

Situation in The Netherlands:

LEGAL FRAMEWORK:

The judiciary comprises 19 district courts, five courts of appeal, two administrative courts and a Supreme Court which has 41 judges. All judicial appointments are made by the Government. Judges are nominally appointed for life, but actually retire at age 70.

The Raad van State (Council of State) is a constitutionally established advisory body to the government, which consists of members of the royal family and Crown-appointed members generally having political, commercial, diplomatic, or military experience. The Council of State must be consulted by the cabinet on proposed legislation before a law is submitted to the parliament. The Council of State Administrative Law section also serves as a court of appeal for citizens against executive branch decisions.

For criminal law the independent Hoge Raad is the highest Court of the Netherlands. The Court was established on 1 October 1838 and sits in the Hague, Netherlands. The jurisdiction of the Supreme Court is limited primarily to civil, criminal and tax-related cases. The Court has the authority to overturn rulings by appellate courts (*cassation*) and therefore establishes case law, but only if the lower court applied the law incorrectly or the ruling lacks sufficient reasoning, facts are no longer subject of discussion. The Court may not rule on the constitutionality of laws passed by the States-General and treaties. Hence the Netherlands has no constitutional court.

HUMAN RESOURCES in prison

Custodial Institutions Service (DJI)

The prisons in the Netherlands all fall under the Custodial Institutions (DJI). Here are also the juvenile detention and TBS clinics housed. DJI contributes to a safer society by custodial sentences and measures to implement. It is important that prisoners have the opportunity to build a tolerable existence. The headquarters of DJI is located in The Hague. With more than 100 offices in the country has about 18,000 employees.

After declining for several years, the number of people working in the prison system, last year increased significantly. According to figures from the Central Bureau of Statistics (CBS). In 2011 there were a total of 11,387 people in the various prisons in the Netherlands.

That is a lot more than in 2010, when 10,783 people were employed in the prison system. Especially the number of people daily with prisoners working and caring for them has grown. The number of security guards took on in 2011 again.

Youth prisons;

Special departments and specializations

Boys and girls stay in separate groups in juvenile detention. Besides regular groups, there are also specialist units for young people who need treatment for which specific knowledge is required. Below is a list of Sections.

- Forensic Observation and Counselling Department (FOBA): for young people in a psychiatric crisis and need to be stabilized;
- Slightly mentally disabled (LVB department): for young people with a low IQ (between 55 and 80);
- Very Intensive Care (VIC Department): for young people who need extra assistance because of a psychiatric disorder or personality disorder;
- ESP Division: for young people who have serious sexual problems;
- Individual Trajectory Department (ITA): for young people who act in the group that it upsets and that they have a negative impact on their peers. This category will go to an Individual Trajectory department where they receive individual treatment.
- Forensic department observation: for young people with a delinquency in a JJI will stay in this Section, the progress of the treatment investigated.
- Youth Detention

• A juvenile who has committed a crime may be sentenced to juvenile detention. In age from 12 to 15 years, young people will get up to a sentence of 12 months in a young offenders' institution imposed. Is a young person aged 16 or 17, then the punishment is up to 24 months. Correctional institutions differ in degree of security and opportunities for leave. Leave is an important link for the later transition to society and prevent recurrence.

Secured and unsecured correctional institutions;

The route that young people go through in a young offenders' institution has different phases. In principle, a youngster in the early stage is secured. Over time, the youngster then - if it is ready for it - to a limited security device (also called BBI). The difference between a normal and a secure device, is the more or less limited degree of security. In a normal security prison there is more security and the youngsters have less freedom. They are always supervised when they move within the establishment and their room door is locked. In a limited secure facility is not (always) the case. Here the young sometimes even go outside the facility independently to go school or training. This is part of the rehabilitation process of young people. So they can gradually work under the guidance of a good return to society. The aim is always the youth in a facility as close to home to place. In specialist departments is not always possible.

Leave;

Youth in correctional institutions can enjoy leave. It depends on the penalty or measure, the type of facility where they reside and their behavior. The leave is intended for young people to prepare for their return to society. The granting of leave goes step by step. The monitoring and supervision during the leave expires in gradations. In the beginning the leave is fully supervised, over time, the degree of supervision lessens until the level that the youngster is able to go on leave unsupervised.

• Leave at delinquency

During a PIJ-measure, a youngster in principle goes only after half a year for the first time on leave. Is it good leave, then the younger continues his treatment in a less high-security department. At the end of the treatment parole is possible. The younger than stays outside the establishment, with their parents or independently, under the supervision of the probation. Only if a juvenile probation lasts at least 26 hours per week in training or work.

• Leave at juvenile detention

The leave in juvenile detention is related to the length of the criminal proceeds and also differs from accompanied to unaccompanied. During this phase, the younger leave unaccompanied for training or internship outside the facility.

Control;

For safety and health the juvenile has regular checks on possession or use of prohibited items. Checks take place at fixed times, but also unexpected. If something is wrong, punishment may follow; the limiting of the leave or to remain in the room.

• Mail: Employees may receive and send mail in the presence of the young open it to check for prohibited items. For mail to and from 'privileged' - for example parents or lawyer – there are special rules, which are enshrined in law.

• Control of the Room: room inspection is about for example, the control of illegal goods such as mobile phones, drugs or weapons. In case of suspicion, an individual room can be searched.

• Urine Control: drugs, alcohol and other drugs are prohibited in the facility. This requires regular urine tests also after leave or visit.

• search and visitation: In a search only the clothes and everything that a young person has will be checked. When you visit the whole body can be investigated. Visitation only happens when entering the facility and on suspicion. Search and visit them is less severe in a restricted security prison.

Basic Methodology: YOUTURN

All activities within the juvenile detention strongly focus on the development, physical and mental well-being and the future of the youth.

With YOUTURN for young people living in the prison live becomes more predictable and manageable. The methodology supports employees within the organization (group leaders, teaching staff and others) capable of working with young people.

- Basic Methodology YOUTURN

Education;

Each correctional institution has its own school. Course times and options differ, but generally there are four to five hours each day and offer design schools more or less regular education.

A class consists of about 7-8 students. These young people can be in the same group within the organization but also with other young people of other age groups with the same subjects. The training is as well as possible as in school activities prior to imprisonment.

Perspective Plan;

Every young person who enters a correctional institution shall, within three weeks have a Perspective Plan. It creates the basis for planning, intake interviews and screening. The Perspective Plan provides the youth with goals and assists them to reach those goals. For progress is a weekly coaching session takes place with the younger to assess whether the personal learning objectives have been achieved and to discuss the things that have gone well or not so well.

After staying in a facility, the juvenile may rotate back into society: at school, a study or work. The so-called Training and Training Programs (STPs) is for this a thorough preparation.

The youngster goes through an individually tailored program, faced to return to daily life, to prevent him or her from re-entering the error.

An STP can during the final period of the penalty be followed for a minimum of three months to a year. It provides a program of at least 26 hours per week, which is focused on education, training or work. The younger while staying day and night outside the facility under the supervision and guidance of the probation or family supervision.

Young people over 18 fall under probation for adults. If he/ she during an STP does not adhere to agreements, he/she runs the risk of replacement in the device.

After discharge, the young people also receive support from the probation service. To this end, during the stay and STP already made arrangements. STPs must follow agreed guidelines and approved by the Accreditation Scheme Training and Training Programs.

Work-Wise

Within the STP are also Work-Wise trajectories accompanied by an individual counselor (ITB'er) of the device. Work-Wise assists in finding a suitable job or training, apprenticeship and getting / keeping a job. Also in the field of housing, leisure and building a network offers the Work-Wise needed help. The ITB' er and (youth) Probation shall jointly create an aftercare plan for supervision after discharge from the facility.

More information;

- Work-Wise

Recognition of STPs

In preparing an individual program only approved programs and modules are used. The program should include a description of how the program contributes to the successful return of the young in society.



Sanctions in Adult Penology **Fines and transactions**

The most often used Dutch sanction is the fine. The fine's popularity stems from the 1983 Financial Penalties Act (FPA), which stresses the use of the fine over that of incarceration. Dutch courts imposed the fine in 51,280 cases, representing approximately one-third of all sanctions. Section 24 of the FPA stresses that a court should consider an offender's ability to pay and the nature of the crime when deciding on an appropriate amount of the fine. Despite the fine's popularity in the Dutch system, it is not a panacea—not even for minor criminal offenses. A substantial number of fines go unpaid

every year. Similarly, transactions play a large role in the sentencing protocol of the Netherlands. A transaction is a sanction whereby the offender is required to pay a fine or assume certain financial conditions. Transactions are popular in the Netherlands because they provide an alternative sanction to punish offenders without congesting the jails. Specifically, transactions permit an offender to pay a fine to avoid further prosecution. Prosecutors have tremendous discretion to dispose of crimes through the use of transactions. However, transactions can only be offered in cases where the maximum statutory prison sentence is less than six years. Approximately 90% of crimes can be appropriately disposed of via a transaction. Yet, in practice, roughly 30% of all cases are settled through the use of a transaction, with prosecutorial guidelines established to minimize arbitrariness. Transactions provide an opportunity for offenders to forgo the stigmatization that results from the more traditional disposition of cases. Critics however allege that transactions coerce the arrested to forgo the procedural safeguards required by trials. As a result, they contend arrested individuals may plea to crimes they did not commit because the risk of conviction outweighs the transaction fee.

Semi-Indeterminate Detention

A semi-indeterminate detention of offender (TBR order) is a sanction ordering the placement of an offender in a secure clinic for an indeterminate period of time. The frequent use of these TBR orders exemplified the rehabilitative culture of the Netherlands following World War II. In 1955 alone, one-third of all incarcerated prisoners were in mental institutions. Critics lamented their overuse, and argued the Dutch rehabilitative philosophy permitted any offense to be sanctioned by a TBR order. A shift in penological philosophy over the next two decades dramatically decreased the use of TBR orders; by 1970, only one-tenth of all incarcerated prisoners occupied mental institutions.

Incarceration

The Custodial Institutions Agency is responsible for the incarceration of adults in the Netherlands. The Netherlands experienced an extended period of decarceration from 1947 until 1974.



The six towers of the Bijlmerprison complex, seen over the Amstel river in Amsterdam.

Beginning in 1975 however, this trend changed. In approximately the last thirty years since, the incarceration rate in the Netherlands has sextupled. Despite this increase, of the 155,270 sanctions imposed by Dutch courts, only 21,480 or approximately 14% resulted in unsuspended prison sentences in 2000. This data alone however may not support the assertion that the country is more punitive than in the past. Incarceration rates alone, particularly in the Netherlands, are a poor indicator of a country's purported move towards more punitive sentencing. Measuring changes in prison capacity alone is an insufficient measure of punitiveness in the Netherlands because these numbers do not accurately represent the incarceration needs of the Dutch. Notably, in the 1970s Dutch prisons operated at full capacity. Incarceration rates were kept artificially low in this era because the Dutch declined to construct the required number of prisons to suit the demands imposed by their criminal justice system. This problem was alleviated on the front-end by dismissing three-quarters of all recorded offenses. Furthermore, there was no guarantee the convicted would ever spend any time in prison, even when prosecutors did not dismiss the offense and the offender was subsequently convicted and sentenced to prison. Individuals were still sent to prison even in the absence of capacity. To remedy this shortfall in capacity, the Netherlands established waitlists or prisons. If the prison incarcerated more perilous offenders than the convicted, then the convict was placed on a waitlist until their crime was deemed sufficiently severe. The reason behind these waitlists was purely practical: the Dutch simply did not have enough available space in their prisons. These waitlists were not developed for rehabilitative reasons. In fact, prison sentences were voided if the convicted spent too long on the waitlist. Over 5,000 unsuspended prison sentences were voided in 1995 alone due to a lack of space in prisons.

Fundamental changes in penal philosophy resulted from the national concern that was registered over these ever-escalating prison waitlists. The Dutch Ministry for Justice report, *Law in Motion*, in fact

advocated, “[w]hat is at stake is nothing less than the credibility of constitutional government and its democratic and social values...Our highest policy priority is, of necessity, to combat crime by preventive and repressive means.

Yet, in 2000, while the number of unsuspended prison sentences doubled, the number of detention years imposed increased nearly eightfold to 16,000. Following the prison construction boom of the 1980s, prison capacity increased from 3,300 occupants to approximately 12,800. In the 1990s, capacity was further increased by an additional 3,500 individuals, bringing the total prison capacity to approximately 16,300 persons. This trend is likely to continue into the future. At least one commentator has noted that the enactment of a “three strikes law” has the potential to raise the Dutch incarceration rate to that of American levels. For 2002, the incarceration rate was 93 inmates per 100,000 prisoners. Prosecutors’ prior widespread discretion over cases has declined since the enactment of new penological guidelines. Guidelines previously imposed a presumption in favor of dismissal, whereas now the guidelines impose a presumption to not dismiss cases.

The relatively open borders and easy international mobility of the Netherlands makes it an attractive destination for immigrants. As a result, the Dutch have also encountered a substantial increase in the infiltration of illegal aliens. In fact, after the prison construction boom in the 1990s, the number of illegal aliens detained for removal increased from 2,000 to 9,600 in only eight years—a 380 percent increase. As a result, 10 percent of all prison capacity is required for the detention of illegal aliens.

One of the most expressive features of the Dutch criminal justice system eliminated in this new movement towards retributivism was the one-cell policy. Dutch penal policy historically permitted only one prisoner per cell out of a concern for basic dignity. However, as the Dutch crime rate sextupled in the last decade, concerns for human dignity became subservient to crime control policies. As a result, Dutch penal policy was amended to permit more than one prisoner in a cell in 2003. This change notwithstanding, the Dutch incarceration philosophy stresses the need to minimize the hardships on the prisoner. This philosophy emphasizes maximizing prisoner contacts with family and the preservation of community ties. Prisoners are able to enjoy many of the benefits of life on the outside. For example, inmates can receive visitors once a week, talk on the phone, and participate in sports. Rehabilitative measures, however, such as the procurement of education to prisoners, have been severely curtailed in recent years.

At this moment there is a huge change foreseen in the imprisonment world. Because of austerity policy prisons will close (or rented out to the Belgians and Germans) but this is still part of a huge discussion in the Netherlands. We will keep you informed.

Currently, the police exercise largely discretionary powers over juvenile matters. Police have three options available when confronted with a juvenile matter: take no further action, dismiss the case after speaking with the child’s guardians, or direct the matter to the prosecutor. Juvenile offenders are primarily subject to two main sanctions: the fine and detention. Furthermore, three alternative sanctions exist: community service, reparations for damages, and the training order. Fines are an available alternative, but judges do not typically impose fines on juveniles; they are not considered an appropriate sanction because juveniles rarely end up paying the fines themselves. Secondly, while fourteen percent of adults receive unconditional sentences, only three percent of juvenile incarceration is unconditional. Juvenile detentions are typically conditional and coincide with community service orders. The community service order was implemented for juveniles after its successful introduction into adult penology. In 1998, seventy percent of all juvenile cases disposed of in court resulted in an alternative sentence (community service, training order, or reparations). Juveniles between the ages of 12 and 16 can be sentenced up to twelve months, whereas individuals between 16 and 18 years old can be sentenced up to 24 months.

A number of sanctions have been introduced for children under the age of 12. The Dutch system does not regard these children as criminally responsible for their actions, and rehabilitative programs have been developed to tend to their delinquency. Two notable programs, HALT and STOP, were developed to respond to juvenile delinquency. STOP was developed to confront the onset of delinquency in juveniles under the age of 12, whereas HALT is for older children. These programs combine strains of rehabilitative and restorative justice to confront the onset of delinquency.

Under the programs, police officers who encounter minor juvenile indiscretions can contact the offender’s parents, or may propose action to be undertaken by social workers. Sanctions include restorative measures such as apologizing, or rehabilitative measures like viewing a film or drawing a picture.

Besides programs like HALT and STOP, a number of additional rehabilitative trends have emerged. First, the Netherlands has reintroduced youth police, to specifically deal with juveniles. Additionally,

many police departments employ a social worker to counsel on juvenile matters. Secondly, the Netherlands has seen an upsurge in financial investments in institutional treatment directed towards youth. Treatment is not exclusively focused on in-case intervention; follow-up procedures play a significant role in providing continuous observational treatment.

Sanctions in Juvenile Penology

Young people in detention

In a young offenders' institution stays young people aged from 12 to 18 years, with a range up to 23 years. There are separate groups for boys and girls. For young people with special needs are special groups. Youth in juvenile may be because they have done something for which they deserve punishment.

Netherlands has ten juvenile detention. In youth institutions stays approximately 2500 young people. Some just a few days, others up to six years.

Responsibility for youth in detention lies with the sector Youth Custodial Institutions (JJI) DJI.

Delinquency Rates

Over the last twenty years, juvenile delinquency rates have been remarkably stable.⁴ A similar trend however is not apparent in the level of juvenile violence over the past twenty years. In the mid 1990s, violence-related offenses surged sixty percent. Most citizens, including those most intimately involved in the criminal justice system—specifically, police officers, prosecutors, and judges—believe that violent crime has increased in the Netherlands. As Michael Tonry remarked, "[w]e know that ordinary citizens base their opinions on what they know about crime from the mass media and as a result that they regard heinous crimes and bizarre sanctions as the norms. They believe sentences are much softer than they are, and they believe crime rates are rising when they are falling. As a result majorities nearly always report that judges' sentences are too lenient." For example, neither victimization surveys nor hospital records show an increase in violent crime over the last decade. This increase may be because police have become less tolerant of violent acts, and the public has become more vigilant in reporting these offenses. Therefore, like the adult system, it is impossible to know whether the increase in the juvenile violent crime rate is largely the result of changes in police and citizen behavior, or an increase in the frequency of violent crime.

As of 2004, data indicates that offenses have stabilized over the last two decades.