

Press Guidelines 2013



Press Guidelines 2013



de Rechtspraak

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1 Provision of services to journalists



- 1.1 The courts will enable journalists to do their work and will provide facilities in and around the courtroom.
- 1.2 Journalists who wish to use the facilities will be asked to provide a copy (once) of their press card that is approved by the Judiciary (the police press card or the press card issued by the Dutch Journalists' Association (*Nederlandse Vereniging van Journalisten*)). Other press cards may be submitted to the court for assessment. Journalists who do not have a press card that is approved by the Judiciary must sign a protocol once (see Appendix 1).
- 1.3 Every court has a communications department. That department can be contacted at least during office hours.
- 1.4 The communications department is responsible, together with the judge responsible for briefing the press, for communications with respect to legal actions and decisions. The judge responsible for briefing the press can be contacted through the communications department.
- 1.5 The communications department is responsible, together with the court management, for communications on behalf of the court with respect to all matters that exceed the scope of the case in question. The court management can be contacted through the communications department.

- 1.6 The communications department of the Netherlands Council for the Judiciary (*Raad voor de rechtspraak*) is responsible for communications with respect to all national matters.
- 1.7 The court will provide journalists with general and up-to-date information on the website www.rechtspraak.nl.
- 1.8 In principle every court will cooperate with those who wish to make documentaries and conduct interviews. Such requests must be submitted to and will be coordinated by the communications department.

Explanatory notes to Articles 1.1 to 1.8

These guidelines inform journalists about the cooperation that they can expect from the judges and the courts. In the Press Guidelines a 'journalist' is taken to mean persons who publish in such a way that the publications are accessible to everyone. Under the law, the presiding judge is entitled to lay down rules at any time in connection with order in the court.

Many cases are resolved by a single judge. However, there are also cases that are decided by a panel of three judges. In case of a panel of three judges, decisions with respect to issues involving public access can either be rendered by the chairperson, or by the three judges jointly. In these Guidelines the term 'court' refers to both courts consisting of one judge and courts consisting of three judges (or the chairperson of such courts).

In the Netherlands judges generally do not explain their own judgments directly to journalists or otherwise discuss what has taken place at the hearing in respect of a particular case. That is based on the principle that the judge 'speaks through his judgment'. However, in practice that is not always sufficient to adequately respond to questions that arise with respect to the administration of justice. Therefore, each court has its own communications department, whose duties include ensuring that the press is informed properly. The judge who is responsible for briefing the press acts as spokesperson. He or she briefs the press as a sideline activity. As a rule, the judge who acts as the spokesperson, did not render the judgment in question nor was he or she a member of the court that rendered the decision in question. All the addresses and telephone numbers of the communications departments of the various courts can be found at www.rechtspraak.nl.

2 Information prior to a hearing



- 2.1 The communications department will provide journalists with information regarding upcoming and pending cases.
- 2.2 The court will make a roster of the court sessions available to journalists free of charge one week before the hearing.
- 2.3 In criminal cases and in preliminary relief hearings (including interlocutory proceedings), writs of summons, petitions and notices of appeal will be available for journalists for inspection one week prior to the hearing, subject to an embargo. This rule does not apply in respect of matters involving law of persons and family law, juvenile cases, and other matters that are handled behind closed doors on legal grounds. In the event that writs of summons are served within a term of less than one week, those documents will be made available for inspection immediately after the case is brought before the court. The embargo will apply until the public hearing starts.

Explanatory notes to Articles 2.1 to 2.3

Upcoming cases are generally listed in 'hearing lists' (*zittingslijsten*) no later than one week prior to the date of the hearing. Those lists indicate which cases the court will handle that week at a public hearing. Those lists also indicate the names of the parties to the proceedings in question.

Cases that are handled in a closed session on legal grounds are not included in those lists. This includes hearings in matters related to family law, such as

divorces and family supervision orders, hearings in cases concerning the Dutch Psychiatric Hospitals (Compulsory Admissions) Act (*Wet bijzondere opnemingen in psychiatrische ziekenhuizen*), hearings at which petitions for bankruptcy are handled and hearings that involve tax matters.

The court will make the hearing lists available to journalists free of charge. With the exception of the procedural documents referred to in Article 2.3, other procedural documents that form part of the content of the case file are not made available for inspection. That is prohibited by law. Such documents are only open for inspection by the parties to the proceedings, any interested parties and the court officials.

The information contained in the hearing lists is under embargo until the matter is handled at the public hearing, as until that time the writs of summons may be withdrawn, in which case the legal action never actually existed. Thus, the courts assume that the journalists will treat the information contained in those documents as confidential prior to the hearings.

A court may deviate from the practice of making the hearing lists and the procedural documents referred to in Article 2.3 available for inspection when no one has need of them. That could include, for example, writs of summons that concern hearings held before the police court. Such documents can be made available to journalists for inspection upon their specific request.

- 2.4 Communications with respect to the course of criminal preliminary investigations are the responsibility of the public prosecutor's office. The court is responsible for providing information with respect to defendants being brought before the delegated judge and decisions that were taken by the court in chambers.
- 2.5 The court can make announcements with respect to cases that are handled in chambers concerning pre-trial detention, for example if journalists are already aware of the case or the name of the defendant and/or the fact that a decision must be made regarding pre-trial detention.
- 2.6 The court may make statements with respect to cases that are handled behind closed doors in proceedings related to criminal prosecution or further criminal prosecution (Article 12 of the Dutch Code of Criminal Procedure (*Wetboek van Strafvordering*)), for example if journalists are already aware of the name of the defendant and/or the fact that the court in closed session must render a decision in respect of such matters.

3 The hearing



- 3.1 Public hearings are always accessible for journalists.
- 3.2.1 During the hearing journalists are permitted to send text messages via their mobile telephone and/or laptop. The sound must be turned off on such devices.
- 3.2.2 The judge may limit or prohibit the sending of text messages during the hearing, for example if sending text messages would impede the proper administration of justice or the orderly process of the proceedings. The judge must motivate his or her decision to limit or prohibit the sending of text messages in public during the hearing.
- 3.3 Drawings may be made during the hearings.
- 3.4.1 Visual and audio recordings may not be made in courthouses without permission. Journalists who wish to make visual or sound recordings must contact the court's communications department in advance.
- 3.4.2 Photographers will be given an opportunity to take photographs prior to the hearing or at the times agreed with the communications department.
- 3.4.3 In order to ensure a proper course of the proceedings, images must be recorded from a fixed position.

3.4.4 In order to ensure a proper course of the proceedings, the court may rule that a limited number of camera teams will be allowed access and stipulate as a condition that they participate in a pooling scheme.

Criminal hearings

3.5.1 During criminal hearings journalists may in any event make visual and audio recordings of the arrival of the judges, the opening of the hearing by the chairperson, the statement of the charges, the handling of the facts, the public prosecutor's closing speech demanding the sentence, the oral pleadings, the reply and the rejoinder, and the pronouncement of the judgment, except under exceptional circumstances.

3.5.2 Journalists may submit requests to be allowed to make recordings of other parts of a criminal hearing.

3.5.3 During the hearing visual and audio recordings may be made of the professional participants in the proceedings.

3.5.4 It is not permitted to make visual or audio recordings of witnesses, experts, victims or the public. Journalists may request such persons personally for permission to make visual and audio recordings of them. In exceptional circumstances the judge may nonetheless prohibit the making of such visual and audio recordings.

3.5.5 It also is not permitted to request the suspect for his or her permission to make visual images. His or her voice may be recorded. In the event that the suspect objects to his or her voice being recorded, the judge may prohibit the making of recordings of the suspect's voice or may rule that the suspect's voice must be distorted.

Other hearings

3.6.1 Journalists may make visual and sound recordings of the entire hearing, except under exceptional circumstances.

3.6.2 During the hearing visual and audio recordings may be made of the professional participants in the proceedings.

3.6.3 It is not permitted to make visual and audio recordings of the parties without their permission. Journalists may request such persons personally for permission to make visual and audio recordings. In exceptional circumstances the judge may nonetheless prohibit the making of visual and audio recordings of non-professional parties to the proceedings.

- 3.7** Journalists may submit requests to directly broadcast all or part of the hearing.
- 3.8** The judge must motivate his or her decision in the event that he or she rejects a request to make visual and audio recordings of parts of the hearing and/or to broadcast directly. In this context the judge must weigh the interest of public access against interests such as the following:
- video and audio recording may not form an impediment to the proper administration of justice (e.g. ascertaining the truth); the privacy of the participants in the proceedings must be safeguarded;
 - the orderly process of the hearing must be adequately guaranteed; and
 - the security aspects must be adequately safeguarded.

The court must publish its decision and the underlying motivation as quickly as possible at www.rechtspraak.nl.

- 3.9** Sound fragments in which names can be heard must be modified, for example by deleting the names or by replacing them with an audio signal.
- 3.10** Journalists may make recordings outside the courtroom at the locations in the courthouse that have been designated by the communications department for that purpose.

Explanatory notes to Articles 3.1 to 3.10

The judge may rule in any case that the hearing will be held in a closed session, if the judge is of the opinion that this is in the interest of public morals, public order or the security of the State, or if the interests of minors or respect for the privacy of the participants in the proceedings so dictate, or if public access would seriously impede the proper administration of justice.

Print journalists have traditionally reported on what takes place at hearings between the parties to the proceedings and the judge. Artists have also traditionally played a role in court reporting. Journalists can report on a case by publishing relatively short text messages on the Internet (directly or subsequently). The publication of a series of such messages allows everyone to follow the course of the proceedings on the Internet.

The presence of print journalists in the courtroom has virtually no effect on the proceedings. Text messages in which a journalist expresses his or her impression of the hearing are also found to be less intrusive than visual and sound recordings. That is the reason why these Guidelines contain specific rules that govern the making of visual and sound recordings.

Making sound or visual recordings in the courtroom could make the persons involved in the proceedings feel like they are being impeded from speaking freely. Such persons could include not only parties to the proceedings, such as a suspect, but also victims or persons who have witnessed a crime. Such pressure could disrupt the purpose of the handling of the case at the hearing: the establishment of the truth. On the other hand, there may also be parties who seize the presence of television and radio reporters as an opportunity to create a stage for themselves before the public at large. That also does not serve the purpose of the hearing. In such cases allowing the audio-visual press to report on the hearing could affect the proper course of the proceedings. In order to ensure that making visual and audio recordings during the hearing will be as unobtrusive as possible, recordings may be made only from one, fixed location.

In connection with the time needed to prepare to comply with such a request, it is recommended that applications for permission to make visual or sound recordings be submitted at least 24 hours prior to the hearing.

The judge who presides over the hearing is responsible for ensuring that the proceedings proceed properly. The judge may therefore rule, taking into consideration the interests provided for in these Guidelines, that no visual or

sound recordings may be made of certain parts of the hearing. The parts of the proceedings that are procedural in nature or in which professional parties to the proceedings, such as lawyers and public prosecutors, are speaking may always be recorded. Further limitations may be imposed under exceptional circumstances, for example if there are safety risks. However, that does not apply in respect of print journalists.

The judge must motivate his or her decision not to allow certain parts of a hearing to be recorded.

Hearings may also be held outside of the courthouse, for example for an inspection or a hearing of the parties on location. In principle such hearings are also public unless the law stipulates an exception, such as hearings involving juvenile law and the Psychiatric Hospitals (Compulsory Admissions) Act. The judge is also authorized to impose mandatory measures 'outside the courtroom', including 'closing the doors'.

Who may be shown?

The Guidelines lay down specific rules that govern showing the public and non-professional participants in the proceedings (such as suspects, other parties to the proceedings, witnesses, experts or victims). In principle it is assumed that non-professional participants in the proceedings will object to being recorded and that making recordings of such people will have an effect on their statements and thus will impede the establishment of the truth and the proper administration of justice. That is the reason why such people may not be shown. However, such non-professional participants in the proceedings may grant permission to be shown, in which case the judge will generally allow them to do so. The judge hearing the case must be informed in advance in that context. In exceptional cases there may be interests that give cause to deviate from that rule.

On the other hand, in principle it is permitted to make recordings of the voices of suspects in criminal cases, which makes it possible to give a more complete picture of the hearing, in particular the interaction between the judge and the suspect. However, the suspect must remain unrecognizable to the public. An exception may apply in the event that the suspect does not have any objection to being filmed.

In criminal cases there is an absolute assumption that a person is innocent until the judge has pronounced him or her guilty (the 'presumption of innocence').

Thus, while a criminal case is being handled it is assumed that the suspect in question is innocent.

In the event that visual images were disseminated prior to a criminal conviction (assuming that the suspect is actually found guilty) from which the identity of the suspect could be derived, that would be in anticipation of the judgment. In the event that the suspect is ultimately found not guilty by the judge, he or she may already have been 'convicted by the public' as a result of the images in the media in which he or she was recognizable. Thus, also in this case the interest in having a fair trial prevails.

In criminal cases it is virtually always prohibited to show victims, as such participants in the proceedings are vulnerable by definition because they generally make very personal statements. They may not be recorded in the interest of protecting their right to privacy and, equally, in the interest in the proper and fair course of the proceedings.

Professional participants in the proceedings are judges, court clerks, public prosecutors, lawyers, as well as other professional participants in the proceedings such as legal representatives of government agencies in cases involving administrative law, tax advisors, bailiffs, employees of the Dutch Child Care and Protection Board (Raad voor de Kinderbescherming) and the probation and social rehabilitation service. Such persons are never present at hearings in their private capacity; they are always there in their professional capacity. In principle it is assumed that professional participants in the proceedings will not object to having their public actions recorded. This applies in particular in respect of judges and public prosecutors, whose actions are intended to be subject to scrutiny by the press. It is therefore clear that they may be shown in recordings of all or part of the hearing. In exceptional cases there may be an interest in deviating from that rule. In exceptional cases lawyers, as well as other professional participants in the proceedings, may also object to having visual and sound recordings made.

The public must feel free to attend a hearing without running the risk that visual and audio recordings are being made. The Guidelines therefore provide that it is not permitted to film the public in either the courtroom or in other parts of the courthouse. If the public wishes to speak with the press, there is every opportunity to do so outside the courthouse.

Other rules and regulations may apply at hearings that are held in extra-secured courtrooms.

Special admittance for journalists to a closed hearing

- 3.11.1** The judge may rule that a case that should be handled behind closed doors may nonetheless be held in public in whole or in part. The judge may allow that if there are weighty reasons to give the public access to the hearing and those reasons are not outweighed by the interests of the parties to the proceedings.
- 3.11.2** In some cases the judge is authorized by law to grant third parties special access to closed hearings. Journalists are also entitled to submit a substantiated request for special access to a closed hearing to the communications department of the court in question.
- 3.11.3** In the event that the judge grants special access he or she will render a decision in respect of what parts of the hearing visual and audio recordings may be made.
- 3.11.4** Journalists who are granted special access to a closed hearing may be asked to sign a protocol containing supplementary guidelines.

4 Information with respect to decisions



- 4.1** On the date of the decision, immediately after the decision is pronounced, the courts will publish on the website www.rechtspraak.nl all decisions, in an anonymized form, in respect of which it is known that there is interest on the part of the press. However, such decisions may not be published in whole or in part in cases in which the law stipulates an exception in connection with weighty interests of other parties.
- 4.2** The court will provide journalists with an anonymized copy of decisions upon request, insofar as it is permitted to do so under the law.

Explanatory notes to Articles 4.1 to 4.2

Every day each of the Dutch courts render dozens of decisions. It follows from various provisions of the law that virtually all decisions are pronounced in public after the hearing, regardless of whether they relate to a public hearing or closed hearing. However, decisions rendered by a court in chambers, known as ‘orders’ or ‘rulings’ (*beschikkingen*), in respect of which a closed hearing is stipulated are not pronounced in public, for example when a court rules in chambers with respect to the pre-trial detention of a suspect. This rule also applies in respect of decisions rendered by a delegated judge.

It is increasingly common for the courts to publish the text of decisions that are noteworthy or that are known to be of interest to the press on the website www.rechtspraak.nl shortly after the decision is pronounced. In that context it is wise to also publish a brief summary in which legal terminology is avoided.

The names of private persons are deleted from the text before publication so that the decision is published on the Internet in an anonymized form. The anonymization guidelines can be found on the website.

The decisions that are published on www.rechtspraak.nl remain there. The anonymization prevents the site from becoming what is ultimately a collection of criminal and civil judicial data with respect to persons, and as a result a concealed form of their judicial documentation. Requests for copies of decisions must be submitted to the communications department.

The law lays down rules that govern the provision of decisions (or copies of decisions) to parties other than those who are involved in a legal case, such as journalists. Those rules are laid down in Article 28 of the Dutch Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*), Article 365 of the Dutch Code of Criminal Procedure (*Wetboek van Strafvordering*), Article 8:79 of the Dutch General Administrative Law Act (*Algemene wet bestuursrecht*) and Article 27g of the Dutch State Taxes Act (*Algemene Wet inzake Rijksbelastingen*).

The common rule underlying those provisions is that a court will provide decisions to third parties who request them, unless the interests of a party who is involved in the case as a party to the proceedings or as a suspect, witness, victim or otherwise oppose the provision of the decision. It is possible that the publication of decisions could lead to many, possibly drastic details about peoples' private lives, their psychological condition and other aspects of their personal lives being made public. Obviously that could harm such persons' interests. That is another reason why decisions are anonymized before they are placed on www.rechtspraak.nl. Incidentally, journalists who follow a case closely are well aware of which case is involved, but it is not possible for other persons, who do not know the personal details of the parties involved, to infer who those parties are.

On the ground of the above-mentioned legal provisions decisions that are not published on www.rechtspraak.nl or decisions that were rendered in the past may be requested. The interests that could be affected by such requests must be weighed as prescribed by law. That weighing of the interests becomes increasingly intractable – particularly in criminal cases – as time passes. At a certain point in time a convicted person has served his or her time and, in line with the intention of punishment in accordance with our legal system, has thus 'paid' for his or her crimes. A renewed publication of the old conviction would be contrary to that principle and could thus be experienced as a double

punishment. That is somewhat less onerous in civil cases or cases decided in accordance with administrative law, but also in such cases it is possible that a person could continue to be followed by a judicial decision from the past, in spite of the fact that the situation has changed greatly in the intervening time.

On the other hand, there are also situations in which journalists require information about earlier decisions with respect to a particular person. That could include the reports on a bankruptcy that was declared earlier in the event that the same person is involved in another bankruptcy, or a person who commits another crime after already having served a sentence of detention under a hospital order. In such cases it can be important, with a view to the monitoring of the courts, that it be clear in what manner supervision was conducted or it was decided that the measure could end. The circumstances of the particular case are entirely decisive in respect of such matters. Attempts are being made by the communications departments to collect concrete examples of requests and the decisions that were rendered in respect of them and to place them on Intro, so that the same general rules apply nationally in this respect.

5 Compliance with the Press Guidelines



- 5.1** The court management is responsible to monitor proper compliance with the Press Guidelines. Journalists who have complaints about the application of the Press Guidelines can contact the court management of the court in question.
- 5.2** The court is responsible for ensuring that the agreements made with journalists are complied with properly. In the event that a journalist fails to properly comply with such agreements the court management may decide to take measures. Matters such as the nature and severity of the violation will be taken into consideration. The court management may give a mere warning, or it may exclude a journalist from using the facilities provided by the court for a certain period of time or indefinitely. The other courts and the Netherlands Council for the Judiciary will be informed of the measures that have been taken.

Appendix 1

Application for press facilities

The undersigned

Name _____

Address _____

Telephone number _____

E-mail address _____

Medium _____

Address _____

Telephone number _____

E-mail address _____

hereby requests access to the various facilities that the courts offer to journalists.

The application is for

- a subscription to the press cause list;
- permission to inspect the initiating procedural documents;
- permission to make audio-visual recordings in the courtroom.

(Please tick which facility you wish to use.)

You must enclose a copy of your proof of identity containing a clearly recognizable photograph.

- 2 The courts will notify that they have adopted the Press Guidelines. These Press Guidelines offer the employees of the courts – and thereby the press – insight into the interest that are at issue in connection with public access to the legal system, and how and by whom those interests are weighed. In addition to the interest of public access, the courts must also ensure that the privacy of the persons involved, who are present in the courthouses or whose names are contained in procedural documents, is safeguarded and not invaded unnecessarily. The courts assume that you have taken note of the content of these Press Guidelines (which can be found at [www.rechtspraak.nl/actualiteiten/informatie voor de pers](http://www.rechtspraak.nl/actualiteiten/informatie%20voor%20de%20pers)).
- 3 The undersigned guarantees that an embargo on the publication of the information will be complied with until the case has been brought up at a public hearing. The undersigned will ensure that the privacy of all the persons involved will be respected when the information is used and published.
- 4 The court reserves the right to exclude the undersigned from using the facilities that are made available in the event that he/she violates the rules contained in this protocol.

Signature:

Publishing details

The Press Guidelines have been drawn up at the initiative of the communication advisors and the judges responsible for briefing the press. The Press Guidelines have been adopted by the Meeting of the Presidents of the Courts.

Composition

- F.W.H. van den Emster, Chairman of the Netherlands Council for the Judiciary
- R. Ellerbroek, Communications Advisor of the District Court of Rotterdam
- A.E.M. van Knippenbergh, Communications Advisor of the Netherlands Council for the Judiciary
- E.J. van der Molen, President of the District Court of Noord-Nederland
- A.P. Pouw, Communications Advisor of the District Court of Amsterdam
- E.A.G. M. van Rens, Briefing Judge of the District Court of 's-Gravenhage
- M.L.H.E. Roessingh, Briefing Judge of the Court of Appeal of Arnhem-Leeuwarden
- D. Vergunst, Briefing Judge of the of the District Court of Oost-Nederland
- G.J. Verhoog, Communications Team Leader of the Netherlands Council for the Judiciary
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