



OPENBAAR MINISTERIE

# THE PUBLIC PROSECUTION SERVICE AT A GLANCE



## Introduction

The Public Prosecution Service (OM) and the courts together make up the judiciary. The Public Prosecution Service decides who has to appear before a court and on what charge. It is the only body that can decide to prosecute someone. Its field of work is criminal law.

The Public Prosecution Service's main tasks are:

- investigating criminal offences
- prosecuting offenders
- supervising the enforcement of sentences.

During the hearing, the court listens to what the public prosecutor and the defence attorney have to say, and may itself investigate the defendant's guilt or innocence. The public prosecutor then recommends an appropriate sentence, after which the court gives judgment.

The Public Prosecution Service does not get involved in disputes about dismissals or quarrels between neighbours about, say, overhanging branches. Such matters are dealt with by the civil courts. It only concerns itself with criminal offences, both minor (*overtredingen*) and serious (*misdrijven*).



## Investigations

The police are responsible for the practical side of criminal investigations. They collect evidence, interview witnesses and victims, and arrest suspects. And they are required to keep a complete record of the case in the form of an official report.

However, the Public Prosecution Service has ultimate responsibility for investigations. The police have to render account for their actions to one of the officers of the Public Prosecution Service, known as the public prosecutor. Every investigation is carried out under the authority of a public prosecutor, who ensures that the police observe all the rules and procedures laid down by law. This is of particular importance in the case of a serious offence, where the public prosecutor will be in direct charge.

The Public Prosecution Service is also responsible for supervising investigations carried out by other authorities, such as the municipal social services, the Fiscal Intelligence and Investigation Service and Economic Investigation Service (FIOD-ECD) and the Investigation Department of the General Inspection Service (AID).

If necessary, the public prosecutor may authorise the police to apply certain coercive measures. For example, they may be instructed to confiscate stolen goods or arrest a suspect if he was not caught red-handed.

The Public Prosecution Service does not have unlimited powers, and certain measures may only be taken with permission from the courts. Two examples are house searches and telephone-tapping.

“POLICE INVESTIGATIONS  
ARE CARRIED OUT UNDER  
THE AUTHORITY OF THE  
OFFICERS OF THE PUBLIC  
PROSECUTION SERVICE”



## Prosecution

Prosecution begins as soon as the courts become involved in a case, even if no-one has actually appeared in court. For instance, the courts may be asked to issue an order remanding a person in custody if he is suspected of having committed a serious offence. He can then be detained for a certain period of time. This is known as pre-trial detention.

The Public Prosecution Service may respond in a number of ways if it suspects that an offence has been committed. The public prosecutor may decide not to prosecute a case (*sepot*), if for example the police have not managed to collect sufficient evidence.

But a prosecution may not go ahead for other reasons, as a matter of policy. Even when the police do have sufficient evidence, if the offence was a minor one, for instance, and if the offender has made good the damage suffered by the victim, the public prosecutor may decide not to bring the matter to court.

Anyone who has a direct interest in a case may object to a decision not to prosecute by lodging a complaint with the Court of Appeal. If the Court says the complaint is well founded, the Public Prosecution Service has to bring a prosecution.

The public prosecutor may, at his own discretion, decide to ask for payment in lieu of prosecution (*transactie*) instead of taking the case to court. This often happens in the case of relatively minor offences such as shoplifting or minor damage to property. The revenue goes to the State. Failure to pay means the person will have to appear in court after all.

The Public Prosecution Service aims to settle straightforward criminal cases as quickly as possible. Nowadays the public prosecutor can impose what is becoming an increasingly common form of sanction, in which he both prosecutes the crime and imposes a sanction (*strafbeschikking*). The courts are not involved. Suspects who accept the sanction thereby admit their guilt. And if they decide to reject it, they can have their case brought before the court. The sanction might be a fine, disqualification from driving (for up to six months), an alternative sanction (e.g. up to 180 hours' community service) or a compensation order, but not a prison sentence. This type of sanction is therefore more like a court judgment than payment in lieu of prosecution and will eventually replace it.

If the public prosecutor decides that none of these options are appropriate, the suspect has to appear before a criminal court. He is sent a summons: a letter stating when the case is to be heard and giving a description of the offence or offences with which he is charged. The defendant may only be tried on those counts. Relatively minor offences are heard in a court presided over by a single judge. More serious cases are heard by three judges.



## The trial

The case against a defendant is presented in court by the public prosecutor. After he has explained in full the charges that have been filed, the court questions the defendant. The public prosecutor is also given an opportunity to question the defendant. He then gives his opinion of the case and recommends that the court impose what he considers an appropriate sanction. This may be a fine, an alternative sanction or a prison sentence. The defendant's counsel then speaks in his defence, and the defendant himself has the last word.

The public prosecutor always rises to his feet when addressing the court. The judge, who sits directly opposite the defendant, remains seated.

## Sanctions

Under Dutch criminal law, an offender can be punished by imprisonment, a fine or an alternative sanction. Alternative sanctions can either take the form of community service (*werkstraf*), which means working for a certain number of hours, without pay, for the municipality, a hospital, the Forestry Department or some other public institution. Or they can be designed to rehabilitate the offender (*leerstraf*). For instance, young offenders are often required to undergo social skills training. A combination of the two types of alternative sanction can also be imposed. In addition to the principal sentence, a court may also impose an additional sentence, such as disqualification from driving.

“ONE OF THE SANCTIONS  
THAT CAN BE IMPOSED  
UNDER DUTCH CRIMINAL  
LAW IS IMPRISONMENT”



## Orders

Besides the penalties described above, the public prosecutor may ask the court to impose a court order. For instance, the court can order the confiscation of certain items, such as narcotics, weapons or pirated compact discs. Or it can take away the proceeds of crime. This is often done in cases of theft, fraud or drug trafficking. The court can also order an offender to pay compensation to the victim of the crime.

A different kind of measure is the hospital order (TBS). The public prosecutor can ask the court to impose a hospital order if he believes the offender has psychiatric problems and needs treatment. Offenders made subject to a hospital order are committed to special clinics or are treated on an out-patient basis.

The Public Prosecution Service is responsible for ensuring that all sanctions or orders imposed by the courts are enforced.

# 200 JAAR RECHTERLIJKE MACHT IN NEDERLAND 1811-2011

200 Years of judicial organisation in the Netherlands 1811-2011



## With thanks to Napoleon

*Napoleon Bonaparte ruled the Netherlands for only three years. Yet that short period left an indelible mark on our daily lives. We all drive on the right and use the same weights and measures. But the chief legacy of the most famous Frenchman in history is our Public Prosecution Service.*

*Napoleon annexed the Netherlands in 1810, incorporating it into the French Empire. Shortly after, he introduced a judicial structure along French lines. This consisted of independent courts and an independent prosecuting body serving the interests of the Empire and known by its French title, **le Ministère Public**. Late in 1813 the Netherlands was liberated and French rule came to an end. What remained was French-style legislation and the French judicial structure. Both fitted perfectly into the new form of government in the Netherlands. **Le Ministère Public** became the **Openbaar Ministerie**, or Public Prosecution Service.*

## Tasks of the Public Prosecution Service

*The Public Prosecution Service leads investigations and is formally responsible for the enforcement of sentences. Only the Public Prosecution Service can bring cases before the courts. These are clearly demarcated tasks. Many years ago it had considerably more, acting frequently in civil cases (in matters relating to the law of persons or family law, for example) and supervising the courts on behalf of the Minister of Justice. But that is all in the past.*

*The most well-known of the members of the Public Prosecution Service is the public prosecutor, who for many years was purely a judicial officer, adopting a strictly legal perspective on cases and focusing on the courts. His aim was for justice to prevail. But from the second half of the twentieth century, public prosecutors began to work more closely with the police and other bodies. They became less aloof, more aware of society. Nowadays, public prosecutors take that social commitment into court with them. But other things are changing too. The Public Prosecution Service is increasingly regarded as having final responsibility within the criminal law system. It therefore now directs investigations and is active in support for victims.*

## Rise in number of cases

*In the nineteenth century all cases were in principle brought before the courts. An explosive rise in the number of petty offences made that impossible. From 1922 onwards the Public Prosecution Service was empowered to offer the possibility of payment in lieu of prosecution for minor offences such as public drunkenness. This practice has continued until the present day. In 1983 it was extended to include certain less serious indictable offences such as theft.*

*Nevertheless, the backlog at the courts continued to grow. Steps had to be taken to deal with this situation. In 1989 a large proportion of traffic violations were brought under administrative law to enable faster processing. And since 2008, with the introduction of the Disposal of Cases (Public Prosecution Service) Act, the public prosecutor can impose a penalty for less serious indictable offences and minor offences.*

## From Jack of all trades to specialist

*Public prosecutors were long expected to be all-rounders. No case was too complex and they had to know something about literally everything. This changed when judges started to specialise and the Public Prosecution Service made separate disciplines of juvenile and economic law. And the number of these 'Public Prosecution Service specialisms' (environment, fraud, traffic law, human trafficking, cybercrime etc.) continues to grow. As a result, the expertise and quality of the Public Prosecution Service has greatly improved.*

## A dynamic organisation

*In the last twenty years much has changed again. Tasks have been added, modified or removed. But the essence, as Napoleon saw it, continues unchanged. In other words, the principle that enforcement of the criminal law is crucial if we are to live in a safe and just society endures. This is the responsibility of the Public Prosecution Service: demanding but highly rewarding.*

### Did you know?

*The Dutch name of the Public Prosecution Service (het Openbaar Ministerie) is a literal translation of the French Ministère Public, while the name for its offices at the courts (parket) comes from the French parquet, originally the area of the court in which judges and lawyers assembled, separate from the public. And the term requisitoir, meaning the public prosecutor's closing speech in which he recommends a sentence, comes of course from the French réquisitoir.*

## Minors

People between the ages of 12 and 18 are subject to different rules. Offences such as shoplifting or damage to property do not generally go to court, but are dealt with by the police (*Halt-afdoening*). Young offenders may be required to follow a course, work for a certain number of hours without pay, apologise to the victim and pay for whatever damage they have caused. Their parents are closely involved in this process.

More serious offences are reported to the public prosecutor, who can impose a fine or an alternative sanction. He can also put the case before a children's judge (*kinderrechter*). The heaviest penalty the judge can impose is a term in a young offenders' institution.

## Informed decisions

Millions of offences are committed in the Netherlands every year. Informed decisions therefore have to be made in the effort to combat crime. Which cases should be given priority and how can they best be dealt with?

To some extent these decisions are taken at national level, mainly by the Board of Procurators General, the highest authority in the Public Prosecution Service. Together with the Minister of Security and Justice, the Board sets the parameters for investigation and prosecution policy.

## Statistics

The Public Prosecution Service disposes of over 250,000 cases every year. Almost a third of these involve property offences, such as theft or burglary, almost a quarter involve violent crime and almost a fifth consist of traffic offences. The number of suspects under the age of 18 has been declining in recent years.





## Tripartite consultations

Individual public prosecutors also have to make choices. They have to comply with national policy, but they can take local circumstances into account. They can decide, for instance, whether to use police resources for increasing patrols during evening shopping hours or for tracking down farmers who contravene the manure regulations, whether to give priority to drug abuse or to improving road safety.

The Public Prosecution Service does not take these decisions alone. One of its tasks is to take part in tripartite consultations with local mayors and police representatives to discuss matters relating to crime, public safety and the use of police resources.

The Public Prosecution Service also works with various other groups: local authorities, the probation service, prison authorities, the child protection board and road safety groups, and with lawyers and the business sector.

The Public Prosecution Service is encouraging the establishment of community safety partnerships in which municipalities, criminal justice authorities and welfare services work together to reduce or prevent crime and anti-social behaviour. The emphasis is on taking a person-specific approach to habitual offenders, young offenders, perpetrators of domestic violence and ex-prisoners. The partners involved make sure, for example, that those who have served their sentences have somewhere to live and receive benefit. These partnerships are organised by the municipalities.

“SHOULD THE POLICE SPEND MORE TIME PATROLLING DURING EVENING SHOPPING HOURS OR TRACKING DOWN FARMERS WHO CONTRAVENE THE MANURE REGULATIONS?”



## Victims

The position of the victim is a major issue. Victims' rights are guaranteed by the Victims' Status (Legal Proceedings) Act. In the case of minor offences victims are entitled to information, access to documents in the case file and to claim compensation. In serious cases such as rape and murder, victims have a right to a meeting with the public prosecutor responsible for the case and to be represented by counsel, as well as being entitled to speak during the trial and to be informed when the offender is released. In addition, victims who are awarded compensation will receive the full amount from public funds if the offender does not pay up within eight months.

All victims of crime can contact the victim support desk set up by the police, the Public Prosecution Service and the Dutch Victim Support Organisation for assistance and information about legal proceedings. Victims of serious offences are approached by the case coordinator at the Public Prosecution Service.

## Other responsibilities

The Public Prosecution Service has other, less well-known, statutory duties. For instance, it is responsible for supervising committals to psychiatric hospitals under the relevant Act. And if necessary, a public prosecutor can apply to the court for an order committing a person suffering from a mental disorder to an institution.

The Public Prosecution Service also has statutory duties under the Burial and Cremation Act. Any death other than by natural causes has to be investigated. In such cases, permission to dispose of the body must be obtained from a public prosecutor.

## Who monitors the Public Prosecution Service?

The Public Prosecution Service is accountable to two separate authorities. First, the courts, which review the conduct of the Public Prosecution Service and the police services. Second, the Minister of Security and Justice, who has political responsibility for the Service's conduct and performance, and may be called upon to render account to both houses of the Dutch parliament. Policy is therefore always on the agenda in consultations between the Public Prosecution Service and the Minister.

The Minister is concerned with general policy on investigations and prosecutions. Only rarely does he intervene in individual cases, by issuing a directive to the Public Prosecution Service after consulting the Board of Procurators General.

If the Minister decides to issue a directive to the Public Prosecution Service, he keeps the court hearing the case in question fully informed. It is of course the court that makes the ultimate decision in criminal prosecutions. If the Minister decides that a person will not be prosecuted, he has to inform Parliament of his decision.

## Organisation of the Public Prosecution Service

The Public Prosecution Service employs more than 5,000 people, including some 800 public prosecutors. Its highest authority, the Board of Procurators General, lays down policy on investigations and prosecutions. The Board and its staff form the Service's national office.

The organisation of the Public Prosecution Service corresponds to the various types of law court in the Netherlands, i.e. district courts (including the limited jurisdiction sector) and courts of appeal.



## District courts

There are 19 district courts in the Netherlands. The Public Prosecution Service has an office – the public prosecutor’s office – in every city with a district court. Each of these offices is under the authority of a chief public prosecutor, who ensures that the policy of the Public Prosecution Service is implemented in his district.

The public prosecutors employed at these offices represent the Public Prosecution Service in district courts. They are assisted by prosecutor’s clerks and an office staff, who may deal with certain cases themselves, such as traffic violations and other minor offences. They also do the groundwork in more serious cases which only the public prosecutor can deal with.

## National Organisation of Appeal Court Public Prosecution Offices

Several court districts are grouped together to serve a specific geographical region (ressort). Each court region has a court of appeal and a Public Prosecution Office. Together, the five offices form the National Organisation of Appeal Court Public Prosecution Offices (LRO), headed by the national chief advocate general. Each Appeal Court Public Prosecution Office is headed by a chief advocate general (the public prosecutors at the appeal courts are known as advocates general).

The main function of the Public Prosecution Office at the appeal court is to handle cases involving contested judgments handed down by a lower court. Both the defendant and the public prosecutor may lodge an appeal, in which event the office at the appeal court prosecutes the case anew. In appeal proceedings, new investigations may be carried out and new witnesses or experts heard. The appeal court then hands down a new ruling (*arrest*).

The Appeal Court Public Prosecution Office also handles cases brought under article 12 of the Code of Criminal Procedure. Article 12 offers those with a direct interest in a case the opportunity to complain if the public prosecutor decides not to prosecute. They can ask the appeal court to order the public prosecutor to bring charges. In contrast to the proceedings in criminal cases, these hearings are not conducted in public.

“TRAFFIC VIOLATIONS AND  
MINOR OFFENCES ARE  
DEALT WITH BY  
PROSECUTOR’S CLERKS  
AND OFFICE STAFF”





## Towards a new appeal court structure

In recent years the Public Prosecution Service has evolved from a structure consisting of independent units into a national organisation based on regional partnerships. The aims in reforming the structure were to reduce vulnerability in terms of content and to specialise in certain areas at regional level.

The new structure is intended to come into effect on 1 January 2013. There will then be ten court districts instead of the current nineteen and four appeal court regions instead of five. The current structure is as follows.

### Jurisdiction of 's-Hertogenbosch appeal court

- 01 's-Hertogenbosch court district
- 02 Breda court district
- 03 Maastricht court district
- 04 Roermond court district

### Jurisdiction of Arnhem appeal court

- 05 Arnhem court district
- 06 Zutphen court district
- 07 Zwolle/Lelystad court district
- 08 Almelo court district

### Jurisdiction of The Hague appeal court

- 09 The Hague court district
- 10 Rotterdam court district
- 11 Dordrecht court district
- 12 Middelburg court district

### Jurisdiction of Amsterdam appeal court

- 13 Amsterdam court district
- 14 Alkmaar court district
- 15 Haarlem court district
- 16 Utrecht court district

### Jurisdiction of Leeuwarden appeal court

- 17 Leeuwarden court district
- 18 Groningen court district
- 19 Assen court district



## National Public Prosecutors' Office

(Landelijk Parket)

There are two national offices in addition to the district and regional offices: the National Public Prosecutors' Office and the Financial, Environmental and Food Safety Offences Office. They are not linked to a particular district court or appeal court.

The National Public Prosecutors' Office focuses on international forms of organised crime and the coordination of efforts to combat terrorism, people smuggling and similar offences. It is therefore concerned with serious crime that is not confined to the jurisdiction of a district court or appeal court. Under its authority falls the Dutch Police Services Agency (KLPD), whose task it is to investigate such offences.

The Traffic Law Enforcement Bureau also falls under the National Public Prosecutors' Office and is responsible for coordinating the enforcement of road, water and air traffic regulations. It also oversees regional traffic projects in all the country's police regions and on the main traffic arteries. Special police teams concentrate on five key areas: safety helmets, seat belts, compliance with traffic signals, alcohol and speed limits.

## Financial, Environmental and Food Safety Offences Office

(Functioneel Parket)

Besides being a centre of expertise, the Financial, Environmental and Food Safety Offences Office is an office of the Public Prosecution Service with responsibility for prosecuting economic or financial offences, social security fraud or agricultural or environmental offences. These are offences brought to light by special investigative services operating under the auspices of a ministry, such as the Fiscal Information and Investigation Service and Economic Investigation Service (FIOD-ECD).

## Proceeds of Crime Bureau

(B00M)

Crime must never pay! Once a person has been convicted, the Public Prosecution Service tries to recover any proceeds they have obtained. During the hearing, the public prosecutor may ask the court to order that such proceeds be confiscated. The Public Prosecution Service has a special office in Leeuwarden, the Proceeds of Crime Bureau, to advise public prosecutors in such cases. The Bureau also includes among its staff public prosecutors handling complex cases of this kind.

## Central Processing Unit

(CVOM)

The Central Processing Unit handles large numbers of standard cases for the public prosecutor's offices. These include minor traffic violation appeals and two types of criminal offence: drink driving and driving without insurance. Central processing is used wherever possible in standard cases, to enhance quality and maximise the number of cases dealt with. More cases will be handled in this way in the future.

## Service Centre for the Public Prosecution Service

(DVOM)

The DVOM is a shared service provider which performs operational management tasks for the offices of the Public Prosecution Service at district court, appeal court and national level. It supplies products and services in the fields of staffing, finance, information management and facilities management.

## Office for Criminal Law Studies

(WBOM)

The Office for Criminal Law Studies has two main tasks. First, it acts as a knowledge and documentation centre on legal matters for the Public Prosecution Service as a whole. Second, it conducts research or commissions outside experts to do so.

## National Police Internal Investigations Department (Rijksrecherche)

The National Police Internal Investigations Department is a small, highly specialised investigation service. It is responsible for handling complaints about the conduct of government officials and public servants. For example, it investigates allegations of fraud or corruption against police officers, the Public Prosecution Service, and staff employed by the municipal, provincial and central authorities. The National Police Internal Investigations Department also routinely investigates cases involving injury or death following the use of firearms by the police. The same applies in the event of a detainee's death in prison or a police station.

### Websites

More information on the Public Prosecution Service:

[www.om.nl](http://www.om.nl) (Dutch and English)

Publications and questions:

[www.postbus51.nl](http://www.postbus51.nl) (tel. 0800 8051) (Dutch only)

Site for young people: [www.vetverkeerd.nl](http://www.vetverkeerd.nl) (Dutch only)



[www.om.nl](http://www.om.nl)