

# Being a witness in a criminal trial



*If you have been the victim of an offence, or a witness to that offence, you may be asked to make a formal statement. The judge who hears the case can use your statement as information. He or she will also hear evidence from the prosecutor, the defendant and from other (expert) witnesses.*

*This brochure explains what you can expect if you are called as a witness, and the role of the various other parties in the Dutch judicial system.*

# Contents

The police investigation	3
Prosecution	4
The preliminary hearing	4
The trial	6
The Court of Appeal	10
The Supreme Court	11
Costs	11
Further information	12

# The police investigation

When a criminal offence has been committed, the police will investigate and gather evidence. Statements by people who saw or heard something can be very valuable. These people are known as ‘witnesses’.

If you have seen or heard anything relevant to a criminal offence, the police may request your assistance. If you have been the victim of a crime, the police will usually wish to hear your account of what happened. You will also be asked for information if you report an offence.

It is important that you can explain what you saw or heard in as much detail as possible. The police may therefore ask you to repeat your account of the events several times. Please take as much time as you need.

**The witness statement** The police will produce a written account of your evidence. This is known as the ‘witness statement’. At the end of the interview, the investigating officer will ask you to read the statement carefully. If you have no comments or questions, you will then be asked to sign the statement to indicate that you agree with its contents. In most cases, you will be offered a copy.

You are entitled to know the name of the police officer dealing with the case. This is useful if you later wish to enquire about the progress of the investigation.

**The suspect** At this stage, the person alleged to have committed the offence is known as the ‘suspect’. If you do not know the identity of the suspect, the police may ask you to look at photographs or video recordings, or might ask for your assistance in producing a facial composite image (the ‘Identikit’ photo).

Once a suspect has been apprehended, the police may ask you to come to the police station to formally identify him (or her). This is done using a two-way mirror: you will be able to see the suspect, but the suspect is not able to see you.

**What happens next?** Sometimes you will hear nothing further once you have made your statement. This does not necessarily mean that the statement has not been followed up. It could be that the police are unable to complete their investigation, perhaps because they have been unable to trace the suspect or because there is insufficient evidence to link the suspect with the offence. In such cases, the police may decide to suspend the investigation and put the case ‘on

hold'. Please remember that this does not mean that the police do not believe you. They will always assume that your account of events is true. However, it may not be possible for them to gather evidence that will stand up in court, whereupon the suspect cannot be prosecuted. If you wish to enquire about the progress of the investigation, you should contact the police officer who took your statement.

## Prosecution

Having completed their investigation, if the police believe that there is enough evidence to link the suspect with the offence, they will forward the file to the public prosecutor, known in the Netherlands as the 'Officer of Justice'. The suspect is now known as 'the accused'. Based on the facts presented, the Officer will decide whether the case should proceed to court. In the case of relatively minor offences, the Officer of Justice can offer an 'out of court' settlement, usually in the nature of a fixed penalty fine. However, the Officer may decide that the case should be heard by a judge, whereupon there will be a 'trial' at which the judge decides whether the accused is guilty and, if so, what punishment he or she should receive.

**Dismissal** In some cases, the Officer of Justice will decide not to take any further action whereupon the case is 'dismissed'. This may be because there is insufficient evidence to secure a conviction.

**Transaction** The Officer of Justice can also offer the accused a 'transaction', which is in effect an out-of court settlement. He will waive further action if, for example, the accused agrees to pay a fine, compensate the victim or make amends in some other way. However, the transaction system is soon to be replaced by one of mandatory fixed penalties for certain offences, whereby the accused will not have the right to refuse the settlement.

## The preliminary hearing

Sometimes, the Officer of Justice will wish to have the matter investigated further before he takes any decision. Perhaps he requires more information or wishes to gather further evidence. Because this investigation goes further than the original police investigation, it has to be conducted under the authority of a judge, known as the *rechter commissaris* or 'examining judge'.

The examining judge will hold a formal hearing (the 'preliminary' or 'committal' hearing) and may summon you to answer questions. If so, you are required by law to attend. If you are unable to do so, you must inform the court as soon as possible. In exceptional circumstances, the examining judge may decide to hear your evidence in private, under oath. This will only happen if you were unable to attend the hearing, but your sworn statement is required nonetheless.

Alongside the examining judge sits the 'Clerk of the Court'. His job is to record everything that is said at the hearing. In most cases, the defendant's legal representative will also attend. He is entitled to ask you questions. The accused himself will not usually be present. If he is indeed to be in court, this will be discussed with you beforehand.

**'Privilege'** In principle, you are required to answer all questions put to you by the examining judge. In certain circumstances, however, you have the right not to answer. In law, this is known as 'privilege'. Privilege extends to the accused himself, his or her immediate family and anyone who has a professional duty of confidentiality (such as a doctor or notary). The examining judge will usually inform you of your rights in this regard, but is not required to do so.

**An interpreter** All court proceedings are conducted in Dutch. If you feel that you do not speak Dutch well enough, you can ask the examining judge to appoint an interpreter. If you wish to bring someone with you to help at the hearing, you must first obtain the examining judge's permission. To do so, contact the Clerk of the Court, either in writing, by telephone or in person.

The Clerk of the Court produces a written report of the hearing which will contain a summary of your evidence. The Clerk will read this report out loud, whereupon the examining judge will ask you whether you agree with the contents. If so, he will then ask you to sign a formal statement.

**Witness intimidation** In some cases, witnesses are at risk of intimidation by the accused or his associates. If the risk is considered 'serious', a special procedure can be followed, provided the accused does not already know your identity and the case involves a particularly serious offence. A 'serious' risk of intimidation exists when there is reasonable cause to fear for your life, health or safety, the disruption of family life, or adverse social or economic effects. Under this special procedure, your identity will not be disclosed to either the accused or his legal representative. You will not be

required to attend the trial itself, but will be required to give your evidence to the examining judge.

If you consider yourself to be at serious risk of intimidation and wish to make your statement anonymously, you must ask permission to do so from the examining judge. You are entitled to seek a lawyer's assistance, and that lawyer may also be present at the hearing. It is the responsibility of the examining judge to ensure that your statement does not disclose your identity in any way.

## The trial

If you have already made a statement to the examining judge, you will not usually be called to appear at the trial itself. In some cases, however, the Officer of Justice may consider it important for you to attend and to reiterate your evidence. You will then receive a 'witness summons', which is a letter instructing you to attend court at the time stated.

**Witnesses for the prosecution and witnesses for the defence** There are two types of witness: those who appear for the prosecution and those who appear for the defence. Both are officially summoned to appear in court by the Officer of Justice.

**Attendance is mandatory** If you have received a witness summons, you are required by law to attend court. If you are unable to do so, you must write a letter to the Officer of Justice, clearly setting out the reasons for wishing to be excused. The Officer may decide that you must attend nonetheless. In extreme circumstances, the court can order the police to detain you and bring you to court.

**Testifying as victim** The victim of a crime can also be called to give evidence at the trial. If you feel that doing so would jeopardize your health, you should inform both the Officer of Justice and the court accordingly. It is the court which decides whether you will nevertheless be required to attend.

**Interpreter** All court proceedings are conducted in Dutch. If you feel that you do not speak Dutch well enough, you can ask the Officer of Justice to arrange for an interpreter. If no interpreter is present at the trial but the judge nevertheless considers it desirable, he will request the Officer of Justice to make the necessary arrangements.

**Open session** In principle, legal proceedings in the Netherlands are conducted 'in open session'. That means that anyone, including journalists, may attend. In certain exceptional circumstances, the judge may order that the case is to be heard in private (the legal term is 'in camera'), which means that the press and public are excluded. Cases involving a juvenile defendant (aged under eighteen) are always heard in private.

As a witness, you are entitled to request the judge to order that the case is heard in private. You should make this request through the Officer of Justice; the decision itself will be made by the judge.

**At court** If you are called to give evidence, you may bring a companion to the trial. On arrival at the court building, you should report to the reception desk where staff will direct you to the appropriate court. In most cases, you will be required to wait outside the court itself until you are called by the usher. The usher will also show you where to sit once inside the court.

**Different types of judge** Not all criminal cases are heard by the same type of judge. the *kantonrechter* (district judge) for example, is concerned with misdemeanours, the *politierechter* (police court judge or stipendiary magistrate) tries relatively straightforward minor offences, while the *kinderrechter* (juvenile court judge) hears all cases involving minors. All these judges hear cases alone. To the right of the judge (as seen from the court) sits the Clerk of the Court who produces a written report of the proceedings. On the left, at a separate table, sits the Officer of Justice. The defendant and his lawyer sit directly opposite the judge.

More serious offences are heard by a panel or 'bench' of three judges. The presiding judge sits in the middle. Again, the Clerk of the Court sits on the right and the Officer of Justice sits at a separate table on the left. The defendant and his lawyer sit directly opposite the judges.

**The procedure** When the judge or judges enter court, everyone stands. The judge formally opens the session and directs all proceedings thereafter. The Clerk of the Court records everything that is said. The procedure for all trials is laid down by law. First of all, the judge will ask the defendant to confirm his or her name and address. He will then inform the defendant that he has the right to refuse to answer questions. Next, the Officer of Justice will read the charges, setting out the offence(s) of which the defendant is accused. The judge will then ask the defendant questions to determine whether he stands by the statements he has made to the police.

**Witness testimony** Witnesses are then called to give their evidence. The judge will first ask you to state your name, date of birth, occupation and place of residence. You must also declare whether you are related to the defendant. If so, you can be excused from testifying, but you may nevertheless do so if you wish. As a relative of the defendant, you can decline to answer certain questions.

Anyone called as a witness must swear an oath “to tell the truth, the whole truth and nothing but the truth.” The oath concludes with the words, “so help me God” or “so help me Allah almighty”. If you have no religious convictions you may opt to ‘affirm’, whereupon you will be required to say “I so promise”.

Your testimony will then be heard. You may take as long as you wish to explain what you know about the case and to answer questions. Do not worry if you cannot recall certain facts. Witnesses are expected to cooperate with the due process of law and to be truthful in what they say. However, it is perfectly normal that you will not be able to remember absolutely everything. In such cases, you should simply say so.

**Answering questions** In principle, you are required to answer every question that is put to you in court. There are certain circumstances in which you may decline to do so: if you are closely related to the defendant, for example, or if you are bound by a professional duty of confidentiality. Sometimes the judge will rule that you do not have to answer a particular question.

**The defendant in court** If you do not wish the defendant to be present in court while you give your evidence, you should inform the Officer of Justice accordingly. He will then ask the judge to have the defendant removed for the duration of your testimony. At any point during your testimony, you can ask the judge directly to have the defendant removed. However, he is under no obligation to do so. Even if the defendant is absent while you give evidence, the judge is required to tell him everything you have said when he returns.

Every witness is heard separately. You are not permitted to hear the evidence given by those called before you. You must wait outside until you are called by the usher. It is important that you remain available at all times. If you have any questions while waiting, you should ask the usher.

Once you have been called, the judge will ask you a number of questions about the statement you made to the police or the examining judge. He will probably



wish to clarify certain points. Once the judge has finished asking you questions, it is the turn of the Officer of Justice to do so. Next, the defence lawyer is entitled to question you. Officially, the defendant himself may then ask you questions, even if he was not in court when you gave your evidence. In practice, however, defendants very rarely exercise this right.

If you have been called as a defence witness, the order of questioning is different: the judge begins, followed by the defence. Finally, the prosecution will 'cross examine' the evidence you have given.

**Contempt of court** If you refuse to answer certain questions (and are not entitled to do so), the judge may rule you to be 'in contempt of court'. In extreme cases, he can order you to be detained in custody for up to thirty days. You are not entitled to appeal against this decision. The judge will set a date on which you will be required to return to court to answer the questions.

**Perjury** Making a false statement or offering false evidence while under oath is itself a criminal offence which carries a maximum penalty of six years' imprisonment. In law, this offence is known as 'perjury'. If during or after the trial there is any suspicion that you have not been telling the truth, the judge can order an investigation. Both the Officer of Justice and the defendant can request him to do so.

Once you have given evidence, you may remain in court to follow the rest of the proceedings if you wish. There may be other witnesses or expert witnesses due to give evidence after you. Alternatively, you may request the judge to excuse you, whereupon you are free to leave.

**The summing up** After all witnesses have been heard, the Officer of Justice will present his closing arguments, known as the 'summing up'. He summarizes all the facts, offers his opinion regarding the evidence, and requests the court to impose a certain sentence. Once the Officer has finished, the defendant's lawyer presents arguments in favour of acquittal, or puts forward mitigating circumstances which may affect the severity of the sentence. Finally, the defendant himself is entitled to address the court.

**Verdict** Judges who sit alone usually announce the verdict immediately. Where the case has been heard by a panel of judges, the verdict will be returned within two weeks of the trial. If you wish, you may return to court to hear the verdict. Because verdicts are always returned 'in open session', you

can also ask someone else to attend on your behalf. Alternatively, you can telephone the Clerk of the Court to enquire about the verdict. In some cases, the verdict will be reported in the press, or the court may publish it on the internet. Here, the anonymity of both the defendant and all witnesses is assured by replacing names with initials.

In passing sentence, the judge is not bound by the Officer of Justice's request. He may acquit the defendant, or can impose a heavier or lighter penalty than that suggested by the prosecution.

## The Court of Appeal

If the Officer of Justice does not agree with the judge's verdict or sentence, he may take the case to the *gerechtshof*, or Court of Appeal. The defendant is also entitled to do so. The case will then be reviewed by a different panel of judges, who will return their own independent ruling. Where a case is taken to appeal, the original sentence cannot be implemented until the procedure has been completed.

### *Fourteen days*

In principle, both the prosecution and the defence must give notice of the intention to appeal within fourteen days of the original verdict. If the defendant was tried 'in absentio', i.e. if he was unaware of the proceedings and the verdict, the fourteen-day period begins when he is informed of the verdict.

In the majority of cases, the appeal is heard some nine months to a year after the original verdict is passed. If the Court of Appeal wishes to hear your evidence, you will be re-called as a witness. However, this is a rare occurrence. You have, after all, already made a sworn statement of what you know about the case. It is possible that you were not called to give evidence during the original trial but the Court of Appeal nevertheless wishes to hear your testimony. There will then be a rather long interval between the time you made your original statement to the police and your appearance at the Court of Appeal. If you can no longer remember exactly what you told the police, you should inform the appeal judges accordingly.

The procedure in the Court of Appeal is identical to that of the lower courts.

## The Supreme Court

After being heard by the Court of Appeal, a case can be taken one step further to the *Hoge Raad* or Supreme Court. As the name suggests, this is the highest court in the Netherlands. It rules only on points of law, not sentencing. The Supreme Court will only hear witnesses in extremely exceptional circumstances.

## Costs

As a witness, you are entitled to claim costs in respect of lost income, travelling expenses and any necessary expenditure further to your appearance in court. Further information is given in the witness summons.

If you have been called to appear as a defence witness (at either the committal hearing or the trial itself), your costs must be reimbursed by the defendant. His or her lawyer will be able to provide further information.

## Further information

A full account of the Dutch judicial system is to be found online at [www.rechtspraak.nl](http://www.rechtspraak.nl). This site also lists the addresses of all courts and information about procedures. Information about the Ministry of Justice and its responsibilities can be found at [www.justitie.nl](http://www.justitie.nl). The Department of Public Prosecutions also has its own website at [www.om.nl](http://www.om.nl).

Brochures about many other aspects of the Dutch legal system are available (although not all in English). A list can be found at [www.postbus51.nl](http://www.postbus51.nl). The brochures can be downloaded or ordered from this site. You can also order brochures by calling the Postbus 51 information line on 0800 8051 (calls are free).

The brochure is published by The Council for the Judiciary, P.O. Box 90613, 2500 EH, The Hague, the Netherlands.

This brochure is for information purposes only. No rights may be derived or inferred from its contents.

Augustus 2008