

PENAL CODE

Art. 5 (Dutch citizens outside the Netherlands)

1. Dutch criminal legislation applies to a Dutch citizen who is found guilty outside of the Netherlands of:

1st: one of the crimes described in Chapters I and II of the Second Book and in articles 197a, 197b, 197c, 206, 237, 272, 273, 388 and 389;

2nd: a crime that is considered an offence in Dutch criminal legislation and which is punishable in the country where it was committed.

2. Prosecution can also take place if the suspect only becomes a Dutch citizen after having committed the crime (Penal Code [Sr] 8; Code of Criminal Procedure [Sv] 2 v; UW 4).

Art. 6 (Offences by civil servants outside of the Netherlands)

Dutch criminal legislation applies to:

1st: A Dutch civil servant who, outside of the Netherlands, is guilty of one of the offences described in Chapter XXVIII of the Second Book;

2nd: A person in public service of an organisation subject to international law that is situated in the Netherlands, who is found guilty outside of the Netherlands of one of the offences described in articles 362 to and incl. 364a (Sr 8, 84, 355v; Sv 5).

Article 23 (fine)

1. A person sentenced to pay a fine is obliged to pay the amount determined by judgment of the court to the State within the period of time to be stipulated by the Public Prosecutions Department charged with the execution of the judgment.
2. The minimum amount of the fine is €2.
3. The maximum fine that may be imposed for a criminal offence is equal to the amount of the category stipulated for that offence.
4. There are six categories:
 - a. the first category, €225;
 - b. the second category, €2,250;
 - c. the third category, €4,500;
 - d. the fourth category, €11,250;
 - e. the fifth category, €45,000;
 - f. the sixth category, €450,000.
5. The court is entitled to impose on a summary offence, and on a criminal offence, respectively, for which no fine is stipulated, a fine not exceeding the amount of the first or third category, respectively.
6. The court is entitled to impose on a summary offence, and on a criminal offence, respectively, for which a fine is stipulated, but for which no category is stipulated, a fine not exceeding the amount of the first or third category, respectively, if this amount exceeds the amount of the fine that is stipulated for the offence concerned.
7. When sentencing a legal entity, a fine may be imposed, if the category stipulated for the offence does not allow an appropriate punishment, to the amount of the category immediately above that category.
8. The provisions of the previous subsection are applicable mutatis mutandis to the sentencing of an unincorporated company, partnership or allocated funds.

Article 28 (deprivation of rights)

1. In the cases defined by law, a person found guilty may be deprived from the following rights under a court order:

- a. Holding office or any specific public office;
- b. Serving in the army;
- c. The right to elect members of any general representative body and to be elected as a member of such body;
- d. Being a counsel or court-appointed administrator;
- e. Exercising specific professions.

Article 33

- 1. A penalty of forfeiture may be imposed upon conviction for any criminal offence.
- 2. Art. 24 is applicable

Article 33a

The following are subject to forfeiture:

- a. objects belonging to the convicted person or objects he can use in whole or in part for his own benefit and obtained entirely or largely by means of the criminal offence;
 - b. objects in relation to which the offence was committed;
 - c. objects used to commit or prepare the offence;
 - d. objects used to obstruct investigation of the serious offence;
 - e. objects manufactured or intended for committing the serious offence;
 - f. right *in rem* and rights *in personam* pertaining to objects specified in *a* through *e*
- 1. Objects specified in section 1 (a)-(e), where they belong to a person other than the convicted person, can only become subject to forfeiture where:
 - a. the person whom they belong had knowledge of the fact that they had been obtained by means of the criminal offence or had knowledge of the purpose or use in connection with the offence, or might have reasonably suspected such provenance, use or purpose;
 - b. it has not been possible to ascertain to whom they belong.
 - 2. Rights as specified in section 1 (f) not belonging to the convicted person, may only be forfeit where the person to whom they belong had knowledge of the fact that the objects to which these rights pertain had been obtained by means of the criminal offence, or had knowledge of the use or purpose in connection with the offence, or might have reasonably suspected such provenance, use or purpose.
 - 3. The terms “objects” is to be taken to mean all corporeal property and all property rights.

Title IIA. Non-punitive orders

Part One. Forfeiture and confiscation of illegally obtained profits or advantages and damages

Section 36a

All costs for the execution of the non-punitive orders referred to in this Part – with the exception of the costs for recourse, including the collection costs – are for the account of, and all that is obtained through the execution, shall revert to, the State, with the exception of what is obtained through the execution of the order as referred to in section 36f.

Section 36b

1. Forfeiture of seized goods may be pronounced:

- 1°. by a court ruling whereby a person is sentenced for a criminal offence;

- 2°. by a court ruling whereby it is determined, pursuant to section 9a, that no punishment shall be imposed;
 - 3°. by a court ruling whereby, in spite of acquittal or discharge from further prosecution, it is determined that a criminal offence has been committed;
 - 4°. by a separate decision of the court, on a request of the Public Prosecutions Department.
2. Sections 33b and 33c, subsections two and three, and section 446 of the Code of Criminal Procedure, are applicable mutatis mutandis.
3. The order may be imposed together with punishments and other orders.

Section 36c

Liable to forfeiture are all goods:

- 1°. that are obtained, either wholly or for the most part, by means of or from the proceeds from the offence;
 - 2°. with respect to which the offence has been committed;
 - 3°. with the help whereof the offence has been committed or prepared;
 - 4°. with the help whereof the investigation of the offence has been obstructed;
 - 5°. that have been manufactured or that were intended for committing the offence;
- all this insofar as they are of such nature that the uncontrolled possession thereof is in violation of the law or of the public interest.

Section 36d

Liable to forfeiture are furthermore those goods that are the property of the perpetrator or suspect that are of such nature that the uncontrolled possession thereof is in violation of the law or of the public interest, and that are found in the course of the investigation of the offence committed by him, or of the offence of which he is suspected, but only if these goods may serve to commit or to prepare similar offences with, or to obstruct the investigation thereof.

Section 36e

1. At the request of the Public Prosecutions Department, the person who is sentenced for a criminal offence may, by separate decision of the court, be obliged to pay a sum of money to the State in confiscation of illegally obtained profits or advantages.
2. This obligation may be imposed on the person as referred to in subsection one who gained profits or advantages by means of or from the proceeds from the criminal offence as referred to in that subsection or from similar offences, or from offences that are punishable with a fine of the fifth category, and of which there is sufficient evidence that they have been committed by him.
3. At the request of the Public Prosecutions Department, a person who is sentenced for a criminal offence punishable with a fine of the fifth category and against whom, as a suspect of that criminal offence, a criminal financial investigation is conducted, may, by separate decision of the court, be obliged to pay a sum of money to the state in confiscation of illegally obtained profits or advantages, if, in view of that investigation, it is likely that offences or other criminal offences have in any way resulted in the convicted person having obtained illegal profits or advantages as well.
4. The court sets the amount that is estimated to be the amount of the illegally obtained profits or advantages. Profits or advantages include costs saved. The value of the goods that are regarded by the court as forming part of the illegally obtained profits or advantages may be estimated at the market value they have at the time of the decision of the court, or by referring to the proceeds the goods would fetch at a public sale, if recourse has to be taken. The court may set the sum of money at less than the estimated profits or advantages. When determining

the amount to be paid, the court may, at the reasoned request of the accused or of the convicted person, take into account the fact that the current and the reasonably to be expected future financial resources of the accused or of the convicted person shall be insufficient to pay the amount due. In the absence of such request, the court may apply this power ex officio or at the request of the public prosecutor.

5. Goods include all property and property rights.

6. When determining the extent of the amount that is estimated to be amount of the illegally obtained profits or advantages, claims allowed by law to injured third parties shall be subtracted.

7. When imposing the order, obligations to pay a sum of money in confiscation of illegally obtained profits or advantages pursuant to previous rulings shall be taken into account.

Section 36f

1. By court ruling whereby a person is convicted for a criminal offence, that person may be obliged to pay the State a sum of money for the benefit of the victim. The State shall pay the amount received to the victim immediately.

2. The court may impose an order if and insofar as under civil law the suspect is liable towards the victim for the damage caused by the criminal offence.

3. The order may be imposed together with punishments and other orders.

4. Sections 24a and 24b, subsection one to and including four, are applicable mutatis mutandis, on the understanding that the increase of the amount due by virtue of the order shall be paid into the public funds of the State.

5. Payment by the convicted person to the State, shall in the first place go towards the payment of the order and subsequently for the increases pursuant to subsection four.

6. Sections 24c and 77I, subsection two to and including six, are applicable mutatis mutandis, on the understanding that the application of default detention or default juvenile detention does not take away the obligation pursuant to the order to pay damages to the victim.

Art. 47 (Participation)

1. The following persons are liable as perpetrators of a criminal act:

1° those who commit a criminal offence, either personally or jointly with another or others, or cause a criminal offence to be committed;

2° those who, by means of gifts, promises, abuse of authority, use of violence, threat or deception or by providing the opportunity, means or information, intentionally solicit the commission of a crime.

2. With regard to the last category, only those actions intentionally solicited by them and the consequences of such actions are to be taken into consideration.

Art. 48 (aiding and facilitation)

The following persons are liable as accessories to a serious offence:

1° those who intentionally assist during the commission of the serious offence;

2° those who intentionally provide the opportunity, means or information necessary to commit the serious offence.

Article 51 (criminal liability)

1. Offences may be committed by natural persons and legal persons.

2. If an offence is committed by a legal person, criminal proceedings may be instituted and the punishments and other measures provided for by law may be implemented where appropriate:

a. against the legal person; or

b. against those who ordered the commission of the offence, and those who were in control of such unlawful behaviour; or

- c. against the persons mentioned under (1) and (2) together.
3. For the purpose of the application of the above paragraphs legal persons shall be deemed to include a unincorporated company, a partnership and a special fund.

Art 84 (extended definition of a civil servant)

1. The term 'public servant' applies to all persons elected to public office duly called under the law.
2. The term 'public servant' and 'judge' also applies to arbitrators; the term 'judge' applies also to those who have jurisdiction in matters of administrative law.
3. All personnel of the armed forces are also regarded as 'public servants'.

Art 126 (Passive and active bribery during elections)

1. A person who, on the occasion of an election duly called under the law, bribes another person by means of gifts or promises, in order to cause him either to refrain from exercising his or another person's suffrage or to cause him to exercise that right in a particular way, is liable to a term of imprisonment of not more than six months or a fine of the third category.
2. The punishment in sub-section 1 is also applicable to a voter or a proxy who allows himself to be bribed to so do by gifts or promises.

OFFENCES AGAINST PUBLIC AUTHORITY

Art. 177 (Bribery of officials)

1. Punishment in the form of a prison sentence of at least four years or a fine in the fifth category will be imposed on:
 - 1st: whoever makes a gift or a promise to a civil servant or provides or offers him a service with a view to getting him to carry out or fail to carry out a service in violation of his duty;
 - 2nd: whoever makes a gift or a promise to a civil servant or provides or offers him a service in response to or in connection with a service, past or present, that the official carried out or failed to carry out in violation of his duty;
2. The same punishment will apply to anyone who commits an offence as described in the first paragraph, under 1st, against a person who has prospects of an appointment as a civil servant, if the appointment as a civil servant is followed.
3. Removal of the rights stated in article 28, first para., under 1st, 2nd and 4th can be pronounced (Sr 84, 328ter, 362v.)
(13-12-2000, Law Gazette 616, effective date 01-02-2001/parliamentary document 26469).

Art. 177a (Bribery not in violation of official duty)

1. Punishment in the form of a prison sentence of no more than two years or a fine in the fourth category will be imposed on:
 - 1st: whoever makes a gift or a promise to a civil servant or who provides or offers him a service with a view to getting him to carry out or fail to carry out a service that is not in violation of his duty;
 - 2nd: whoever makes a gift or a promise to a civil servant or who provides or offers him a service in response to or in connection with a service, past or present, the official carried out or failed to carry out, without this being in violation of his duty.
2. The same punishment will apply to anyone who commits an offence as described in the first paragraph, under 1st, against a person who has prospects of an appointment as a civil servant, if the appointment as a civil servant is followed.
3. Removal of the rights stated in article 28, first para., under 1st, 2nd and 4th, can be pronounced.

(13-12-2000, Law Gazette 616, effective date 01-02-2001/parliamentary document 26469).

Art. 178 (Bribery of a judge)

1. Whoever makes a gift or a promise to a judge or provides or offers him a gift with a view to exerting influence on his decision in a case that is subject to his judgement will be punished with a prison sentence of at the most six years or a fine in the fourth category.

2. If the gift or promise is made or the service is provided or offered with a view to obtaining a conviction in a case, the guilty person will be punished with a prison sentence of at the most nine years or a fine in the fifth category.

3. Removal of the rights stated in article 28, first para., under 1st, 2nd, and 4th, can be pronounced. (Sr 84, section 2, 126, 364; RO 11, 24, 29)

13-12-2000. Law Gazette 616, effective date 01-02-2001/parliamentary document 26469)

Art. 178a (Extended definition of a civil servant)

1. With regard to articles 177 and 177a, persons working in the public service of a foreign state or an organisation governed by international law are equivalent with civil servants.

2. With regard to articles 177, first section, under 2nd, and 177a, first section, under 2nd, former civil servants are equivalent to civil servants.

3. With regard to article 178, judges in a foreign state or an organisation governed by international law are equivalent to judges

(13-12-2000, Law Gazette 616, effective date 01-02-2001/parliamentary document 26469)

Art. 328ter (private bribery)

1. A person who, in a capacity other than that of public servant, either in the service of his employer or acting as an agent, accepts a gift or promise in relation to something he has done or has refrained from doing or will do or will refrain from doing in the service of his employer or in the exercise of his mandate, and who, in violation of the requirements of good faith, conceals the acceptance of the gift or promise from his employer or principal, is liable to a term of imprisonment of not more than one year or a fine of the fifth category.

2. The punishment in sub-section 1 is also applicable to a person who makes a gift or a promise to another person who, in a capacity other than that of public servant, is employed or acts as an agent, in relation to something that person has done or has refrained from doing or will do or will refrain from doing in his employment or in the exercise of his mandate, the gift or promise being of such nature or made under such circumstances that he might reasonably assume that the latter, in violation of the requirements of good faith, will not disclose the gift or promise to his employer or principal.

Art. 339

1. Upon conviction for any of the offences defined in this title, the judge may order publication of the judgement and the offender may be disqualified from practising the profession in which he committed the serious offence.

Art 362 (Passive bribery not in violation of official duty)

1. Punishment in the form of a prison sentence of not more than two years or a fine in the fifth category will be imposed on the civil servant:

1st who accepts a gift, promise or service, knowing that it is made to him in order to induce him to act or to refrain from acting in the execution of his duties, in a manner not contrary to the requirements of his office;

2nd who accepts a gift, promise or service, knowing that it is made to him as a result or as a consequence of something he has done or has refrained from doing, in the execution of his duties, past or present, in a manner not contrary to the requirements of his office;

3rd who asks for a gift, promise or service, in order to act or to refrain from acting in the execution of his duties, in a manner not contrary to the requirements of his office;

- 4th who asks for a gift, promise or service, as a result or as a consequence of something he has done or has refrained from doing, in the execution of his duties, past or present, in a manner not contrary to the requirements of his office;
2. The same punishment will apply to anyone who has the prospects of an appointment as a civil servant, if the appointment as a civil servant is followed, commits an offence as described in the first paragraph, under 1^o and 3^o.
 3. A person who commits an offence as described in the first paragraph in one's capacity as minister, state secretary, royal commissioner, member of the provincial executive, mayor, aldermen or member of a public representative body, is liable to a term of imprisonment of not more than four years or a fine of the fifth category.

Art 363 (Passive bribery)

1. Punishment in the form of a prison sentence of not more than four years or a fine in the fifth category will be imposed on the civil servant:
 - 1st who accepts a gift, promise or service, knowing that it is made to him in order to induce him to act or to refrain from acting in the execution of his duties, in a manner contrary to the requirements of his office;
 - 2nd who accepts a gift, promise or service, knowing that it is made to him as a result or as a consequence of something he has done or has refrained from doing, in the execution of his duties, past or present, in a manner contrary to the requirements of his office;
 - 3rd who asks for a gift, promise or service, in order to act or to refrain from acting in the execution of his duties, in a manner contrary to the requirements of his office;
 - 4th who asks for a gift, promise or service, as a result or as a consequence of something he has done or has refrained from doing, in the execution of his duties, past or present, in a manner contrary to the requirements of his office;
2. The same punishment will apply to anyone who has the prospects of an appointment as a civil servant, if the appointment as a civil servant is followed, commits an offence as described in the first paragraph, under 1^o and 3^o.
3. A person who commits an offence as described in the first paragraph in one's capacity as minister, state secretary, royal commissioner, member of the provincial executive, mayor, aldermen or member of a public representative body, is liable to a term of imprisonment of not more than six years or a fine of the fifth category.

Art 364 (Passive bribery of a judge)

1. A judge who accepts a gift, promise or service, knowing or reasonably suspecting that it is made or rendered to him in order to exercise influence on the decision in a case that is before him for judgement, is liable to a term of imprisonment of not more than nine years or a fine of the fifth category.
2. A judge who solicits a gift, promise or service in order to induce him to exercise influence on the decision in a case that is before him for judgement, is liable to a term of imprisonment of not more than nine years or a fine of the fifth category.
3. Where a judge, knowing or reasonably suspecting that it is made or rendered to obtain a conviction in a criminal case, accepts such gift, promise or service, he is liable to a term of imprisonment of not more than twelve years or a fine of the fifth category.
4. Where a judge solicits such a gift, promise or service in order to induce him to obtain a conviction in a criminal case, he is liable to a term of imprisonment of not more than twelve years or a fine of the fifth category.

Art 364a (Extended definition of a civil servant)

1. With regard to articles 361, 362 and 363, persons working in the public service of a foreign state or an organisation governed by international law are equivalent with civil servants.
2. With regard to articles 362, first section, under 2nd, and 363, first section, under 2nd, former civil servants are equivalent to civil servants.

3. With regard to article 364, judges in a foreign state or an organisation governed by international law are equivalent to judges

Title XXXA. Money laundering

Section 420bis

1. As guilty of money laundering shall be punished with a term of imprisonment not exceeding four years or a fine of the fifth category:

a. A person who hides or conceals the true nature, origin, location, alienation, or relocation of a good, or hides or conceals the party entitled to a good, or has the good in his possession, knowing that the good has proceeded – indirectly or directly – from a crime;

b. A person who acquires, has in his possession, transfers, or converts a good or makes use of a good, knowing that the good has proceeded – indirectly or directly – from a crime.

2. Goods are understood to include all property and property rights.

Section 420ter

A person who makes a habit of money laundering shall be punished with a term of imprisonment not exceeding six years or a fine of the fifth category.

Section 420quater

1. As guilty of money laundering debts shall be punished with a term of imprisonment not exceeding one year or a fine of the fifth category:

a. A person who hides or conceals the true nature, origin, location, alienation, or the relocation of a good, or hides or conceals who is the party entitled to a good or who has the good in his possession, whereas he should reasonably suspect that the good has proceeded – indirectly or directly – from a crime;

b. A person who acquires, has in his possession, transfers, or converts a good or makes use of a good, whereas he should reasonably suspect that the good has proceeded – indirectly or directly – from a crime.

2. Goods are understood to include all property and property rights.

Section 420quinquies

When sentenced for one of the offences as set forth in Sections 420bis to 420quater, inclusive, the offender may be deprived of the rights as referred to in Section 28, subsection 1, under 1°, 2° and 4°, and the offender may be denied the exercise of the profession in which he committed the offence.

Section 511b

1. A request of the Public Prosecutions Department as referred to in section 36e of the Criminal Code shall be submitted to the court as soon as possible after judgment is pronounced in first instance, but not later than two years after that date. If the criminal financial investigation is closed and reopened in accordance with the provisions of section 126f, subsection two, the period of two years shall be extended with the time that has passed between the closing and the reopening of the investigation.

2. The public prosecutor shall submit his request together with the documents on which it is based to the court. Section 258, subsection six, is applicable *mutatis mutandis*.

3. The request shall be served on the person to whom it pertains, with the notification that the person is entitled to inspect the documents. If a criminal financial investigation has been

carried out, the request shall be served simultaneously with the closing thereof on the person against whom it is directed.

4. The request also contains the summons to appear before the court on the date mentioned therein. Sections 260, 263 and 265 to and including 267, are applicable *mutatis mutandis*.

Section 511c

For as long as the investigation is not closed at the hearing, the public prosecutor may offer the suspect or convicted person a written settlement for payment of a sum of money to the State or for the transfer of goods in full or partial confiscation of the estimated profits or advantages – including costs saved – obtained by the person involved by means of or from proceeds from the offence for which he is prosecuted or from similar offences

Section 511d

1. The provisions of Part One, Title VI, Book Two, are applicable *mutatis mutandis* to the hearing of a request of the public prosecutor. The hearing of the request may be preceded by a written preparation in a manner to be stipulated by the court.

2. If a further criminal financial investigation turns out to be necessary, the court stays the proceedings, and submits the documents to the public prosecutor, indicating the object of the investigation and if necessary, the manner in which it shall be conducted.

3. The investigation shall be regarded as a criminal financial investigation conducted by judicial authorization and shall be conducted in accordance with the provisions of Part Nine, Title Four, of Book One, with the exception of section 126*f*, subsections four and five.

Section 511e

1. The provisions of Part Four, Title VI, of Book Two, are applicable *mutatis mutandis* on the deliberations and the judgment, on the understanding that:

a. further to the request and the investigation, the court shall deliberate at the hearing about the question whether the non-punitive order as referred to in section 36*e* of the Criminal Code has to be imposed, and if so, the amount at which the extent of the illegally obtained profits or advantages is to be estimated; and

b. the court is not bound to the provision of section 345 regarding the period within which judgment has to be pronounced.

2. If the person to whom the request pertains has not been notified of the day of the judgment at the hearing, a notice shall be served on him as soon as this date is set.

3. If during the deliberations it appears that the investigation was not complete at the time of the hearing, the court may have an investigation carried out by the public prosecutor in accordance with the provisions of section 511*d*, subsections two and three. In this event, the procedure to be followed is the same as if the investigation were suspended for an indefinite period of time.

Section 511f

The court may only estimate the profits or advantages as referred to in section 36*e* of the Criminal Code, that are capable of being expressed in money, on the basis of lawful evidence.

Section 511g

1. The judgment of the court may be appealed.

2. Title II, of Book Three, is applicable *mutatis mutandis*, on the understanding that:

a. the case in appeal is brought by a summons of the advocate general, served on the suspect or convicted person;

- b. the hearing of the appealed request may be preceded by a written preparation in the manner to be determined by the court;
- c. the special provisions of section 422, subsection two, regarding evidence, are not applicable *mutatis mutandis*;
- d. sections 511*d*, subsections two and three, and 511*e*, subsection three, are applicable *mutatis mutandis*. In these instances, the financial investigation shall be conducted by the public prosecutor of the court that has pronounced judgment in first instance. After the ordered investigation is completed, the public prosecutor submits the documents to the advocate general;
- e. section 511*e*, subsection one, under *b*, is applicable *mutatis mutandis*.

Section 511h

The judgment in appeal may be appealed to the Supreme Court. Title III, of Book Three, is applicable *mutatis mutandis*.

Section 511i

A decision on the request of the Public Prosecutions Department as referred to in section 36*e* of the Criminal Code ceases to have effect by operation of law, for reasons that the judgment as a result of which the conviction of the suspect, as referred to in section 36*e*, subsection one, or three, respectively, of the Criminal Code, is not effected, becomes final and conclusive.