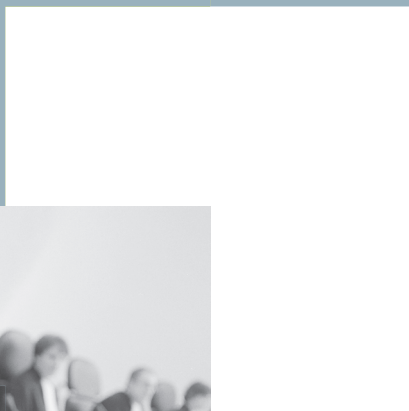


On trial



de Rechtspraak



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About this brochure

This brochure provides information about the criminal justice procedures in the Netherlands. This information applies to you if you have received a summons (at your home address) to appear in court at a later date. It does *not* apply if you have been remanded in custody awaiting trial. The staff of the detention centre will be able to provide further information.

If you are accused of a 'misdemeanour' (a relatively minor offence), you will usually be called to appear before the *kantonrechter* (District Court), where the case will be heard by a single judge. If you are accused of a 'crime' or 'felony' (a more serious offence), your case will be heard by a higher court, presided over by a bench of three judges. The procedure is roughly identical in both types of court. Appeals are heard by the *gerechtshof* (Court of Appeal). You are permitted to appeal against either your conviction or the sentence passed only once. In certain exceptional circumstances, you can take the case one step higher, to the *Hoge Raad* (Supreme Court), which rules only on points of law and procedure. Further information about the appeals procedure is to be found elsewhere in this brochure.

The summons

The summons is a letter which sets out the details of the offence of which you are accused, and where and when your case will be heard. On the reverse of the summons, you will find information about your rights, which include the right to an interpreter if you need one (all proceedings are conducted in Dutch) and the right to legal representation.

Objection

You may believe that the summons has been issued in error. If so, you should lodge an 'objection' with the Clerk of the Court's office (at the address stated). You have eight days in which to do so. You must provide a full explanation of why you consider the summons unjustified, e.g. because you can show that you could not have committed the alleged offence. The court will assess your reasons and rule accordingly. The judge may wish to ask you questions about your objection. If the judge considers your reasons to be ungrounded or inadmissible, your case will be heard at the scheduled time, as stated in the original summons. You may wish

to consult your lawyer for advice on whether lodging an objection is appropriate in your circumstances.

Legal representation

You are not obliged to retain the services of a lawyer. However, it is certainly advisable to do so, especially if you are accused of a serious offence. If you decide to engage a lawyer, you should do so as soon as possible to allow him (or her) time to prepare your case thoroughly. If you are unable to afford a lawyer, you may be eligible for financial assistance ('Legal Aid'). Your lawyer will submit the relevant application on your behalf. Note that you may still be required to pay a proportion of the costs. The exact amount will depend on your income and assets. Your lawyer or the *Juridisch Loket* (local legal advice centre) can provide further information. A separate brochure about Legal Aid is also available (see details at the end of this brochure).

If you have been remanded in custody awaiting trial, you will automatically be assigned a court-appointed lawyer. However, you are entitled to engage another lawyer if you wish. Even if you have admitted the offence or intend to plead guilty in court, it is still worthwhile seeking professional advice since a lawyer will know exactly how everything works and what options are available to you.

The victim

If your case involves a 'victim' – someone who has suffered loss or damage due to the alleged offence – he or she is entitled to ask the court to award compensation. The court will decide whether compensation is appropriate and, if so, will set the amount that you are required to pay.

Your dossier

The official court dossier on your case contains all relevant documents (e.g. police and prosecution statements). You are entitled to see its contents. To do so, you must make an appointment with the Clerk of the Court's office. You may copy any documents by hand, or can request photocopies (upon payment). Of course, you can also leave all this to your lawyer, who will usually wish to see all documents in order to prepare your case properly.

Witnesses

The prosecutor, known as the 'Officer of Justice', can call witnesses and expert witnesses to give evidence at your trial. The names of the prosecution witnesses are usually stated on the summons. You are also entitled to call witnesses, or can bring them with you to the trial if you think that they will be able to contribute to your defence. If you suspect that a defence witness is unlikely to appear in court of their own accord, you can ask the Officer of Justice to issue a 'witness summons'. Please note that you are liable for any costs (e.g. travel and accommodation) incurred by defence witnesses.

If you intend to call witnesses, you must inform the Officer of Justice accordingly, in person or by registered letter, no later than three days prior to the trial date. You must state the name, profession and address of each witness. The Officer of Justice will then make the necessary arrangements. However, he can decline to issue a witness summons and will inform you accordingly. If you disagree with his decision, you may ask the trial judge to instruct the Officer to call the witnesses. You should make this request in court, as soon as the trial begins.

Anyone who receives a witness summons from the Officer of Justice is *obliged* to attend court, give their evidence and answer all questions truthfully under oath. Further information can be found in the brochure, *Being a witness in a criminal trial*.

Deferment

If you can show that you have not had adequate opportunity to prepare your case, you can ask for the hearing to be 'deferred', i.e. postponed to a later date. (In the United States, this is known as a 'continuance'.) However, you must be able to give good reason, e.g. illness or other unavoidable circumstances which preclude your attendance. To request a deferment, contact the Clerk of the Court's office as soon as possible. Again, you may wish to leave this to your lawyer. Note that the judge is under no obligation to grant a deferment and may decide to proceed in your absence. You should therefore check with the Clerk of the Court's office prior to the scheduled trial date.

Your attendance in court

In the first instance, you are not obliged to attend court in person. You can opt to leave your defence entirely in the hands of your lawyer (although you will have to sign a legal 'Power of Attorney' for this purpose). The judge will decide whether this arrangement is acceptable. If not, you will receive a further summons requiring you to appear in person.

Failure to appear

If you have not responded to the summons, have not authorized your lawyer to appear on your behalf, and do not attend the hearing in person, the judge may decide to hear the case in your absence. In certain circumstances, he will decide that you must indeed attend in person to answer the charges. The case will then be deferred and you will receive a further summons.

If you wish to respond to the charges but do not wish to do so in person, you may write a letter to the judge, setting out your point of view with regard to the facts stated in the summons. The judge will take your views into account before making his ruling. If you ignore a summons but the judge considers your attendance in court to be necessary, he can issue a warrant for your arrest. You will then be detained by the police and escorted to the court at the appointed time.

'In open session'

In principle, all court proceedings in the Netherlands are conducted 'in open session'. That means that the public, including your family and friends, are able to attend. Journalists are also able to follow, and report on, the proceedings. (Reporting restrictions apply where cases involve a juvenile defendant, although the judge can lift these restrictions at his discretion.)

In certain exceptional cases, proceedings can be held in private. The legal term is 'in camera'. The press and public are then excluded from the court. If you wish your case to be heard 'in camera', you should ask the judge to rule accordingly at the very beginning of the hearing. You must be able to offer a good reason and the judge is under no obligation to honour your request.

The procedures

If you are not sure exactly where (in which court) your case is to be heard, you should report to the reception desk of the court building. Staff will provide directions. You will usually be required to wait outside the court until you are called. In the lower courts (police court and district court), cases are heard by a single judge. The Clerk of the Court and the Officer of Justice (prosecutor) will also be present. In the higher courts, cases are heard by a panel, or 'bench' of three judges, with the president (senior judge) seated in the middle. Again, the Clerk of the Court and the Officer of Justice will also be present.

The judge will begin by asking you to confirm your name and other personal information. He (or she) will then ask you to listen carefully to everything that is said in court, and will remind you that you are not obliged to answer questions. Next, the Officer of Justice will read out the charges against you. (You will already know the alleged offences from the summons.) If any witnesses or expert witnesses are to be called, their names will also be read out. If you have brought any defence witnesses whose names are not on this list, you must say so at this time. If you do not, the judge is under no obligation to admit their evidence.

Witness statements All witnesses must take the oath (or 'affirm': make a formal promise to tell the truth) and are obliged to answer all questions put to them by the judge, the Officer of Justice, the defendant and the defence lawyer. Witnesses are called individually. The judge will instruct anyone who is to give evidence later in the trial to leave the court, so that no one can hear other witnesses' evidence before it is their turn to testify. After each witness has spoken, the judge will give you an opportunity to respond to their evidence if you wish.

File The judge will then list the documents included in the dossier, such as the original police report, the probation service's report, etc. You and your lawyer will have had the opportunity to see these documents. If you wish (extracts from) the documents to be read out during the hearing, you can request the judge to do so.

Judges

Clerk of the Court

Defendant and defence lawyer

Officer of Justice

Cross-examination The judge may now ask you a number of questions. You are under no obligation to answer. Unlike the witnesses, you are also under no obligation to take the oath or affirm.

Prosecution statement Once the judge is satisfied that he has sufficient information about the case, he will ask the Officer of Justice to make his closing statement. The Officer will give a summary of the case and the facts as he sees them. He explains why you should be found guilty and will recommend an appropriate penalty. However, the prosecutor's recommendation is just that: a suggestion. It falls to the judge alone to decide.

Defence statement Once the Officer of Justice has made his recommendation, you (or your lawyer) may reply. You can mention anything that you consider to be relevant to your defence, including any mitigating circumstances. The Officer is then given an opportunity to respond, whereupon you (or your lawyer) may offer a rebuttal. As defendant, you always have the right to the last word, although you are not obliged to exercise this right.

Verdict and sentencing The final stage in the trial is for the judge to return his verdict. He may find you not guilty (an 'acquittal'), may discharge the case, or can find you guilty. If you are found guilty, the judge will now pass sentence. This can be a fine, a term of imprisonment or an 'alternative penalty' such as community service or a restitution order.

The penalty may also include other measures, such as the loss of your driving licence for a fixed period (in the case of motoring offences) or the forfeiture of assets. In some instances, the judge may order the defendant to be detained in a closed institution under medical supervision, over and above any prison sentence. In determining an appropriate sentence, the judge will always take into account the nature and severity of the offence, and the circumstances in which it was committed. If he decides to impose a fine, he will take your personal financial situation into consideration.

Timing of the verdict In the lower courts (District Court and Police Court) in which cases are heard by a single judge, that judge will usually return his verdict at the end of the hearing itself. He will also rule as to whether an appeal is to be allowed. If you do not intend to appeal, you can waive this right immediately. Alternatively, you can ask for fourteen days in which to consider your position. In most cases, the higher courts (in which cases are heard by a panel of three judges) do not return their verdict immediately, but set a date on which the verdict will be

announced. This must be within fourteen days of the last day of the hearing itself. You are not obliged to attend court to hear the verdict in person, but can contact the Clerk of the Court for all relevant information. However, you should do so promptly otherwise you may lose the right to appeal.

Appeal

If you disagree with the court's ruling, you may be permitted to lodge an appeal. If so, you must do so within fourteen days of the verdict being returned. You can ask someone else (such as your lawyer) to lodge the appeal on your behalf, but you must sign a formal 'Power of Attorney' for this purpose. Remember that the Officer of Justice is also entitled to appeal. If he decides to exercise this option, you will be informed accordingly.

In the Court of Appeal, three senior judges known as *raadsheren* hear the entire case again (unless specifically requested by the appellant to limit their deliberations to certain points of law or procedure). At this higher level, the prosecutor is known as the 'Advocate General'. His role is similar to that of the Officer of Justice. The trial procedure is virtually identical to that in the lower courts.

Costs

If you are found not guilty (acquitted) of the charges or the case is discharged, you may be entitled to claim reimbursement of any costs incurred, including legal fees, travel and accommodation expenses, loss of income and any incidental 'out-of-pocket' expenses incurred as a direct result of the case, both by yourself and any defence witnesses. You must make your claim to the Clerk of the Court at which the case was heard, and must do so within three months. Note that costs cannot be claimed if you were found guilty but the judge decided not to impose a penalty due to your personal circumstances (the 'judicial pardon' or 'conditional discharge'). Further information is available from the Clerk of the Court

Useful addresses

The Dutch court system is divided into 19 districts. Each centres on a city in which the main courts and the regional offices of the Public Prosecution Service are located. These cities are:

A Alkmaar, Almelo, Amsterdam, Arnhem, Assen, **B** Breda, **D** Den Haag (The Hague), Dordrecht, **G** Groningen, **H** Haarlem, 's-Hertogenbosch, **L** Leeuwarden, **M** Maastricht, Middelburg, **R** Roermond, Rotterdam, **U** Utrecht, **Z** Zutphen, Zwolle.

The Courts of Appeal are located in **A** Amsterdam, Arnhem, **D** Den Haag, **H** 's-Hertogenbosch and **L** Leeuwarden.

The Supreme Court of the Netherlands (*Hoge Raad*) is located in The Hague.

Addresses and telephone numbers can be found in the telephone directory and at www.rechtspraak.nl. This website also provides information about procedures in the various courts.

The Juridisch Loket is a national network of legal advice centres which also offers a telephone information service on 0900 8020 (€ 0.10 per minute). This number can be used to make a personal appointment with a qualified lawyer at one of the local centres. See also: www.hetjl.nl

Further information

Information about the Dutch judicial system can be found at www.rechtspraak.nl.

This site includes the addresses of all courts in the Netherlands, together with information about court procedures.

Further information about the Ministry of Justice can be found at www.justitie.nl. The Public Prosecution Service also has its own website at www.om.nl.

Several other brochures dealing with Dutch law and jurisprudence are available. They can be downloaded or ordered from www.postbus51.nl, or by calling 0800 8051 (free).

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