

FPUR UNODC-rapportage: Call for Inputs on challenges, lessons learned, best practices and enabling factors on equal access to justice for all: Criminal law

The legal powers and procedural position (rights and obligations) of the various participants in the criminal process - including the accused, the victim, the witness and the expert - are set out in the Dutch Code of Criminal Procedure.

Challenges

- The Dutch criminal justice system has faced backlogs and long processing times in the handling of criminal cases in recent years. This does not have any consequences for the equal access to justice, but it means that, by Dutch standards, the litigants spend a long time in uncertainty about the outcome of their criminal case. Reducing both backlogs and processing times is therefore one of the (three) priorities of organizations with a criminal justice task (the Criminal Justice System). The Dutch government closely monitors the progress and results of this approach.
- A second priority is with the further digitization of the criminal justice chain. This development will also benefit citizens' access to the criminal process by simplifying access to procedural documents, the filing of procedural documents and the filing of legal remedies.

Developments

- The legal position of the suspect has already been strengthened in a number of topics in recent years, partly as a result of European regulations and case law.¹ Additional developments to improve access to legal protection in Dutch criminal law relate in particular to improving legal assistance for suspects in the criminal process:
 - In the criminal justice system of the Netherlands work is done via a so called ZSM working method, in which The Netherlands Public Prosecution Service in close consultation with the relevant organizations within the Criminal Justice System (such as the parole board), quickly and carefully reaches a considered decision on the disposal of the case. Due to the speed of the process and the circumstance that in most cases the choice is made to impose a sentence on the suspect by the public prosecutor (and not the judge; it is called a penal order), it has been decided to provide suspects with additional legal aid to promote better access to criminal justice. This means ensuring that all criminal suspects are provided with free legal aid at the front end. And if the case is disposed of with an penal order by the public prosecutor, then all crime suspects will be entitled to free legal aid so that they can make an consciously and well-informed decision on whether or not to oppose the penal order in order to still take the criminal case to court.
 - The current Code of Criminal Procedure (bill is pending) provides for an extension of the right to subsidized legal aid for minor and vulnerable adult suspects who are at large and invited by the police for questioning. Under that bill, legal counsel will henceforth be appointed by The Dutch Legal Aid Board in those cases as well. This means that - as is already the case with arrested suspects - the government will actively provide legal assistance in those cases, which will also be free of charge for the suspect.
 - A comprehensive revision of the Code of Criminal Procedure (the third priority of the criminal justice chain) is currently under way in the Netherlands. The new Code will include clear safeguards for both suspects and citizens who are not a suspect. The new regulation envisaged by the new Code encourages suspects to seek the assistance of legal counsel at an

¹ These include, for example, the change in the legal position of the accused on the occasion of the first police interrogation, as shaped by the implementation of two EU directives, namely, Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJEU L142) and Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in proceedings for the execution of a European Arrest Warrant and on the right to have a third party informed from the deprivation of liberty and to communicate with third parties and consular authorities while in custody (OJEU L294). The amendment means that before interrogation (usually at the police station), the suspect must be informed of his rights. Reinforcement of the legal position of the suspect has also taken place in procedures implementing a European Arrest Warrant and the right to have a third party informed from the deprivation of liberty and to communicate with third parties and consular authorities during the deprivation of liberty (OJEU L294) (Stb. 2016, 475) and the Act of 17 November 2016, amending the Code of Criminal Procedure and some other laws in connection with supplementing provisions on the suspect, counsel and some coercive measures (Stb. 2016, 476).

early stage of the investigation, if they so wish, and for low-income suspects to apply for subsidized legal aid at an early stage for this purpose. In this regard, for suspects who are at large, the time when they can apply for subsidized legal aid is put forward. This will allow the counsel for such a suspect to request and study the file at an early stage, as well as to approach the examining magistrate with investigation wishes. The policy of the Dutch Legal Aid Board will be adjusted in this regard, so that an addition can be granted as early as after the first interrogation of the suspect instead of only at the time the initiation of proceedings is filed. This will also enable impaired suspects at large to be assisted by counsel at an early stage of the investigation. The entry into force of this new code is scheduled for 2029.

- In recent years, the legal position of the victim in the criminal process has improved significantly. This was a focal point of the last governments:
 - The victim can join the criminal proceedings for a claim for compensation;
 - At the trial, the victim may exercise the right to speak if a serious crime has been charged;
 - The victim has the right to be informed of decisions related to the criminal case, the victim may, within certain limits, take notice of the case documents and the victim may request the prosecutor to add documents to the case documents.
- The current government is also committed to providing sufficient appropriate facilities for victims, including restorative justice:
 - While restorative justice is growing, several measures are currently being worked on to further encourage the use of restorative justice and mediation in criminal cases.

The new Code of Criminal Procedure also further strengthens the legal positions of the victim. For instance, the victim's right to access procedural documents is strengthened. The victim is also given the possibility, as a direct interested party, to complain not only about the lack of prosecution, but also about the lack of investigation.