikingly low prison rate in the early 1970s has impressed foreign criminal law scholars and criminal justice officials.
This traditional mildness is now under pressure. Crime has increased considerably and so has the prison rate. Major changes have taken place in Dutch society. It has gradually become multiethnic, not always sharing common values and norms. Crime changed and became more violent and organized.
These changes require new criminal justice policies. In recent years, considerable changes in criminal law and law enforcement legislation have been adopted by Parliament. The Dutch police force has been reorganized, as has been the prosecution service. The statutory powers of the police to investigate organized crime have been expanded. The efficiency of the prosecution service is improved, the judiciary has been extended and prison capacity has been increased.

This booklet covers both the organization of the present Dutch criminal justice system and the main procedures used within the system. It deals with the basic principles that guide the operation of the Dutch criminal justice system.

I hope that this introduction to the Dutch criminal justice system will prove to be useful both to those new to the Dutch system and those wishing to extend their knowledge of it.

1 Introduction

1.1 Criminal policies

The Dutch criminal justice system has long been noted for its mildness. In support of this view, reference was usually made to the low prison rate in the Netherlands compared to other European countries. In the 1970s, the prison rate was around twenty per 100,000.
At present, it tends to be around ninety per 100,000. For many, this increase is shocking. That feeling is understandable when one only looks at the figures. However, reality differs considerably from the picture emerging from the statistics.

The low prison rate in the 1970s and the early 1980s was partly cosmetic because in practice there was a considerable difference between actual prison capacity and the need for capacity, giving rise to 'waiting lists'.
In the Netherlands, offenders who are not in pre-trial detention when they stand trial and are sentenced to imprisonment do not serve their prisonsentence immediately after the court session, but are put on a waiting list and called to serve their sentence as soon as there is capacity.
From the mid 1970s, the backlog in implementation of prison sentences of those who were put on waiting lists was increasing. Partly that was caused by new legislation on pre-trial detention, which in fact did reduce the number of pre-trial detainees. Hence, fewer people served their sentence consecutively on the court session at which they received their prison sentence. The further aim of this legislation for the reduction of pre-trial detention cases to lead to a reduction in prison sentences did not materialize. The prison department of the Ministry of Justice realized too late that the actual capacity and the need for capacity did no longer match. On the contrary, in those years even prison policy led to a closing-down of prisons.

Only at the beginning of the 1980s, a wide scale extension of prison capacity was initiated. A new prison construction program was set up which led to an extension of the prison capacity with 900 places by the end of the 1980s. Despite this construction program, the backlog in implementation of prison sentences increased.
In the early 1990s, the largest ever prison construction program started. Between 1994 and 1996, fourteen new prisons were opened and at present prison capacity is around 12,800 cells.
Over the last decade, the prison rate more than doubled. The Netherlands had one of the fastest growing prison populations in the world.

This increase in prison capacity was partly due to more severe sentences. Although the crime rate has increased substantially, the number of prison sentences, in relation to the increased crime, has remained relatively stable.
The average prison sentence, however, has become much longer. In 1970, almost 13,000 (partly) unsuspended prison sentences were imposed with a total of 2,100

detention years. Thirty years later, the number of prison sentences merely doubled but the number of detention years increased to 16,000. Since the Netherlands still operate the principle of only one prisoner per cell, the increasing number of detention years led to an increasing number of prison cells and average prison occupation.

The other reason for increase in prison capacity was a new policy influenced by serious criticisms on the delayed implementation of prison sentences.
In various memoranda and policy plans the importance of an efficient and effective implementation of prison sentences had been stressed. Proper implementation of sanctions imposed is the cornerstone for a reliable administration of criminal justice. Therefore, an annual update of forecasts of the capacity needed for the implementation of (custodial) sanctions is made. The present forecast indicates that an end has come to the sharp increase in the need for prison capacity. For some special penitentiary establishments, like juvenile detention institutions, detention facilities for illegal foreigners, female convicts and for the implementation of entrustment orders, extra capacity will be needed over the next years.
Despite the quality of the forecasts, events may still occur which increase the need for extra prison capacity. In 2001 and 2002, a large number of drug couriers was intercepted. This led to the adoption of emergency legislation (the 2002 Provisional Act on Emergency Capacity for Drug Couriers, *Stb*. 2002, 124). So-called drug swallowers may be detained in special emergency remand houses and prisons. The regime for detained drug couriers is not covered by the 1998 Penitentiary Principles Act, but by the provisional Act which is of a very sober character with restricted rights. Under this regime, the one prisoner per cell rule is not applicable, and prisoners do not have the right to take part in prison labour, education, recreation, and sports. The Act was initially expected to expire after one year, but the expiry date has been postponed until March 2005.

The stereotype of the Netherlands as a country with exceedingly mild penal policies is – like most stereotypes – greatly oversimplified. Nonetheless, in comparison to many European countries, and more so the United States, Dutch penal policy is less incapacitative.
Penal policies since the 1980s have been characterized by strong tendencies to reduce the use of short-term imprisonment, and to increase the use of non-custodial sanctions.
During the same period, when prison sentences became longer and the number of prison cells rose sharply, the use of short-term imprisonment fell, fines became the preferred sentence, prosecutorial diversion grew rapidly, community sentences came into use, and new non-custodial sentences were being developed.

A remarkable feature of present day criminal law enforcement in the Netherlands is that only a small percentage of all crimes that are registered by the police are actually tried by a criminal court. While the number of registered crimes increased almost fivefold between 1970 and 2002, the number of cases tried in court only doubled.

In 2000, 1.3 million crimes were registered by the police. The number of cases solved was 191,242 (14.6 per cent). In quite a number of solved cases there were more suspects. In total 268,173 suspects have been interrogated by the police of which 236,752 were male and 31,421 were female. The prosecution service took a prosecution decision in 233,325 cases. Almost half of the cases (118,370) were settled out of court by the prosecution service of which 16,975 through a dismissal due to technicalities (mainly insufficient evidence) and 14,670 through a dismissal due to the use of the expediency principle, 61,515 through transaction, and 6,260 cases through task penalties. Criminal courts tried 111,285 cases. In 104,760 cases, a conviction took place. The number of acquittals was 4,690. The courts imposed 155,270 sanctions, of which 21,480 unsuspended prison sentences, 5,960 partly unsuspended prison sentences, and 17,160 suspended prison sentences. 43,455 unsuspended fines were imposed, and 4,660 partly suspended fines as well as 3,165 suspended fine sentences. The number of task penalties was 20,770. The number of imposed entrustment orders was 220. These figures show that a custodial sentence is still considered a last resort, and that despite the increased length of the prison sentences, the relative mildness of the Dutch criminal justice system is built into the system itself as a core element of Dutch criminal policy.

Proper law enforcement and administration of criminal justice has become an issue of growing concern. Registered crime has increased six fold since 1970, but the clearance rate gradually went down to around fourteen per cent at present. This is mainly due to a lack in investigation capacity. The increase of the police force and judicial officers did not keep pace with the increase in crime. In relation to the volume of crime, the per capita level of expenditure to control crime is low in comparison with neighbouring countries. The number of public prosecutors and the size of the judiciary is relatively small as well, which leads to a rather slow pace of criminal justice.
The high degree of non-intervention and the slowness of justice is detrimental to the proper administration of criminal justice. Recently, a crimecontrol policy plan was launched to increase public expenditure for criminal law enforcement and the administration of criminal justice by extending the police force, the prosecution service and the judiciary.

The policy plan focuses on four goals:

Crime control: the increasing crime rate and the lack of crime control in the public domain leads to a widely shared feeling that law enforcement is insufficient. Crime prevention and crime control therefore must be improved. This calls for an extension of the police force and other crime controllers in the public domain.

Intervention: A large number of crimes do not lead to any intervention by law enforcement agencies. The high percentage of non-intervention harms the interests of victims of crime, the credibility of law enforcement agencies, and the effectiveness in the cases in which an intervention takes place. The proportion of non-intervention therefore must be reduced by extending crime control in the public domain, and by increasing the clearance rate. Every offender must realize that there is a real chance that his offence will be investigated. Therefore, the quality and the quantity of the investigation of crimes must be increased, and the capacity of the prosecution service, the judiciary and the implementation of sanctions agencies extended.

Speediness: A tardy course of criminal justice is detrimental to the interests of victims of crime and to the offenders' right to get a speedy trial. Furthermore, the effectiveness of intervention diminishes in proportion to the time lapsed since the offence has been committed. The course of justice must become more expedient by improving cooperation between various actors in the administration of criminal justice process and the shortage of personnel must be alleviated.

Tailor-made interventions: Law enforcement agencies and the judiciary are confronted with a large number of offenders who, after serving their sentence, reoffend. The effectiveness of criminal law intervention for this group obviously is too restricted. To increase effectiveness, tailor-made support, and supervision of these offenders seem to be necessary. Special attention must be given to those juvenile offenders who are likely to start a criminal carrier. This may be a task for the probation service, whose capacity must be extended.

These four goals can only be realized when public expenditure for law enforcement and the administration of criminal justice is increased. The total budget for the Ministry of Justice is 4.6 billion euro, of which roughly 1.07 billion is earmarked for law enforcement, 1.03 billion for the judiciary and 1.3 billion for the implementation of sanctions.

2 The Dutch Criminal Code

2.1 History

The history of the present Dutch Criminal Code starts in 1811, when the Kingdom of the Netherlands was incorporated into the French Empire, and the Penal Code for the Kingdom of Holland, in force since 1809, was replaced by the French Napoleonic *Code Pénal*.
After the restoration of independence in 1813, the French Code was kept in force provisionally, but it contained some important changes. The sanctions system was reformed considerably, for instance by abolishing deportation and lifelong forced labour.

The 1813 Dutch Constitution stipulated that the main body of substantive and procedural criminal law is to be regulated in codes.
During the nineteenth century, a number of draft criminal codes were proposed, but the lack of parliamentary unanimity on the sanctions system and the prison system prevented adoption of any of these drafts.
However, important revisions of the criminal code did take place, in particular regarding sanctions. The range of sentences was reduced to various forms of prison sentences, fines, suspension of certain rights, and forfeiture of certain goods. Corporal punishment was abolished in 1856, as was the death penalty in 1870. Fine default detention was introduced in 1864.
In fact, the ideas of the classical school of criminal law, prevalent in the French *Code Pénal*, gradually were replaced by modern ideas which led to a more humane sanction and prison system.
Dutch prisons of that time, mainly built in the 17th century, were incompatible with those modern ideas. The prison regime was very harsh, with a focus on re-education. There was no differentiation in prisons according to age, term of prison sentence, first offender or recidivist, etc. Imprisonment had a detrimental effect on prisoners, who not housed in individual cells but in common quarters.

In 1823, the Dutch Association for the Moral Improvement of Prisoners, the forerunner of the present probation service, was established by some citizens. The aim of the Association was the moral advancement of the prisoners. The volunteers of the Association tried to combat the threat of moral decay arising from the lamentable conditions in prison by visits, educational measures, religious instruction, and the supply of books.
The Dutch Association played an important role in the final adoption by Parliament of the cellular prison system (the 'Pennsylvanian system'), which paved the way for the first truly national criminal code.

In 1870, a penal law reform committee was established that drafted a criminal code which, together with an extensive explanatory memorandum, was submitted to Parliament in 1879 by Modderman in his capacity of Minister of Justice. The Code (*Wetboek van Strafrecht*) was adopted in 1881, but came into force in 1886,

because a number of acts had to be reformed and new prisons based on the cellular prison system had to be built first.

2.2 Major Criminal Code reforms

Since 1886, the Criminal Code has been reformed considerably. New criminal provisions have been added, for example on discrimination, intrusion of privacy, environmental pollution, illegal computer activities, commercial surrogate mothership, stalking, and virtual child porn. Other offences, such as adultery or homosexual acts between an adult and a juvenile of over sixteen years of age have been decriminalized. Termination of pregnancy (induced abortion) and termination of life on request and assistance in suicide (euthanasia) are not punishable anymore, provided that certain legal requirements are met.

Major criminal law reforms took place in juvenile criminal law (1965 and 1995), on sentencing – the extension of suspended sentences (1987), the introduction of early release (1987), the reform of fines (1983), the introduction of community sentences and task penalties (1989-2001) – on corporate criminal liability (1976) and on serious offences against public morals (1986-2002), the introduction of conspiracy (1994), and the introduction of new criminal law measures like the Confiscation and Compensation Order and the Detention of Persistent Drug Addicted Offenders Order (1993-2001).

By the 1989 Administration of Road Traffic Offences Act, minor traffic offences were classified administrative offences instead of criminal offences.

At the occasion of the 100th anniversary of the Criminal Code, the question was raised whether a full recodification of the Criminal Code was advisable. There was no great enthusiasm for this idea. A preference was expressed for ongoing partial criminal law reforms, and for gradually modernizing the present Criminal Code.

2.3 Characteristics of the Criminal Code

Compared to the French Penal Code, the Dutch Criminal Code was characterized by its simplicity, practicality, faith in the judiciary, adherence to egalitarian principles, absence of specific religious influences, and recognition of an autonomous ‘legal consciousness’.
Its simplicity, for instance, is still illustrated by the legal definitions of criminal offences, the division of criminal offences in either crimes or infractions, and its sanctions system with only four principal sentences: imprisonment, detention, task penalty, and fine.
Its faith in the judiciary is evident from the absence of specific minimum sentences for serious offences, and the wide discretionary power in sentencing.

The Dutch Criminal Code does not contain distinctions and definitions of a dogmatic nature. Definitions on various forms of culpability or causation, nor definitions on defenses are found in the Code.
The Criminal Code is a very practicable one, leaving the development of criminal law doctrine to courts in general and the Supreme Court in particular.

2.4 Division in the Criminal Code

The Criminal Code (CC) consists of three books.
The first book (sects. 1-91) is a general part concerning the scope of application of the code, sanctions and measures, defenses, attempt and conspiracy, the extension of criminal liability through participation, the reduction of sentences in case of concurrence, the statute of limitations, and the *non bis in idem* principle.
In the second (sects. 92-423) and third (sects. 424-476) book, the core crimes and infractions are defined.

2.5 Criminal law for juveniles

There is no special statute on juvenile offenders. The Criminal Code, however, contains a number of special provisions on juveniles. These primarily concern the sanctions which can be imposed on juvenile offenders (sects. 77a through 77gg CC).

2.6 Other main criminal law statutes

The Dutch Criminal Code does not define all criminal offences. Numerous other statutes complement criminal law legislation. The main examples are the 1950 Economic Offences Act, the 1994 Road Traffic Act, the 1928 Narcotic Drug Offences Act, and the 1989 Arms and Munitions Act. Violation of these acts (e.g., drunk driving, hit-and-run, illegal possession of firearms, trafficking of drugs) constitutes a crime. Military criminal law is found in the 1991 Military Criminal Code. The Code contains criminal law provisions supplementary to the provisions in the Criminal Code.

Furthermore, hundreds of bylaws contain criminal provisions for the proper law enforcement of administrative legislation. The general part of the Criminal Code is also applicable to other criminal law statutes and criminal bylaws (sect. 91 CC).

2.7 Code language

The authoritative version of the Criminal Code is in Dutch. There are, however, unauthorized translations of the Dutch Criminal Code in French, German and English:

– Code Pénal Néerlandais, in: M. Ancel and Y. Marx, Les Codes Pénaux Européens, Tome III, Centre Français de droit comparé, Paris 1958, pp. 1375-1466.
– Das Niederländische Strafgesetzbuch, translated by D. Schaffmeister, in: H.H. Jescheck and G. Kielwein, Sammlung ausserdeutsche Strafgesetzbücher, Band 18, de Gruyter, Berlin 1977.
– The Dutch Penal Code, translated by L. Rayar and S. Wadsworth, in: The American Series of Foreign Penal Codes; no. 30, Rothman Littleton, Colorado 1997.

New criminal law legislation is published on the internet at: www.overheid.nl.

3 The Dutch Code of Criminal Procedure

3.1 History

In the Netherlands the Napoleonic *Code d'instruction criminelle* was applied until 1838 with some modifications. For example, the French jury system has never been adopted in the Netherlands. The Dutch Code of Criminal Procedure, which came into force in 1838, was not really a new code, but rather a translation of the French Code. The 1838 Code was characterized by strong inquisitorial elements. The suspect was object of a secret and written investigation procedure without any rights. The numerous attempts to reform the Code of 1838 and to restrict the inquisitorial elements failed, until the present Code of Criminal Procedure (*Wetboek van Strafvordering*) was enacted in 1926.

3.2 Characteristics of the Code of Criminal Procedure

In the Explanatory Memorandum of the Code of Criminal Procedure (CCP), the code is characterized as 'being moderately accusatorial'. In comparison to the 1838 Code, the new code gave the offender more procedural rights to influence the course of justice. At an early stage in the investigative phase, the offender obtained the right to be assisted by his counsel with whom he can have free oral and written communication. In the pre-trial phase, the offender also acquired the right to remain silent when interrogated. He, furthermore, got the right to be informed about the results of the investigations by the police or the examining judge, and to interfere in these investigations, albeit with restrictions. In order to prevent abuse of the procedural rights by the offender, these rights could be restricted 'in the interest of the investigations' by the public prosecutor or the examining judge. Such restrictions, however, can be reviewed by higher judicial authorities.
According to the Code, the emphasis of the criminal procedure lies in the court trial where immediacy is the leading principle. At the court trial, as a rule, evidence must be produced on the basis of this principle. In 1926, however, the Supreme Court ruled that a *testimonium de auditu*, hearsay evidence, is admissible. Other exceptions to the immediacy principle, such as the use of statements of anonymous witnesses as means of evidence, were later also ruled to be admissible, provided there is circumstantial evidence.
Under the influence of decisions by the European Court on Human Rights, the immediacy principle gradually began again to play an important role in the Dutch criminal procedure. Today, the adversarial character of the court trial is increasingly stressed.

3.3 Division in the Code

The Code of Criminal Procedure is divided into five books.
The first book (sects. 1-138c) contains provisions on the competence of the police, the public prosecutor and the judiciary, the rights of the defendant and

the defense counsel, and coercive measures such as pre-trial detention, seizure or search of the premises, interception of communication, and provisions on other investigative powers.
The second book (sects. 139-398) contains the legal provisions on the pre-trial and the trial stages.
The third book (sects. 399-481) deals with legal remedies such as appeal and cassation.
The fourth book (sects. 482-552hh) contains special criminal procedure provisions, e.g., for trials against juveniles and corporate bodies.
The last book (sects. 553-592a) contains provisions on the implementation of court decisions.

3.4 Major procedural law reforms

The Dutch Code of Criminal Procedure has been reformed considerably over the last few years. In the past, the Code was regularly supplemented and changed, but the current revisions are of such a nature that the question has already been raised whether it is time for a comprehensive law reform.
However, a full law reform in which the general principles of the criminal procedure are reconsidered does not seem necessary or desired. The CCP establishes a balanced allocation of powers and rights to parties in a criminal court procedure. There is no need for a reallocation of competence.
The recent law reforms did not result in a substantially different position of the parties in court, nor in an essential shift in competence. A full revision is also not desired because, from the perspective of the operational situation in the administration of criminal justice, there are many objections. At present, pressure on criminal justice officers is too high to work with a completely new Code. The latter would have the result that the administration of criminal justice would overheat.
This was also the point of view of the Minister of Justice, as expressed in a memorandum to Parliament, in which he extensively dealt with the present state of the Code of Criminal Procedure law reform.

'No' to an integral law reform does not mean that the Code is not involved in a permanent process of reform. Since 1990, over 85 law reforms with important alterations and extensions of the Code took place. There are a number of important reasons for major changes: the age of the Code, technological progress, the impact of international human rights instruments, and the 1996 Parliamentary Enquiry on police investigation methods.

3.5 Main reasons for procedural law reforms

– *The age of the Code*
The Code dates from 1926, and reflects a careful consideration of interests and

competences of the classic court room participants, the suspect and his defense counsel, the police and the prosecution service.
However, the legal position of witnesses and victims was not elaborated at all, or very insufficiently so. Civil compensation (*action civile*) in criminal proceedings was unknown. Furthermore, private prosecution by victims is impossible because, according to Dutch law, the prosecution service is vested with an absolute prosecution monopoly. Thus, the victim of a criminal offence had been allotted a very modest place in the Code.
Ever since the 1993 Criminal Injuries Compensation Act, the victim's position has been considerably strengthened. He or his heirs can now institute a lawsuit to claim civil compensation in criminal proceedings.
The legal position of the witness has also changed. The phenomenon of the threatened witness, who refuses to meet his legal obligation to testify for fear of retaliatory measures, has been recognized. Since the 1993 Threatened Witness Act, a witness protection scheme now exists.

– *Technological progress*
New technological developments enabled the use of advanced technical means of coercion in the fight against organized and serious crime. In this connection, two changes may be indicated.
First, the 1993 DNA Act introduced the possibility, in case of serious suspicion of a crime which carries a statutory imprisonment of eight years or more, to take blood for a DNA test for identification without the suspect's approval but by order of the examining judge. Since 2001, on a public prosecutor's order, a buccal mouth swab for a DNA test may be taken from the suspect of a crime which carries a statutory imprisonment of four years or more.
Second, the 1993 Computer Crime Act introduced the possibility to intercept all forms of telecommunications and the possibility to intercept all forms of communications by means of long-distance target microphones.

– *The impact of international human rights instruments*
The third cause of recent changes is the need to meet the demands stemming from international human rights instruments concerning persons accused of crimes and persons deprived of liberty, in as far as these instruments are directly applicable under Dutch law.

The Netherlands have no constitutional court, and section 120 of the Dutch Constitution explicitly prohibits constitutional judicial review of Acts of Parliament (statutes) by courts: 'The constitutionality of Acts of Parliament and treaties shall not be reviewed by courts'. However, the Dutch Constitution obliges courts to review all domestic legislation, including Acts of Parliament, with regard to their compatibility with directly applicable provisions of international treaties to which the Netherlands are a contracting party, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.

All provisions in this Convention that do not need further legislative implementation or operationalization are regarded as directly applicable. Where a Dutch statutory provision is found to be in conflict with a directly applicable provision of the Convention, the court must apply the provision of the Convention instead of the national provision. Section 94 of the Constitution reads: 'Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions by international institutions'.

Standards on the application of directly applicable provisions of the Convention elaborated in case law by the European Court of Human Rights (ECHR) in Strasbourg must also be applied by Dutch courts. This is not only the case with regard to ECHR decisions ruled against the Netherlands, but also with regard to decisions ruled against other Member States of the Council of Europe, in as far as these decisions contain standards regarding the provisions of the Convention. This means that apart from decisions against the Netherlands, other decisions of the court also have an impact on Dutch criminal procedural legislation and trial practice.
The European Court on Human Rights' decisions in the Cubber and Hauschildt cases (26 October 1984, A 86 and 24 May 1989, A 154) have resulted in reform of the criminal procedure for juveniles. The Kruslin and Huvig case (24 April 1990, A 176) necessitated new procedural provisions for the interception of (telephone)communications, the Kostovski case (20 November 1989, A 166) led to the introduction of legislation on anonymous witnesses, and the Kamasinski case (19 December 1989, A 168) formed the reference for new legislation on interpretation and translation help during the criminal procedure, while the Brogan case (29 November 1988, A 145 B) has resulted in advanced control of the lawfulness of police custody.
In 2000, the position of suspects has been improved in line with the equality of arms principle as expressed in sect. 6 of the Convention. He now has the right to request the examining judge to carry out further investigations of a specific nature, the so-called mini-investigation (sects. 36a-36e CCP).

– The recent crisis in police investigations
In 1996, the Parliamentary Enquiry Committee on police investigations came to the conclusion that the Netherlands were suffering a crisis in police investigations. No legal standards for police investigations methods existed. Neither the courts nor the prosecution service performed its role of supervisor of the police sufficiently conscientiously, so the police could operate outside the authority and control of the prosecutor in charge. Quite often, undercover policing methods were used that were in conflict with the rules of law in a democratic state. The report of the Committee caused a profound shock to those responsible for the supervision of the Dutch police, and in 2000 led to far-ranging legislation on investigative powers and special investigative methods, such as observation and

tailing, police infiltration, running informers, interception of communication by technical means, covert entry, pseudo-purchase, and proactive investigation (sects. 126g-126u CCP).

3.6 Procedural criminal law in other acts and international instruments

Some acts, such as the 1950 Economic Offences Act and the 1928 Narcotic Drug Offences Act, include procedural law regulations that partly deviate from the Code of Criminal Procedure, in particular concerning searches of the premises and the procedure for seizures.

The Code of Criminal Procedure is not applicable to minor roadtraffic offences. These are dealt with through administrative procedures without direct access to a criminal court. The 1989 Administration of Road Traffic Offences Act empowers the police to impose a maximum administrative fine of € 340 per offence. The fine becomes irrevocable, unless a complaint is lodged with the prosecution service which acts as an administrative agency. Against the decision of the prosecution service, access to the cantonal judge of the district court is allowed, who may review the decision of the public prosecutor. Ultimately, an appeal may be filed with the court of appeal in Leeuwarden, which in this case functions as the highest (administrative) instance.
There is no special statute on criminal procedure for juvenile offenders. The Code of Criminal Procedure contains special provisions on juvenile court trial (sects. 486 through 505). As a rule, trials in juvenile court are not open to the public.
The 1991 Military Code of Criminal Procedure regulates the organization of the military court system and contains supplementary provisions for the military court trial.
The Netherlands have signed and ratified a number of (Council of Europe or European Union) conventions dealing with procedural law issues, for instance the conventions on Mutual Assistance in Criminal Matters, on Transfer of Proceedings in Criminal Matters, on Extradition, on the International Validity of Criminal Judgments, and on the Transfer of Sentenced Persons.

3.7 Code language

The Code of Criminal Procedure has been officially published in Dutch.
No translations in other languages than German are available.
– Die niederländische Strafprozessordnung vom 1. Januar 1926, translated and introduced by Hans-Joseph Scholten, Freiburg im Breisgau: edition iuscrim 2003.

New procedural criminal law acts can be found on www.overheid.nl.

4 The main organs of the criminal justice system

A The police force

4.1 Organization of the police

The formal organization of the police force is laid down in the 1993 Police Act. Prior to this Act, the police force was divided into a national police force and 148 municipal police forces. The 1993 Police Act reformed the organization and main structures of the police service. The main reason was the need to increase efficiency and effectiveness in the fight against supralocal, national and international (organized) crime.
The country is divided into 25 police regions. Each region has its own police force under the administrative management of the mayor of the largest or most central town in the region; the other mayors or burgomasters in the region participate in a supervisory council, which, however, has very limited powers. The regular police force has 48,000 employees, of whom 33,000 are executive police officers, vested with the right to investigate criminal offences.

Besides the regional police forces, a national police force exists. This force consists of various units, such as the motorway police, the water police, the railway police, and the department of criminal investigations *(Divisie Recherche)*. This department is responsible for international police cooperation as well as for the international exchange of police information, maintaining the contact with Dutch liaison officers abroad and foreign liaison officers in the Netherlands. The national crime squad (*Landelijk Recherche Team, LRT*) forms part of this department. The regional police forces and the national police force act under the ultimate supervision of the Minister of Interior.

In addition to the regional and national police forces, there is the Royal Dutch Military Police, a small force which, under the supervision of the Minister of Defense, primarily exercises the general police task within the Dutch armed forces.

The regional criminal investigation service (*Regionale Recherche Dienst*) forms part of the regional police force but has a separate position within it. The criminal investigation service includes specialized units, such as the criminal intelligence units, and has around 8,000 investigation officers. The main task of the criminal investigation police is to investigate criminal offences, either on their own initiative or in response to tip-offs from the public. Owing to the high number of criminal offences, most police time is spent processing information. As a result, the police forces in regions with major cities are often not in a position to devote sufficient time to traditional investigations. The clear-up rate of registered crimes gradually went down to around 16% today.

In addition to the regular police service, there are special criminal law enforcement agencies both on the local and the national levels, which are vested with the right to detect and investigate a restricted category of offences. These agencies form part of the local or national administration.
On the national level, there are special investigative agencies under the control of governmental departments, such as the Customs and Excise Investigative Office of the Inland Revenue Ministry, and the Inspectorate for labour relations of the Ministry of Social Affairs and Employment. These special agencies have investigative powers only for criminal offences related to matters of immediate concern to these ministries.

Finally, a National Information and Security Service (the former National Secret Service) exists which is accountable for the national security and the continuation of the democratic order.

4.2 Tasks of the police force

The task of the police force (sect. 2 Police Act) is to enforce the legal order, and to assist those who need help. The enforcement of the legal order comprises the enforcement of criminal law, the enforcement of public order, and the performance of judicial services.
When enforcing public order, the police operate under the authority of the mayor who can issue instructions in this respect.
When enforcing criminal law and performing judicial services, the police act under the authority of the prosecution service. The enforcement of criminal law comprises the effective prevention, termination, and investigation of criminal offences. The prosecution service can give instructions to the police for the enforcement of criminal law.
A police officer has jurisdiction *ratione loci* in the whole of the Dutch territory, but as a rule he will restrict his actions to the region where he is employed. In order to carry out judicial services all senior police officers have the capacity of auxiliary to the public prosecutor *(hulpofficier van justitie)*. In this capacity, they may carry out some tasks on behalf of the public prosecutor.

There is no sharp division between the enforcement of public order and the enforcement of criminal law, so it is not always clear under whose authority the police act. Therefore, the mayor who has the administrative management of the regional police force (*korpsbeheerder*) regularly meets with the head of the regional police force and the (deputy) chief of the regional prosecution service (the so-called tripartite consultation) to discuss questions such as the input of the police force to fight local crime and improve local safety.

4.3 Powers of the police force

In relation to the task to detect and investigate criminal offences, the police are vested with specific statutory powers such as arrest, police custody, and seizure. Some powers may only be exercised by senior police officers who have been designated as auxiliary to the public prosecutor. An auxiliary is not a member of the prosecution service, nor vested with the powers of a public prosecutor. However, he is vested with the power to use coercive measures, such as search and police custody.
The police may use force in the exercise of their police tasks. Furthermore, the police may carry out a body search if safety reasons so require.
On the basis of the Police Act the police have the power to perform limited invasions of someone's privacy by means of surveillance or taking pictures of persons in public.

4.4 Supervision over the police

The prosecution service is ultimately responsible for the criminal investigation. Public prosecutors have to ensure that the police observe all statutory rules and procedures.
Formally, the public prosecutor is the senior investigator (sects. 148 CCP and 13 Police Act). In practice, however, the police deal with most cases without prior consultation with the public prosecutor except in more important criminal cases where the latter may give detailed instructions. Otherwise, consultation takes place on a more abstract level, in order to determine the policy for the investigation of certain kinds of crime and for the use of special investigation methods (undercover agents, infiltrators, etc.). This is due to the limited strength of the prosecution service, as well as the recognition that, with regard to investigative techniques and tactics, the police possess more expertise than the prosecution service.
There is also consultation in specific cases where police officers require the approval or cooperation of the public prosecutor or the examining magistrate for the use of certain means of coercion.

Until recently, the prosecution service did not perform its supervisory role over the police properly. The police enjoyed too much autonomy in their investigative activities, in particular in the fight against organized crime.
The 1996 report by the Parliamentary Inquiry Committee on Police Investigation made clear that the police extensively used illegitimate undercover policing methods. In using those methods, the golden rule: 'no competence without responsibility, no responsibility without accountability' was ignored. The main reasons for this were: the lack of legislation and clear rules, the lack of authority and supervision by the prosecution service, and the lack of organization in the police force, fostered by the relative independence of the Criminal Intelligence

Units, whose investigation was either sealed off – only to be disclosed by the public prosecutor in court – or remained secret. Due to the conclusion of the Parliamentary Inquiry Committee and the ensuing Parliamentary debate, statutory rules on investigative police methods have been enacted in 2000.
Furthermore, in 1999 a reorganization of the prosecution service took place in order to improve its supervisory role over the police.

4.5 Instructions to the police

Public prosecutors have taken a more active part in investigative work by issuing written or oral instructions to the police on the investigation of specific offences. This may be a result of the increasing complexity of cases and the lack of financial resources, which has made it necessary to fix priorities when instituting investigations. Furthermore, the Supreme Court's rulings on inadmissible evidence have increasingly stressed the importance of public prosecutors in ascertaining, as early as possible, what methods should be employed in the investigation.

It follows from the above that the criminal investigation police are largely responsible for investigating the facts and ascertaining the truth. The majority of criminal offences, which come to trial, are prosecuted only on the basis of the information collected by the investigating police officers.

B The prosecution service

4.6 Organization of the prosecution service

The prosecution service is a nationwide organization of prosecutors. It is organized hierarchically. At the top is the Board of prosecutors-general. The service functions under responsibility of the Minister of Justice, but it is not an agency of the Ministry of Justice. The service is part of the judiciary.
The organization of the prosecution service is regulated by the 1827 Judicial Organization Act (JOA). In 1999, the prosecution service has been profoundly reformed.
The total number of prosecutors stands at around 500. One quarter of all prosecutors is female. Prosecutors are recruited in the same way as judges. They belong to the judiciary but, unlike judges, they are not appointed for life. Public prosecutors are appointed by the Crown and retire at the age of 65.
The prosecution service is organized in two layers, corresponding to courts of first instance and courts of appeal.
At the nineteen district courts, the prosecution service (*arrondissementsparket*) consists of prosecutors with the rank of the chief prosecutor, senior prosecutors, prosecutors, substitute prosecutors, and prosecutors acting in single court

sessions. The public prosecutors are supported by staff members (*parketsecretarissen*) who may hold a mandate to summon a suspect in simple cases. As a rule, these 'parketsecretaries' check the police files to see whether there is sufficient evidence for a prosecution, and draft the charge and wit of summons.
At the five courts of appeal, the service consists of the chief advocate-general and the advocates-general. The main task of the service at the court of appeal level is to deal with charges in appellate cases.

4.7 National prosecution office

There also exists a national prosecution office located in Rotterdam, which is not linked to a particular district court. This office supervises the national crime squad (*LRT*). The national crime squad mainly investigates international crimes like human trafficking, terrorism, moneylaundering, and fraud. The national prosecution office prosecutes cases investigated by this unit. Furthermore, the national prosecution office develops the investigation and prosecution policy with regard to (international) organized crime. An operational task of the office is the coordination and handling of foreign requests for legal assistance.

4.8 The Board of prosecutors-general

There is no hierarchical relation between prosecution services of the courts of first instance and the prosecution services of the courts of appeal. Both are subordinated to the Board of prosecutors-general. The Board directs the prosecution service as one organization.
The prosecution service is headed by a board of three to five prosecutors-general (*College van procureurs-generaal*). The Crown appoints the chairman of the Board. The Board has its office (*het parket-generaal*) in The Hague. The Board of prosecutors-general may give instructions to the members of the prosecution service concerning their tasks and powers in relation to the administration of criminal justice and other statutory powers, e.g., supervision of the police. Such an instruction may be of a general criminal policy nature or of specific nature. Prosecutors are legally bound by these instructions.
The highest authority over the investigation and prosecution rests with the Board. The Board ultimately supervises the implementation of a proper prosecution policy by the prosecution service, and a proper investigation policy by the police. The Board meets on a regular basis with the Minister of Justice.
The Board of prosecutors-general is advised by a number of advisory bodies, consisting of public prosecutors and high police officers. One of these bodies is the serious crime committee, which functions as policymaking body concerning organized crime, and which filters recommendations about organized crime control. The advisory bodies initiate the issuing of national prosecution guidelines.

4.9 Main duties and power of the service

The main task of the prosecution service is to administer, by means of criminal law, the legal order. The prosecution service plays a pivotal role in the administration of criminal justice. The decisions made by the public prosecutor involve profound consequences for the offender, and repeated refusals to prosecute certain crimes may also lead to a decline in the detection and investigation of offences by the police. In turn, the charges laid against the accused largely delineate the adjudicatory functions of the courts.

It is no exaggeration to say that the Dutch prosecution service has enormous powers, at least in dealing with the criminal cases. It has a monopoly over prosecutions, and employs the expediency principle in this connection. Furthermore, it makes use of its hierarchical structure to pursue a coordinated policy. In this way, the prosecution service is able to determine systematically what cases should be brought to trial, and what sentences the courts should be asked to impose.

Since the introduction of the present Code of Criminal Procedure in 1926, the decision to institute criminal proceedings has been reserved exclusively to the prosecution service. Approximately one half of the crimes, which reach the public prosecutor's office through the intermediary of the police, are not brought to trial, but are disposed of by the prosecution service itself. Usually, this involves a decision not to prosecute through a dismissal due to technicalities, or through a dismissal due to the exercises of the expediency principle, or by a settlement out of court by means of a transaction.

If the prosecution service decides to refer a matter to a criminal court, suspects in simple, less serious kinds of crimes will generally be summoned by the public prosecutor exclusively on the basis of the information obtained in the police investigation. In cases of a more complicated nature and serious crime, the public prosecutor may apply to the examining judge for a preliminary judicial investigation. When the preliminary investigation, conducted either by the police or by the examining judge, is completed, it is once again the public prosecutor who must decide whether or not to prosecute or to continue the prosecution.
If the suspect is notified by the public prosecutor that no charges will be brought (either conditionally or otherwise), the case is terminated, unless fresh incriminating evidence is subsequently discovered.

If the public prosecutor decides to prosecute (i.e., if a notification of further prosecution or a summons is issued), the accused can lodge a written notice of objection with the district court. The objection procedure enables the suspect to challenge in a non-public setting (i.e., *in chambers*), what may be a rash or unjust prosecution, and thereby avoid being exposed to a public trial.

This judicial review of the decision to prosecute is fairly limited. In the great majority of cases, the notice of objection procedure results, after a brief investigation, in a decision by the judge in chambers that the case should go to trial after all. Should the court find that a prosecution is unjustified, the case will be dismissed. Otherwise, the case is prepared for trial. The grounds on which the prosecution may be dismissed are limited to four:
– where the case is to be dismissed because the prosecutor does no longer have the right to prosecute, e.g., due to the statute of limitations;
– where the evidence against the accused is manifestly insufficient;
– where the act does not constitute a criminal offence; and
– where the accused is not liable, e.g., due to self-defense.

4.10 The prosecution office at the Supreme Court

The prosecution office attached to the Supreme Court is not part of the prosecution service. It forms an independent office with special tasks and powers. The office consists of the procurator-general and the advocates-general.The procurator-general and the advocates-general at the Supreme Court are independent officials appointed for life with mandatory retirement at the age of seventy (sects. 117 Dutch Constitution and 1a Position of Judicial Officials Act).

The main statutory tasks of the procurator-general are:
– to prosecute Members of Parliament, ministers and deputy ministers for criminal offences committed in the exercise of their function. The order to prosecute is given by Royal Decree or by decision of the Lower House (*Tweede Kamer der Staten-Generaal*);
– to advise the Supreme Court in all cases dealt with, and to give his legal opinion on disputed legal questions;
– to appeal in cassation in the interest of the proper application of criminal law.

The task to advise the Supreme Court and to give a legal opinion on disputed legal questions is primarily carried out by the advocates-general.

The procurator-general is in particular charged with supervision of the enforcement and implementation of statutory rules by the courts.

4.11 Political accountability

The prosecution service is not an independent body, in the sense that the Minister of Justice is politically accountable for the policy of the prosecution service and can be held to account in Parliament for intervening or failing to intervene in this policy. He can be questioned by Parliament both for the prosecution policy at large, and for individual prosecutorial decisions. This political accountability is one of the core elements of the Dutch Rule of Law State.

The Minister of Justice is hence involved in the formulation of prosecution policy at large. There are regular contacts between the Minister and the Board of prosecutors-general in this respect. The Board of prosecutors-general is responsible for the proper realization of the prosecution policy, as agreed with the Minister of Justice. The Board issues instructions in this respect. The Minister may be involved in the decisionmaking in individual cases as well. He may be consulted by individual pro-secutors in cases where the prosecutorial decision may have an impact on the general prosecution policy, or where his political accountability is at stake. The final responsibility rests with the Minister of Justice.
Section 127 of the Judicial Organization Act therefore vests the Minister of Justice with the power to give general or specific instructions on the exercise of tasks and powers of the prosecution service.
The Minister may give instructions concerning investigation and prosecution in individual cases as well. Before the Minister can issue such an instruction, the Board of prosecutors-general has to be consulted. The instruction must be reasoned and issued in written form.
Officials of the prosecution service are required to follow those instructions. As a rule, such an instruction has to be added to the files, together with the views of the Board of prosecutors-general in order to give the court full information. A ministerial instruction not to prosecute or not to investigate a criminal offence has to be notified to Parliament, together with the view of the Board.

The need for democratic control increased over the last decades as the prosecution service acquired more adjudicatory powers and only a restricted number of criminal cases were brought to trial.

Although the power of the Minister of Justice to issue instructions under section 127 JOA is unrestricted, the Minister will rarely exercise this power. In most cases, consultation with the Board of prosecutors-general will have the effect that the Board will issue such an instruction. Only in rare cases where the Board disagrees with the opinion of the Minister, he is likely to use this power.

The Minister cannot give orders to the procurator-general and the advocates-general of the Supreme Court, who hold an independent position. Otherwise, conflicting interests might occur between their powers and those of the Minister of Justice.

C The courts

4.12 Organization of the court system

The organization of the court system is regulated by the Judicial Organization Act (*Wet op de rechterlijke organisatie*), which was enacted in 1827. There has been a major reform of this statute in 2002.
At present, there is a total of around 1,700 (FTE) judges in the Netherlands, of whom around 400 deal with criminal cases. Judges are appointed for life by the Crown, and retire at the age of seventy. Supreme Court justices are appointed from a list of nominees drawn up by the Lower House.

Criminal offences are dealt with by criminal courts at three levels. The first instance level are district courts (*rechtbanken*). There are nineteen such courts. The district courts differ greatly in size, which depends mainly on the number of inhabitants of the jurisdiction.
The second level is the court of appeal *(gerechtshof)*, of which there are five.
The highest level is the Supreme Court *(Hoge Raad)* in The Hague.
Unlike the other courts, the Supreme Court does not deal with the facts, but reviews the lawfulness of judgments of lower courts and the manner of proceedings. Exceptionally, the Supreme Court is court of first and last instance. Where Members of Parliament, ministers and deputy ministers have to be tried for offences committed in the exercise of their functions, the Supreme Court is competent to try these cases. Up to now, such a trial has never taken place.

Not all judges are professional judges. Lawyers, legal scholars and other persons who have a degree in law and who possess knowledge and experience of the criminal justice system may be appointed as substitute judges. In that capacity, they participate on a more or less regular basis in the administration of criminal justice. They receive a small remuneration. By their participation the case load of professional judges is reduced and courts may benefit from their specific expertise.

4.13 Composition of criminal courts

Infractions are tried by a single cantonal judge (*kantonrechter*) of a district court. Crimes are tried either by a full bench of three judges, or by a single judge of a district court. The more serious cases are dealt by a full bench. If the public prosecutor considers the case to be a comparatively minor one, he can prosecute before the police judge (*politierechter*), a single judge chamber of the district court. The police court may not impose prison sentences exceeding twelve months. The police court is entitled to refer a case to the full bench criminal division if he is of the opinion that a full bench would be more appropriate. Furthermore, nearly all economic crimes and environmental crimes are tried by a single judge, the economic police court *(economische politierechter)*, and

nearly all juvenile crime is tried by the single judge of the juvenile court (*kinderrechter*).
The court of appeal sits in a three judge or one judge bench.
As a rule, the Supreme Court hears a case with a bench of five judges. It may hear a case with a bench of three judges as well, where the Supreme Court deems that the review of the case cannot result in cassation, or when no legal questions are at stake (sect. 75 JOA).

4.14 The Supreme Court

The highest court in criminal matters is the Criminal Chamber of the Supreme Court. It is competent to review a decision (cassation) in cases where the law has been improperly applied, or the rules of due process and fairness of the procedure have been violated (sect. 79 JOA). Both the defendant and the prosecution service have the right to appeal in cassation to the Supreme Court against all criminal judgments of lower courts against which no other remedy is open, or against which such remedy has been open. Since 2002 the ban on cassation against an acquittal has been deleted.
Where the Supreme Court quashes the judgment due to an error of law, the case, as a rule, is remitted to the court whose judgment was quashed. In cases of a procedural error, the Supreme Court remits the case to another court. The court of remittance is bound by the decision of the Supreme Court.

The Supreme Court can also give a decision in cases which the parties themselves have not submitted. This is possible when the procurator-general at the Supreme Court *sua sponte* submits a case to the Supreme Court to decide a matter of principle, even though no appeal in cassation has been lodged. This so-called cassation in the interests of law (*cassatie in het belang van de wet*) is intended to ensure the uniformity in the application of criminal law by the courts. Furthermore, the Supreme Court is empowered to decide on the request of a convicted person that his case, in which a final judgment already exists, has to be retried. This review of a case is only possible if contradictory judgments in a case exist or new, previously unknown, facts in favour of the convicted person have emerged that cast serious doubt on the validity of the final judgment. This review is an extraordinary remedy against miscarriages of justice. The retrial is done by a court of appeal to which the case is referred (sects. 457-481 CCP).

4.15 Precedents

The Supreme Court can play a guiding role in the application of criminal law at large through its powers to give decisions of principle on certain criminal law issues. Although there is no statutory rule on precedents – and due to their status as independent courts – and lower courts are not compelled to follow the views of the Supreme Court, they will generally do so, since the Supreme Court does not readily deviate from previous rulings.

4.16 Lay participation

There is no jury system in the Netherlands. Criminal justice is administered by legally qualified career judges and public prosecutors.
There is thus no participation by lay persons except in two cases:
– the military division of both the district court and the court of appeal in Arnhem consists of two professional judges and one military lay judge; and
– the penitentiary division of the court of appeal in Arnhem, which hears penitentiary issues such as the refusal of early release, consists of three professional judges and two experts in behavioural sciences.

D Probation service

4.17 Organization of the probation service

Since 1823, when the Dutch Association for the Moral Improvement of Prisoners was established as a private initiative, the Dutch probation system was extended by a number of (sometimes religious) associations, all focusing on the three main tasks for the probation service: cell visits, the provision of social enquiry reports, and the provision of aftercare.
The past decades, reorganizations in the probation service *(reclassering)* took place in order to increase its efficiency in spite of budget cuts.

The present probation services cooperate in the Dutch Probation Foundation, which allocates the budget for probation activities over three probation agencies: the probation department of the Salvation Army, in particular dealing with homeless people and juveniles in multiproblem situations, the probation department of the Mental Health Care Organization, dealing with alcohol and drug addicted clients, and the National Probation Service with five branch offices and over sixty executive units with eleven to fifteen full-time staff members.
The Foundation is governed by the 1995 Probation Rules. The Foundation's responsibility is to assure that in each of the district court jurisdictions the statutory probation activities are performed by professional probation officers, who have received an (academic) education in social work. For those activities, the Foundation annually receives a budget from the Ministry of Justice (around 110 million euro).

4.18 Main functions

The main functions of the probation service are laid down in sections 8-14 of the 1995 Probation Rules:
- the provision of early help, consisting of provisional social enquiry reports on the offender to the police, the prosecution service, and the judge in case the person in question has been arrested by the police and pre-trial detention is considered;
- the provision of social enquiry reports at the request of the criminal justice agencies, of the offender or on the initiative of the probation service in order to enable the agencies to make decisions;
- the provision of assistance and supervision for convicted persons;
- assisting offenders at the court session;
- assisting offenders with behavioural difficulties;
- providing probation activities in the last phase of the implementation of a prison sentence and during aftercare (penitentiary programs);
- preparing and implementing task penalties and substitutes to imprisonment, such as electronic monitoring, including supervision of compliance with task penalties and providing information to the competent authorities on compliance.

Probation activities in penitentiary establishments have been considerably restricted since 2002 due to budgetary cuts.

4.19 Role of volunteers

There are two kinds of volunteers in probation activities:
- individual volunteers who, at the request of the Probation Foundation, cooperate in carrying out the statutory probation tasks; and
- organizations of volunteers who initiate and develop projects which are closely related to the statutory probation activities.

4.20 Sentence enforcement agencies

The enforcement of custodial sentences is a statutory task of the prosecution service (sect. 553 CCP) but is actually carried out by the National Agency of Correctional Institutions of the Ministry of Justice (*Dienst Justitiële Inrichtingen*) operating a computerized cell-allotment system. The budget of the Agency is around 1.3 billion euro.

The Agency has to ensure the safe, efficient and humane enforcement of custodial sentences and measures. The prison organization is a deconcentrated one.

Strategic prison policy is developed by the Minister of Justice, who is politically accountable for the development of prison policy. The National Agency of Correctional Institutions of the Ministry of Justice translates strategic prison policy into operational policy. The policy is implemented by the prison governor and his assistants. The division between policymaking and policy implementation has been very favourable for the prison organization, because the prison management teams get ample opportunity to make their own decisions in personnel and financial and material matters, as each of the penitentiary establishments manages its own budget.

E The Bar and legal counsel

4.21 The Dutch Bar Association

Assistance in criminal matters and legal aid is provided by lawyers registered with a Dutch district court, or by lawyers from other European Union countries, provided these cooperate with a Dutch registered lawyer.
A university degree in law and further professional training is the legal qualification for registration. The number of registered lawyers is around 12,000 (25% of whom are female). Registered lawyers practice their profession in a self-employed capacity.
There are around 3,000 law firms, the majority of which are small (<20 lawyers). Relative few are solely defense lawyers.

All registered lawyers have to be members of the Dutch Bar Association. The General Board of the Association, under the presidency of the Dean, is elected by the members of the Assembly of Deputies who are elected by the regional Bar associations. The General Board promotes the proper practice of law by lawyers, and may take all measures in this respect.

All registered lawyers are subject to disciplinary law regulations issued by the Association.
Disciplinary jurisdiction is exercised by Disciplinary Councils in first instance, and by the Court of Discipline in appellate cases. Disciplinary sanctions may be imposed for acts and failures of registered lawyers which are in conflict with the proper care a lawyer has to provide to those whose interests he has to serve, and for acts and failures which are unbecoming of a registered lawyer.
Admission to the profession, the powers and duties of registered lawyers, the organization of the Bar, and disciplinary law are regulated in the 1952 Bar Act.

In a strict sense, defense counsel are not bodies under public law, or even an official part of the criminal justice system. Such institutions as public defenders are unknown in the Netherlands.

Lawyers are, nevertheless, in many respects very definitely dependent upon the judicial organization in the widest sense of the word in order to conduct an effective defense both at the trial and in the preliminary investigation.

4.22 Legal aid

Under the Code of Criminal Procedure, a defendant is at all times entitled to choose one or more defense counsels. In principle, the defendant has to pay for any defense counsel chosen in this way.

The Code also allows appointment of defense counsel in cases involving indictable offences. In such cases, the fee is paid by the criminal justice authorities. A counsel is assigned automatically in cases involving deprivation of liberty. Once a suspect has been detained in police custody, he is given legal assistance by the counsel on duty. Such an appointment is then confirmed *ex officio* by the president of the district court when the suspect is remanded in custody.

Furthermore, a defense counsel may be assigned by the Regional Legal Assistance Council on request in order to represent a suspect with a low income. The suspect as a rule has to pay the Council a financial contribution proportionate with his income. The rules on legal aid are contained in the 1993 Legal Aid Act.

As a result, lawyers acting in criminal cases are generally assigned to the suspect. Defense counsel charge fees calculated in accordance with fixed rates. A 'no cure no pay' agreement is not allowed. Clearly, the system for the appointment of defense counsel and the size of the fees are factors which affect the degree of commitment of defense counsel.

5 Issues of criminal law

5.1 Definition of criminal offence

The Criminal Code does not give a definition of the concept of a criminal offence. It deals with the conditions that have to be met before an offender can be punished, and provides statutory definitions of different punishable conduct. The statutory definition of an offence contains the constituent elements of the criminal offence. The constituent elements must be summed up by the public prosecutor in his charge, and the presence of these elements must be proven by facts presented by the prosecution service before a court may sentence the offender. Where a constituent element is missing in the charge, a discharge (*ontslag van rechtsvervolging*) must follow.
Where the public prosecutor cannot prove by evidence that the charge is matched by the facts, an acquittal (*vrijspraak*) must follow.

In practice an offender whose conduct falls within the statutory definition of an offence is criminally liable. In the charge the absence of defenses does not have to be summed up. Substantive criminal law presumes that in most cases defenses will not apply. If there are indications that a defense may apply – mainly the offender will raise his defense – the court has to ascertain whether the defense applies. If so, the court has to discharge the accused.
The statutory elements of a criminal offence play an important role in substantive criminal law, in view of the principle of legality.

5.2 Principle of legality

The principle of legality is established in the Criminal Code. Section 1 reads 'No conduct constitutes a criminal offence unless previously statutorily defined in criminal statutes.' A similar provision is laid down in the Constitution (sect. 16). The legality principle is a guarantee against arbitrary administration of criminal justice, and offers a high degree of legal certainty. The principle guarantees that only the legislature may define criminal offences. The principle guarantees, moreover, that no court may create new criminal offences by analogous interpretation of criminal law provisions.
The principle, furthermore, guarantees that new criminal law provisions may not be retroactive. The prohibition of retroactivity is not applied if a new criminal provision replaces an old one, and the redefinition of the criminal offence is to the advantage of the offender or the reduction of the maximum sentence to be imposed is the result of a change of the legislators views on the punishability of the offence. In these cases, the most favourable provision must be applied.
Furthermore, the principle of legality, requires that only penalties specified by statutes may be imposed.

5.3 Applicability of Dutch criminal law

Sects. 2-7 CC contain provisions on the applicability of Dutch criminal law.
Under the principle of territoriality, Dutch criminal law is applicable to anybody who commits a criminal offence on Dutch territory or on board of a Dutch vessel or aircraft outside the Netherlands.
Under the universality or protective principle, anyone who commits designated offences against the interest of the Dutch State or Dutch financial interests outside Dutch territory falls under Dutch criminal law jurisdiction.
Under the active nationality principle, Dutch criminal law is applicable to anybody of Dutch nationality who commits, outside Dutch territory, either a designated crime or an offence that under Dutch criminal law constitutes a crime and under the law of the country where the offence is committed is considered to be a criminal offence (the requirement of double incrimination). The designated crimes include, *inter alia*, offences against the security of the Dutch state and royal dignity.
Furthermore, Dutch criminal law applies to anybody whose prosecution by a foreign state has been transferred to the Netherlands pursuant a treaty conferring jurisdiction to prosecute in the Netherlands.
Finally, Dutch criminal law is applicable to a public official employed by a Dutch public service who commits, outside Dutch territory, serious offences involving abuse of office.

5.4 Classification of offences

All criminal offences are classified as either crimes or infractions. There is no clear and conclusive qualitative criterion (such as *mala in se* versus *mala prohibita*). The division is used for all criminal law statutes. The legislature decides whether an offence constitutes a crime or an infraction.
The classification of offences is decisive for the question by what judge the criminal offence must be tried: crimes (as a rule) are tried by the police judge or full bench of the district court, whereas infractions are tried by a cantonal judge (sect. 382 CCP). The classification, furthermore, is relevant because an attempt to commit an infraction, or complicity as an accessory to an infraction, does not trigger criminal liability.

Minor traffic offences do not constitute a criminal offence but an administrative offence, to be administered through an administrative procedure without direct access to a court. Such an administrative offence is administered by the police through an administrative fine. The maximum fine is € 340. The police officer's decision to impose an administrative fine is final if, within a certain period of time, no appeal is filed with the prosecution service. In the latter case, the public prosecutor has to re-examine the case and can revoke the police officer's decision. Where the public prosecutor reaffirms the administrative fine, one may appeal to the cantonal judge of the district court who acts as an administrative

judge. The court of appeal in Leeuwarden functions as the highest administrative appellate court in respect of administrative offences.

5.5 Legal definitions of some major crimes

Intentional homicide (sect. 287 Criminal Code): Anyone who intentionally takes the life of another person is guilty of homicide and liable to a term of imprisonment not exceeding fifteen years or a fine of € 45,000.

Murder (sect. 289 Criminal Code): Anyone who intentionally and with premeditation takes the life of another person is guilty of murder and liable to life imprisonment or a term of imprisonment not exceeding twenty years of imprisonment or a fine of € 45,000.

Assault (sect. 300 Criminal Code): Physical abuse is punishable by a term of imprisonment not exceeding two years or a fine of € 11,250.

Theft (sect. 310 Criminal Code): A person who removes any property belonging in whole or in part to another, with the intention of unlawfully appropriating it, is guilty of theft and liable to a term of imprisonment not exceeding four years or a fine of € 11,250.

Robbery (sect. 312 Criminal Code): Theft preceded, accompanied or followed by an act of violence or threat of violence against persons, committed with the object of preparing or facilitating the theft or, when the offender is caught red-handed, of either securing escape for himself or for others participating in the serious offence, or of securing possession of the stolen property, is punishable by a term of imprisonment not exceeding nine years or a fine of € 45,000.

5.6 Minimum age for criminal responsibility

The minimum age for criminal responsibility is twelve years. Children under the age of twelve cannot be prosecuted for criminal offences, but Civil Code measures, such as a referral to a juvenile treatment center, may be applied.
To juveniles between twelve and sixteen years of age, juvenile criminal law is applicable. To juveniles aged between sixteen and eighteen, in principle juvenile criminal law is applied as well, but the juvenile court may apply adult criminal law where it finds grounds to do so by reasons of the gravity of the offence, the character of the offender, or the circumstances in which the offence was committed. For the same reasons, to adults aged between 18 and 21 juvenile criminal law may be applied instead of adult criminal law. The statutory age of adulthood is eighteen years. There is no statutory maximum age for criminal responsibility, although old age may be taken into consideration by the public prosecutor when deciding whether or not to prosecute a crime.

5.7 Causation

Although, according to many statutory definitions of offences, the causing of harm of a particular kind constitutes a criminal offence – see e.g., the statutory definition of murder – the Criminal Code does not define the circumstances under which an act may be perceived as the cause of a result.
The criterion for causation is developed in the Supreme Court's case law. Initially, the Court used the reasonable foreseeability of the result as the criterion for causation.
Today, the Court applies the criterion of reasonable imputability in its case law. The foreseeability of the result is still an important factor, as is the factor that no other act may predominantly have influenced the result.

5.8 Mental elements

The statutory definition of crimes as a rule contains a mental element (e.g., intent or negligence). This mental element must be present in order to trigger criminal liability, and must be proven by the public prosecutor before the court may sentence the offender. Absence of evidence of the presence of the mental element leads to acquittal. The concept of strict liability is unknown in Dutch criminal law.
Where the mental element is not part of the statutory definition of the criminal offence, which is as a rule the case for infractions, the mental element is presumed to be present, unless there are indications to the contrary.
The absence of the mental element in such a case leads to a discharge due to the absence of criminal liability.
It is a key principle of Dutch substantive criminal law that there is no criminal liability without culpability or blameworthiness *(geen straf zonder schuld)*.

5.9 Culpability

Two forms of culpability are distinguished: intent *(opzet)* and negligence *(schuld)*.
Intent includes acting willingly and knowingly, as well as acting in the awareness of a high degree of probability. Intent may be present in the form of a *dolus eventualis*, which is the case where the offender willingly and knowingly accepts a considerable chance that a certain result may ensue. The *dolus eventualis* doctrine is quite often applied in court practice.
Negligence includes both conscious and unconscious negligence. The former is present when the offender is aware of a considerable and unjustifiable risk that the element exists or will result from the act, but thinks on unreasonable grounds that the risk will not materialize.
Unconscious negligence is present when the offender was not aware of the risk, but should have been aware of it (carelessness or thoughtlessness).

5.10 Justification and excuse

The Criminal Code contains a number of provisions establishing defenses. In addition to these statutory defenses, there are two non-statutory defenses, which have been developed in the case law of the Supreme Court.

The Criminal Code does not distinguish between justification and excuse. In both cases, according to the Criminal Code, the offender is not criminally liable. The distinction between justification and excuse is made in criminal law doctrine. At present, the prevailing view is that justifications concern the lawfulness of the act whereas excuses concern the blameworthiness. If grounds for justification are present, the violation of the law does not constitute a criminal offence. If grounds for excuse are present, the violation of the law constitutes a criminal offence, but the offender cannot be blamed for having committed the offence. All defenses may be invoked with respect to all offences; no single offence is excluded.

The statutory grounds for justification are:
– necessity (sect. 40 Criminal Code);
– self-defense (sect. 41 Criminal Code);
– public duty (sect. 42 Criminal Code); and
– obeying the official order of competent authority (sect. 43 Criminal Code).

The requirements of subsidiarity and proportionality have to be met when accepting a justification defense.
The statutory grounds for excuse are:
– insanity (sect. 39 Criminal Code);
– duress (sect. 40 Criminal Code);
– excessive self-defense (sect. 41(2) Criminal Code); and
– obeying an order issued without authority (sect. 43(2) Criminal Code).

Two additional defenses have been developed in the case law. The first one, absence of substantive unlawfulness, leads to justification; the other one, absence of all blameworthiness due to ignorance (mistake of facts or mistake of law), leads to excuse. In both cases, according to the Criminal Code, the offender is not criminally liable.

5.11 Justification defenses

– *Necessity (noodtoestand)*
Section 40 Criminal Code reads: 'Anyone who commits an offence as a result of a force he could not be expected to resist is not criminally liable.'
On the basis of the history of the Code, the Supreme Court ruled that this section includes necessity.

Necessity is a situation in which a person has to choose between conflicting duties. 'If the person in such a situation obeys the most important one and violates by doing so the criminal law his act is justified' according to the Supreme Court. In this formulation, the principles of subsidiarity and proportionality are expressed.

– *Self-defense (noodweer)*
Section 41 Criminal Code reads: 'Anyone who commits an offence where this is necessary in the defense of his person or the person of another, his or another person's integrity or property against immediate unlawful attack is not criminally liable.'
As a rule, one may not take justice in one's own hands, but in the case of an immediate unlawful attack one may repel force by force, provided that there is no other convenient or reasonable mode of escape (subsidiarity). The amount of force must be reasonable (proportionality). In assessing whether the force was reasonable, the criminal court may take the personal characteristics of the offender into consideration.

– *Public duty and official order (wettelijk voorschrift en ambtelijk bevel)*
Section 42 Criminal Code reads: 'Anyone who commits an offence in carrying out a legal requirement is not criminally liable.'
Section 43 Criminal Code reads: 'Anyone who commits an offence in carrying out an official order issued by a competent authority is not criminally liable.'

In both cases, impunity is guaranteed because the person acted on the authority of a governmental body or public officer.

– *Absence of substantive unlawfulness (afwezigheid van materiële wederrechtelijkheid)*
This justification defense is developed by the case law of the Supreme Court. In 1933, the Court ruled that, even though unlawfulness is not an element in the statutory definition of the offence (thus unlawfulness does not have to be proved), the offender cannot be convicted where his act does not result in substantive unlawfulness. This is the case when an act (which is in conflict with the law) serves the same interest as is guaranteed by the law. The legal impact of this non-codified justification is limited. After 1933, the Court did not repeat its ruling.

5.12 Excuse defenses

– *Insanity (ontoerekenbaarheid)*
Section 39 Criminal Code reads: 'Anyone who commits an offence for which he cannot be held responsible by reason of a mental disorder or mental disease is not criminally liable.'

No statutory standards or case law standards are set for determining insanity, but in practice a person is not held responsible for his criminal conduct if at the time of such conduct, as a result of a mental disorder or disease, he lacks substantial capacity either to appreciate the wrongfulness of his conduct, or to bring his conduct into conformity with the requirements of law.
In assessing whether the offender cannot be held responsible, the court makes use of reports by psychiatrists.

– *Duress (overmacht)*
Section 40 Criminal Code encompasses both necessity and duress. An offender who acts under the pressure of an external force he could not reasonably resist is excused. The external force may be an unlawful threat from another person or a natural force.
If someone acts under the pressure of a force caused by his moral conscience, he does not have the defense of duress. In case of duress, the will of the offender is impaired to such a degree that he cannot be blamed for his act.

– *Excessive self-defense (noodweerexces)*
Section 41(2) Criminal Code reads: 'Anyone exceeding the limits of necessary defense, where such excess has been the direct result of a strong emotion brought about by the attack, is not criminally liable.'
When the unlawful attack causes strong emotions, such as rage, anger, fear, or desperation, the person attacked may not react properly by using a reasonable mode of escape. Due to the emotions, he may overreact and use an amount of force that is disproportionate. Due to the strong emotions, the offender's will is impaired so that he cannot be blamed for his act.

– *Obeying an unlawful order (onbevoegd gegeven ambtelijk bevel)*
Section 43(2) Criminal Code reads: 'Obeying an official order issued without authority does not remove criminal liability unless the order was assumed by the subordinate in good faith to have been issued with authority and he complied with it in his capacity as subordinate.'
Good faith may be both subjective and objective. The latter means that there is still a responsibility on the subordinate to be prudent, and in case of doubt to refrain from obeying the order.

– *Absence of all blameworthiness (afwezigheid van alle schuld)*
In line with the principle 'no criminal liability without blameworthiness' the excuse of absence of all blameworthiness has been developed in the Supreme Court's case law. It supplements the codified defenses. Absence of all blameworthiness may be due to ignorance of facts, or ignorance of law.
The ignorance of facts must be reasonable. The offender must have done all he reasonably could do in order not to be ignorant. If the ignorance is due to indolence, frivolity, or indifference, there is no absence of all blameworthiness.

The ignorance of law functions as a mitigation of the presumption that everyone has to know the law. The ignorance is only excused when the offender has actively sought expert advice on law by a person or agency having such an authority that he could reasonably trust the reliability of the advice, but was misinformed. Misinformation by the police, or a notary, a public official of a ministry may lead to excusable ignorance. Misinformation by his counsel does not lead to excusable ignorance of the offender.

5.13 Inchoate offences

Two inchoate offences are to be distinguished:

– *Attempt*
An attempt to commit a crime is punishable where the offender manifests his intention by initiating the crime (sect. 45 CC). In case of attempt, the statutory principal penalty for the crime is reduced by one third. This sentence reduction has two reasons: less danger to society has materialized than by the consummation of the crime, and the reduction may be an incentive for the offender not to consummate the crime.
The Code does not define where the preparation of a crime ends and the execution of a crime starts. The Supreme Court's case law seems to follow the objective theory: an act which in its outward appearance should be regarded as being directed to the consummation of the crime is an act initiating the crime.
There is no attempt if the crime has not been consummated by reason only of circumstances dependent on the offender's will, the so-called voluntary withdrawal (sect. 46b CC). The offender's motives for not consummating the crime are irrelevant.
There are two reasons for the impunity of this voluntary withdrawal: the offender is not as bad as he initially appeared to be, and impunity may be an incentive not to consummate the crime.

– *Preparation*
Preparation does not fall within the scope of attempt since there is no initiation of the crime. For the prevention of crimes, it was felt to be unsatisfactory that the police could not arrest offenders preparing serious crimes. In 1994, therefore, the preparation of serious crimes which carry a statutory prison sentence of not less than eight years has been criminalized (sect. 46 CC). Preparation of such a crime is punishable where the offender intentionally obtains, manufactures, imports, transits, exports, or has at his disposal, objects, substances, monies or other instruments of payment, information carriers, concealed spaces, or means of transport clearly intended for the commission of such a crime.
In the case of preparation, the statutory maximum penalty for the crime is reduced by one half or to ten years when the statutory maximum penalty is life sentence, since no or less danger for society has materialized.

There is no preparation where the crime has not been completed only by reason of circumstances dependent on the offender's will (sect. 46b CC).

5.14 Complicity

Complicity is the involvement in criminal offences as principal or as accessory before and during the fact.
Principals are those who commit a criminal offence, either personally or jointly with another, or who cause an innocent person to commit a criminal offence and those who, by means of gifts, promises, abuse of authority, use of violence, threat or deception, or providing the opportunity, means, or information, intentionally solicit the commission of a crime (sect. 47 CC).

Accessories to crimes are those who intentionally assist during the commission of a crime and those who provide the opportunity, means, or information to commit the crime (sect. 48 CC).
Accessory to infractions is not punishable. In the case of complicity as an accessory, the statutory maximum of the principal penalty is reduced by one third. In case the offence carries a life sentence, the accessory may be sentenced to an imprisonment of fifteen years maximum.

5.15 Corporate criminal liability

Criminal liability is not restricted to natural persons. Private or public corporate bodies, like provinces or municipalities, can also be held liable for committing an offence (sect. 51 CC). The State as public corporate body enjoys criminal immunity. State agencies however, like ministries, fall within the scope of sect. 51 CC. In the case where a criminal offence has been committed by a corporation, prosecution may be instituted against the corporation and/or against the persons in the corporation who have ordered the commission of the criminal offence and against those in control of such unlawful behaviour. A person is considered to be in control when he is in the position to decide that the act takes place and accepts the actual performance, or when he is in the position to take measures to prevent the act but fails to do so and consciously takes the risk that the prohibited act is performed. Both the person and the corporate body may be sentenced for the offence.
A corporate body commits a criminal offence if the corporation itself or the management is in the position to control the occurrence of the criminal activities and, moreover, if it turns out in the course of the events that these activities had been accepted by the corporate body.

5.16 Double jeopardy

Double jeopardy or successive prosecutions for the same act are prohibited by section 68 Criminal Code, which reads: 'No person may be prosecuted twice for an act for which a final judgment has been rendered by a (Dutch) court, except in cases of a review decision by the Supreme Court.'
The Code does not define what is meant by act.
According to the Supreme Court's case law, where one act constitutes more than one criminal offence, each of them can be prosecuted, provided the offences are different in the objective of prohibition and in the nature of the blame that can be imputed to the offender, e.g., a joyrider who drives dangerously can be prosecuted both for the offence of joyriding and for the offence of dangerous driving.

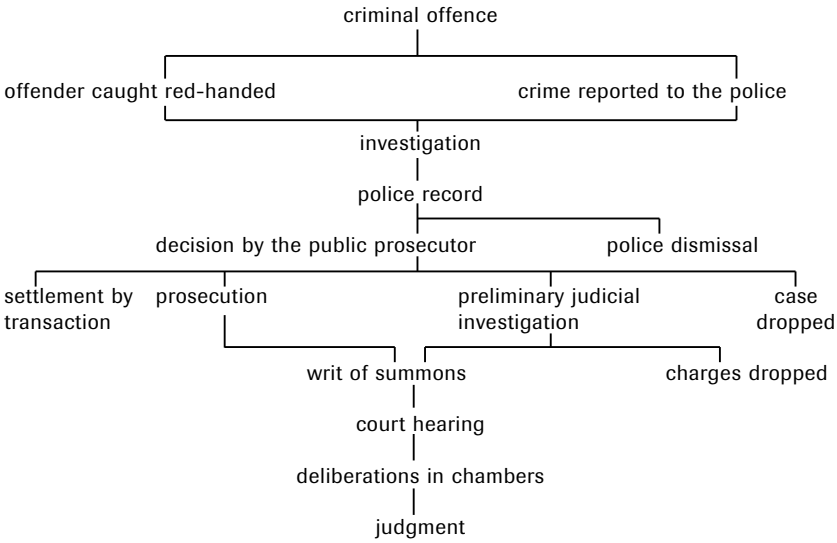
5.17 Statute of limitations

Time limits can bar the prosecution of a criminal offence. The rationale for the time limits is related to the reduced societal need to punish the offender, and the difficulties in gathering evidence after a long lapse of time. The more serious the offence, the longer the period of limitation is.
According to sect. 70 of the Criminal Code, the statute of limitation ranges from two years for all infractions, to eighteen years for crimes which carry a statutory punishment of life sentence. The time limits are six, twelve and fifteen years for crimes which carry statutory imprisonment of less than three, less than ten, and more than ten years respectively. Exceeding the time limits leads to a dismissal of the case.
The time limits for the enforcement of the sentence are one third longer than the time limits for the prosecution.
At present, a bill is pending in Parliament to abolish the time limit for murder and to extend the time limit to thirty years for crimes carrying a life sentence and to twenty years for crime carrying a statutory imprisonment of more than ten years.

6 Issues of procedural law

6.1 The pre-trial phase

Scheme of the criminal procedure in first instance



6.2 Pre-trial investigation

A criminal procedure for a court in first instance comprises two phases: the pre-trial investigation phase and the public trial phase.

There are two kinds of pre-trial investigations:
– the investigation by the police under the direction of a public prosecutor; and
– the judicial preliminary investigation by an examining judge.

The criminal procedure is initiated by the pre-trial investigation carried out by the police as soon as the police are informed of a criminal offence. The purpose of the pre-trial investigation is to gather information on the offence and the suspect. A suspect is anyone who may reasonably be suspected of having committed the offence. The police have the right to question any person in relation to the offence, whether or not this person is a suspect. However, no one is obliged to answer questions put by the police.

The police prepare a written record of the questioning of the suspect and other persons, and of other relevant findings of facts. The written records are prepared by the police under oath, and may be used as evidence by the court. The police are authorized to carry out coercive measures, such as arrest, body search, and search of the premises, when the legal prerequisites to do so exist.

A Police investigation

6.3 Investigative methods

The Code of Criminal Procedure does not give a systematic description of investigative measures nor statutory rules for all investigative methods used by the police.
Some statutory rules exist concerning the interrogation of the offender by the police and concerning investigative methods of a coercive nature such as the use of DNA-tests for the identification of the offender, or the interception of (tele)-communication. Other important investigative methods, such as the interrogation of witnesses or the application of technical means of investigation such as fingerprints, confrontation through the Oslo-method, and the use of dogs for a search, have recently been given a statutory basis.
The admissibility of these investigative methods previously had been based on the Supreme Court's case law.

Under Dutch law, before a criminal investigation may be started and investigative measures applied, there must be a reasonable suspicion that a criminal offence has been committed. In recent years, the police have more and more focused on the gathering of information about networks, groups, and individuals especially in order to know what criminal activities were planned, thus before a criminal offence was committed, the so-called proactive policing. Proactive policing methods and covert policing methods like surveillance, infiltration, and the handling of informants have recently acquired a statutory basis in the Code of Criminal Procedure by the 2000 Special Powers of Investigation Act.

When the police investigation is terminated, the written records are forwarded to the prosecutor for a decision on prosecution.

6.4 Examining judge

The role of the examining judge in the pre-trial phase has been reduced since the 2000 Act on the Revision of the Judicial Investigation. He performs two functions, namely in determining whether a suspect should remain in pre-trial detention for a period of up to ten days, and in (further) investigating crime. The examining judge has powers which the police and prosecutor lack. He may order a witness to appeal before him and make a witnesses deposition. The examining judge may order a psychiatric examination of the suspect, involvement of an expert witness, or intimate bodily examination (DNA).
If the public prosecutor finds that the proper investigation of a crime requires the exercise of one of these powers, he must request the examining judge to start a judicial preliminary investigation.

Furthermore, the examining judge plays a role when intrusive measures such as the search of premises against the will of the resident, the interception of communication by technical means, or the opening of intercepted post have to be used by the police or the public prosecutor. For the use of this intrusive measures, the police and the public prosecutor have to request the examining judge for permission. Before the examining judge may give his permission, he has to check whether the legal prerequisites for these intrusive measures have been met.

– *Judicial preliminary investigation*
During this preliminary investigation, the examining judge carries out further investigations, if necessary with the help of the police. The examining judge may search premises against the will of the resident, and may order that computer data are revealed. He may hear a witness under oath who cannot be present at the trial, or who may not be willing to appear at trial because of fears of retaliation by the defendant. In such cases, the defense counsel is notified and he may attend the hearing and put written questions.
Only in a limited number of cases that come to trial a judicial preliminary investigation has taken place.

6.5 Prosecutorial decisions

When the police investigation or the judicial preliminary investigation is terminated, the files are forwarded to the prosecutor who has to take a decision. He can decide:
– to drop the case;
– to settle the case by means of a transaction; or
– to issue a writ of summons on the offender.

– *Non-prosecution*
The power to prosecute resides exclusively with the prosecution service.
No prosecutorial power is granted to private persons or bodies, not even when the prosecution service declines to prosecute.
This prosecution monopoly does not require the prosecution service to prosecute every crime brought to its notice.
The prosecution service may decide not to prosecute in case a prosecution would probably not lead to a conviction, due to lack of evidence, or for technical considerations (technical or procedural waiver).
The prosecution may also decide not to prosecute under the expediency principle. The expediency principle laid down in section 167 CCP authorizes the prosecution service to waive (further) prosecution 'for reasons of public interest'.
In appropriate cases, the prosecutor can decide conditionally to suspend prosecution. The suspended non-prosecution has no statutory footing, and is therefore theoretically dubious, but it is generally accepted that the prosecution service is allowed to suspend a prosecution. Explicit general or special conditions for a

suspended prosecution do not exist, but in practice the prosecutor imposes conditions similar to the conditions attached to a suspended sentence.
Prior to the late 1960s, the discretionary power to waive (further) prosecution was exercised on a very restricted scale.
Thereafter, however, a remarkable change in prosecution policy took place. Research on the effects of law enforcement coupled with the limited resources of law enforcement agencies revealed that it was impossible, undesirable, and in some circumstances even counterproductive to prosecute all offences investigated.
Gradually, the discretionary power not to prosecute for policy considerations began to be exercised more widely.
To harmonize the utilization of this discretionary power, the top of the prosecution service, the Board of prosecutors-general, issues national prosecution guidelines. Public prosecutors are directed to follow these guidelines except when special circumstances in an individual case are spelled out.
Under these guidelines, a public prosecutor could waive prosecution for reasons of public interest if, for example:
- measures other than penal sanctions are preferable, or would be more effective (e.g., disciplinary, administrative, or civil measures);
- prosecution would be disproportionate, unjust or ineffective in relation to the nature of the offence (e.g., if the offence caused no harm and it was inexpedient to inflict punishment);
- prosecution would be disproportionate, unjust or ineffective for reasons related to the offender (e.g., his age or health, rehabilitation prospects, first offender);
- prosecution would be contrary to the interests of the state (e.g., for reasons of security, peace, and order, or if new applicable legislation has been introduced);
- prosecution would be contrary to the interests of the victim (e.g., compensation has already been paid).

The grounds for non-prosecution due to technicalities may be:
- wrongly registered as suspect by the police;
- insufficient legal evidence for a prosecution;
- inadmissibility of a prosecution;
- the court does not have legal competence over the case;
- the act does not constitute a criminal offence; and
- the offender is not criminally liable due to a justification or excuse defense.

Public prosecutors are not obliged to motivate their decisions not to prosecute due to technicalities or due to policy considerations. They are, however, obliged to categorize their decisions under one of the reasons or grounds for non-prosecution previously mentioned. This categorization is no guarantee for a uniform application of the reasons for non-prosecution. However, it provides information on the prosecution policy pursued in each of the nineteen prosecutorial

jurisdictions, and provides insight in the difference in these prosecution policies. It is one of the means to harmonize these prosecution policies.

In the early 1980s, the proportion of unconditional waivers on policy considerations was relatively high. Approximately one quarter of all crimes cleared were not further prosecuted for policy reasons. The rationale was that prosecution should not be automatic, but should serve a concrete social objective. Such a high proportion of waivers on policy grounds was seriously criticized. The prosecution service was instructed to reduce the number of unconditional waivers by making more frequent use of conditional waivers, reprimands or transactions. Today, the percentage of unconditional policy waivers has dropped to around 5%. The decrease of the percentage of unconditional waivers did not lead to an increase in the number of cases tried by a criminal court. This is because an increasing number of cases was either waived conditionally or settled out of court with a transaction.

– *Transaction*

Transaction can be considered as a form of diversion in which the offender voluntarily pays a sum of money to the Treasury, or fulfils one or more (financial) conditions laid down by the prosecution service in order to avoid further criminal prosecution and a public trial.

The opportunity to settle criminal cases by way of a transaction has long existed. The first opportunity to settle a case financially was created in 1838 for offences which carry no other statutory sentence than a fine. The offender who offers the prosecution service to pay the maximum statutory fine may settle his criminal case by paying (sect. 74a CC). The second opportunity to settle a case was adopted in 1921. The public prosecutor may, before trial, propose one or more conditions *in lieu* of criminal proceedings.

Prosecution is in effect suspended until such time as the conditions are met, after which the right to prosecute lapses.

However, until 1983 this opportunity to settle a case financially was exclusively reserved for misdemeanours in principle punishable only with a fine. Following the recommendations of the Financial Penalties Committee, the Financial Penalties Act of 1983 expanded the scope of transactions to include crimes which carry a statutory prison sentence of less than six years (sect. 74 CC).

The restriction that transaction is excluded for crimes carrying a statutory prison sentence exceeding six years has a limited impact. The overwhelming majority of crimes carry a statutory prison sentence of less than six years.

The following conditions may be set for a transaction:

a. the payment of a sum of money to the State, the amount being not less than two euro and not more than the maximum of the statutory fine;
b. renunciation of title to objects that have been seized and that are subject to forfeiture or confiscation;

c. the surrender of objects subject to forfeiture or confiscation, or payment to the State of their assessed value;
d. the payment in full to the State of a sum of money or transfer of objects seized to deprive the accused, in whole or in part, of the estimated gains acquired by means of or derived from the criminal offence, including the saving of costs;
e. full or partial compensation for the damage caused by the criminal offence;
f. the performance of non-remunerated work or taking part in a training course during 120 hours.

Compliance in due time with the conditions set by the prosecution service does not imply that the offender admits that he has committed a criminal offence. Acceptance of the public prosecutor's offer to settle a case is as a rule beneficial to the offender: he avoids a public trial, the transaction is not registered in the criminal record, and he is no longer uncertain about the sentence. On the other hand, by accepting the transaction he gives up the right to be sentenced by an independent court with all associated legal guarantees (sect. 6 ECHR). The acceptance must be made in free will without constraint.

The almost unlimited power given to the prosecution service in 1983 to settle criminal cases by a transaction without the intervention of a court has been strongly criticized. The most important criticism was that the increased transaction opportunities introduced a plea bargaining system, represented a real breach of the theory of the separation of powers, undermined the legal protection of the accused, favoured certain social groups, and entrusted the prosecution service with powers which should remain reserved to the judiciary. Furthermore, it was feared that with nearly ninety per cent of all crimes brought within the sphere of the transaction, the public criminal trial, with its safeguards for the accused, would become the exception and not the rule.
Despite this criticism, the introduction of the broadened transaction was a great success. More than one third of all crimes dealt with by the prosecution service is now settled out of court by a transaction. This is in line with the national criminal policy plan, which formulated the target that one third of all prosecuted crimes had to be settled by way of a transaction.
Transactions for crimes seem to be very popular, both for the prosecution service and the offender. They save the prosecution service and the offender time, energy and expenses, and furthermore protect the offender against stigmatization. Quite often, high transaction sums for environmental crimes committed by corporations are accepted in order to avoid negative publicity.

To minimize the risk of arbitrariness and lack of uniformity in the application of transactions, the Board of prosecutors-general has over the years issued guidelines for the common crimes for which transaction is most frequently used, relating to the principles to be taken into consideration regarding transaction and prosecution.

Since 1993, the police may offer transactions for certain categories of crimes. Shoplifting and drunk- driving have been designated as offences for which the police may offer a transaction.
The maximum amount of a police transaction for crimes is € 350 (sect. 74c PC). By contrast, the maximum amount of a prosecutorial transaction for crimes is € 450.000.

– *The writ of summons*
When a criminal case has not been settled out of court, the prosecutor will summon the suspect to appear in court.
The summons comprises the charge (*tenlastelegging*) and a list of witnesses to be *subpoenaed*.
The public prosecutor is truly *dominus litis*. The trial judge has no control over the content of the charge. The prosecutor may decide to charge the suspect with a less serious offence (e.g., by disregarding aggravating circumstances) despite the existence of sufficient evidence to charge the suspect with a more serious crime, or may limit the charge to some offences committed by the suspect. The court is informed in an informal way about the other offences committed (*voeging ad informandum*). For the sentence to be imposed, the court may consider these non-charged offences, provided that the suspect does not deny and the offence can be proved.
The trial stage begins as soon as the prosecutor has issued a summons.

6.6 Character of the pre-trial phase

The pre-trial phase has a tempered inquisitorial character. Specific inquisitorial elements are present when coercive measures such as bodily searches, searches of the premises, or telephone interception are applied.
The inquisitorial character is tempered by provisions providing that the offender has the right to be assisted by a defense counsel and the right to communicate without supervision of his counsel. The suspect is furthermore informed of the progress of the investigations in the pre-trial phase, unless this information would hamper the proper conduct of the investigation.

B Special issues

6.7 Arrest and detention before and pending trial

Deprivation of liberty before and pending trial of a person suspected of having committed a criminal offence can be divided into five phases:
– police arrest in order to be questioned;
– police custody;
– remand in custody;

– remand detention;
– detention pending trial.

The decision on police arrest and police custody rests with the public prosecutor, or a senior police officer if the decision of the prosecutor cannot be waited for.

The decision on remand in custody, remand detention and detention pending trial rests with the judiciary, a single judge, or a full bench of the court. The latter three phases form the pre-trial detention, the first and second phase are not part of the pre-trial detention.

– *Police arrest*
Police arrest (*ophouden voor verhoor,* sect. 61 CCP) is possible when offenders are caught red-handed, or for crimes which carry a statutory prison sentence of four years or more.
Arrests have to be ordered by a public prosecutor or a senior police officer (*hulpofficier van justitie*) if the order by the public prosecutor cannot be waited for (sects. 52 and 54 CCP) or in urgent cases by any police officer.

The aim of arrest by the police is the interrogation of the suspect by a (senior) police officer in the interest of the investigation of a criminal offence. During the first interrogation, the police officer assures himself that the right person has been arrested, that the arrest was lawful, and that continuation of the arrest seems necessary. This is the so-called verification interrogation. The verification interrogation is the most appropriate moment to comply with the obligation to inform the arrested person of the reasons for his arrest (sect. 5 ECHR).

The person arrested has the right to be assisted by his defense counsel only during this verification interrogation, but in practice a counsel is hardly ever present. The same applies for an interpreter.

The police arrest may last up to six hours, not including the hours between midnight and nine a.m., during which the detainee can be further interrogated about the crime allegedly committed by him. In this interrogation the suspect has no right to assistance by a defense counsel. A defense counsel is not yet assigned to him. The client can see a counsel of his own choosing after this questioning.
The term of six hours starts at the moment when the person arrested arrives at the place of questioning. Because transport to the place of questioning may take some time, the deprivation of liberty can take much longer than six hours.
During the police arrest, an additional term of six hours arrest – not including the hours between midnight and nine a.m. – may be ordered for the identification of offenders caught red-handed during which investigative measures may be taken, for instance, fingerprints, photographs, observation, haircut, and so on.

– *Police custody*
After expiry of the term for police arrest, the suspect has to be either released or taken into police custody (*inverzekeringstelling*, sect. 57 CCP). Police custody is ordered by the public prosecutor or by a senior police officer. Police custody can only be applied in the interest of the investigation of criminal offences for which pre-trial detention is possible.

The police custody order contains a description of the criminal offence, the reasons why the order was issued (in the interest of the investigation), and the circumstances which have resulted in the supposition of these reasons (mostly: interrogation of witnesses/confrontation/further interrogation of the suspect is necessary).
From the moment of the police custody order, the suspect has the right to an assigned defense counsel who has free access to the suspect, unless this is abused to hamper the finding of the truth. The defense counsel also has access to the police files on the case. The suspect can be restricted in his rights to receive visits and to communicate by telephone and letters.

The police custody order holds good for three days. The order can be extended once for up to three days by the public prosecutor.

Ultimately, after three days and fifteen hours, the arrested person has to be brought before the examining judge. The judge may only examine the lawfulness of the police custody. The person in custody may be assisted by his defense counsel.

– *Remand in custody*
After the expiry of the term of police arrest and police custody (six days and fifteen hours) the suspect has to be released or brought before the examining judge who can order remand in custody (*bewaring*, sect. 63 CCP) for ten days at the request of the public prosecutor. The remand in custody order can also be issued without preceding police custody.

The suspect is heard by the examining judge. His counsel may be present at this interrogation. The remand in custody is the first phase of the pre-trial detention.

Two statutory requirements for the application of pre-trial detention have to be met.
The first regards cases in which pre-trial detention may be applied. The second deals with the grounds on which pre-trial detention may be applied. Section 67 of the Code of Criminal Procedure enumerates the cases.

Pre-trial detention can be ordered if a serious suspicion exists that the offender committed an offence:
– which carries a maximum penalty of not less than four years imprisonment; or
– which is specifically designated, e.g., embezzlement, fraudulent misrepresentation, and threat; or
– which carries imprisonment whilst the suspect does not have a fixed residence or regular place of abode in the Netherlands.

Section 67a CCP specifies when pre-trial detention may be applied. According to this section, for the application of pre-trial detention there must be a danger that the suspect will abscond or will pose a serious danger to public safety.
A serious danger to public safety exists:
– if the offence carries a maximum statutory sentence of at least twelve years imprisonment and the legal order has been seriously affected by the offence;
– if there is a serious risk that the offender will commit a crime, that carries a maximum statutory sentence of not less than six years of imprisonment, or which may jeopardize the safety of the state or the health or safety of persons, or create a general danger to property;
– if there is a serious suspicion that the offender has committed a property offence and will re-offend, whereas less than five years have passed since he was sentenced to a deprivation or restriction of liberty or a community service order; or
– if it is necessary to detain the offender in order to establish the truth by methods other than through his own statement.

Remand in custody is not permitted if it is not likely that the offender will be sentenced to unconditional imprisonment. Furthermore, pre-trial detention has to end if it is likely that the actual term of imprisonment (taking into consideration the provisions on early release) will be shorter than the period spent in pre-trial detention.

– *Remand detention*
If the grounds for pre-trial detention after expiry of the term of remand in custody are still valid, the prosecutor requests the full bench of the court to order remand detention for thirty days (*gevangenhouding*, sect. 65 CCP). This request may be repeated twice. The requests are dealt with by the court in chambers. The suspect is heard in processing these requests.
The suspect can at all times request cancellation of the remand detention, and has the right to be heard about the first request. Otherwise, the suspect has the right to be heard every thirty days.

– *Detention pending trial*
If the suspect is still in pre-trial detention after one hundred days, the public

prosecutor has to present the case to the court in order to be tried. Unless the case is ready for trial, the trial may be adjourned. In either case, the remand detention order may remain valid until sixty days after the final court decision, provided that the verdict in the first instance and on appeal results in a prison sentence exceeding the period spent in detention. In case of an acquittal or discharge or a prison sentence in length not exceeding the pre-trial detention, the order has to be cancelled with immediate effect.

In the majority of cases, the offender is released before the full term of pre-trial detention (one hundred days) has expired. Limiting the duration of pre-trial detention has the result that cases against detained suspects are tried by courts with priority.

The court remanding the suspect in custody has the authority on its own initiative or on the request of the public prosecutor or the suspect to suspend pre-trial detention. The statutory condition for suspension is that the offender will not flee from justice when the suspension is revoked, or when he is sentenced to imprisonment. The court is free to impose other 'special conditions'. Sometimes, these include the condition that the suspect has himself admitted to a clinic, e.g., for drug addicts. The checks on compliance with this condition, however, are not always very effective. In a great majority of cases, the court imposes conditions which restrict the freedom of the suspect to a lesser extent.
The court may impose bail as a guarantee that the conditions are observed, but hardly ever does so.

6.8 The right to challenge detention

For police arrest and the first term of police custody, the CCP provides no legal remedy to challenge the lawfulness of the detention. If the lawfulness of these phases of detention is doubted, one will have to try and find a solution in consultation with the police and the public prosecutor who has issued the order, or with their superior officers. If this fails, there is the possibility of initiating summary civil proceedings before the civil judge because of unlawful detention and because of the urgency of the case.

The suspect can make use of the right to request release when he is brought before the examining judge before the expiry of three days' police custody.

With regard to remand in custody, it is assumed that the suspect has the right to elicit a release order from the examining judge. If this is issued, the prosecution service has fourteen days to lodge an appeal with the district court. The suspect is also entitled to request the court to cancel the remand in custody order.

At the occasion of his first request, the suspect has the right to be heard by the court. Should the court refuse to cancel the remand in custody order, an appeal can be lodged with the court of appeal.
In case of a remand detention and detention pending trial order, the suspect can appeal against the court order to the court of appeal within three days. This means that the suspect can lodge an appeal against each decision of the district court to continue the pre-trial detention, that is once every month. Furthermore, the suspect has the right to ask the district court to cancel the pre-trial detention order.
If the possibility of challenging the detention under criminal procedure does not, in the circumstances of the case, offer the prospect of a timely decision, the civil judge can always be asked for a decision by means of summary civil proceedings.

All in all, this leads to the conclusion that Dutch law offers full *habeas corpus* protection.

6.9 The right to compensation for unlawful detention

The Dutch CCP (sects. 89-91) provides for financial compensation for time spent in pre-trial detention when the criminal case ends without a sentence or with a sentence for an offence for which pre-trial detention was not admissible.

Compensation is possible for unlawful detention, but also in retrospect for unjustified lawful detention.

The compensation does not have to be of a financial nature. Unlawful as well as unjustified lawful detention can be compensated in the form of reduction of the duration of a prison sentence imposed for another criminal offence.

Unjustified lawful detention is compensated by a payment for immaterial damages of around € 100 per day of deprivation of liberty.
The decision on compensation under criminal procedures is given by the criminal court in chambers based on fairness. This court should preferably be composed of the judges who also served as the trial judges.
Furthermore, the State can be sued with a civil claim for unlawful detention.

6.10 Deduction of the period of detention

A statutory provision (sect. 27 CC) provides that the full term of arrest and pre-trial detention shall be deducted from the term of imprisonment. Courts do not have any discretion in this regard.

6.11 Rights of the defense counsel during pre-trial detention

Defense counsel has the right to free and unmonitored access to a client who is in custody. Since such access is not allowed to delay the investigation, counsel is always partly dependent on the criminal justice authorities and on the time and facilities made available for this purpose by the police.
When exercising his right to inspect the police files on the case, defense counsel is also dependent on the cooperation of the relevant authorities in order to obtain the copies in good time. The most important restriction on the provision of an effective defense is the fact that defense counsel does not have the right, under statutory law or case law, to be present at police interrogations.

C The trial phase

6.12 General issues

The pre-trial phase ends and the trial phase begins with the decision to prosecute the case and to summon the offender. The charge is mentioned in the summons (*dagvaarding*), so that the offender can prepare his defense.

A court hearing commences with the identification of the accused by the president of the court and the reading of the charge (*tenlastelegging*) by the public prosecutor. The accused is reminded by the court of his right not to answer questions.
The charge is the subject of the court session. It consists of a description of the alleged criminal offence, and closely follows the statutory definition of the offence. The court does not have the power to modify the charge if it deems this necessary. The public prosecutor is vested with the power to do so, since he is master of the trial. This power, however, is very limited. This is due to what is called 'the tyranny of the charge', i.e., the court may only convict the accused on the basis of the charge.

After the reading of the charge, the court examines the accused, the witnesses (either called by the prosecutor or by the defendant or his defense counsel), and the experts. Afterwards, the public prosecutor and the defense counsel may ask additional questions of the accused and the witnesses. Unlike the accused, witnesses are obliged to answer the questions put by the court, the prosecutor and the defense counsel. Cross-examination, however, is unknown under Dutch law. The examination of the accused and the witnesses by the court is usually combined with the reading by the presiding judge of their statements made to the police or the examining judge. Witnesses are examined after having taken the oath. The defendant may not be questioned under oath. He has the right to remain silent, and cannot be obliged to tell the truth and nothing but the truth.

Although the Code of Criminal Procedure embodies the immediacy principle, obliging witnesses to be questioned in court, witnesses are as a rule not questioned, since the Supreme Court accepts hearsay evidence. In fact, criminal court sessions to a large extent deal with written statements of witnesses filed by the police or the examining judge. Their written statements may be used as evidence provided that these have been discussed in court. This restriction of the immediacy principle has as effect that court trials do not take very long if the accused confesses and does not contradict the written statements of the witnesses. It is rare that a trial lasts more than a couple of hours, even in serious cases.

After the evidence has been presented and discussed, the public prosecutor makes his closing speech (*requisitoir*). In his closing speech, he gives a summing up of the evidence and recommends what offence the defendant is to be sentenced for and requests the sentence to be imposed. However, the judge is not bound by this request. Finally, the defense counsel addresses the court with his plea. Before the presiding judge closes the trial the last word is given to the accused.

After the close of the session of the court, the court goes in chambers to deliberate the verdict and the sentence. The verdict must be available within two weeks. The verdict is read in a public session of the court. As a rule, it takes more than two weeks to write a verdict and to give a full summing up of the evidence used for the decision on the guilt of the convict. Such extended verdicts normally are only prepared when appeal or appeal in cassation is lodged.
A person convicted may not be ordered to pay the costs of the criminal procedure.

6.13 Court decisions

In a judgment, the court can take four procedural decisions and four substantive decisions.
As procedural decisions, the court can declare the summons null and void, can declare itself not competent to try the case, can dismiss the case, and finally, can suspend further prosecution (sect. 348 CCP).
The court must declare the summons null and void when it has not been served properly, or when the charge is not properly formulated or not comprehensible.
The court can declare itself not competent to try the case when the offence charged has not been committed within its jurisdiction, or when the offence belongs to the jurisdiction of another specialized court, e.g., the juvenile court.
The court must dismiss the case when the right to prosecute a case does not exist (anymore), e.g., due to the statute of limitations, due to a settlement of the case through a transaction, or due to the fact that a requirement for prosecution has not been met.
Under some circumstances, the court must suspend further prosecution, e.g., when the defendant is not fit to stand trial.

When the court decides that the summons is valid, that the court is competent to try the case, and that the case is not to be dismissed or the further prosecution has to be suspended, the court has to give a substantive decision, which means a decision on the charged offence.
The court has to decide four questions:
– are the facts mentioned in the charge proven;
– do the facts constitute a criminal offence;
– is the accused criminally liable; and
– what sentence shall be imposed (sect. 350 CCP)?

The accused is to be acquitted when the essential facts charged are not proven by the evidence presented.
A discharge of the accused takes place when the facts charged are proven, but do not constitute a criminal offence, or when the offender is not liable due to a justification or exculpation defense.
A sentence is imposed when the evidence that the accused has committed a criminal offence is beyond reasonable doubt and when the accused is criminally liable for the offence.

The verdict must be reasoned (sects. 358 and 359 CCP). The reasoning concerns the question whether the charge is proven, why an explicit defense is denied, or why despite guilt no penalty is imposed. Furthermore, the sentence imposed must be reasoned.

A dismissal, a decision on incompetence, a decision to declare the summons null and void, as well as a decision to suspend further prosecution must also be reasoned.
An acquittal does not need a reasoning.
Special reasoning is required when the court imposes a more serious sentence than requested by the public prosecutor, or when an entrustment order is imposed.

Dutch criminal case law is published in the weekly periodical *Nederlandse Jurisprudentie* (mainly Supreme Court rulings). Criminal case law is in abstracts published in the *Nieuwsbrief Strafrecht* (Newsletter Criminal Law). For criminal court decisions, see also www.rechtspraak.nl.

6.14 Character of the trial phase

The trial phase has an accusatorial character. To a large extent there is an equality of arms between the public prosecutor and the defendant who may present evidence in his favour. Since, however, the main purpose of the trial phase is to discover the truth, a pure adversarial system is not followed. For instance, the system of cross-examination is unknown. It is mainly the judge who asks questions during the criminal trial.

D Special issues

6.15 Legal remedies against court decisions

The CCP provides various legal remedies against court decisions. The most important are appeal and appeal in cassation.
The general legal remedy against a decision by the court of first instance is appeal. An appeal may be filed by both the public prosecutor and the accused. The appeal must be filed in due time, as a rule within fourteen days. Appeal involves a complete rehearing of the case by the court of appeal. The appellate court may, if the appeal was lodged by the accused only, increase the sentence only by an unanimous decision. An acquittal by a court of first instance may also only be changed into a conviction by a unanimous decision of the court.

Appeal in cassation may be lodged at the Supreme Court against court of appeal decisions, except a decision to acquit. An appeal in cassation may be lodged by both the public prosecutor and the accused.
Appeal in cassation is not a rehearing of the case, since the Supreme Court is not deciding on the facts, but merely assesses the proper application of law by lower courts. Where the Supreme Court rules that substantive or procedural law has not been properly applied, the verdict of the lower court will be quashed and the case referred back to the court of appeal or another court. That court has to render a new decision, and is bound by the decision of the Supreme Court concerning the proper application of law in that case.

6.16 Trial in absence of the accused

The accused has the right to be present at the court trial, but he is not obliged to appear in court unless the court orders so, which rarely happens. A case may be tried in the absence of the accused, unless he was not summoned properly.
As a rule, the summons must be served to the accused in person, or to his representative, at least ten days prior to the court session.
Prior to the 1998 Procedural law reform Act, the accused lost the right to be defended by his defense counsel if he himself was not present during court session. The European Court on Human Rights has decided in the Lala and Pelladoah decisions that this was in conflict with sect. 6 of the European Human Rights Convention.
Since that Act, an absent accused may have himself defended by his counsel when the latter is explicitly empowered by the accused to do so. In that case, the trial is considered to take place in the presence of the accused (sect. 279 CCP).

6.17 Rules of evidence

An offender can be convicted only when the court through the court trial has gained the conviction from evidence defined by statute that the offender has committed the offence as charged (sect. 338 CCP). The evidence may not rest upon the testimony of a single witness *(unus testis nullus testis)*, and a conviction may never be based solely on the statement of the accused. A guilty plea is unknown. The court is free in assessing the truthworthiness of the evidence and the quality of the evidence. In the verdict, the court has to state the reasons for convicting the accused. The burden of proof as a rule lies with the public prosecutor. The court may play, however, an active role in gathering evidence during court trial by ordering further investigation. The presumption of innocence is a fundamental principle of the Code of Criminal Procedure.

6.18 Statutory means of evidence

Five means of evidence are defined by statute (sect. 339 CCP):
- the court's own observations during the court hearing, e.g., photos or tapes;
- the statement of the accused in court or out of court, provided the statement is filed;
- the statement of a witness in court, including hearsay testimony;
- the statement of an expert in court; and
- written (police) materials.

A statement of the accused is his statement during court trial about facts and circumstances he knows from his own knowledge. A refusal to make a statement may not lead to adverse inferences, an obvious lie, however, may.

A statement of a witness is the information he gives in court on facts and circumstances he personally perceived and experienced. Personal opinions, guesses, and conclusions are excluded as evidence. Hearsay testimony falls within the definition of a witness' statement, which has as effect that a police officer can make a statement on a statement of a witness without the latter appearing in court. Previously, the criminal procedure took place predominantly on the basis of police files and reports on statements made by the accused, witnesses, or experts in front of the examining judge proceedings. The adversarial rule was then at stake. Under the influence of the recent case law of the European Court of Human Rights, the adversarial principle nowadays gets more emphasis by summoning regularly more witnesses.

An expert statement is an opinion based on an expert's knowledge concerning the subject on which his opinion is sought. As a rule this opinion is expressed in an expert witness' report, which is read out at trial.
In that case, the report falls under the evidence category of written materials.

The Code distinguishes five categories of written materials (sect. 344 CCP):
– written decisions by members of the judiciary;
– reports by members of competent agencies, e.g., police reports on facts or circumstances personally perceived or experienced by them;
– documents of public agencies concerning subjects related to their competence containing the communication of facts and circumstances perceived or experienced by these agencies;
– reports of experts; and
– all other written materials.

The latter category may only be used in relation with the content of other means of evidence.

6.19 Rules on gathering evidence

The rules governing the methods of acquiring evidence deal mainly with the interrogation of the accused or the witnesses, and with the legal prerequisites for acquiring technical evidence. Coercive measures can be used to collect evidence. In principle, these coercive measures may only be used in cases of crimes for which pre-trial detention is allowed by law (crimes carrying a statutory prison sentence of four years or more). Permission to apply intrusive investigation measures must be obtained from the examining judge.

Unlawfully obtained evidence (e.g., evidence collected during illegal searches of premises or illegal interception of communication) may have three consequences (sect. 359a CCP):
– the court may mitigate the sentence in proportion with the seriousness of the irregularity provided that the harm caused by the irregularity can be compensated;
– the court may exclude the evidence; and
– the case may be dismissed if the irregularity by obtaining the evidence would lead to a trial that would be in conflict with the principles of a proper criminal procedure.

E The victim

6.20 Legal position of the victim

The term victim does not occur in the Code of Criminal Procedure, nor in any other criminal law statute. The victim has a procedural role only in his capacity of witness, informer, or injured party. He has few rights in the pre-trial and trial phase. He has no right to present a criminal charge or to be heard in his capacity of victim on the charge presented by the public prosecutor. The victim does not have the right to counsel, nor the right of appeal.

Due to the changing attitude towards the weak legal position of the victim, and in line with the United Nations Declaration on Basic Principles of Justice for Victims of Crime and the Abuse of Power (1985), a number of guidelines have been issued by the prosecution service on how to treat victims. The guidelines oblige police and prosecutors to inform the victim whether the prosecution of the offender will take place, and about the possibility of financial compensation from the offender.
Furthermore, the legal position of the victim has been substantially improved by the 1993 Criminal Injuries Compensation Act. He now has access to police files, and the right to be informed by the public prosecutor on the state of the criminal procedure.
Legal implementation of a restricted right to give an oral statement during court trial – the so-called victim impact statement – is presently under discussion.
The model of restorative justice is gaining an increasing number of supporters.

6.21 Complaints by the victim against non-prosecution

The Dutch Code of Criminal Procedure grants the right of prosecution exclusively to the prosecution service. The State thus has a full monopoly on prosecution without any restriction. The victim does not have the right to private prosecution.
Anybody with an interest in the prosecution of an offence can file a protest against a decision to waive a case, by lodging a complaint with a court of appeal. The court examines the manner in which the discretionary power was utilized by the public prosecutor. This examination extends both to the legality of the decision (the issue being the proper application of the law), and to the use of discretion (a study of the extent to which this decision is in line with the general prosecution policy). The complainant has the right to be heard by the court, and may be assisted by his counsel. The court of appeal may order the public prosecutor to initiate a prosecution if it finds that the prosecutor has misused his discretionary power. However, in practice the court of appeal seldom orders prosecution. Annually, around 1,200 complaints are filed.
In addition to judicial control over prosecution, administrative control over prosecution can take place at the request of a person with an interest in prosecution. An individual can request a public prosecutor to review a prosecution decision or, should he refuse to do so, write a letter to a higher official in the hierarchy of the prosecution authority, requesting to review the decision of the subordinate prosecutor.

6.22 Civil claims in criminal trials

In his capacity of injured party, since the 1993 Criminal Injuries Compensation Act the victim can join, in the pre-trial or trial phase, the proceedings as injured party, and can claim full financial compensation from the offender to be decided

on by the criminal court in connection with criminal proceedings (sect. 51a CCP). The claim may comprise material and immaterial damages. The heirs of a victim who died as a result of the criminal offence may join the proceedings as well. There is no statutory maximum amount that can be claimed when joining the proceedings, but the claim must be clear and not too complex to be dealt with by the criminal court.
The joiner as a rule is effected by a form in the pre-trial phase to be handed to the public prosecutor, and in the trial phase to be handed to the court containing personal data of the injured party and information on what the grounds for the claim are and the content of the claim. For the proper preparation of the claim, the injured party has access to the police files of the case. In claiming compensation from the offender, the victim is not assisted by the State, but may be assisted by a counsel or by a proxy.

The State does not assist the injured party in the effective recovery of his claim. To avoid the situation that recovery of the claim is impossible due to the unwillingness of the offender, the court can either impose a partly suspended sentence under the condition that the offender pays compensation (sect. 14c CC), or impose a compensation order (sect. 36f CC). Compensation orders are enforced by the State.

6.23 Criminal Injuries Compensation Fund

In 1976, the Criminal Injuries Compensation Fund was established. Anyone who has been the victim of a violent crime which caused serious physical or psychical injuries can claim compensation of up to € 22,700 for material damage and € 9,100 for immaterial damage from this Fund. A national committee decides whether the claim is to be granted. Appeal against this decision may be made to the court of appeal in The Hague.

The Compensation Fund pays annually around five million euro to victims. The number of claims is around 5,000. The majority of the claims is granted.

6.24 Victim support centers

Local victim support centers, funded by the Ministry of Justice through the National Victim Support Organization, cover the country and provide help and guidance to individual victims of crime, e.g., by directing victims to the Criminal Injuries Compensation Fund. Annually, over 1,700 professionals and volunteers approach more than 100,000 victims. Two thirds of them accept the offer. Particular attention is given to victims of incest, rape, and other types of violence. A number of schemes are developed for special types of aid, such as support groups for victims of robbery, victims aid for tourists, and aid to victims of sexual violence. In most cases, the police refer the victim to the victim support centers.

The victim support center provides financial and material help, and helps the victim to overcome any psychological and emotional problems resulting from the crime. The victim is helped in avoiding further contact with the offender, and in solving practical problems (such as housing and employment). The victim support center also provides information about the criminal case and the offender, as well as information on the technical aspects of crime prevention.

7 The system of sanctions

7.1 Classification of penalties

The current Dutch sanctions system for adults distinguishes between penalties and measures. Penalties are aimed at punishment and general prevention. Punishment means that the offender, through the penalty, is made to suffer in reaction to the harm caused by his offence to others. In the penalty, revenge plays a role. Due to this element of revenge, the length of imprisonment must be proportionate to the level of blameworthiness.
Measures, on the other hand, are aimed at the promotion of the security and safety of persons or property, or at restoring a state of affair. A measure differs from a penalty in that it can also be imposed where there is no question of criminal responsibility, in the sense that the person cannot be blamed for having committed a crime.

The Criminal Code furthermore distinguishes between principal penalties and accessory penalties, which originally only could be imposed in conjunction with a principal penalty. Since 1984, accessory penalties may be imposed as principal sentences as well.

7.2 Sanctions for adults

The various principal penalties are set out in order of severity in section 9 of the Criminal Code as follows:
– imprisonment (sects. 10-13);
– detention (sects. 18-19);
– task penalties (sects. 22c-22k); and
– a fine (sects. 23-24c).

For all offences, the maximum of the statutory penalty is specified by the Act, which defines the particular offence. This maximum penalty reflects the gravity of the worst possible case, and is thus high for the most serious offences, e.g., twelve years for rape, six years for domestic burglary, nine years for extortion, and four years for simple theft.

7.3 Capital punishment

Capital punishment for ordinary crimes was abolished in 1870. For military crimes and war crimes capital punishment was abolished in 1983 (sect. 114 Dutch Constitution), but in practice had not been used since 1950. The Netherlands ratified Protocol no. 6 to the European Convention of Human Rights on the abolition of the death penalty.

7.4 Principle penalties

– *Imprisonment*
The most severe penalty in the Dutch penal system is imprisonment, which can only be imposed for crimes. The most severe form is life imprisonment, which is relatively rarely imposed. Around twenty crimes carry life imprisonment as a statutory penalty, but the Criminal Code does not prescribe compulsory life imprisonment in any circumstances. Crimes, such as murder or manslaughter under aggravating circumstances, carrying life imprisonment, also carry a fixed-term prison sentence of up to twenty years. Furthermore, since 1983 a fine may be imposed as the sanction for any crime, even those which carry life imprisonment as statutory sanction.

A life sentence is deprivation of liberty for an indeterminate period. Parole or release arrangements are not applicable in the case of a life sentence. Life sentences, however, may be converted by way of pardon into a fixed-term prison sentence, for example for twenty years. After such conversion the offender may be considered for early release. As a rule, a life sentence means about fifteen years of effective imprisonment.

The fixed-term prison sentence is the most frequently applied form of imprisonment. The statutory minimum is one day and the statutory maximum is fifteen years. In certain circumstances, the maximum may be twenty years. Unlike the situation in other countries, none of the offences carry a special statutory minimum term of imprisonment. Thus, for example for murder, a minimum prison sentence of one day is theoretically possible.

Where an offender is sentenced to imprisonment for several offences committed concurrently or consecutively, the court may impose a prison sentence which may exceed by one third the maximum statutory prison sentence for the severest offence.

– *Detention*
Detention is the custodial sentence for infractions. The minimum duration of detention is one day and the maximum duration is one year. In special cases, e.g., in cases of recidivism, the maximum can be increased to sixteen months. Originally intended as a *custodia honesta*, detention is deemed a lighter sentence on the sentencing scale than imprisonment, although the two hardly differ in the manner of their implementation.

– *Task penalty*
The task penalty is one type of the community sentences increasingly used to reduce the incidence of custodial sentences. Additional forms of community sentences, such as electronic monitoring and penitentiary programs, are alternative

forms for the implementation of deprivation of liberty (*executiemodaliteiten*).
The development of community sentences started in the seventies with the establishment in 1974 of the Committee on alternative penal sanctions. This Committee was set up to advise the government on new sentencing options in order to reduce the number of short-term prison sentences.
Resolution (76) 10 of the Committee of Ministers of the Council of Europe and positive experiences in England and Scotland suggested the community service order (CSO) as a sentencing option.
In 1979, the Committee on alternative penal sanctions proposed a CSO experiment, which was initiated on 1 February 1981.
Ministerial guidelines directed that the experiments take place within the existing statutory framework. Therefore, CSO could be imposed by the prosecution service as a condition for waiving prosecution, or by the court as a condition attached to a decision to suspend a sentence.
At the end of the experiment, statutory provisions governing the CSO for adult offenders were introduced in the Criminal Code on 1 December 1987. Statutory provisions on CSO for juvenile offenders followed in September 1995.
The criminal court could impose a CSO only when it would otherwise impose an unconditional prison sentence of six months or less or a part suspended/part unconditional prison sentence of which the unconditional part is six months or less. Community service could not be used as an alternative to a suspended prison sentence, a fine, or a fine default detention.

The number of CSO's imposed on adult offenders increased rapidly from 2,000 in 1983 to over 18,000 in 2001.

In 2001, the provisions on the CSO have been considerably reformed. The CSO has been replaced by the task penalty *(taakstraf)* which is no longer a substitute for a short-term prison sentence but a distinct sanction option considered to be a restriction of a person's liberty that is less severe than the custodial sentence, and more severe than a fine. A task penalty may consist of a work order, a training order, or a combination of both orders.
A task penalty may not exceed a total of 480 hours of which the work order is 240 hours maximum. The task penalty must be completed within twelve months. Extension of the completion term is possible.
When imposing a task penalty, the court has to state the term of default detention in case the task penalty is not complied with. The default detention is at least one day and the maximum is eight months. Every two hours of task penalty count for one day default detention. When a part of the task penalty is complied with, the length of the default detention is reduced proportionally.

The prosecution service is responsible for overseeing compliance with the task penalty, and information may be requested from individuals and organizations involved in probation work for this purpose. In appropriate cases, the prosecution

service may change the nature of the work to be carried out, or the kind of education to follow.
When the prosecution service is satisfied that the task penalty has been carried out properly, it must notify the person convicted as soon as possible.
If the person convicted has not carried out the task penalty properly, the prosecution service may order implementation of the default detention mentioned in the sentence, taking into account the number of hours of the task penalty that has been carried out properly. The person convicted can file an appeal against the order to implement the default detention. The appeal is dealt with by the court which imposed the task penalty. The order to implement the default detention must be given within three months of the end of the completion period.
The probation service is responsible for administering task penalties and coordinators have been appointed in each of the nineteen jurisdictions who canvass for workplaces where the work order can be carried out. The work order must benefit the community. It can be with public bodies like the municipality, or private organizations involved in health care, the environment and the protection of nature, and social and cultural work.

A training order is of a different nature. It means that the offender is sentenced to follow a training course in order to learn specific behavioural skills or in order to be confronted with the consequences of his criminal behaviour for the victim. Training orders are mainly imposed on offenders from whom it is expected that they are motivated to change their behaviour by attending courses or other activities aiming to improve communicative or social abilities.

– *Fine*
The fine is the least severe of the principal penalties. Originally, the fine was exclusively intended for infractions and minor crimes.
Since the 1983 Financial Penalties Act all offences, including those subject to life imprisonment, may be sentenced with a fine.
The 1983 Act furthermore expresses the principle that the fine should be preferred over the prison sentence. Section 359 CCP requires the court to give special reasons whenever a custodial sentence is ordered instead of a fine.

The 1983 Act was the final part of a major reform of the fines system, which started in the mid-1970s with a view to creating better opportunities to reduce the use of imprisonment.
The law reform was prepared by the Financial Penalties Committee established in 1966. The reform of the fines system was launched in 1976, by enacting the Financial Penalties Enforcement Act. The main purpose of this Act was to improve the enforcement of fines so that fines could function as a better alternative to the short-term prison sentences. This Act introduced the installment fine and other opportunities for paying fines in installments, simplified the recovery procedures in cases of non-payment, and reduced the maximum fine default detention.

The next step was the adoption of the 1983 Financial Penalties Act. That Act replaced the old fine system in which every offence carried its own statutory maximum fine, with a more simple and convenient system of fine categories. The minimum fine for all offences is € 2. The maximum fine depends on the fine category into which a crime or infraction is placed.

The 1983 Act created six categories with maxima of € 225, € 2,250, € 4,500, € 11,250, € 45,000, and € 450,000, (sect. 23 CC). Infractions come under the first three categories and crimes under categories II through V. Category VI fines can only be imposed on corporate bodies and on individuals under a few special criminal laws, such as the Economic Offences Act and the Narcotic Drug Offences Act.

When the fines system was reformed in 1983, the old system of fixed sum fines was retained. Following the advice of the Financial Penalties Committee, the introduction of a day fine system, as known in an increasing number of European criminal law systems, was rejected on theoretical as well as practical grounds.

The Act urges courts to take into account the financial position of the offender when imposing a fine sentence in as far as this is necessary to arrive at an appropriate sentence without the offender being disproportionately affected in his income and capital (sect. 24 CC). There must be a two-pronged proportionality test, between the crime and the fine and between the fine and the ability to pay.

7.5 Fine default detention

The implementation of fines and other judicially imposed financial penalties rests entirely with the prosecution service. If the person convicted does not pay the fine, the fine may be recovered from the offender's property. If the prosecution service rejects recovery as an option, default detention will be enforced. The term of the default detention is set by the court when imposing the original fine. In practice, a conversion rate of € 25 to € 45 for one day default detention is usually applied.

The statutory minimum duration of fine default detention is one day, and the maximum is twelve months. A fine default detainee can be released if he pays the fine while in prison.
In order to reduce the need for prison capacity for fine default detention, a more effective way of recovering fines imposed for crimes forms part of the present sentence implementation policy. Aim of this policy is to recover 95% of the fines within a year after being imposed.

There are at present no alternatives for fine default detention. This form of detention is not subject to current debate in penal policy.

7.6 Other community sanctions

– *Electronic monitoring*
Electronic monitoring is the latest new community sentence that may get a statutory basis in the near future, but is now regulated in an instruction by the Board of prosecutors-general (20 April 1999, *Stcrt.* 114). Electronic monitoring is considered to be a viable substitute to imprisonment or any other form of deprivation of liberty (e.g., pre-trial detention).
Electronic monitoring is applied either in the last phase of the serving of the prison sentence as part of a penitentiary program, or in combination with a suspended sentence. By applying electronic monitoring in the last phase of the serving of the prison sentence the actual period spent in the prison can be reduced. Electronic monitoring as a condition attached to a suspended sentence can be a substitute for imprisonment of between six and twelve months in combination with a task penalty of 240 hours.
Candidates for electronic monitoring are proposed by the probation service. The probation service is charged with supervision and control. The decision to allow persons to serve their sentence through electronic monitoring is made by the court in as far as it concerns the combination with the task penalty, and is vested with the prison administration in as far as it concerns the last phase of the detention.

7.7 Accessory penalties

The accessory penalties are:
– deprivation of rights and disqualification from practicing professions;
– forfeiture; and
– publication of the judgment.

The deprivation of rights concerns: the right to hold a public office, the right to serve in the army, the right to vote and to be elected, the right to serve as an official administrator, and the right to practice specific professions (sect. 28 CC).

Forfeiture consists of deprivation of objects or money (sect. 33 CC). Objects that may be forfeited are those obtained by means of the criminal offence, or in relation to which the offence was committed, or which are manufactured or intended for committing the crime.

The possibility of imposing accessory penalties is limited to certain kinds of offences.

Publication of the judgment (sect. 36 CC) is only rarely imposed.
Some special criminal law codes contain specific accessory penalties, such as withdrawal of one's driving license (sect. 17b of the 1994 Road Traffic Act) or closure of a company (sect. 7 Economic Offences Act). These specific accessory penalties are more frequently imposed.

7.8 Measures

Measures can be imposed on offenders, regardless whether they can be held criminally responsible for having committed an offence, since measures are not aimed at punishment but at the promotion of safety and security of persons or property or at restoring a state of affairs.

A range of measures is laid down in the Criminal Code:

– *Withdrawal from circulation (sect. 36b CC)*
  During a police investigation objects may be seized. Certain objects which are dangerous or whose possession is undesirable may be confiscated. This concerns: objects obtained entirely or largely by means of or derived from the offence, objects in relation to which the offence was committed, objects used to commit or prepare the offence, objects used to obstruct investigation of the offence, and objects manufactured or intended for committing the offence.
  If the uncontrolled possession of the objects in question would be in conflict with the law or contrary to the public interest, they can be withdrawn from circulation, regardless whether the offender is convicted for a criminal offence.

– *Confiscation of illegally obtained profits (sect. 36e CC)*
  Since the 1993 Criminal Code law reform (the so-called Strip-them Act) the court may impose an obligation to pay to the State Treasury an amount that equals the financial gain obtained through the commission of criminal offences.
  The measure was introduced in order to improve the fight against organized crime. Not only the profits from a crime for which the offender was sentenced may be confiscated, but also the profits from similar offences for which a fine of the fifth category may be imposed, and where there is sufficient evidence that they have been committed by him.
  The court must assess the net value of the illegally obtained profits. In case of non-compliance with the obligation of full recovery, the court may order a default detention of six years maximum (sect. 24d CC). Partial payment does not lead to a reduction of the default detention.

– *Obligation to pay compensation (sect. 36f CC)*
  The 1996 Compensation Order Act introduced the possibility for the court to impose an obligation upon a person who is convicted for a criminal offence to

pay the State Treasury a sum of money for the benefit of the victim of the crime. The Treasury shall remit the money received to the victim without delay.
In case of non-compliance with the obligation of full recovery of the amount due the court may order default detention of one year maximum.
This measure is introduced in order to improve the legal position of the victim in the criminal procedure.

– *Psychiatric hospital order (sect. 37 CC)*
If a defendant cannot be held responsible for the crime because of a mental defect or mental illness, the court may not impose a penalty, but the court may order that the defendant be committed to a psychiatric hospital for up to one year, provided that the person is a danger to himself, to others, to the general public, or to property in general. The court shall only issue the order after submission of a reasoned, dated and signed opinion of at least two behavioural experts – one being a psychiatrist – who have examined the defendant.

– *Entrustment order (sect. 37a CC)*
If the court considers that a defendant, despite his mental defect or mental illness, can be deemed responsible, the court may impose a penalty in combination with this measure. An entrustment order may be imposed for crimes carrying a maximum statutory penalty of at least four years of imprisonment and provided that hospital care is necessary in order to protect the safety of other people, the general public, or property. The hospital care is carried out in a special private or state institution were the person is treated, the so-called *terbeschikkingstelling* (TBS). The order lasts for two years, but may be extended by one or two years. For certain violent offences a further extension is possible as long as the safety of others requires so. Regular reviews of the entrustment order have to take place.

– *Out-patient hospital order (sect. 38 CC)*
If the court considers that the requirements for an entrustment order are met but hospital care is not necessary, the defendant can be treated as an out-patient. The court can combine the principal penalty with instructions relating to his conduct and with an order that the probation service offers the necessary help and support.
When a custodial sentence is also imposed, the entrustment order shall not be for more than one year. The instructions attached to the entrustment order may not limit the freedom to profess religious or other beliefs or curtail constitutional freedom.

– *The detention and treatment of drug addicts order (sect. 38m CC)*
Persistent drug addicted offenders are responsible for a disproportionately large share of property crimes and nuisance in the major Dutch cities.

In order to enhance security and to reduce this nuisance, since 2001 the court has had the power to impose a detention and treatment of drug addicts order. The court may, at the request of the public prosecutor, commit the offender to a closed treatment center when the following conditions are met:
– for the offence committed pretrial detention is allowed;
– the offender in the previous five years has been at least three times sentenced to imprisonment or community service;
– the offender is likely to reoffend;
– the offender is a drug addict, and both the crime committed as well as the chance to reoffend are connected with his addiction; and
– the safety of persons or property is at stake.

The order may last two years, and is partly implemented in a closed setting (about six months), partly under a half-open regime (about six to seven months) and partly in free society. The offenders are provided with intensive nursing care and counseling programs in which attention is given to education, employment, leisure time, housing, and managing money.
The court may suspend the order under conditions, e.g., the condition that the offender accepts medical treatment for his addiction as an out-patient. A probation officer specialized in the rehabilitation of drug addicts supervises the offender.

7.9 Sanctions for juveniles (sects. 77a–gg CC)

In 1995, a major reform of juvenile criminal law took place in response to criticisms regarding the juvenile criminal law adopted in 1965. The 1965 juvenile criminal law was too paternalistic, and no longer in line with the increased emancipation of the youth. Furthermore, the legal position of juveniles was too weak and the juvenile criminal law was perceived as too complex and outdated.
The 1995 juvenile criminal law was simplified and modernized by introducing various substitutes to imprisonment, and by taking into consideration the increased emancipation of adolescents.
Only a restricted number of crimes committed by juveniles is tried by juvenile courts since both the police and the prosecution service can settle juvenile cases out of court. Minor crimes such as vandalism, shoplifting and theft can be settled by the police, provided that the juvenile offender takes part in a crime prevention project of not more than twenty hours.
The prosecution service can settle a case through a transaction. The conditions attached to a transaction are compliance with instructions issued by the Child Care and Protection Board during a probationary period not exceeding six months, performance of non-remunerated labour of forty hours to be completed within three months, reparation of the damage caused by the offence, attending a training project to improve behavioural skills, and finally, the payment of a sum of less than € 2,250 to the Treasury.

Where the crime is too serious to be settled out of court, the juvenile court may impose juvenile detention, a task penalty, or a fine.
The aim of the detention is correction. The pedagogical effect of the detention is mainly the result of the deterrent effect of the sanction. Although the treatment of the juvenile offender is not a major point during the implementation of the detention, much attention is paid to formative activities, such as education, work, and sports.
The minimum term of juvenile detention is one day. The maximum term is twelve months for juvenile offenders under sixteen years of age and 24 months for those over sixteen years. Juvenile detention is implemented in special juvenile penitentiary institutions where offence-related treatment can take place.
The task penalty may consist of:
– a community service order or work contributing to the repair of the damage caused by the offence of 200 hours maximum;
– a training order (attendance at a training center in order to follow courses or training programs) of 200 hours maximum; or
– a combination of a community service order and a training order of 240 hours maximum.

Non-compliance with a task penalty may lead to a default detention of four months maximum.

For many juveniles a fine is a rather effective sanction provided that the fine is not paid by the parents. The minimum fine is € 2, the maximum is € 2,250, which may be paid in installments. The total fine must be paid within two years. When neither full payment nor recovery of the amount due is possible, the court may order a fine default detention for three months maximum or a task penalty.

7.10 Special sanctions for military personnel

Neither the Criminal Code nor any other statute provides special sanctions for civil servants or other special groups. The Military Criminal Code, after the reform on 1 January 1991, contains sanctions similar to those noted in the Criminal Code. The custodial sanctions imposed on military personnel are enforced in the military penitentiary establishment (*Nieuwersluis*), where the regime differs from ordinary penal establishments.

7.11 Measures for juveniles

Four measures may be imposed by a juvenile court:
– the committal to an institution for juveniles;
– withdrawal from circulation;
– confiscation of illegally obtained profits; and
– compensation for the damage.

The latter three measures are governed by the same rules on measures applicable in adult criminal law.
The committal to an institution for young persons is a very radical measure, and may only be imposed where it concerns a serious offence for which pre-trial detention is allowed, where the safety of others or the general safety of persons or of property requires such a measure to be imposed, and where the measure is in the interest of the future development of the offender.
The main objective of the measure, besides the protection of the community, is to provide young persons with the education and the care which is considered necessary.
The duration of the measure is not fixed in advance but is rather determined by the degree to which the young person in question requires residential education. Because of that, the juvenile court may only impose the measure after submission of a reasoned, dated, and signed opinion by no fewer than two behavioural scientists of different disciplines. One such expert must be a psychiatrist if the juvenile suffered from mental defect or mental disease at the time of the commission of the offence.
In principle the measure runs for two years. It can be terminated by the Minister of Justice in the meantime, upon consultation with the Child Care and Protection Board. The measure may also be extended by the juvenile court. Extensions can be requested for a maximum of two years upon request of the prosecution service. Extension is only possible if the measure was imposed in case of a violent offence or a sexual offence. Extension of the term of the measure with a further two years is only possible when the juvenile offender at the time of the offence was suffering from mental defect or mental disease. The security and development criteria must once again be met before extension is allowed. This means that a juvenile offender receiving such a measure at the age of seventeen years can be at the maximum detained until he is 23. A request for an extension of the measure of committal to an institution is heard by a three-judge bench of the district court.

7.12 The suspended sentence

Sections 14a-14k CC deal with the suspended sentence. The Dutch suspended sentence is a hybrid form of the Belgian-French *sursis* and the Anglo-Saxon probation. A suspended sentence means the non-implementation of (a part of) an imposed sentence. Since its introduction in 1915, the rules for the suspended sentence have been radically revised a number of times. The last major reform took place in 1986, when the scope of application of the suspended sentence was substantially expanded.
The reform was inspired by a 1983 report of the Committee on Alternative Penal Sanctions, and was strongly influenced by the need to reduce pressures on prison capacity. The reform simultaneously responded to a need, which had long been recognized in practice, to make a partial revocation of a suspended sentence possible.

Since the 1987 law reform, a suspended sentence is possible for all principal sentences, with the exception of the task penalty. A prison sentence up to one year, detention, and fines may all be suspended totally or in part. A prison sentence between one year and three years may be suspended only for one third of the sentence. A prison sentence of over three years may not be suspended. The suspended sentence can be applied to all offences and to all sentences to detention, fines, and sentences of imprisonment for up to three years. Accessory penalties may be suspended as well.

7.13 Partly suspended sentences

The court may impose a sentence that is suspended only in part. Since a sentence may consist of a combination of various principal penalties, a partly suspended prison sentence in combination with a task penalty or a fine is possible.

– *Conditions*
The suspended sentence is always subject to the general condition that the convicted person shall not commit another offence during the period of probation. The court determines the length of the period of probation at the time of sentencing. The period of probation is at most three years, but usually two years or less.

In addition to the general condition, the court may impose one or more special conditions, such as:
– compensation for all or part of the damage caused by the offence;
– admission to an institution of nursing care for the duration of the period of probation;
– deposit of bail (an amount of money equal to the statutory fine); and
– the donation of a certain sum of money not exceeding the maximum statutory fine to the Criminal Injuries Compensation Fund or to other organizations interested in the protection of the interests of the victims of crime.

The special conditions may not restrict the freedom to practice one's religion or personal beliefs or one's civil liberties.
The suspended sentence is very widely applied.

– *Control over compliance with conditions*
The effectiveness and credibility of the suspended sentence depends very much upon the control over the compliance with the conditions attached to the suspended sentence. The prosecution service has to exercise control over compliance and may be ordered by the court to help and assist the convicted person to comply with the conditions imposed. The probation service keeps the prosecution service and the court informed about the progress of the suspended sentence through progress reports (sect. 12 Probation Rules).

Compulsory probation supervision was abolished in 1973 as a result of pressure from the probation service, which increasingly had come to feel that this task conflicted with its proper social work role. With the abolition of the supervision by the probation service, the judiciary's confidence in the effectiveness of the special conditions plummeted and gradually less specific behavioural conditions were attached to the suspended sentence.

– *Revocation*
Non-compliance with the conditions attached to the suspended sentence may lead to a revocation by the court of the suspended sentence on request of the public prosecutor. The court may decide partially to revoke the suspended sentence, or to extend the probation period, or to add or change the condition attached to the suspended sentence.
When the court considers revocation of a suspended sentence or part of it, it may instead order the performance of a task penalty (sect. 14g CC).

8 Sentencing

8.1 Statutory framework

The Dutch judiciary is vested with the widest discretionary power when sentencing.
The very few statutory rules that guide the court in this process are general, and do not limit the court in choices of type and severity of the sanctions in individual cases.
The statutory framework of sanctions is set very broadly. The statutory minimum term of imprisonment is one day, and is the same for all crimes, regardless of the generic seriousness of the offence.
Maximum terms of imprisonment are specified, and reflect the gravity of the worst possible case. Few crimes are subject to life-imprisonment, but instead of life imprisonment a fixed-term prison sentence up to twenty years or a fine can be imposed.

– *Aggravating circumstances*
The Criminal Code provides a rather restricted set of rules for aggravating circumstances. Three circumstances may result in a more severe sentence: recidivism, concurrent offences, and the committal of an offence in the capacity of public official. In case of aggravating circumstances, the statutory maximum sentence may be increased by one third.
In addition, the Code has specified special aggravating circumstances for a number of criminal offences, which may result in a more severe sentence. This is the case with offences, which are qualified in terms of their consequences (e.g., assault resulting in the death of the injured person).

– *Mitigating circumstances*
The Criminal Code contains one mitigating circumstance, i.e., tender age. Tender age results in the application of juvenile criminal law with a much lighter sanction system.
Apart from this general mitigating circumstance the Criminal Code contains special mitigating circumstances, which are related to certain offences.

– *Concurrent sentences*
Concurrent prison sentences cannot be imposed. When a suspect has to stand trial for concurrent offences or for multiple offences, the court cannot impose a prison sentence simultaneously and cumulatively. In that case, the court can impose a joint sentence, the maximum term of which may be one third higher than the highest statutory maximum prison sentence for one of those criminal offences.
Fines may be imposed for any of the concurrent offences.
There is a possibility of combining various principal sentences. A prison sentence, if totally or partly suspended, may be combined with a fine or a task penalty.

8.2 Rules on reasoning of sentences

The choice of sanctions lies with the court, but is subject to procedural requirements concerning the reasoning of the sentence:

- Section 359 (5) CCP requires that the verdict states the special reasons, which determine the sentence.
  The court often will confine itself to a standard phrase, which is limited to the statement that the imposed sentence meets the seriousness of the offence, the circumstances in which the criminal offence has been committed, and the personality of the offender. It is generally known that this reasoning, required by art. 359 (5) CCP, is pre-printed on the sentence form, or flows easily from the word processor when devising the verdict.

- Section 359 (6) CCP furthermore requires that in a verdict which results in the deprivation of liberty, the special reasons are to be stated which have led to the choice of a custodial sentence, and also that the circumstances are stated which were considered in the assessment of the length of the sentence. The choice of a suspended sentence does not need further reasoning.
  This requirement was incorporated in the CCP through the 1983 Financial Penalties Act.

- Section 359 (7) CCP requires a statement of reasons when the court imposes a more severe sentence than the prosecution service has requested in its closing speech.

- Finally, section 359 (8) CCP requires special reasoning when the court imposes an entrustment order for a crime involving a danger for the bodily inviolability.

Dutch procedural criminal law provides for a two-step procedure in sentencing of adults (sect. 359 (5) and (6) CCP).
The first step requires a decision on the amount of the punishment that is proportionate to the offender's criminal liability and the seriousness of the offence.
The second step requires a decision on whether punishment should be imposed as a fine, a suspended sentence, or determinate sentence of imprisonment.
In this decision, not the individual criminal liability or seriousness of the offence, but considerations of special or general prevention play a decisive role.

8.3 Statutory sentencing rules

There is no statutory provision on the aims of sentencing. These aims are quite diverse and include retribution, special or general deterrence, reformation, conflict solution, protection of society, and reparation.
All the statutory sanctions and measures are based on various sentencing aims.

The task penalty combines many aims, but special prevention has a certain priority when imposing the task penalty. Multiple aims exist also for the withdrawal of illegally obtained profits (reparation, retribution, and prevention), the fine (retribution, prevention, and reparation), imprisonment (retribution, prevention, and protection), and the entrustment order (protection, prevention as well as retribution). The basic notion of sentencing, however, remains the retribution of criminally liable conduct.

The court is free to choose one or more aims it thinks appropriate in each individual case. The chosen aim can often be deduced from the kind of sentence and the length of the sentence. Very often, the court opts for a combination of sentencing aims, but there are also many examples where one aim is emphasized, (e.g., HR (= Supreme Court) 26 August 1960, *NJ* (= Dutch case law) 1960, 566: retribution ('... that measures are not, unlike sentences, also beneficial to retribution of the criminal offence and are only aimed at the protection of public order and improvement of the offender...'); HR 9 December 1986, *NJ* 1987, 540: general prevention ('... that foreign criminals, like the defendant, should be deterred to provide for themselves by committing offences in this country'); HR 12 November 1985, *NJ* 1986, 327: protection of society against the defendant ('... In the imposition of a prison sentence, the reason that the Court wanted to protect society maximally by doing so, is not impermissible'); HR 15 July 1985, *NJ* 1986, 184: special prevention ('... With a view to a proper enforcement of norms, the Court holds the opinion that no other sentence but deprivation of freedom shall be imposed'). As a rule, however, the court does not explicate the aims of the sentence in the verdict at all.

The question arises here, to what extent the guilt of the offender puts a further limit on the severity of the sentence, and to what extent the sentence imposed should be in proportion to the degree of criminal liability. The principle 'no sentence unless criminal liability' is part of Dutch penal law. That means that a defendant, by reason of insanity, cannot be punished and his case will be dismissed. But if he is a danger to himself or to others, or to the general safety of persons or goods, the court must order that the defendant be admitted to a mental hospital through an entrustment order.

However, the principle 'no sentence unless criminal liability' does not result in the consequence that the sentence is fully determined by this liability. Nor does it mean that a sentence, which is disproportional measured by the degree of liability, is inappropriate. In fact, the sentence is not only determined by the degree of liability, but also by other factors such as: protection of society against recurrence in connection with the danger of the offender; the seriousness of the offence committed; the seriousness of the effects for the legal order; and the general and preventive effect which emanates from such a sentence (HR 15 July 1985, *NJ* 1986, 184). In its case law, the Supreme Court has repeatedly accepted a sentence in which a measure (e.g., an entrustment order), imposed because of a diminished liability, was combined with a very long prison sentence. Despite diminished liability, the court can pass a long-term prison sentence, because it

feels the need to keep the offender outside society for a long time, in order to protect society (HR 10 September 1957, *NJ* 1958, 5, HR 6 December 1977, *NJ* 1979, 181, and HR 12 November 1985, *NJ* 1986, 327).

Various personal or isolated factors may be reasons to adjust the sentence upwards or downwards. An upward adjustment may be justified by the criminal past of the accused, or by the negative attitude of the accused during the examination in court; for example, an accused who consequently denies having committed the crime, or an accused wanting to evade a sentence by making several false statements, by the motives that compelled him to commit the offence, for instance jealousy and hate, by the circumstance that the accused did not want to cooperate in a psychiatric evaluation, or by the fact that the accused fails to understand that his behaviour was wrong.
A downward adjustment may be justified by a serious delay between the time of committing the crime and the trial, by voluntarily offering compensation for damages inflicted, by expressions of regret on the part of the accused, by lack of previous convictions, or by positive probation prospects.

8.4 Judicial review of sentencing

A sentence by a court of first instance can be reviewed by an appellate court. An appeal can be lodged by the convict or the prosecutor. In appeal, the court enjoys full discretion to determine a new sentence.
As a rule appeal pays. Research on 20,000 appeal cases in 1994 and 1995, showed that in 21.5% the appeal sentence was similar to the prison sentence imposed in first instance. In 14.1% the appeal sentence was lower, and in 8% higher than the prison sentence imposed in first instance.
In almost 52% of the cases, the appeal court changed the prison sentence imposed by the court of first instance into a partly suspended sentence or, although rarely, into a fine. The total amount of prison days, imposed by courts of first instance, was 1.8 million. In appeal, the amount was reduced to 1.3 million prison days, a reduction of 1,370 prison years.
Sentence reduction by the court of appeal is often a reward for good conduct during the time elapsed between the verdict in first instance and the court session in appeal.

Review of sentencing is exercised by the Supreme Court as well, but the review is restricted to the question whether the sentence is sufficiently reasoned, according to the statutory requirements of section 359 CCP.
The Supreme Court, as a rule, accepts as sufficiently motivated the standard formula that the sentence is proportionate with the seriousness of the crime, the circumstances in which it was committed, and with the personal circumstances of the suspect.

The Supreme Court does not accept the standard formula when the sentence is surprisingly severe. This is the case when, for example:
- there is an obvious discrepancy between the offence committed and the sentence imposed, e.g., the seizure of a car worth € 18,000 for a criminal offence which carries a fine not exceeding € 5,000 (HR 13 June 1989, *NJ* 1990, 138);
- in appeal the sentence is augmented considerably without further motivation, which is the case when a suspended prison sentence, imposed in first instance, is replaced by a determinate sentence (HR 2 April 1985, *NJ* 1985, 875);
- the judge did not respond to an explicit defense as to the sentence at the trial, in which the defendant pointed out a factor for reduction of the sentence in an insisting and confident way (HR 1 November 1988, *NJ* 1989, 351); or
- the court imposes a high fine whilst the offender is poor (HR 17 February 1998, *NJ* 1998, 447).

8.5 Disparity in sentencing

The absence of mandatory rules for sentencing may contribute to the mild penal climate, but may also result in great disparity in sentencing.
Disparity is one of the most serious problems in sentencing in The Netherlands. The court of appeal or the Supreme Court can, as we have seen, reverse extreme unjust sentences. But neither appellate courts, nor the Supreme Court, can ever realize full equality in sentencing by lower courts. Equality in sentencing has been of major concern over the last decades.
Various proposals have been discussed to improve the equality in sentencing without restricting the judges' discretionary powers to individualize the sentence too much.
Those proposals ranged from the establishment of a special sentencing court to a data bank on sentences, or sentencing checklists or sentencing guidelines for courts, but none of those proposals has led to a viable solution to the problem of disparity in sentencing.
For certain types of offences there was less disparity in sentencing. This was not a coincidence, but a result of the fact that for these offences the prosecution service had issued directives on what sentence was to be requested at trial in the closing speech. This holds good for drunk driving, social security fraud, tax fraud, drug crimes, and so on. Those directives had a harmonizing effect.
It appeared that in practice the court considered the sanction requested by the prosecutor in his closing speech as a guideline for sanctioning.
The directives have been issued by the Board of the prosecutors-general, and were in line with the sentencing policy of individual courts.
An individual member of the prosecution service is bound by these directives in principle. This obligation stems from the hierarchical structure of the prosecution service, in which someone lower in the hierarchy is committed to instructions emanating from his superior. This commitment is expressed in the law (sect. 139 Judicial Organization Act, and sect. 140 CCP).

Unlike the members of the prosecution service, the court is not bound by these directives. Nor is it obliged to state the reasons for a deviation from the directives to the detriment of the offender (HR 10 March 1992, *NJ* 1992, 593). In daily practice, however, the directives prove to be a beacon in its sentencing policy. Although, since the 1970s, these types of sentencing directives for prosecutors have been issued for a large variety of crimes, they did not have the desired effect. This was due to the fact that the directives allowed a large margin between the highest and the lowest sentence to be requested, without making clear when the highest or the lowest sentence was appropriate.
There was also a lack of consistency in the directives. The question whether a weapon was used, was very important in the directive on bodily harm, but the use of a weapon did not play a role in the directive on sentencing for the use of violence. Another reason why the sentencing directives were not an effective instrument against disparity in sentencing was that the prosecutorial directives on sentencing left room for public prosecutors, without further reasoning, to deviate from these directives in individual cases.

8.6 Prosecutorial sentencing guidelines

Within the prosecution service, since 1999 more than 35 national guidelines for sentencing have been formulated, which must lead to equality in sentencing for the majority of crimes, the so-called *Polaris*-guidelines. The structure of these prosecutorial sentencing guidelines is very clear and is based on the 'Frame for prosecutorial sentencing guidelines' published by the Board of prosecutors-general (*Stcrt.* 2001, 28). For each crime a number of sentencing points is set, e.g., bicycle theft 10 points; burglary 60 points; motorcar theft 20 points; shoplifting 4 points; destruction 6 points; bodily harm 7 points; threat 8 points; insult 10 points; open or overt use of violence 15 points; import or export of hard drugs 30 points; burglary in a factory 42 points.
Due to special circumstances, the number of points can be higher or lower, e.g., the use of weapons or the existence of injury of the victim lead to extra points. An attempt to commit a crime leads to a reduction of points. Recidivism makes that half of the points are added, multiple recidivism doubles the points. Finally, the points are converted into a sentence.
Not all the points count fully for the sentence. A conversion method has been elaborated. Up to 180 points, every sentencing point counts. Between 181 to 540 points, each point counts as half a point, and above 541 points, each point counts as a quarter of a point.
Every point may lead to a fine of € 22, or to one day of imprisonment or to two hours task penalty. Below 30 points, the public prosecutor can avoid a public trial and use the fine or the task penalty transaction. Between 30 and 60 points, the prosecutor may only use the task penalty transaction. Above 61 points, there will be an indictment and the public prosecutor will request a task penalty (<121 points) or a prison sentence (>120 points).

An individual public prosecutor is allowed to deviate from these guidelines, but he has to give an explicit reason for doing so. The advantage of this system is that review can take place in all nineteen regional prosecution services. In case one of the prosecutors deviates very much from the national policy, a discussion has to take place between the chief public prosecutor and the individual prosecutor.

The expectation is that uniform requests by the prosecution service, on the basis of these guidelines for sentencing, will lead to more uniform sentences by the courts.

9 The prison system

9.1 Prison policy

Annually almost 50,000 people enter and leave the Dutch penitentiary establishments.
Over the last 25 years, the composition of the Dutch prison population has changed considerably. In comparison with the prison population in the 1980s, nowadays prisons are filled with prisoners of a different type, serving much longer sentences for a different kind of offences.
The Minister of Justice is ultimately responsible for the Prison Administration and the development of prison policy. Regularly, a prison memorandum or prison policy plan is issued. They indicate changes in prison philosophy and regime policies. Between 1953, when the Principles of Prison Act came into force, and 1999, when its successor the Penitentiary Principles Act came into effect, four prison memoranda have been published, showing that gradually high expectations of the rehabilitation ideal have been altered in a more back to earth philosophy. The decline of the rehabilitation ideal has been caused by many factors, some of which we shall deal with here.

The latest prison memorandum was issued in 1994. In Dutch, it is called '*Werkzame detentie*'. It simultaneously means effective incapacitation and laborious or industrious detention.
The main reason for developing a new prison policy was the changing characteristic of the prison population. There was an increasing number of prisoners serving very long prison sentences; there were more aggressive prisoners and prisoners with a high escape risk or psychotic and drug addicted prisoners. There also was an increasing number of non-native prisoners who would be expelled after their release. The number of nationalities, foreign languages, religions, etc. is growing annually.
Another reason to reconsider prison policy was the enormous extension of the penitentiary capacity since the previous prison memorandum.
During the last decade, the prison rate more than doubled, and the Netherlands had one of the fastest growing prison populations in the world. The incarceration rate per 100,000 inhabitants grew around 130 per cent between 1985 and 2000. Nevertheless, Dutch incarceration rates in absolute terms are lower than in many other European countries. In 2000, the rate was ninety per 100,000. Between 1985 and 2000 the prison capacity quadrupled. Recent projections by the Ministry of Justice suggested the need for even more construction.

What is the core of present prison policy? The starting point is that a standard regime for all prisoners exists, in which productive labour for 26 hours a week is a central element. The standard regime offers each prisoner a number of statutorily guaranteed activities, such as open-air visits, visits by family and friends, recreation, and sports.

The purpose of the standard regime is twofold:
– it leads to a more adequate implementation of the time spent in prison; instead of boredom and idleness, prisoners will have a meaningful time investment; and
– it contributes to the integration of released prisoners in the society.

By far the majority of prisoners are subjected to the standard regime. A relatively small group qualifies for special treatment, which is more specifically directed towards promoting their integration into society after their release.
As far as the closed prisons are concerned, there are special facilities for:
– drug addicts who want to escape their drug-related criminal lifestyle;
– prisoners with psychiatric disorders who require close supervision; and
– prisoners who want to improve their opportunities in society by means of education, occupational courses, and work training programs.

The Dutch Prison System was reorganized in 1992 after a lengthy and complex process. Until then, the management of Dutch prisons and penitentiary institutions was directed by the Central Prison Directorate of the Ministry of Justice. Almost all decisions concerning personnel and prisoners were made by this Directorate. A so-called deconcentration process put an end to this situation. Since then, the prison governors are vested with powers, which previously belonged to the Prison Directorate. The task of the National Agency of Correctional Institutions was to coordinate the decentralized management, and to develop and implement a system of planning and control.
The deconcentration process brought a division between policymaking and implementation of this policy. The former is the task of the National Agency of Correctional Institutions, the latter the task of the prison governor.
This division between policymaking and policy implementation was very favourable to prison organization, because local management got ample opportunity to make its own decisions in personnel and financial and material matters. The process of deconcentration was also favourable to the organization of prison labour.

9.2 The 1998 Penitentiary Principles Act

The main legislation on the enforcement of prison sentences are the 1998 Penitentiary Principles Act (PPA), and the attached Penitentiary Rules. The Act replaced the 1953 Principles of Prison Administration Act and considerably changed the regulations on differentiation of penal establishment and on the selection of prisoners. As of 1 January 1999, the Act has come into effect.
The core of the Penitentiary Principles Act consists of four topics. The Act:
– legalizes some infringements of human rights;
– takes as starting point that implementation of prison sentences does not take place under the principle of separation, but under the principle of association;

– guarantees a minimum of facilities and activities for prisoners; and
– provides prisoners with legal safeguards.

The guiding principles of the Penitentiary Act are: the principle of resocialization, the principle that a sanction is implemented as soon as possible after it is imposed, and the principle that the incarcerated person is to be subjected to as few restrictions as possible.
The Penitentiary Principles Act, furthermore, covers the principles governing the regulation of different types of penal institutions. These different types are the remand houses mainly for implementation of pre-trial detention orders and for implementation of certain prison sentences or other kinds of deprivation of liberty, and the prisons for the implementation of prison sentences at large.
The Penitentiary Principles Act also elaborates the principles in respect of classification of prisons, level of association, selection of prisoners, use of control of and violence against prisoners, degree of contact with the outside world, social, spiritual, and medical care, prison work, recreation, discipline, and the complaint procedure for prisoners.
The PPA is both applicable to prisoners and to pre-trial detainees. As a rule, the legal position of a pre-trial detainee is similar to that of a convict. The PPA provides rights and obligations for all persons detained, regardless of the title of detention – prison sentence, pre-trial detention order, fine default detention, or expel detention order (sect. 1 PPA).
In the Penitentiary Rules, the principles laid down in the Penitentiary Principles Act are elaborated in more detail.

– *Penitentiary programs*
The new Penitentiary Principles Act and Penitentiary Rules introduced this backdoor variant of community sanctions. Although, in 1986, discretionary parole release was replaced by automatic non-conditional early release, a new form of conditional release has been created which is open only to a limited category of prisoners.
Penitentiary programs are discretionary programs. Participation in these programs can be granted to motivated detainees when they have served at least fifth sixths of a term of imprisonment of at least six months. A penitentiary program lasts at least six weeks and at most six months, and precedes the automatic early release, which is granted after two thirds of the sentence. The convicted person is under supervision of the probation service and is obliged to participate in activities aimed at re-integration and rehabilitation outside the prison for at least 26 hours per week. The remaining prison term is not served in prison but at home, of which 12-16 weeks under house arrest. Approximately ten per cent of prisoners with terms of more than one year will be eligible for participation in penitentiary programs.
As a rule, penitentiary programs are combined with electronic monitoring.

9.3 Types of prisons

Prior to the introduction of the 1998 Penitentiary Principles Act, a number of statutory criteria were developed for the classification of prisons, such as age of the prisoner and length of the prison sentence. Although the PPA does not recognize age and length of the sentence as statutory criteria for differentiation anymore, in practice they still play a role. The differentiation based on gender is still in use. Men and women are detained separately but common activities are possible. The main differentiation criterion since the PPA came into force is the level of security.
The various penitentiary establishments can be distinguished on the basis of their destination and their level of security against escapes. There are five levels of security (sect. 13 PPA):
– very restricted security;
– restricted security;
– normal security;
– extended security;
– extra extended security.

There are at present twenty penitentiary establishments for adults, many of which have one or more remand houses, and one or more types of prisons. In seven penal establishments exist departments or wings for female prisoners. Dutch penitentiary establishments are rather small. The largest has a capacity of almost 400 cells. The total prison capacity for adults is around 13,000.
Many prisoners are so-called self-reporters. Those are persons convicted who are not serving their sentence directly. They are not deprived of their liberty at the time the prison sentence is imposed but, after a period of time, they are summoned to report to prison to serve their prison sentences. It is assumed from the fact that they report to prison themselves, that they accept the sentence, and that they will not try to escape. They therefore present a minimal security risk, and can be kept in a very low security prison.

Penitentiary establishments are either prisons or remand houses.
At present the prisons count a total of around 3,500 cells. The different kinds of prisons are:
– Half-open penitentiary establishments. In these prisons, prisoners with long prison sentences serve the last phase of their sentence, provided they are well motivated and deemed suitable. Educational programs are offered to prepare the prisoners' return into free society. The level of security is low.
– Half-open penitentiary establishments for self-reporters. These prisons have a very low level of security and are intended for detainees who, at the time they were sentenced by the court, were not held in pre-trial detention, and who report themselves after having been requested to do so.

- Open penitentiary establishments. These prisons are intended for those detainees who have served at least half of their sentence, but who have still at least twelve months to serve. The maximum stay is five months. Good motivation and suitability are prerequisites for placement in these establishments. During daytime, prisoners have to work and to follow educational programs. The level of security is limited.
- Penitentiary establishments for short-term sentences. These prisons are intended for convicts who have to serve a remainder of six months prison sentence, as a rule implemented consecutively to pre-trial detention. Prison labour forms the main activity.
- Penitentiary establishments for long-term sentences. These prisons are intended for convicts who still have to serve at least six months prison sentence. Prison labour forms the main activity and convicts may take part in educational programs. Participation in programs is obligatory.
- Establishments for persons arrested. These are closed prisons for convicts who did not report themselves after having been requested to do so.
- Extra high security units. After a number of spectacular escapes in 1991, the system of the extra high security units was introduced for prisoners who present a high escape risk, and who were labeled as extremely dangerous. In four prisons, units of twelve cells each were established. The weak point of the extra high security unit was that facilities for outdoor exercise, sports, and visits were not located in the unit but in other parts of the prisons. Several extremely dangerous prisoners attempted to escape, using extreme violence and taking hostages.
  A decision was made to build one fully-fledged EHSU-prison. All the facilities are inside the walls of the unit. The EHSU-prison in Vught comprises 24 cells. In fact, the unit is a prison within a prison. Given the limited capacity, placement in an extra high security unit takes place only after a thorough assessment of risks of escape. Prisoners who present an extremely high escape risk, and whose escape would be unacceptable for society in terms of recidivism of serious violent crimes or in terms of considerable societal unrest, may be placed in an EHSU. Detention in an extra high security unit is for a period of six months but can be extended by six months, provided that the risks of escape still exist.

  A prisoner can challenge a decision to place him in an EHSU or to renew his placement.
  The regime in the extra high security unit is very restricted. The contact with wardens is as remote as possible. No contact is allowed with prisoners of other units. Regular body checks and special cell checks take place. Visits by family and friends take place in a room separated by a glass wall. Visitors are strip-searched prior to the visit. Prisoners are checked prior to and after the visit. All talks with visitors are recorded. Outside the cell the prisoner always wears handcuffs.

At least twice a week half an hour of sports is allowed, and at least three times a week recreational activities are permitted.
The Council of Europe's prevention of torture committee has argued that, despite the good material conditions, the overall quality of life of the EHSU prisoners left a great deal to be desired, and has come to the conclusion that the regime of the EHSU is inhuman. Recently the European Human Rights Court (Judgement 4 February 2003, Lorsé and others vs. the Netherlands) hold that same security measures in the EHSU amounted to inhumane and degrading treatment in violation to sect. 3 of the European Human Rights Convention.

In remand houses, around 9,500 places are available. The major kinds of remand houses are:

- Police cells. Someone who is in remanded custody for a crime, or who has to serve a prison sentence or pay a fine. Default detention may serve ten days of the sentence maximum in a police cell of a police station.
- Remand houses with a standard regime. These remand houses are intended for pre-trial detainees. The daily activities mainly consist of prison labour. A pre-trial detainee may take part in educational programs. Participation in programs is not obligatory.
- Remand houses with a sober regime. These are intended for fine default detainees, foreigners, persons arrested, and those convicts who may cause trouble. The maximum stay is sixty days. There is a day program but no activities in the evening. The statutory minimum amount of activities is offered.
- Remand houses for detention of illegal aliens who are ordered to leave the country (sect. 26 Aliens Act). Detention of illegal aliens is an administrative measure, but is executed in a secure institution. The conditions are identical to those for pre-trial detention. The average length of stay is about fifty days. This means that twelve per cent of the annual remand house population consists of illegal immigrants.
- Penitentiary treatment centers. This development concerns a new custodial measure: compulsory detention of persistent drug addicts who frequently commit less serious offences, that are nonetheless considered a serious public nuisance. In view of the pettiness of the committed offences, they are usually punished with minor prison sentences. Therefore, it is not possible to start treatment in a penitentiary setting effectively. The new measure authorizes confinement of addicts in a special 'penitentiary treatment center' for up to two years. During this period, detention will be used to get the addict to cooperate in a treatment program aimed at detoxification, normalization, and re-integration. Part of the treatment can be carried out outside the institution. Despite fierce criticism from independent scientific experts, the measure was introduced in 2001.

The Minister of Justice determines the designation of each penal establishment or wing and draws up the rules concerning placing and transfer of prisoners.

The Minister may designate parts of a penal establishment as a wing with a separate designation.

– *Selection of prisoners*
The system of specialized penal institutions for adults means that prisoners have to be selected for the different types of prison. Selection is carried out by penitentiary consultants (sect. 15 PPA). Using the selection criteria, they decide in which prison a convicted person must serve his sentence. If, during the course of the sentence, it becomes clear that a prisoner does not fit in well with the prison selected, he can be transferred to another prison. In practice, one of the most important reasons for transfer is that the convicted person cannot be kept with other inmates in the selected prison.
A prisoner has the right to lodge a complaint against his committal to the selected prison, or his transfer to another prison. The complaint is dealt with by the penitentiary consultant (sect. 17 PPA). When the prisoner still disagrees with the decision of the penitentiary consultant, he can lodge an appeal with the Council for the Administration of Criminal Justice and Youth Protection in The Hague, which serves as an administrative court.

– *Level of association in prisons*
A distinction is made between complete freedom of association, and limited association. Under the regime of complete freedom of association, prisoners can move around inside the prison fairly freely, except at night. Under limited association, prisoners are confined to their cells, except for periods of communal or group activities. In the case of complete association, communal activities are the rule and confinement to cell an exception; in the case of limited association it is the other way round. Thus, for example, in the prison for those deemed unfit to mix with other prisoners, association is restricted to work, outdoor exercise, church services, and, in special cases, educational and recreational activities. The level of association can therefore vary from being let out of the cell only for work, exercise, church, and recreation, to staying out of the cell all day long. Whatever the level of association, nighttime is always spend alone in the cell.

– *One prisoner per cell only*
The Dutch prison system operates a principle whereby no more than one prisoner may occupy each cell. By force of circumstances, more in particular the lack of prison capacity in the early 1990s, the one prisoner per cell rule has not been fully adhered to. Since 1993, prisoners for fine default, and those who are placed in detention due to an expulsion order, may be accommodated in a common cell. Furthermore, in emergency situations pre-trial detainees and prisoners in remand houses may be accommodated in common quarters, which since 2002 also happens with the so-called drug swallowers. Recently, new remand houses have been opened and prison capacity has been extended, so that the one prisoner per cell rule is fully complied with again. The average size of the cell is

10 m², and each cell as a rule contains a toilet and washstand. The cell, furthermore, contains a bed, a chair, a table, a wardrobe, and a shelf.

9.4 Prison regime

In penitentiary establishments where a limited association is applied, three types of regime are possible (sect. 3 subs. 3a PPR):
- the standard regime under which a day program of 78 hours per week minimum, including 43 hours per week activities including common meals and visits will be offered;
- the sober regime under which a day program of 56 hours per week, including 38 hours of activities and visits will be offered; and
- the regime for extra security units under which a day program of 78 hours per week, including eighteen hours of activities and visits is offered.

Under each regime, there are basic activities available for all detainees – sports, recreation and one hour per day open-air visit. The participation in other activities – labour, study programs, the preparation of participation in penitentiary programs – depends on what the penitentiary establishment can offer and on the prisoner's behaviour. During the day program, the prisoner is together with other prisoners in association. During the remaining hours the prisoner stays in the cell. The PPA provides rules for the prison regime and the legal position of detained persons. The most important rights are related to contacts with the outside world, the right or duty to take part in prison activities in leisure time or to take part in religious services, aspects of food, clothing, personal belongings, open-air visits, medical care, disciplinary measures, safety and order in the remand house, complaints procedures, and so forth.

In the Netherlands, a detainee may have a television and video in his cell, at his own expense, as well as books and a bird or a small aquarium. In the model prison rules *(huisregels)* it is established which objects may not be possessed in a prison cell:
- objects similar to those which have already been provided by the State as inventory of the cell;
- flashes, candles, oil lamps, vibrators, sex puppets, film and video equipment, binoculars, telescopes, photo equipment, a transmitter, and communication equipment;
- pets, with the exception of one or two fish to be held in an aquarium not bigger than 40 by 25 by 30 cm, and a birdcage not bigger than 35 by 35 by 50 cm with one or two small birds.

All these objects are statutorily forbidden. Other objects may be forbidden by the prison governor (e.g., computers and CD players).

The model prison rules determine, sometimes in detail, other objects like clothes (seven pairs of underwear), shoes, and other personal belongings that may be held in the cell. Objects, other than those explicitly forbidden or allowed, may be allowed or refused by the prison governor. He may allow the prisoner to keep a personal computer, an electric kettle and a hairdryer in the cell.

– *Visits*

The inmate has a right to receive visitors for at least one hour per week at the times and places determined in the prison rules (sect. 38 PPA). Pre-trial detainees, however, who are detained under restrictions set by the examining judge, do not have this right unless the public prosecutor or examining judge issues directions to the prison governor to allow the pre-trial detainees to receive a visit.

The visitor who would like to visit an inmate must ask permission by telephone or in writing prior to the visit.

The governor may limit the number of visitors simultaneously admitted to the detainee if it is in the interest of maintaining order or safety of the penitentiary establishment. The visit takes place in visiting rooms supervised by prison wards. In visiting rooms, as a rule, other prisoners receiving their visitors are present as well. Individual visits, however, may be granted by the prison governor. The conversation between the inmate and his visitor may be overheard or intercepted, provided that the prison governor informs the inmate prior to the visit that this may happen.

As a rule, there is no glass or plastic screen between the inmate and his visitor. The governor, however, may decide that such a screen will be placed and that communication takes place through intercom. Visitors must wear an identity card and their clothing may, prior to the visit, be examined for the presence of objects that may be a risk to order or safety in the institution. The examination may also concern objects brought by the visitor. The governor has the authority to keep the objects during the visit. The visitor must pass a detection gate. Visitors may not hand over anything to the inmate.

Before and after visiting hours, the inmates' clothing may be searched or the inmate may be ordered to undergo a bodily examination.

Lawyers may visit their clients without time restrictions. Lawyers have to identify themselves and have to pass a detection gate. Their belongings will not be examined.

Prisoners serving a long-term prison sentence may be granted the right to receive a so-called non-supervised visit. These visits may be used for sexual relations. The request for non-supervised visits by pre-trial detainees, however, will be granted only in most exceptional circumstances. A long stay in pre-trial detention and a deterioration of the relationship with the partner are not seen as sufficient reasons for granting a non-supervised visit.

– *Telephone calls*
Except where a pre-trial detainee is held under restrictions, as a rule every detainee has the right to conduct telephone calls with persons outside the penal establishment for ten minutes at least once a week. Telephone calls are at the expense of the detainee, unless the prison governor determines otherwise.
The detainee can buy telephone cards in the prison canteen. If he is found in possession of more telephone cards than are needed for regular use, this may constitute an offence against the order in the penal establishment, which may be punished with a disciplinary sanction.
The governor may decide to supervise telephone calls conducted by or with the pre-trial detainee, if this is necessary to establish the identity of the person with whom the detainee calls or for the following reasons:
– the maintenance of order or safety in the penal establishment;
– the prevention or investigation of criminal offences; or
– the protection of victims of crimes.

The supervision may include interception or recording of the telephone conversation. Prior to the telephone calls the detainee is informed about the nature of and reason for the supervision.
The governor may deny the detainee the opportunity to make telephone calls, or may terminate a telephone conversation within the time allotted for the reasons previously mentioned.
The decision to deny the detainee the opportunity to make telephone calls remains in force for a maximum of three months.
Free telephone calls without restrictions can be made to persons and bodies listed in section 37 PPA (e.g., judicial authorities, the Ombudsman, and so forth), provided that the necessity and opportunity for those telephone calls exist.
No other supervision shall be exercised over these telephone calls than that necessary to establish the identity of the person called. Quite often, lawyers complain that telephone conversations are supervised, despite the statutory guarantee that telephone calls with their clients may not be intercepted. The Minister of Justice has issued instructions to prison governors to stop supervision of telephone calls between inmates and their lawyers. Pre-trial detainees, who are detained under restrictions as set by the examining judge, are not allowed to make telephone calls except to their lawyers, in urgent cases at any time, in non-urgent cases during regular telephone hours.
E-mail, telefax and mobile phones are outside the scope of section 39 PPA, and therefore may not be used.

– *Letters and parcels*
As a rule, a detainee can send, at his own expense, and receive as many letters as he wants to write or receive. The prison governor, however, has the authority to restrict the number of letters in order to maintain order and safety.

The prison governor has the authority to examine covers and other postal items and check the content for contraband. He may also supervise letters or postal items sent by or intended for a detainee. This supervision may comprise the copying of letters or of other postal items. The detainee shall be notified beforehand that letters or postal items will be examined and supervised.
The governor may refuse to distribute certain letters or other postal items and he may confiscate objects if this is necessary in order to maintain order or safety in the penal establishment, to prevent or investigate criminal offences, or to protect victims of – or those involved otherwise in – criminal offences.
Non-distributed letters are returned to the sender, kept for the detainee, destroyed with his consent, or handed over to the police in order to prevent or investigate a criminal offence. Each detainee has an unrestricted right to send letters to Members of the Royal Family, Members of Parliament, the Minister of Justice, judicial authorities, the National Ombudsman, and the Council for the administration of criminal justice and youth protection (sect. 37 PPA).
The right to send and receive letters is also restricted for pre-trial detainees who are detained under restrictions. All letters they send or receive must be checked and supervised.
The refusal by the governor to distribute or post a letter must be substantiated in writing, signed by the governor.
A delayed distribution of a letter, because the letter had to be translated, is not a ground for complaint.
On the occasion of a birthday or Christmas, the detainee may receive a parcel of a restricted value (€ 33 maximum) provided that the present is easy to check.

– *Food, clothing, and personal hygiene*
The penitentiary establishment provides the inmate with food (sect. 44 PPA).
If the doctor of the establishment prescribes a special diet for health reasons, or if the prisoner for religious or ideological reasons is not allowed to eat the regular meal, regularly special food will be provided, for example, no pork for Jews and halal food for Muslims. The expenses for food are limited, but in conformity with the recommendation of the National Nutrition Information Office. Every inmate may buy, at his own expense, supplementary sandwich fillings, fruit, snacks, soft drinks, confectionery, cigarettes, and tobacco in the prison canteen. As a rule smoking is permitted in remand houses and prisons. The governor may order that smoking is forbidden in certain areas and at certain times. During the daily open-air visit smoking is always permitted.
The inmate is entitled to wear his own clothes and shoes or footwear, unless these pose a possible risk to order and safety or personal health. He may be obliged to wear specially adapted clothes or footwear during work or sports.
If the inmate refuses to wear these clothes or footwear, he may be excluded from labour or sports. The penitentiary institutions take care that clothes are laundered.

For personal hygiene, the penitentiary establishment provides soap, toothpaste, a toothbrush, shaving equipment, a comb, and shampoo, and for female inmates sanitary towels. In the prison canteen an inmate may buy supplementary products for personal hygiene. In principle, an inmate may wear a beard or moustache. The governor sees to the possibility that a hairdresser regularly is present to cut hair, beard, or moustache.

After sports activity, and at least once a week, an inmate is obliged to take a shower. No right exists to a daily shower but it is quite often permitted.

– *Prison labour*
A detainee has the right to participate in prison labour. The prison governor controls the availability of prison labour, provided that this labour is not in conflict with the nature of the detention.
Convicted prisoners are obliged properly to perform the prison labour ordered, either within or outside the prison establishment. Pre-trial detainees cannot be obliged to work. If they are willing to participate in prison labour, they are to be treated in the same way as convicted prisoners.
Working hours are to be laid down in the prison statute in conformity with good practice outside the prison.
The Minister of Justice enacts rules concerning wages for prison labour. The prison governor takes care of the assessment of wages and payment.
Those inmates who are obliged to work but refuse to do so, are generally disciplinarily punished by way of confinement in a cell or separation in a cell. Other disciplinary punishments, such as deprivation of visiting rights or denial of leave, may be imposed as well.
Those inmates who are not obliged to work, and are unwilling to participate in prison labour, have to stay in their cell during working hours.
No participation in prison labour can also mean no money to buy tobacco or other canteen goods (such as extra sandwich filling), no money to rent a TV or pay for telephone cards or stamps. Hence, by refusing to work, every prisoner further diminishes the quality of his stay in prison.
Since 1996, penitentiary establishments have been allowed to keep the profit of prison work instead of donating that money to the State Treasury. In exchange for the payment of detainees, no subvention is available anymore. Since 1996, the penitentiary institutions have had to pay the 'wages' of detainees themselves. The total income out of prison labour over 1999 was twenty million euro.
In 1996, a provisionary set of rules on payment of detainees was introduced. On 1 January 1999 the final Rules on payment of detainees came into force. For every hour an inmate works he is paid € 0,65. The prison governor may decide upon a supplementary payment of 100% maximum.
In case there is no work available, or the inmate cannot work due to illness, he receives 80% of the average daily income. Special rules apply to work requiring a higher level of skill, performed by inmates. In penitentiary establishments,

the maximum amount of money that can be earned weekly is € 38.
The rules on payment differ considerably. In some penitentiary institutions a maximum of € 12 per week is paid for 26 hours of work, in others € 18 or € 30, depending on the payment regime applicable. The money an inmate can earn is not a real payment for the work since it is not market-related or related to the Minimum Wages Act. In fact it is merely pocket money and the new set of rules does not lead to a substantially higher income for the inmates than in the previous period.

The penitentiary institutions also have to pay for the machinery, the equipment, the depreciation and amortization of equipment, and the cost of materials.
The acquisition of labour is a task for the prisons themselves. Annually more than 2.5 million hours are available for prison work.
One should not set too high expectations of prison labour since there are quite a number of limitations which affect the level of work negatively.
Some limitations concern the inmates. Inmates quite often originate from deprived social backgrounds. They lack sufficient vocational education. The majority of them has been unemployed or was not used to a work situation, before they ended up in jail. Half of the inmates are foreigners, who may not be able to understand work instructions. Quite a number of inmates are drug addicts or suffering from psychological or psychiatric problems, and so forth. These are important differences compared with the situation 'outside'. Unlike in the outside world, where employees can be selected on the basis of their capacities and skills, in prisons a selection on the basis of those criteria cannot take place at all, or only to a limited extent.
Some limitations concern labour facilities. Prisons are not constructed like factories, since prison labour was merely incidental to their main purpose. That means that only recently constructed prisons could take into account the emphasis on prison labour. In new prisons one can find more modern work facilities.
In a number of prisons reconstruction activities are carried out to improve the work facilities.
Other limitations concern the kind of work that is carried out in prisons.
There is still quite a lot of labour which can be called 'general labour', which in fact is labour that can be carried out without investment in machineries and equipment, and which does not require intensive coaching or supervision. This work can be repetitive, boring and relatively low graded. The main labour of diverse nature consists of packaging activities. There is also prison work available of some higher level, which requires more special equipment and supervision. This work consists of offset printing, bookbinding, carpentry, metalwork, fabrics and textile fashioning, leather manufacture, and assembly.
For this type of work vocational training can be offered. In prisons there is restricted vocational training for welders, lathe operators, carpenters, painters, and bricklayers.

– *Money*
A pre-trial detainee must hand over any money he is carrying when he arrives at the remand house or prison. He will be given a receipt for it. The money is kept by the administration and credited to the detainee's personal account. Any money, which is transferred or send to the detainee, is also put into this account. Earnings out of prison labour are added to the personal account as well. From this personal account a detainee may buy supplementary articles from the prison canteen up to € 90 maximum, of which € 23 maximum may be spent on buying telephone cards. If a detainee does not possess any money when he arrives at the penitentiary establishment, some money may be loaned to him to be deducted from earning out of prison labour. Of course the detainee, in that case, must be prepared to work.

– *Medical care*
Medical care is provided by a physician who is (as a rule part-time) employed by the penitentiary establishment (sect. 42 PPA). The inmate has a right to consult a physician of his choice, however, at his own expense. The physician or his substitute, employed by the penitentiary establishment, will have consultation hours regularly or will be present if this is necessary in the interest of the prisoner's health and will examine inmates in order to assess whether they are fit to participate in prison labour, sports, or other activities.
The prison governor is responsible to ensure that medical care is properly arranged, that medicaments prescribed by a physician are provided, and that medical treatment prescribed takes place inside or outside the penitentiary establishment.

In many penitentiary establishments, a physician is assisted by one or more nurses who select the requests by inmates to consult the physician in order to set priorities.
The costs for medical care are borne by the State, except the costs of consultation of a physician of the prisoner's own choice.
There is one full-time physician for every 300 detainees, and one nurse for every fifty.
A physician provides medical care but has other responsibilities as well.
He supervises inmates who are, by decision of the prison governor, confined in a cell as disciplinary measure or placed in an isolation cell as a measure to ensure order. Furthermore, the physician, by request of the prison governor, may perform a bodily examination in case of serious threat to health.
Medical care includes regular dental care, but on request only. Some expensive or time-consuming dental care like inlays, false teeth, and so forth, is merely provided to long-term prisoners, not to pre-trial detainees, except when the inmate has had good dental care prior to his detention and the Dental Care Consultant at the Ministry of Justice gives permission for the expensive dental care.

The number of inmates with mental health problems is increasing. This causes serious problems in penitentiary establishments. Sixty per cent of the prisoners have psychological problems due to drug addiction. For inmates who need special psychiatric/psychological help, Individual Treatment Wards are present in penitentiary establishments.
In crisis situations, mentally disturbed pre-trial detainees can be transferred to the Forensic Observation and Treatment Ward (FOBA) in Amsterdam with a capacity of forty inmates. In the Forensic Observation and Treatment Ward permanent psychiatric treatment for mentally disturbed inmates is provided. In case a pre-trial detainee is – due to his mental disturbance – unfit to be detained, he may be placed in a forensic psychiatric clinic or in a psychiatric hospital.

– *HIV in prison*
A serious problem is presented by HIV-infected prisoners, since a considerable part of the Dutch prison population comes from groups with an increased risk of HIV-infection. Exact data on the prevalence of HIV in Dutch prisons are not available, since there is no compulsory testing for HIV. On the basis of conversations, or external symptoms, or other indications, the physician may be informed on whether the detainee belongs to the group of high risk HIV-infection.
A circular on the policy to prevent HIV-infection in prisons has been issued recently.
As to its key features, this policy does not deviate from AIDS policy in free society. That policy is based on two pillars: information and prevention. The policy aims at informing prisoners and prison staff on the way in which transmission takes place, and calls for preventive measures to reduce the risk of infection. Prison guards and prisoners are informed on the nature of the AIDS problem, the ways in which infection may take place, and the nature of high-risk behaviour. This information serves two goals: taking away needless feelings of anxiety on the one hand, and alerting everyone when necessary on the other hand.
A characteristic of AIDS policy is, that it is set up in such a way that it assumes that every detainee is potentially HIV-positive.
Part of the policy to prevent the spread of HIV is the supply of methadone (for prisoners who are drug addicts) and condoms. The exchange of clean syringes is under discussion.
In spite of numerous measures taken in prison to prevent drugs being brought in, it is generally known that drugs are available in Dutch prisons, mainly soft drugs like hashish or marihuana, but sometimes even hard drugs, such as heroin and cocaine.
In a number of prisons there are drug-free prison wings that function autonomously, for inmates who want to rehabilitate of their addiction or who are afraid of becoming addicts during their imprisonment. Transfer to a drug-free wing, where the treatment is both of a medical and psychosocial nature, depends, *inter alia*, on the prisoner's acceptance of certain conditions. On the basis of the Penitentiary Rules, the prison governor may – for the benefit of

order, security, or the smooth operation of the penitentiary institution – require a prisoner to hand over urine for a test on the presence of drugs.
Protection against drugs cannot be offered outside the drug-free wings. The possession and use of drugs is of course forbidden, and results in the application of sanctions. A positive result of a urine test, or refusal to submit to such a test, leads to disciplinary sanctions. Short-term prisoners, who in open society took part in a methadone program, may get their doses in the prison as well. For long-term prisoners who are drug addicts, a gradual reduction of 5 mg methadone per day is advised by the medical advisor of the Ministry of Justice, in particular for addicts having serious psychiatric pathology.

– *Other rights*
Every detainee has the right to stay outdoors in the open air at least one hour per day, as a rule together with other inmates. Where the pre-trial detainee is detained under restriction, he stays outdoors in open air in a segregated area.
The detainee has the right to take part in sports activities at least twice for three quarters of an hour per week, if his health condition is favourable. As a rule, every type of sport may be exercised which is possible inside a penitentiary establishment. Combat sport is allowed, unless strong contraindications exist.
An inmate has the right to buy protein, which he needs to perform sports in the penitentiary establishment. Sports primarily consist of power sports.
Every detainee also has the right to take part in recreation activities for at least six hours per week. More hours per week may be granted if the detainee is deemed to deserve them, for example, due to his prison labour efforts.
Recreation consists of table tennis, playing chess, watching television, etc.
In all penitentiary establishments there is a library with books and reviews, sometimes in foreign languages. A detainee may borrow books or reviews at least once a week. Books may also be borrowed from public libraries. Personal copies of books may be used after a thorough check on contraband. Books that may cause a danger to the order in the penitentiary establishment may be refused by the prison governor. Detainees may, at their own expense, order newspapers and reviews and rent a television set, because they are entitled to stay up-to-date with news and current affairs.
A detainee may also follow educational courses, and may participate in other educational activities, to the extent that these are deemed compatible with the nature and duration of the detention and the character of the inmate.

– *Disciplinary sanctions*
Disciplinary sanctions can be imposed by the prison governor when the behaviour of the inmate is in conflict with good order, security, and discipline (e.g., the possession of a small quantity of marihuana or alcohol or serious misbehaviour during transport; sect. 50 PPA). Before a sanction can be imposed the inmate must be heard, preferably in a language he understands.
Disciplinary sanctions are:

– solitary confinement of two weeks maximum. Solitary confinement is implemented in a cell separate from the premises where prisoners are held. The cell merely contains a toilet, a mattress, and a foam rubber block to sit upon. During solitary confinement, the prisoner may not take part in prison labour and recreational activities. He may, however, receive mail and visitors, attend religious services, and he may also spend one hour per day in the open air;
– deprivation of visits for four weeks maximum, if the behaviour was related to the visit, for example, when the visitor had attempted to smuggle drugs on the prisoner's request;
– isolation in the inmate's own cell for two weeks maximum. During the isolation the prisoner may not take part in prison labour or in recreational activities and the TV in his cell will be removed; and
– a fine of two weeks' wages for prison labour.

The implementation of disciplinary sanctions can be suspended by a probationary period of three months. The prison governor shall immediately give the inmate a reasoned, dated, and signed written notification of his decision, and inform the inmate that he can lodge a complaint with the prison complaints committee against any disciplinary sanction imposed.
Safety measures can be imposed by the prison governor as well. Whereas disciplinary sanctions serve to correct the inmate's behaviour, safety measures can be applied when the order and safety of the penitentiary establishment or the safety or well-being of the prisoner is at stake.
Safety measures are the exclusion of a prisoner of regime activities or isolation in an isolation cell for two weeks maximum, which term can be extended by an additional two weeks if circumstances require it. Contact with the outside world can be restricted or excluded, except contact with wardens and officials. Due to the far-reaching nature of these measures, the Supervisory Committee and the prison physician have to be informed within 24 hours (sect. 24 PPA). Furthermore, the prison governor can order that a prisoner's body be examined if this is necessary to prevent serious risk to the order and safety in the penal establishment or to the inmate's health. The internal bodily examination includes anal or vaginal examination and the insertion of an endoscope. The examination takes place by a physician or on his instructions, by a nurse.
This intrusion on someone's basic rights of the inviolability of the body or his right on privacy (sects. 10 and 11 Dutch Constitution) may be necessary if there are serious reasons to assume that the inmate hides parts or ammunition of a firearm or cocaine in his body.

– *Prisoners' complaint procedure*
Since the 1976 Legal Status of Prisoners Act came into being, prisoners have the right to lodge a complaint against decisions taken by a prison governor. This right is now regulated in sections 60-73 PPA. The complaint is put before the complaints committee, which forms part of the Prison Supervisory Board

attached to every prison. Against decisions of this committee an appeal can be made by the prisoner and the prison director to the appeal committee of the Council for the administration of criminal justice and youth protection.
Complaints can be filed in respect of any decision related to the prisoner taken by or on behalf of the governor. Complaints also can be filed relating to delayed or refused decisionmaking.
No complaints are possible about general rules or regulations, nor about actual behaviour by, or on behalf of, the governor.
In the written complaint the decision of the governor must be mentioned and the reasons for the complaint must be given. The written complaint has to be submitted within seven days after the day on which the prisoner is notified of the decision against which he files a complaint. Within four weeks, a decision on the complaint has to be taken. The president of the complaint committee, which consists of members of the Prison Supervisory Board, is preferably a member of the judiciary. He can postpone the implementation of the governor's decision. Where the complaint committee annuls the governors decision, but the decision was already implemented, (financial) compensation to the prisoner is possible.
Annually, around 4,000 complaints are filed. A quarter of the complaints concern the enforcement of disciplinary measures, the majority of the complaints concern measures that deviate from what the prisoners see as their valid rights, for example, complete solitary confinement. In exceptional cases, the prisoner may address the National Ombudsman, whose task, however, since the PPA is very restricted.

– *Rules for prison leave*
Four sets of rules exist: general leave rules, regime-related leave rules, rules on the suspension of (further) implementation of the prison sentence, and, finally, rules on occasional prison leave.
The furlough regulations for long-term prisoners are laid down in the 1998 General Leave Rules. According to these rules, leave is granted on an individual basis. A number of objective criteria have to be met in order for leave to be granted:
– the sentence must be definite;
– the remaining sentence must be at least three months;
– one third of the sentence must have been served;
– the remaining sentence may not exceed one year; and
– the date for early release must have been fixed.

There are a number of subjective contraindications, which are applicable for all prison leave decisions. Leave must serve to prepare the prisoner for release. This criterion is almost always met by definition, except where there are contra-indications. This is the case when:
– a risk of absconding, reoffending, breach of the peace, or public commotion can be expected;

– there is a well-founded suspicion that leave will be used to smuggle in contraband goods, or will lead to drug or alcohol abuse;
– the convicted person is unable to keep to agreements;
– there is no leave address; or
– a risk of an unwanted confrontation with the victim of the crime can be demonstrated.

According to the General Leave Rules, the maximum number of times a prisoner can go on leave is six, an average of once every two months. Leave is granted for up to sixty hours, including traveling time. The application of these general leave rules means that, during the last year of their sentence, prisoners are allowed sixty hours leave every two months.
The decision to grant leave is taken by the Minister of Justice or the prison governor on his behalf.
Foreign nationals, who will be deported, expelled, or extradited at the end of their sentence, and prisoners in an extra high security unit or in an extended security prison, are not allowed leave.
The rules for regime-related leaves are as follows:
– all prisoners in open prisons are, in principle, entitled to weekly weekend leave;
– those serving sentences in half-open prisons are entitled to a 52 hours leave every four weeks, and 76 hours if the weekend is a public or Christian holiday.

Rules also exist on suspension of implementation of the prison sentence in very special situations; visits to family members who are seriously ill or bereaved, to funerals, or visits in connection with the birth of a child, may under these rules be allowed.
The rules on occasional prison leave are related to pressing personal circumstances such as serious illness or death of a relative, the birth of a child, and for medical psychiatric or psychological reasons, as well as for the participation in exams or for study and vocational training.
Failure to keep the conditions of leave, for example, by returning too late or under the influence of alcohol, may be dealt with in a number of ways. If the prisoner is in an open prison, a breach of conditions usually results in transfer to a closed institution. Alternatively, weekend leave may be reduced or completely withdrawn. If a prisoner fails to return from normal leave, this frustrates a future leave. In addition, it may be treated as a violation of prison order and discipline and be punished accordingly.

9.5 Miscellaneous

– *Absconding*
Absconding from prison does not constitute a criminal offence, unless criminal offences such as the kidnapping of warders or the use of violence, have been committed while absconding. Absconding may lead to a postponement or to

a refusal of early release. In recent years annually less than twenty (long-term) prisoners absconded, mainly with help from outside the prison. Special extra high security prisons – a prison in the prison – are established for inmates with a high escape risk. Annually, a few hundred inmates do not return to the penitentiary establishments after the furlough time is over.

– *Significant minorities in prison*
Dutch prisons contain two significant minority categories of prisoners: non-natives and female prisoners.
About eighty nationalities are represented in the Dutch prisons, ranging from citizens of the Cape Verde Islands, to Australians and Bolivians.
The largest groups are prisoners born in Suriname, Morocco and Turkey. Colombians, British and Germans are present in significant numbers as well.
Non-natives account for more than half of the entire prison population. Prisoners of a foreign nationality account for about one third of the total prison population.
Female prisoners, of whom more than 40% are also foreigners and mainly drug couriers, form a second minority category (5.5% of the total prison population). Although the number of female prisoners has multiplied fourfold over the last decade, the absolute number is still less than one thousand. New prison capacity for female offenders is under construction.
Due to the restricted number of penitentiary establishments where female prisoners can serve their sentences, the possibility of a differentiated enforcement is more limited than for male prisoners. Under the 1998 Penitentiary Principles Act the separation of implementation of prison sentences imposed on male and female offenders is obligatory, but the Act opens the possibility to designate separate wings in one penitentiary establishment for female prisoners and for male prisoners. Female prisoners may be allowed to take care of their babies or small children, provided that statutory conditions are met (sect. 12 PPA).

– *European Convention on Transfer of Prisoners*
The Netherlands are a contracting party to the 1983 European Convention on the Transfer of Sentenced Persons. The number of prisoners sentenced by a court abroad and transferred to the Netherlands to serve their prison sentence is still rather small (annually around 200 prisoners file a request). A very small number of offenders sentenced to imprisonment by a Dutch court, has filed a request to be transferred to their home country to serve their sentences.
The majority of the requests to be transferred from a foreign prison to a Dutch prison come from Spain, Germany, and the UK. The requests to be transferred to foreign prisons concern the UK, Turkey, Germany, and France. The actual transfers are however restricted. Requests from Spain, Germany, and Portugal are more likely to lead to a transfer than requests from the UK, Germany, or the Scandinavian countries. The latter countries oppose a transfer due to the mild sentencing climate in the Netherlands in relation to drug crimes.

– *Prison costs*
Imprisonment is quite expensive. The average cost price of a cell per day was € 150 early 2001. For the extra high security units the cost price was € 283, and for the half-open prison the price was € 148 per day. These prices include the costs of personnel, the premises, and overhead. The costs of a penitentiary program were € 47 per day.

10 Early release, pardon, and aftercare of prisoners

10.1 From conditional release to early release

Conditional release provisions were incorporated in the Criminal Code as early as in 1886. At that time, conditional release was intended as a gesture of leniency for good conduct, to be applied only in exceptional cases and only to prisoners who had served rather long sentences. This concept of conditional release was expressed in the legal prerequisites for conditional release, and the granting of release lay within the discretion of the prison administration.

In 1915, the regulations on release were changed considerably. Conditional release became a means of improving the rehabilitation of the offender into the free society. The objective of the conditional release was to improve the offender's future conduct by means of supervision by the probation service and by attaching conditions to the release.

Following the 1915 reform, prisoners were eligible for conditional release after having served two thirds of their sentence and at least nine months. The period of parole lasted a minimum of one year. The release decision was taken by the administration (the Prison and Probation Department of the Ministry of Justice) at the request of the local prison board.

The prosecution service was given the power to ensure compliance with the conditions. In addition to the mandatory general condition, the administration could attach special conditions to the release decision.
The general condition was that the released prisoner will not commit further offences during the probation period and he will not behave badly otherwise. Special conditions were related to the conduct of the released prisoner, but were not further specified. In practice the special condition mostly used was that the released person should accept special supervision by a probation officer. The prosecution service was vested with the right to control compliance with the conditions and the right to require revocation of the release.
A breach of conditions had to be reported by the supervising probation officer.

– *Decline of conditional release*
In the sixties and seventies, the importance of the conditional release as a rehabilitative instrument decreased. This was partly a result of the decrease in the number of long prison sentences, which meant that the number of prisoners eligible for conditional release (1950: ±800; 1970: ±340) declined as well. Far more important, however, was the fact that the professionalization of the probation work and the adoption of new probation work methods led to a tension between the probation work philosophy and the statutory tasks for the probation service in particular concerning the post-release supervision.
The essence of this tension was that in the relation between a probation officer and a client there is no room for any authoritarianism nor for any compulsory

supervision which, however, formed basic parts of the statutory probation tasks. One consequence of this probation work philosophy was that reporting on breaches of conditions did not fit in the probation officer's duty, as a helping agent, so since the early seventies such reporting was officially abolished in the Netherlands.

As conditional release was no longer seen as a bonus for good behaviour in prison, nor as an instrument of rehabilitation, it became increasingly difficult for the Prison and Probation Administration to refuse to grant parole to an eligible prisoner. As a result the release percentages went up from 50% in the early fifties to more than 90% in the early seventies and 99% in 1981.
Since in practice release was granted in most cases and only refused in very specific cases, a need was felt to create the possibility for a prisoner to appeal to a court when his request for release was turned down. Since 1976, prisoners eligible for release could lodge an appeal with the special penitentiary division of the Arnhem court of appeal against a decision to reject, suspend, or revoke conditional release. The court's case law was very critical towards the Prison and Probation Administration's release policy, and due to this case law the percentage of parole refusals dropped from 11% in 1975 to 1% by 1986.

– *The conditional release law reform committee*
Gradually, the conditional release changed from being a favour to almost an automatic right. Against this background, in 1980 a Committee was set up to advise the Minister of Justice as to whether conditional release should be retained and if so whether it would be advisable to articulate in the penal code that prisoners eligible have the right to be paroled.

The Committee did not support the idea of an automatic release. Although automatic release would save costs since the release procedure was time consuming and very bureaucratic, and although automatic release would stop prisoners feeling uncertain, it also has considerable drawbacks. With automatic release there is a risk that courts will take the release into account when deciding on the length of the sentence; automatic release would mean that dangerous prisoners would be released as well; with automatic release there is no longer any incentive for good contact between the prisoner and the wardens, and finally, automatic release would constitute a need for remission to be deserved for good conduct.

The conclusion of the Committee was that the conditional release regulations should be reformed. The Criminal Code should not regulate the grounds on which conditional release would be granted but the grounds on which it should be refused.
The Committee advocated retaining the possibility of attaching special conditions in order to provide the conditionally released prisoner with the possibility of continuing with his probation contacts.

The government, however, preferred a system which could reduce the pressure on the prison system, get rid of red-tapism, and save a great deal of money and time by introducing a system of automatic early release.

10.2 Present early release provisions

The new release legislation (sects. 15-15d CC) came into force on 1 January 1987. The essence of the release rules is that:
- prisoners serving a sentence up to a maximum of one year must be released after having served six months plus one third of the remaining term; and
- prisoners serving a sentence of more than one year must be released after having served two thirds.

Early release may be postponed or refused when:
- the prisoner, because of mental disorder, is serving his sentence in an entrustment order treatment institution and the continuation of his treatment is deemed necessary; or
- the prisoner is sentenced for an offence for which the statutory punishment is imprisonment of four years or more, provided that the offence was committed whilst serving a sentence eligible for release; or
- the prisoner has been guilty of very grave misconduct (according to the case law of the penitentiary division of the court of appeal in Arnhem this means: being suspected of a criminal offence for which pre-trial detention would be allowed) after the commencement of the serving of the sentence; or
- the prisoner, after the commencement of the serving of the sentence, has removed himself from execution or attempted to do so.

Unlike the former conditional release, the power to refuse or postpone early release rests not with the Prison and Probation Administration, but with the penitentiary division of the court of appeal in Arnhem. The penitentiary division decides whether the release should be postponed or refused on the request of the public prosecutor attached to the court, which had imposed the prison sentence, which is eligible for early release.
The decision is taken in a public trial at which the prisoner, assisted by his counsel, is heard. If the early release is postponed or refused, the penitentiary division sets the date of release. Both refusals or postponements are rather rare.

10.3 Reform under discussion

One of the disadvantages of the present early release policy is that an ex-prisoner cannot be supervised or monitored after the date of his release because his release is unconditional. However, in the first months after the release the social integration and the prevention of reoffending is of great importance and might be improved if conditions to his early release could be attached.

Therefore, a reform proposal is under discussion to introduce conditional early release provisions in order to create the possibility to revoke an early release provided that the released prisoner during the probationary period – one third of the prison sentence – does not comply with the condition not to commit new crimes or with special conditions like no alcohol consumption or taking part in a training program. The main aim of the conditional early release is the improvement of the societal safety by reducing the risk of recidivism.

10.4 Pardon

The 1998 Pardon Act, which in 2002 has been revised, empowers the Queen to grant pardon on a petition addressed to the Queen by the person sentenced or by the prosecution service. Only clearly reasoned petitions will be processed. Under section 122 of the Constitution and the provisions in the Pardon Act, pardon may be granted for all prison sentences and for fines over € 340 as well as for certain measures imposed by Dutch courts. Pardon furthermore may be granted for all sentences imposed by foreign courts but implemented in the Netherlands, provided that the foreign sentence is converted into a Dutch sentence or the prisoner is transferred to the Netherlands on the basis of a treaty.

There are two statutory grounds to grant pardon. The first is that the court when sentencing did not – or could not – take account of a circumstance which if the court had been aware of it, would have led to a different sentence or to no sentence at all. The second ground for pardon is that the (continuation of the) implementation of a sentence in all reasonableness cannot serve any purpose for which the implementation was intended.

The prosecution service and the court, which imposed the sentence, are as a rule to be consulted before the pardon may be granted. Pardon may involve a complete or partial remission of the sentence, the suspension of the implementation of the sentence, or the conversion of the sentence into a less serious one, such as a task penalty. A pardon decision can be made conditional. The conditions of a conditional pardon are similar to the conditions of a suspended sentence. The probation service can be ordered to support and assist the conditionally pardoned offender.
In 2000 the number of pardon decisions was 5,185. (Conditional) pardon was granted in 2,809 cases.

10.5 Aftercare of released prisoners

Technically speaking, the aftercare of released prisoners is not a task of the probation service. When the sentence has been served, the ex-convict cannot by any means be obliged to stay in contact with the probation service. However, when a released prisoner asks for help on his or her own initiative, the probation

service will transfer the client to other organizations outside the criminal justice system, like the social service or health care services. These services provide all kinds of material help, such as assistance in housing, employment, and debt relief. For the resettlement of released prisoners aftercare projects have been set up in which volunteers play an important role.

11 Figures on crime and sentencing

11.1 Crime patterns

Since 1970, with an exception for 1990, 1995, and 1996, the numbers of annually recorded crimes have increased. Until 1985, the annual increase was more than 10%, for the later years the average increase was around 2%. Between 1970 and 2000 the recorded crimes increased from 265,700 to 1.3 million.

Registered crimes x 1000	
1970	265,7
1975	453,2
1980	705,7
1985	1,093,7
1990	1,150,2
1995	1,222,9
2000	1,305,6

When taking into account the increase in population, the number of crimes per 100,000 (12-79 years) in the period 1970 to 2000 almost quadrupled.

Registered crimes per 100,000 inhabitants	
1970	2,673
1975	4,246
1980	6,229
1985	9,168
1990	9,357
1995	9,654
2000	10,050

1994 was a top year: 10,415 registered crimes per 100,000 inhabitants.

In 1970, 40% of all registered crimes were cleared by the police. In absolute figures the number of cases cleared grew until 1984, but in later years the average clearance rate dropped to around 14.3% in 2000. In 2000, almost 8% of all registered property crimes was cleared. Two thirds of all registered crime consisted of property crimes.

There are four main categories of crimes which nowadays form 98% of all registered crimes:
– violent crimes like murder, homicide, rape, threat, assault, and violent theft;
– property crimes like fraud, embezzlement, and theft;
– destruction (including crimes against public order); and
– traffic crimes like drunken driving and hit-and-run cases.

– *Violent crimes* have as a common characteristic the intentional use of violence, which leads to an intrusion of the physical integrity of a person.
Between 1970 and 2000 the number of violent crimes increased sixfold – 15,800 to 90,900. Per 100,000 inhabitants the number of violent crimes in 1970 was 120, in 1995: 510, and in 2000: 700.

– *Property crimes*. The number of property crimes per 100,000 inhabitants increased from 1,287 in 1970, to 7,136 in 1995, and 6,834 in 2000. In 1995 and 1996, the number of property crimes, mainly bicycle theft and theft of cars or theft out of cars, decreased annually by 8%. Because two thirds of all crime consists of property crimes, the decrease of the overall crime in 1995, and 1996 has been caused by the decrease of property crimes.

– *Vandalism and crimes against the public order*. There has been a gradual increase of crimes of destruction and crimes against the public order from 100 per 100,000 inhabitants in 1970 to 1,127 in 1995, and to 1,461 in 2000. Destruction is by far the most important crime of this category.

– *Traffic crimes*. Over the last thirty years the number of traffic crimes per 100,000 inhabitants increased from 254 in 1970 to 704 in 1995, and to 907 in 2000.
In 1980, after the introduction of a new section on drunken driving in the Traffic Act, 50% of all traffic crimes consisted of drink driving. In 2000 it was around 25%. Since drink driving as a rule is cleared due to a specific control by the police, this decrease could be the result of less control by the police.
In 2000, 70% of all traffic crimes were hit-and-run cases.

– *Drug crimes*. The absolute number of drug crimes increased between 1970 and 2000 from 442 to 7,500.

Large-scale crime is predominantly a problem of larger cities. The average of registered crimes for the whole of the Netherlands in 2000 was 10,050 per 100,000 inhabitants. In small communities (<20,000 inhabitants) this average was 4,325 in 2000; in larger towns (>250,000 inhabitants) it was 16,687. In larger towns, the number of violent crimes is five times higher than in smaller towns.
The number of juvenile suspects (12-17 years) increased from 25,800 in 1970 to 47,200 in 2000. The number of adult suspects from 113,400 to 268,200.
The number of female juvenile suspects increased from 2,100 in 1970 to 6,300 in 2000 and the number of female adult suspects from 11,300 in 1970 to 31,400 in 2000.
Although the majority of suspects are male, the number of female suspects is increasing more rapidly.

11.2 Sentencing patterns

On average, the present prison population serves considerable longer sentences than thirty years ago.
In particular, in the last twenty years there has been a constant need to extend the prison capacity. Between 1980 and 2000, the total prison capacity increased from almost 3,300 cells to more than one thousand.

Prison capacity

year	penitentiary establishments for adults	for juveniles	for the implementation of entrustment orders in psychiatric clinics (TBS)
1985	4,827	667	402
1986	4,829	695	349
1987	5,170	707	358
1988	5,822	669	464
1989	6,240	691	470
1990	7,021	722	489
1991	7,650	802	528
1992	7,773	832	551
1993	8,151	846	578
1994	9,439	888	627
1995	10,249	1,045	650
1996	12,087	1,214	803
1997	12,553	1,410	866
1998	13,055	1,581	970
1999	13,207	1,700	1,175
2000	12,617	1,906	1,183
2001	12,806	2,122	1,222

The present government has decided further to extend the total prison capacity, but the policy remains to slow down this increase in prison capacity by extending the possibilities for the judiciary to impose non-custodial sentences. Furthermore, a new policy for crime prevention has been implemented, as well as the newly elaborated prosecutorial sentencing guidelines.

The permanent pressure on the prison capacity is caused by a variety of factors like the raising crime rate, the increasing seriousness of the criminality, the more punitive penal climate, etc.
Two aspects have a serious impact on the prison capacity:
– the average length of a prison sentence; and
– the number of prison sentences.

The number of (partly suspended) prison sentences has increased considerably (1970: 12,954, 2000: 27,446). The same goes for the average length of the (partly suspended) prison sentences.

Since 1980 there has been a constant increase in the number of detention years imposed by courts (1980: 3,000; 1985: 5,700; 1995: 10,900; 2000: 16,000).

What may explain that many more and much longer unsuspended prison sentences have been imposed in 2000 than in 1980?

There are at least five possible causes:
– criminal law reforms by which the statutory maximum sentences were increased;
– an increased willingness of the public to report crimes;
– changes in the detection and investigation policy and the expansion of the police force;
– changes in seriousness, amount, and kind of criminality; and
– a more punitive sentencing policy.

Interviews with representatives of the police, the prosecution service, the judiciary, and the Bar revealed that two causes prevailed:
– crime, in particular violent criminality, became more serious;
– judges and prosecutors became more punitive.

Number of prison sentences

year	unsuspended prison sentence	partly suspended prison sentence	suspended prison sentence
1970	8,407	4,547	1,987
1975	10,099	4,698	2,327
1980	9,261	6,108	2,608
1985	10,361	5,390	6,046
1990	10,051	4,582	7,444
1995	19,846	4,803	9,312
2000	21,480	5,966	n.a.

Sentencing patterns 1970-2000

	1970	1975	1980	1985	1990	1995	2000
<1 month	7,457	8,394	8,944	6,724	6,797	7,959	11,155
>1 <3 months	2,161	2,787	2,541	3,558	4,558	6,280	6,410
>3 <6 months	2,012	2,029	1,959	2,680	3,279	4,678	3,825
6 months <1 year	978	972	1,104	1,821	2,394	3,062	2,895
>1 <3 years	311	502	646	1,281	1,507	2,732	2,285
>3 years	35	113	175	287	612	970	875

Annex I
Demographic issues

The Netherlands and the Netherlands Antilles in the Caribbean form the Kingdom of the Netherlands. The present boundaries of the country were established after the Netherlands were separated from Belgium in 1830. The Netherlands consist of twelve provinces, two of which carry the name Holland: Northern Holland and Southern Holland. The word Holland has become popular as a *pars pro toto* for the entire country.

The Netherlands are surrounded by the North Sea on the north and the west, the Federal Republic of Germany on the east and Belgium on the south. The language spoken in the Netherlands is Dutch, which belongs to the Germanic language group. The court language is either Dutch or Frisian. The latter is mainly spoken in the upper region of the Netherlands.

The total population of the Netherlands is around 15,8 million (7,846 million males and 8,017 million females)

2000	male*	female*
0-19 years	1,981,3	1,864,7
>19 years	5,865,0	6,252,9

* thousands

Allochthonous population

There is a large number of aliens who live in the Netherlands without permission, the so-called 'illegals'. The exact number is by definition unknown and always subject to political dispute, but the number of illegals is estimated between 100,000 and 150,000.
The most important countries of origin among the allochtonous population born abroad or in it one of the parents having been born abroad are Turkey (309,000), Suriname (303,000), and Morocco (262,000).
Some 260,000 non-natives come from other European Union states such as Germany (107,000), the United Kingdom (41,000), Belgium (35,000), Spain (17,000), and Italy (16,000).

Major urbanized areas

The Netherlands have an average of 468 inhabitants per square kilometer. In the western part of the Netherlands, an area called Randstad, the population density is high (1,066 per km^2). The density in the northern provinces is 201 per km^2 and in the eastern and southern provinces 441 per km^2.

In the Randstad, which forms 17% of the total land area, around 40% of the total population lives in urbanized areas and large cities such as Amsterdam (the capital), Rotterdam (largest harbour), and The Hague (the seat of the government).

Unemployment rate

Almost three per cent of the autochtonous working population (15-64 years) is unemployed. The unemployment rate among the non-natives is eight per cent. More than 100,000 people have been unemployed for longer than three years. Unlike many other countries, women are not employed to the same extent as men. More than 7,1 million people are economically active, 4,5 million of them male and 2,9 million female.

Annex II
Statistical data

Law enforcement in figures

year	crimes registered by police	number of cases registered by the prosecution service	settled by prosecution service	tried by criminal court x 1000
1970	265,7	109,2	52,2	50,3
1975	453,2	149,6		
1980	705,7	210,1	97,5	82,8
1985	1,093,7	262,8	137,0	83,8
1990	1,150,2	255,6	141,3	83,7
1995	1,222,9	209,9	145,1	102,3
2000	1,305,6	187,8	118,3	111,2

Prosecutorial discretion

year	non-prosecution x 1000	of which due to: – technicalities	– policy considerations
1970	37,6		
1975	45,5		
1980	72,3	22,8	49,5
1985	74,8	26,5	48,3
1990	70,5	32,5	38,0
1995	53,2	29,9	23,3
2000	24,3	13,9	10,4

Average prison occupation

year					
1970	2,644	1980	3,224	1990	6,481
1975	2,526	1985	4,608	1995	9,540
				2000	11,760

Annex III
Further reading

F. Bruinsma	Dutch Law in Action, Ars Aequi Libri 2000
J.A.W. Lensing	The Netherlands (Criminal Law) in: International Encyclopedia of Laws, R. Blanpain (Ed.), Kluwer Law International 1997
Ministry of Justice	– Legal infrastructure of the Netherlands in international perspective (Crime Control), The Hague, 2000
	– Crime and law enforcement 2000, Research and Policy Series no. 189, The Hague, 2001
Peter J.P. Tak	Essays on Dutch Criminal Policy, Wolff Legal Publishers, 2002
For statistics:	www.cbs.nl (statline)

Websites (English versions) of:
- the Dutch Ministry of Justice: www.minjus.nl
- the National agency of correctional institutions: www.dji.nl
- the Prosecution Service: www.openbaarministerie.nl
- the Police: www.minbzk.nl