The Prosecutor in the Netherlands: Playing a Key Part in Criminal Justice

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Abstract: In this article we will explore the position, powers and organisational structure of the Dutch system of the Public Prosecutor's office in the criminal procedure. It involves the public prosecutor and his organization, the Public Prosecution Service. The public prosecutor plays a key role in the administration of justice in (various types of) criminal cases. Even though the public prosecutor is the only authority who has the right to bring criminal charges in individual criminal cases, he is never obliged to do so. Not only does the Public Prosecution Service play a crucial role with regard to the decision as to whether offenders will be prosecuted in separate cases, but it also plays a key role in defining criminal policy as part of law enforcement in criminal matters. The public prosecution service does not enjoy absolute independence, as the Minister of Justice in theory has the power to give instructions.

Keywords: Public Prosecutor, Public Prosecution Service, discretionary power, Code of Criminal Procedure, EPPO.

1. Introduction; some general aspects of the positioning of the Public Prosecution Service[1]

In this article we will explore the position, powers and organisational structure of the prosecutor in Dutch criminal procedure, the public prosecutor and his organisation, the Public Prosecution Service, in the Dutch criminal justice system.[2] As explained in more detail below, the public prosecutor plays a key role in the administration of justice in various types of criminal cases. We should point out here that this is particularly true because the public prosecutor is the only person who has the right (an exclusive right) to decide to bring criminal charges in individual criminal

[1] For a description of the Dutch criminal justice system and Dutch criminal procedure, and of the various aspects of the rights and duties of public prosecutors and the Public Prosecution Service in general, in English, see: P.H. van Kempen, M. Krabbe and S. Brinkhoff, *The Criminal Justice System of the Netherlands*, Antwerp: Intersentia, 2019.

[2] The prosecutor of first instance is called the public prosecutor; the prosecutor representing the Public Prosecution Service in appeals procedures lodged with higher courts is called the Advocate General. The Public Prosecution Service is one single nationwide organisation led by the Board of Prosecutors General and divided into so-called 'offices of the public prosecutor'. For more information on this, see below, in Section 7.

cases. No other parties have that right – not even the victim. At the same time, the public prosecutor is never *required* to file criminal charges; for more information on this, see below, in Section 2. The Public Prosecution Service, in its capacity as a central organisation, has developed some policies outlining how public prosecutors are to use the freedom granted to them by the Code of Criminal Procedure to decide on whether or not to bring charges.

For a proper understanding of the discussion of the Public Prosecution Service's various duties, organisational structure and powers with regard to deciding whether or not to bring criminal charges in criminal cases, we will shed a light, in this introduction, on certain general aspects of the rights and duties of the public prosecutor and of the Public Prosecution Service in the Dutch criminal justice system.

The position and duties of the Public Prosecution Service are not laid down in the Constitution (unlike the position and duties of judges in the judiciary, which are), but the organisational structure of the Public Prosecution Service is specified in the Administration of Justice Act ('Wet op de rechterlijke organisatie', hereinafter abbreviated as 'AJA'), while its position and powers in criminal cases are specified in the Code of Criminal Procedure (hereinafter abbreviated as 'CCP').[3] Section 124 of the AJA stipulates that the Public Prosecution Service is charged with 'the legal enforcement of the rule of law in criminal matters'.[4] This duty involves more than just bringing charges in criminal matters. Pursuant to the Code of Criminal Procedure, the public prosecutor is also charged with leading the criminal investigations in criminal proceedings. He must be an investigator himself; he must supervise the criminal investigations performed by other investigators (particularly those performed by the police), and if any criminal charges are brought, he must account to the criminal judge for the manner in which the criminal investigations were conducted, particularly with respect to the lawfulness of said criminal investigations. For more detailed information on this, see below, in Section 6. Obviously, the fact that the

[3] At the time of writing this article, the Dutch Parliament has been presented with a bill proposing that the Code of Criminal Procedure be amended and updated: *Parliamentary Papers II*, 2022/23, 36327, no 2. However, said bill does not propose any changes to the basic structure of the position and powers of the public prosecutor or of the Public Prosecution Service, as outlined in this article. Said position and powers, particularly those relating to the decision-making as to whether or not to file criminal charges, are considered too great an asset to Dutch criminal procedure to revise them, both in the sense of 'this system has been around for a long time and is the system we are familiar with' and in the sense of 'this system has proven its value and is worth retaining'.

[4] Section 124 of the AJA stipulates the following: 'The Public Prosecution Service is charged with the legal enforcement of the rule of law in criminal matters, as well as with other duties specified in the law.' These 'other duties' to be performed by the Public Prosecution Service include, among other things, the power to ask a civil judge to prohibit a legal entity because its purpose or effect are contrary to public order (Section 2:20 of the Dutch Civil Code). Since these powers of the Public Prosecution Service relate to non-criminal cases of a civil or administrative nature, we will not touch on them in this article. For more information on those powers, see M.E. de Meijer, *Het openbaar ministerie in civiele zaken* (PhD dissertation written at Erasmus University Rotterdam), Deventer: Kluwer, 2003.

public prosecutor serves both as the leader of the criminal investigation and as the (only) authority competent to (then) decide on whether or not to file criminal charges, based on the results of the criminal investigation, only reinforces the public prosecutor's key role in Dutch criminal procedure with regard to decisions on the resolution of particular individual criminal cases.[5]

The Administration of Justice Act not only specifies the duties to be performed by the Public Prosecution Service. The Act also lays down rules regarding the further organisation and apparatus of the Public Prosecution Service, in its capacity as a component of the 'administration of justice system', in addition to the courts (the judicial branch). This means that the criminal duties and powers of the Public Prosecution Service are assigned directly to the Public Prosecution Service by the legislature; its duties and powers have been granted to it. In other words, the duties and powers of the Public Prosecution Service have *not* been assigned to the Minister of Justice, whose powers are exercised by the Public Prosecution Service in the Minister's name. This legal construction, in which duties and powers are attributed directly to the Public Prosecution Service pursuant to the Administration of Justice Act, is meant to emphasise that the Public Prosecution Service can and must perform its duties and exercise its powers with a certain degree of autonomy from the executive branch, and particularly from the Minister of Justice and politicians. The idea is that the Public Prosecution Service must only be guided by what is in the public's best interest in terms of legal enforcement of the rule of law in specific criminal matters.[6] As far as this is concerned, the public prosecutor serves as a 'judicial officer' within the meaning of the Administration of Justice Act.[7] Although the members of the Public Prosecution Service are not judges and are not charged with the administration of justice, they are expected to perform their duties in a way that serves the public good, just like judges. On the other hand, they do execute policies enacted by the executive branch, because the Minister of Justice is accountable for the proper performance of the Public Prosecution Service and has a certain amount of control over it. Therefore, unlike judges, who are completely independent from the executive branch (and particularly from the Minister of Justice and politicians) on principle, also with regard to the legal aspects of their employment position, public prosecutors are not entirely autonomous. For a more in-depth discussion of this duality, see below, in Section 3.

2. The Public Prosecution Service's discretionary power to decide whether or not to bring charges, as granted by the Code of Criminal Procedure

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[5] Until 2020, one of the duties of the Public Prosecution Service was to enforce the criminal sanctions imposed on offenders by criminal judges. However, since 2020, that duty has been delegated to the Ministry of Justice and Security, pursuant to the stipulations of the Code of Criminal Procedure, as was common in practice even before the amendment to the law.

[6] H. de Doelder, *Het OM in positie* (inaugural lecture presented at Erasmus University Rotterdam), Arnhem: Gouda Quint, 1988.

[7] Section 1(b)(4-6) of the AJA.

2.1 Filing charges: a discretionary power

As mentioned, in Dutch criminal procedure, the Public Prosecution Service is the only party authorised to decide that charges will be filed in criminal cases, although it is never required to file those charges. Under the so-called principle of opportunity, the Public Prosecution Service can and must investigate cases and decide whether criminal prosecution is the right course of action. Because its power is discretionary, the Public Prosecution Service may choose not to bring charges.

Both sides of this power and its discretionary nature are laid down in Section 167 of the CCP, which reads as follows:

1. If, following the criminal investigation it has performed, the Public Prosecution Service arrives at the opinion that criminal proceedings must be instituted, either by issuing a penal order or otherwise[8], *it will instigate said criminal proceedings as soon as possible.*

2. It may refrain from instituting proceedings on the ground that the public interest will be better served in this way. The Public Prosecution Service may, on certain conditions, defer the decision as to whether charges are to be brought for a time frame to be determined.

This passage from the CCP shows *that* decisions about whether or not charges will be brought are reserved to the Public Prosecution Service. The CCP does not confer this power on any other agency or party. In Dutch criminal procedure, there is no provision for victims to bring charges independently, not even in the form of an ancillary complaint, which does exist elsewhere (for instance what the Germans would call a 'nebenklage').

Section 167(2) of the CCP stipulates that the Public Prosecution Service may refrain from bringing charges 'on the ground that the public interest will be better served in this way'. The Public Prosecution Service is even free to do so in situations where there is a reasonable likelihood of conviction.[9] This being the case, Dutch criminal procedure is based on the already mentioned principle of opportunity. Dutch criminal procedure does not operate on the premise of the so-called principle of legality, under which the Public Prosecution Service is, in principle, required at all times to file charges, except in exceptional cases defined by the legislature, if there is sufficient ground, based on a suspicion of a criminal offence, to assume that criminal prosecution will result in a conviction.[10] Nevertheless, this notion

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[8] An explanation on the phrase 'by issuing a penal order or otherwise' will be provided below.

[9] For a much more extensive discussion of this, see the Code of Criminal Procedure, A.L. Melai/M.S. Groenhuijsen et al., Section 167 of the CCP, annotation no. 3.

[10] Code of Criminal Procedure, A.L. Melai/M.S. Groenhuijsen et al., Section 167 of the CCP, annotation no. 5 These annotations of the CCP discuss in great detail the various aspects of Section 167 of the CCP and the resulting dynamism of the decision to file charges. With regard to later stages of the proceedings, Section 242 of the CCP contains a provision more or less identical to Section 167 of the CCP, which we will not discuss here. For a comparison of the Dutch criminal law system, based on the principle of opportunity, and the Swiss criminal law system, based on the principle of legality, see the study by F.H. Went, *Het opportuniteitsbeginsel in het Nederlandse en Zwitserse strafproces. Een rechtsvergelijkend onderzoek met bijzondere aandacht voor de rechtsgeschiedenis en het internationale recht* (PhD dissertation written at Erasmus University Rotterdam and Universität Zürich), Cham: Schultess, 2012.

DPCE online
ISSN: 2037-6677

of a principle of legality does exist in Dutch criminal procedure, too. Although the Public Prosecution Service is not always required by law to file charges, it is generally believed that the Public Prosecution Service will do so if and when required for the protection of public interests. In more cases than ever, criminal prosecution is the right course of action, particularly because of increased attention being paid to the position and rights of victims of crimes, the wish to ensure that criminal law addresses the grievances suffered by the victims, victims' right to compensation under criminal law, and victims' right to address the offender at the hearing.[11] Pursuant to the recommendation on this subject[12] issued by the Public Prosecution Service, each public prosecutor is required, in deciding whether or not to file charges, to expressly take into account the victim's interests and to expressly hear the victim discuss said interests in several types of proceedings, before deciding either way. As far as that is concerned, the power conferred by Section 167(2) of the CCP to decide to refrain from filing charges on the ground that doing so serves the public good should be considered a – fairly general – exception to the guiding principle that criminal prosecution will be the right course of action in many cases. Regarding this, the rule seems to be, to some extent, 'charges must be filed, unless…' This means that, now more than ever, the so-called 'negative application' of the principle of opportunity appears to be somewhat dominant. On the other hand, there is the 'positive application', whose adherents believe that the Public Prosecution Service need only file charges in those cases in which doing so seems necessary to protect public interests.[13]

Moreover, individual public prosecutors do not have complete latitude in deciding whether or not to prosecute someone, since such latitude might entail a certain lack of legal security and a certain amount of randomness. In order to coordinate prosecutorial discretion within the meaning of Section 167 of the Code of Criminal Procedure, the Board of Prosecutors General has drawn up policies regarding various types of offences, in the form of guidelines and recommendations regarding criminal prosecution. All officers of the Public Prosecution Service can and must use these to determine, where appropriate, which types of offences must be prosecuted in principle, and which must not.[14] In this way, the concept of 'public interest'

[11] The regulations outlined in the Dutch Code of Criminal Procedure regarding the rights of victims (e.g., the right to be informed on whether charges will be filed and the right to speak at the trial) are adapted from Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (PbEU 2012, L315).

[12] See the Recommendation on Victim Rights issued by the Board of Prosecutors General, which entered into effect on 1 December 2021, 2021A003.

[13] The latter belief expressly expresses the idea that criminal law should be the ultimate remedy. This belief dominated the Dutch political approach to crime until well into the 1980s. For more on this, see CCP, A.L. Melai/M.S. Groenhuijsen et al., Section 167 of the CCP, annotation no. 10.

[14] For more information, see P.H. van Kempen, M. Krabbe and S. Brinkhoff, *The Criminal Justice System of the Netherlands*, Antwerp: Intersentia, 2019, p 17. The guidelines and recommendations also outline guiding principles for the determination of the sentence sought by the Public Prosecution Service, in the event that the accused is prosecuted and found guilty.

as referred to in Section 167 of the Code of Criminal Procedure is further explained in guidelines and recommendations. For instance, the Public Prosecution Service's Recommendation on Social Security Fraud stipulates that, in principle, if the amount fraudulently obtained is less than €50,000, no criminal charges will be filed. In such cases, the Public Prosecution Service trusts that other methods will be employed, such as a civil penalty and/or reclaiming the sum in question. However, that same recommendation also stipulates that, even if the amount fraudulently obtained is less, the offenders can be prosecuted in exceptional cases – for example, if the offender has been found guilty of other offences, if the offender serves as a role model, or if the offender is a repeat offender who has committed the same offence before within a certain time frame.

Individual public prosecutors may (obviously) deviate from the recommendations and guidelines that serve as general policy on the subject of prosecutorial discretion, particularly when it is in the public interest to do so. However, such derogations must be justified (or justifiable) on the basis of arguments pertaining to the public interest, because the guidelines and recommendations are published, meaning the offender may have recourse to the provisions made in them. By publishing its guidelines, the Public Prosecution Service seeks to instil confidence in people that it will act in accordance with the letter and spirit of the guidelines ('principle of confidence'), except in exceptional cases, subject to solid arguments. Criminal judges will check the Public Prosecution Service's motivations for prosecuting people when charges are filed.[15]

2.2 The decision not to file charges

At the same time, the previously cited Section 167 of the CCP stipulates that the Public Prosecution Service may choose *not* to file charges, even if there are sufficient grounds to suspect that the suspect has committed an offence for which he/she may be convicted. This is called a 'policy-based decision not to file charges': prosecution is possible and manageable, but the public prosecutor has found that prosecution is unnecessary or even undesirable, to protect the public interest, on the ground that the public interest will be better served in this way. This type of policy-based decision not to file charges must be distinguished from what is known as a 'technical decision not to file charges'. The latter is made when a suspect cannot (and therefore must not) be prosecuted for technical reasons, or when it seems unlikely that the suspect will be convicted, for instance (and most commonly) because the criminal investigation shows after a while that there is no evidence of any criminal offence, or because the suspect is found to be exempt from criminal liability because the assault constituted self-defence.

There are several reasons why the Public Prosecution Service may decide (even in the final stages of the investigation[16]) to make a policy-

[15] For more information on the various ways in which they are checked, see below.
[16] A decision not to file charges can be made at any time leading up to the start of the hearing. It may even include a withdrawal of a subpoena previously issued. Once the hearing has begun, only the judge can decide to cancel the proceedings. This is

DPCE online
ISSN: 2037-6677

related decision not to file charges and to refrain from prosecuting the suspect in the public interest. This may happen on grounds pertaining to the actual criminal case. For example, because the offence is considered (too) insignificant.[17] Or because the aggrieved party has already been compensated for any damage sustained, or because neighbours who used to insult and physically assault each other no longer live next to each other, or because the offender's personal circumstances have changed significantly since he/she committed the offence, or perhaps because any attempt at prosecution might jeopardise the social work programme or therapy on which the offender has by now embarked. Or alternatively, the principle of opportunity may be applied to keep more general and societal issues in check. In the Netherlands, there is a prominent belief that the government sometimes has better instruments than criminal law at its disposal to control societal issues and problems – better than actually prosecuting people – or that this actual application of criminal law must be in line with the use of other instruments. For instance, in domestic violence cases, the public prosecutor may refrain from filing charges because, under administrative law, the violent person can have a restraining order imposed on him/her. By the same token, the police may choose not actually to file charges against coffee shops that sell soft drugs, if and to the extent that the owners/managers of said coffee shops ensure that various requirements are met in the running of their businesses. In such cases, pursuant to Section 167 of the CCP, the Dutch government adheres to a policy of not enforcing laws prohibiting illegal activities – the so-called 'policy of tolerance'.[18] This shows the extent to which the provision of the principle of opportunity, as outlined in the Code of Criminal Procedure, is an instrument with a more general and political application in the Netherlands, and even an instrument of more general government policy, originating from 'a notion regarding meaningful (and therefore selective) enforcement of criminal law'.[19] It is customary in such situations for the Public Prosecution Service to consult other relevant non-governmental organisations and governing bodies regarding the application of its own powers in terms of bringing charges.[20]

because from this point onwards, the offender is entitled to a *judge's* decision on the nature of the proceedings.

[17] Recommendation on how to decide not to press charges and how to apply the grounds for said decision (*Government Gazette* 2022, 16129), which entered into effect on 1 July 2022.

[18] This means that the sale of soft drugs is (and will continue to be) considered an offence, but that no charges will be filed if a coffee shop complies with the published conditions for the sale of soft drugs. These conditions include the following: only a limited quantity of soft drugs can be sold to any one person in a one-day time frame; no hard drugs must be sold on the premises; minors must not be allowed on the premises, and no drugs must be sold to them on any account; and the coffee shop's neighbours must not experience any inconvenience or annoyance.

[19] See M.S. Groenhuijsen, 'De dreigende verdachtmaking van het opportuniteitsbeginsel in het Nederlandse strafprocesrecht', *DD* 2002/32, issue 5, pp 439-440.

[20] To achieve this, the Public Prosecution Service has drawn up agreements and covenants with other governing bodies or private entities with regard to mutual consultation and a harmonised application of law enforcement instruments or social work and therapy efforts. For instance, they may consult municipal social work

All these grounds for a policy-related decision not to file charges were laid down in guidelines and recommendations that have been published, so as to ensure that prosecutors in criminal cases all over the Netherlands arrive at their decisions on whom to prosecute and whom not to prosecute in the same manner.

2.3 Manners in which criminal cases are to be resolved

Following on from the above, two typical aspects of Dutch criminal procedure require us to take a closer look. If the Public Prosecution Service decides to file charges, it can generally do so in two manners, both designed to resolve the criminal case in question.

The first and traditionally most common way is for the Public Prosecution Service to decide to prosecute the offender by summoning him/her with a subpoena and bringing the case before a criminal judge. This is done by issuing a subpoena, which, among other things, contains a description of the offence with which the offender is being charged by the Public Prosecution Service.[21] This means that the Public Prosecution Service is the authority (the sole authority) that determines with what kind of criminal offence an offender is going to be charged, and what the 'factual facts' underlying the charge are. In the wording of the charge, the Public Prosecution Service will describe the factual actions of the offender, which it will then qualify, which is to say that the public prosecutor will indicate of what kind of criminal offence he believes the suspect to be guilty. The charge must be described in the words used to describe those particular aspects of the offence in question. In other words, the Public Prosecution Service not only gets to decide *whether* charges will be filed, but also *what kind* of charges will or will not be filed. This means that the Public Prosecution Service also determines the scope of the legal battle, since, during the trial, the judge must only focus on the question of whether the evidence suffices to prove that the suspect is guilty of *the offence with which he/she has been charged.* This

organisations, or alternatively, civil servants working in construction and housing, or any other inspectorates whose powers and duties include monitoring. With regard to the legal enforcement of the rule of law in criminal matters by means of a penalty, this may involve some overlap in cases where such governing bodies have the power to impose civil fines. This does not constitute a criminal charge under Dutch law, but it does involve a criminal charge within the meaning of Article 6 of the European Convention of Human Rights. Apart from such more general arrangements, when it comes to preventing crime and maintaining public order, e.g. when major events or high-risk sports matches are held, the Public Prosecution Service joins hands with the mayor and local police in a so-called 'tripartite consultation', since maintaining public order in itself is one of the mayor's duties and powers, but that obviously also involves preventing and combatting crime and/or investigating and filing charges if any crimes are committed. These tripartite consultations originated from the Police Act, but do not alter the fact that the Public Prosecution Service is solely responsible for the legal enforcement of the rule of law in criminal matters.

[21] See Section 258(1) of the Dutch Code of Criminal Procedure: 'The case is brought before a judge by having a public prosecutor serve the suspect with a subpoena; this is what causes the legal proceedings to commence.' For more on this, see, in particular, J.M. Reijntjes, *De dagvaarding in strafzaken* (Studiepockets strafrecht, no. 32), Deventer: Kluwer, 2011.

is to say that the charge delineates the scope of the case and determines the scope of the criminal charges and the judgment. Judges cannot find suspects guilty of facts that are not included in the scope of the charge. Nor can they amend or expand the scope of the charge, even if they believe such to be necessary. This is called the 'basis of assessment doctrine' ('grondslagleer'), under which a judge presiding over a hearing must only judge the case on the basis of the actual charge.[22] This means that an 'unfortunately phrased' charge that falls short in legal or factual terms may result in the offender being acquitted of this charge.[23] In such cases, the suspect cannot be charged again with the same fact by filing an amended charge (double jeopardy).[24] For this reason, the public prosecutor will often include many alternative accusations and descriptions of the offence in the charge, thus allowing the judge to decide for himself/herself exactly what kind of criminal offence was committed. In practice, this principle, as well as this relationship between the Public Prosecution Service and criminal judges, often results in the filing of charges that are hard to understand for the offender.[25] At the same time, the basis of assessment doctrine means that the Public Prosecution Service is the *dominus litis* (master of the suit),[26] meaning it once again plays a key role in criminal procedure.

The second stipulation regarding prosecution (and the decision as to whether to file charges), with a view to resolving a criminal matter, concerns the following. Since the Public Prosecution Service Resolution Act[27] entered into effect in 2008, the Public Prosecution Service has also been able to prosecute offenders by issuing a penal order (Section 257(a) of the CCP). Penal orders are a way for the Public Prosecution Service to independently resolve criminal matters by imposing penalties without getting any judges involved. A penal order is a procedure in which the offender is found guilty of an offence. Moreover, the offender has a criminal penalty imposed on them, which will be exercised against their will if necessary. The imposition of the penalty is irrevocable, unless the offender refuses to accept the penalty, in which case the case will be judged and resolved by a criminal judge, in accordance with the rules of criminal trials.

[22] This basis of assessment doctrine is not entirely absolute, in that it grants the Public Prosecution Service some latitude in revising and adding to charges during the legal proceedings (Sections 312-314(a) of the CCP), and apparent misphrasings in the charge can be rectified ex officio by the judge. See G.J.M. Corstens, M.J. Borgers and T. Kooijmans, *Het Nederlands Strafprocesrecht*, Deventer: Wolters Kluwer, 2021, p 929.
[23] B.F. Keulen & G. Knigge, *Strafprocesrecht*, Deventer: Wolters Kluwer, 2020, p 112.
[24] Since an amendment of the law was passed in 2007, this principle has lost some of its strength, in that the Code of Criminal Procedure now allows the Public Prosecution Service to file an appeal against the acquittal, and also allows for the charge to be amended in the legal proceedings brought before the judge of the court of appeal.
[25] B. de Wilde, 'Pleidooi voor een ruimere interpretatie van de grondslagleer', *AA* 2017/6.
[26] For more on this, see L. Stevens, B. de Wilde, M. Cupido, E. Fry & S. Meijer, *De tenlastelegging als grondslag voor de rechterlijke beslissing. Een rechtsvergelijkend onderzoek naar de inrichting en de gebondenheid eraan bij het bewijs, de kwalificatie en de straftoemeting in Nederland, België, Frankrijk, Italië en Duitsland*, The Hague: WODC, 2016.
[27] Act of 7 July 2006, *Staatsblad* 2006, 330.

Since, in a penal order procedure, the penalty is imposed by the Public Prosecution Service rather than by a criminal judge following a trial, the imposition of a penal order qualifies as 'prosecution' rather than a 'trial' in the Dutch criminal procedure system. The different phrasing expresses the idea that offenders must not be prevented from exercising their right to a fair trial, as outlined in Article 6 of the European Convention on Human Rights. Since penal orders are issued 'merely' by the Public Prosecution Service, they can only be used in prosecutions for less serious offences (infractions and misdemeanours).[28] They can only be used to impose monetary penalties or mild non-custodial sanctions, e.g. up to 180 hours of community service.[29] They cannot be used to impose custodial sanctions, as under the Dutch Constitution, the right to impose custodial sanctions is reserved to judges. In other words, in order to ensure that an offender receives a custodial sentence, the Public Prosecution Service must follow the road of criminal prosecution, by serving the offender with a subpoena so that he/she can be sentenced by a criminal judge. If a suspect receives a penal order, the nature of the penalty will be recorded in the suspect's legal records.

The impact of the ability to issue penal orders is significant. Now that it is able to issue penal orders, the Public Prosecution Service has also become a penalty-imposing body itself, while before that time, sanctions could only be imposed on the basis of an irrevocable sentence pronounced by a judge following a trial for a criminal offence presided over by that judge. The change means that the so-called duty of procedure required for the imposition of a sanction no longer exists.[30] The Public Prosecution Service very often avails itself of the opportunity to resolve criminal cases by issuing penal orders, particularly when it is dealing with a large number of similar criminal cases, partly to reduce the workload of criminal judges, who are in short supply.[31]

[28] Only in the event of an infraction or misdemeanour, or in the event of a felony for which the maximum penalty as specified in the law is less than six years' imprisonment.

[29] When a penal order is imposed, the sanctions may take the form of a monetary fine, community service, suspension of the suspect's driving licence (for up to 6 months) or mandatory payment of compensation to the victim. Alternatively, an interdict may be imposed (e.g., a stadium ban), or the suspect may be required to make a deposit into the Violent Offences Compensation Fund, forced to relinquish seized goods, or have certain objects confiscated.

[30] For a more extensive discussion of this, see M. Hildebrandt, *Strafbegrip en procesbeginsel. Een onderzoek naar de betekenis van straf en strafbegrip en naar de waarde van het procesbeginsel naar aanleiding van de consensuele afdoening van strafzaken* (PhD dissertation written at Erasmus University Rotterdam), Sanders Instituut, 2002.

[31] To check whether the Public Prosecution Service complies with the legal requirements for the issue of penal orders, and to ensure that it does, the prosecutor general at the Supreme Court of the Netherlands (an officer with his own independent legal position, who is not a member of the Public Prosecution Service) performed a long-term investigation on the subject. This investigation was based on Section 122 of the AJA, which reads as follows: 'If, in the opinion of the prosecutor general at the Supreme Court, the Public Prosecution Service does not properly enforce or comply with the statutory provisions in the performance of its duties, he may notify our Minister of this fact.'

DPCE online
ISSN: 2037-6677

On top of the decision to file charges and the decision not to file charges, there are two more options: a conditional discharge and a transaction. Both the conditional discharge and the transaction involve the Public Prosecution Service presenting an offender with an offer: the Public Prosecution Service promises that it will not file any criminal charges against the suspect, in exchange for the offender's 'voluntary' compliance with certain conditions, e.g. paying the state a certain amount of money, compensating a victim for the damage he/she has sustained due to the offence, or the condition that the offender (e.g. the suspect of an assault) receive therapy and attend an anger management course, thus preventing a repeat offence. If the offender does not comply with the conditions imposed on him/her, the Public Prosecution Service will file charges, after all. In a transaction, the Public Prosecution Service is required to comply with those conditions outlined in Section 74 of the Criminal Code that are in line with the sanctions that may be imposed by means of a penal order. If those conditions are met, this will mean the end of the prosecution or the end of the criminal case in question, both in a conditional discharge and in a transaction. Unlike offenders who are subject to a penal order, offenders who are offered a transaction or conditional discharge are not found guilty of any criminal offence. Legislators hope that transactions and conditional discharges will eventually be replaced by penal orders. For the time being, transactions are still quite common, particularly in cases where offenders are guilty of a financial or economic crime.

2.4 Monitoring mechanisms

An appeal may be lodged against the Public Prosecution Service's decision to file or not to file charges in a particular criminal case. It can even be lodged with a criminal judge. There are mechanisms that can be employed to have a criminal judge assess the public prosecutor's decision as to whether or not to prosecute an offender.[32]

Two types of procedures are particularly notable here. First, the procedure associated with the offender's filing of a notice of objection against the subpoena within the meaning of Section 262(1) of the Code of Criminal Procedure. Offenders may lodge a notice of objection with the court within eight days after the service of the subpoena. This procedure was instituted to allow offenders to lodge an objection and to protect them from an overly-lightly-taken decision by the Public Prosecution Service to prosecute the offender by summoning him/her to a hearing. After all, such a decision would result in the offender having to attend a public hearing. No offender should be exposed to that too lightly. For this reason, if an offender files a notice of objection against the subpoena, the criminal judge will judge the notice behind closed doors. If the court, having performed a marginal review, finds that there are indeed insufficient grounds to have the offender stand trial in public, and that the Public Prosecution Service's decision to subject the offender to this procedure was taken too lightly, the criminal judge will

[32] See G.J.M. Corstens, *Waarborgen rondom het vervolgingsbeleid* (PhD dissertation written at the University of Amsterdam), IJmuiden: Vermande Zonen Uitgevers, 1974.

exempt the offender from prosecution, and therefore in principle terminate the criminal proceedings against the offender in that particular criminal case (Section 262(5) of the Code of Criminal Procedure). Since the marginal review performed by the judge is very perfunctory (the procedure is only meant to be used in evident cases in which the Public Prosecution Service would normally refrain from filing charges anyway), this procedure does not have much practical use in the Dutch criminal justice system.

The same cannot be said for the second type of procedure that is relevant in this context, which is the grievance procedure within the meaning of Section 12 et seq. of the CCP. Although in principle, the Public Prosecution Service is free to decide not to bring (certain) charges, a party with a direct interest in the prosecution (particularly the victim) may disagree with that decision. In such cases, this interested party may turn to the court and ask a judge to order the Public Prosecution Service to prosecute the offender. The grievance to be addressed here will be on the part of someone who is not the offender. In practice, it is generally the victim who instigates a grievance procedure because he/she wants to see the offender prosecuted.[33] This procedure is employed quite frequently, partially because there has recently been a greater focus on the rights of victims, and also because it has been stated increasingly explicitly lately that 'legal enforcement in criminal matters' (which is the duty with which the Public Prosecution Service is charged by virtue of the aforementioned Article 124 of the AJA) must also take into account the victim's rights, which has resulted in victims feeling that this is 'their' case, rather than a matter of public interest. Victims can institute a grievance procedure against the Public Prosecution Service's decision not to prosecute the offender at all (which may also involve a grievance against a conditional discharge or transaction), but also against the Public Prosecution Service's decision to file charges in the form of a penal order rather than summoning the offender to attend a trial. Victims may not wish offenders to be charged in this way because it robs them of a chance to exercise their right to address the court of the criminal judge presiding over the case. The mere act of having an offender stand trial in public is – partially with a view to upholding the presumption of innocence – not an interest that must be protected by the court, quite aside from the fact that offenders are not always required to attend a hearing in person in Dutch criminal procedure.[34] If the Public Prosecution Service has decided to file charges by subpoenaing the offender

[33] The phrase 'party with a direct interest' also refers to a legal entity which, by virtue of its mission and in light of its actual activities, seeks to promote an interest that will be directly affected by the decision not to file charges or to withdraw charges previously brought; Section 12(2) of the CCP. This means that certain interest groups, too, may have recourse to Section 12 of the CCP to institute a grievance procedure against a decision not to bring charges in individual criminal cases if they feel that criminal prosecution would serve the (public) interests promoted by this legal entity. The power to do so is an extension of their right to report offences to the police.

[34] Under an amendment to the law that has yet to enter into effect, this duty will apply in more cases, particularly in cases where the offender is being remanded in custody and the case revolves around offences about which the victim has the right to speak at the hearing. A judge may decide that, to protect other interests, attendance in court will not be required.

for a particular offence, a grievance procedure may be instituted if the interested party feels that the offender should be tried in court for another, generally more serious offence.[35] In this respect, the procedure outlined in Section 12 of the CCP constitutes a certain rectification of the basis of assessment doctrine adhered to in Dutch criminal procedure, as explained in more detail above.

The court analyses decisions as to whether to file (particular) charges or not that are subject to a grievance procedure in light of the same 'public interest' referred to in the aforementioned Section 167 of the CCP. In other words, the court will perform a thorough analysis of whether a different decision on whether or not to prosecute is in order. If it is, the court will recommend prosecution of the offender with regard to the fact to which the grievance pertains. The court may also refuse to issue such on order on the ground that the public interest will be better served in this way. In such cases, the court does not merely perform a perfunctory analysis of the kind where the only question that need be answered is whether the Public Prosecution Service arrived at the decision that is at the heart of the grievance procedure in a reasonable manner.

So many interested parties avail themselves of the opportunity to use a grievance procedure against the Public Prosecution Service's decision not to prosecute offenders that it is resulting in a manpower shortage at the courts of appeal. At the same time, the fact that so many people employ this procedure shows that it is a valuable procedure that provides certain checks and balances to the Dutch criminal procedure system, in which the Public Prosecution Service is all-powerful in deciding who gets prosecuted and who does not, because now more than ever, the interests of various parties (offender, victim, protection of public interests for the benefit of society as a whole) must be weighed against each other. Even though this may result in intense debates about this procedure,[36] it is right that, despite discussions on the subject in academic literature, the legislature chose to leave the most important aspects of the grievance procedure intact when it drew up its bill for the amendments to the Code of Criminal Procedure. Two of the aspects that were left intact in the bill were the fact that grievance procedures can only be instituted by persons with a direct interest in the case, and only against decisions on whether or not to prosecute someone in a specific case, based on at least a suspicion of a specific and properly identified offence. The procedure is not a tool allowing people to vent their general displeasure with

[35] Supreme Court, 25 June 1996, *NJ* 1996/714. In that case, the parents of a child who died in a road accident instituted a grievance procedure against the public prosecutor's decision merely to file charges against the rider of the motorbike for negligent homicide, and had their complaint declared admissible. The parents were of the opinion that, given the rider's reckless riding, he should be prosecuted for manslaughter.

[36] In 2009, a recommendation was made that charges be filed against a member of the Dutch parliament, Geert Wilders, for certain things he had said that were considered hate speech. Critics of that recommendation argued that politicians who engaged in hate speech should not be fought with criminal law, but rather with public debates.

the criminal justice system (or a failure to prosecute someone) or with policy in general.[37]

When an offender is summoned to stand trial, the judge presiding over the trial only has limited rights to assess the public prosecutor's decision to file charges. The judge can only examine whether the legal requirements for prosecution have been met or whether the case seems likely to run into foreseeable legal obstacles, such as the fact that the legal proceedings were initiated after the prescriptive period had passed, the suspect is dead or was not yet aged 12 at the time of the offence, or the fact that the offender has previously been tried for the same offence or has already complied with the penalty imposed in a penal order, or paid a civil fine. The judge presiding over the trial does *not* have the right to judge whether the decision to file charges against the offender meets the public interest requirements; the judge must respect the Public Prosecution Service's decision on this matter. He/she can only question that decision if, for no valid reason, the decision deviates from the published guidelines applicable to the Public Prosecution Service (principle of legitimate expectation), or in the extreme event that the judge is of the opinion that no public prosecutor acting on the principle of reasonableness could ever have arrived at a decision to file charges against the suspect. It should be noted that these exceptions are extremely rare in actual practice. The Netherlands' highest-ranking criminal judge ruled that the passage of time (or even a severe violation of the 'reasonable time' within the meaning of Article 6 of the European Convention on Human Rights) does not pose a bar these days to continuing the prosecution of the offender.[38]

2.5 Conclusion

Although, as shown above, the Public Prosecution Service has significant discretionary power in the decision-making process with regard to who gets prosecuted and who does not, and although there is a great deal of faith in its ability to weigh all the considerations against each other and make the right decisions, it is not entirely free in its decision-making process. This is mostly because in a considerable number of cases, the decision is not up to one particular public prosecutor, but rather dictated by the guidelines applicable to the Public Prosecution Service. Nevertheless, the Public Prosecution Service is granted a wide latitude by applicable legislation. Some of its decisions may be assessed by a judge after the fact, but only when such an assessment is requested by the offender or an interested party.[39] For some relevant developments that may take place in the future, see Section 14 below.

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[37] Along those lines, see S. Koning, 'De ventielfunctie van de artikel 12 Sv-procedure: van georganiseerd wantrouwen naar gezamenlijk politiek project?', 2022/2, pp 84-105.

[38] In such cases, all the offender may be entitled to is a commutation of sentence.

[39] G.J.M. Corstens, *De verhouding rechter – openbaar ministerie. Een lat-relatie in het strafrecht* (inaugural lecture presented at Erasmus University Rotterdam), Arnhem: Gouda Quint, 1983.

3. The position of the Public Prosecution Service

The position of the Public Prosecution Service was discussed in the preceding section. The Public Prosecution Service is a governing body and is considered autonomous under the terms of the Administration of Justice Act. In terms of the legal enforcement of the rule of law in criminal matters, the Service is positioned between the executive branch and the judicial branch. This means that the Public Prosecution Service represents the executive branch before judges who are independent. Although the Public Prosecution Service, as mentioned, is not part of the Ministry of Justice and Security, the Minister is politically accountable for the way in which the Public Prosecution Service, a governing body, performs its duties, including the actions of individual public prosecutors in criminal cases. Being politically accountable, the Minister may be held to account by Parliament. Given this accountability, the Minister is notified of the nature of the recommendations issued to the Public Prosecution Service by the Board of Prosecutors General before they are published. As a matter of principle, it should be noted here that the Minister can issue the Public Prosecution Service with general and more specific instructions regarding the way in which it performs its duties and exercises its powers, and regarding the policies adhered to by the Public Prosecution Service. The Minister may even issue instructions on specific decisions concerning individual criminal cases. This is the power to issue instructions laid down in Section 127 of the Administration of Justice Act. The fact that the Minister has this power to issue instructions entails a certain degree of dependence.

However, the law provides a safeguard in that the Minister must allow the Board of Prosecutors General – which, as we saw earlier, is the highest-ranking governing body within the Public Prosecution Service – to share its opinions before the Minister can issue an instruction regarding the Public Prosecution Service's performance of its duties and exercise of its powers. As a result, the Minister is not entirely free to issue instructions at his/her own discretion, meaning that the Public Prosecution Service's judge-like independence is not undermined in that respect.[40] It should be noted that this power is hardly ever exercised in practice. On the other hand, the Public Prosecution Service is part of the judicial system within the meaning of the Administration of Justice Act, although they are not judges; the Public Prosecution Service and the public prosecutors are not charged with the administration of justice.[41] Under this act, the Public Prosecution Service's

[40] For more on this, see H. de Doelder, *Het OM in positie* (inaugural lecture presented at Erasmus University Rotterdam), Arnhem: Gouda Quint, 1988.

[41] This means that the Public Prosecution Service is a body that comes under the central government. This played a part in a recent case involving Section 12 of the Code of Criminal Procedure, in which a notice of objection was filed because two prosecutors were not getting prosecuted for violating their duty of confidentiality (Section 272 of the Criminal Code) in relation to the lawyer-client privilege of several lawyers affiliated with a major Dutch law firm. During a criminal investigation, the prosecutors had asked an Internet provider to provide them with certain email messages, but had not made an exception for the lawyers' email address. As a result, they were also able to read email messages that are subject to the lawyer-client privilege. However, the court ruled that the public prosecutors had not acted in their capacity as private persons, but rather in their capacity as representatives of the

duties are attributed directly to the Public Prosecution Service. This involves a certain degree of autonomy and a 'judge-like attitude'. The latter implies that the Public Prosecution Service should actually keep its distance from the executive branch, and more particularly from the Minister of Justice, his/her policies and politicians in general. The Public Prosecution Service's job is to enforce the democratic rule of law, and in specific cases, the Service must act exclusively in the public's best interest, as thus defined.[42] This is not the same as defending whatever political ideas happen to be *de rigueur* at any given time. In actual criminal cases, the public prosecutor's actions and decisions are geared towards having offenders tried by a judge (where appropriate); the Public Prosecution Service must make its decisions 'as if it were a judge', but may also prompt actual judges to implement changes and dynamism in the legal enforcement of the rule of law in criminal matters – for instance, with regard to sentencing. In that respect, too, a certain distance, independence and autonomy from both the executive and judicial branches are necessary for a proper performance of duties in the policy-making and day-to-day operations of the Public Prosecution Service, with regard to the legal enforcement of the rule of law in criminal matters. This includes a realisation of and reflection on the necessity and nature of this autonomy on the part of the Public Prosecution Service itself.[43]

The exact relationship between the Public Prosecution Service and the Minister of Justice (and more particularly the Minister's power to issue instructions, as specified in Section 127 of the AJA) has undergone changes over the years, and has been the subject of much debate.[44] The relations,

Public Prosecution Service, i.e., as representatives of the judicial branch, which is considered part of the Dutch State and is therefore immune from criminal prosecution, which immunity is recognised and honoured in Dutch constitutional and criminal law. The court found that, because of this reason, criminal prosecution of individual employees of the Public Prosecution Service was not in order. See The Hague Court of Appeal, 27 February 2023, ECLI:NL:GHDGA:2023:298. This ruling does not alter the fact that, in the sentencing of offenders, Dutch criminal procedure allows for consequences to be attached to this kind of professional procedural defect, as in the aforementioned criminal case.

[42] And a fundamental reflection on the position and exact nature of the duties to be performed by the Public Prosecution Service from the point of view that the democratic rule of law is a fundamental and essential key element of law enforcement, and that maintaining the rule of law is a duty to be performed by the Public Prosecution Service, can be found in the works of A.C. 't Hart, such as 'Openbaar Ministerie en rechtshandhaving', Arnhem: Gouda Quint, 1994 and 'Hier gelden wetten', Arnhem: Gouda Quint, 2001. For an analysis of the integrity of the Public Prosecution Service's actions, see M. de Meijer, *Integriteit als maatstaf voor het Openbaar Ministerie: Een beschouwing van een meerdimensionaal integriteitsconcept van het Openbaar Ministerie in een democratische rechtstaat*, University of Amsterdam, Oratiereeks (published inaugural lectures); no. 563, 2016.

[43] As far as that is concerned, it may be interesting to note that three Dutch universities have appointed professors with endowed chairs who specialise in research on the Public Prosecution Service. All three professors are members of the Public Prosecution Service.

[44] A great deal has been written about this development. For a recent overview, see E. Hirsch Ballin (2021). In T. Kooijmans, J.W. Ouwerkerk et al., *Op zoek naar evenwicht: liber amicorum Marc Groenhuijsen*, pp 307-321. Also see J.R. Blad & H. de Doelder, 'Rechtshandhaving door het Openbaar Ministerie', in JR Blad (ed.), *Strafrechtelijke*

which took some time crystallising into something distinct, did not assume their current (and markedly different) form until 1999.[45] The Service's relation to criminal judges in individual criminal cases is laid down in the Code of Criminal Procedure and has not fundamentally changed much from a legal point of view. With regard to that, though, it is important to note that the Public Prosecution Service now more than ever resolves many criminal cases on its own and must make a decision on whether or not to file charges in every single criminal case, in an increasingly complex web of special and general interests of the offender, the victim or his/her survivors, interest groups and the requirements and expectations of politicians and regular people with regard to whether or not the Public Prosecution Service should legally enforce the rule of law in criminal matters. Because of this trend, the exact, actual and normative legal relationship between the Public Prosecution Service and the executive branch (particularly the Minister of Justice) has become more important with regard to the considerations weighed and choices made by the Public Prosecution Service in the performance of its (independent) duties, including the underlying policies implemented by the Public Prosecution Service.

It is clear that the Public Prosecution Service's position vis-à-vis the executive branch is not characterised by complete autonomy, as is the case for judges. This fact comes with certain consequences. The Public Prosecution Service has been granted the powers it needs to be able to decide on how to collaborate with law enforcement officers in other countries in criminal cases. The judgment handed down by the Court of Justice of the European Union on OG and PI in 2019 showed that the Dutch Public Prosecution Service is not sufficiently independent, which resulted in the Public Prosecution Service being unable to issue a European arrest warrant.[46] This case showed that only organisations that will not receive any instructions or recommendations from the executive branch under any circumstances or on any condition are competent to issue European arrest warrants. Due to the special power to issue instructions with which it has been vested, the Dutch Public Prosecution Service cannot be considered a 'judicial authority' within the meaning of Article 6(1) of the Council Framework Decision on the European arrest warrant and the surrender procedures between member states. What this means, specifically, for the Netherlands, is that the Dutch Public Prosecution Service is no longer competent to issue European arrest warrants. Instead, this must be done by a judge (in the Dutch system: the examining magistrate in criminal matters). A debate ensued after these judgments were handed down by the Court of Justice of the European Union, about whether the Minister should be further removed from the Public Prosecution Service.[47] More particularly, this

rechtshandhaving, second edition, The Hague: Boom Juridische uitgevers, 2008, pp 105-131.

[45] Act passed on 19 April 1999, *Staatsblad* 1999, 194, designed to ensure the restructuring of the Public Prosecution Service.

[46] Court of Justice of the European Union (Grand Chamber) 27 May 2019 joined cases C-508/18 (OG) and C-82/19 PPU (PI), ECLI:EU:C:2019:456, EHRC 2019/181, annotated by Lestrade.

[47] M. Hirsch Ballin (2021). In T. Kooijmans, J.W. Ouwerkerk et al., *Op zoek naar evenwicht: liber amicorum Marc Groenhuijsen*, pp 332.

should be done to prevent the Minister from being able to issue any special instructions to members of the Public Prosecution Service. The question to be answered is whether abolition of the special power to issue instructions is a necessary and desirable solution that might guarantee a more independent Public Prosecution Service.[48] Such without negatively affecting the existing relations, the central position of the Public Prosecution Service and the counter balance to the Minister's political accountability.

The relationship between the Public Prosecution Service and criminal judges has shifted somewhat over the years. In the past, the Public Prosecution Service's main task was to prepare judges for handing down their judgments. Due to societal changes and the associated shifts in the way we view criminal law, the Public Prosecution Service's role has changed and particularly become more autonomous. Since the number of cases keeps growing all the time, it has become more necessary to select those criminal cases that must be brought before a judge for sentencing. It is the Public Prosecution Service's job to make that selection, on the basis of the principle of opportunity. As a result, the principle of opportunity is being applied more loosely, more cases are being resolved by the Public Prosecution Service alone, and fewer cases are being brought before a judge, particularly in the (sizeable) category of relatively minor offences, where custodial sanctions are not in order. This means that the Public Prosecution Service's position has shifted. The Service used to support judges. It now opposes offenders, in which capacity it acts as the enforcer of government policy.[49] This trend has been significantly reinforced by the fact that, as mentioned above, the Public Prosecution Service has been able since 2008 to impose sanctions on offenders by issuing penal orders.

4. Prohibition on retroactive force

Dutch legislation comes with both a material and formal principle of legality. Section 1 of the Criminal Code lays down the material principle of legality: *no offence shall be punishable unless it was an offence under the law at the time when it was committed.* If the law is amended after the time at which the offence was committed, the case will be assessed against the provisions that are the most favourable for the offender. In other words, newly instituted statutory penalties cannot be imposed with retroactive effect. If a new type of offence is committed, it will not be punishable under the law until after the entry into force of new legislation governing this type of offence. The formal principle of legality has been enshrined in Section 1 of the Code of Criminal Procedure: *criminal charges can only be filed in the manner provided by the law.* This provision does not mention a prohibition on retroactive force. While

[48] For more on this, see J.W. Ouwerkerk, S.M.A. Lestrade, K.M. Pitcher, J.H. Crijns & J.M. ten Voorde, *De rol en positie van het openbaar ministerie als justitiële autoriteit in Europees strafrecht. Een verkennende studie naar een toekomstbestendige vormgeving van de rol en de positie van het openbaar ministerie in de EU-brede justitiële samenwerking in strafzaken*, The Hague: WODC, 2021.

[49] For more on this, see G.J.M. Corstens, *De verhouding rechter – openbaar ministerie. Een lat-relatie in het strafrecht* (inaugural lecture presented at Erasmus University Rotterdam), Arnhem: Gouda Quint, 1983.

criminal proceedings are taking place in an ongoing criminal case, any new judicial powers that may be introduced will apply at once.

Once a case has made it to a trial presided over by a judge, the legal system requires the judge to hand down a judgment.[50] This means that, from that moment onwards, public prosecutors can no longer decide to withdraw the charges that have been filed. In other words, the judge will have to hand down a judgment.

5. Prosecution ex officio

Cases can only be brought before a criminal judge by the Public Prosecution Service. In principle, the Public Prosecution Service can prosecute any person who is suspected of having committed an offence. Generally, that is the only requirement for prosecution. There is an exception, though: the (small) category of *Antragsdelikte* identified in the Criminal Code. The prosecution of an offender for an *Antragsdelikt* ('complaint offence') requires a formal complaint by a person competent to file a complaint (generally, the victim).[51] Said complaint must consist of a police report and a request to file charges. See Section 164(1) of the Code of Criminal Procedure. Examples of *Antragsdelikte* include the following: insults (Section 269 of the Criminal Code), a violation of trade secrets (Sections 272-273 of the Criminal Code), stalking (Section 285b of the Criminal Code) and theft from one's spouse (Section 316 of the Criminal Code). The legislature decided that, when it comes to these kinds of offences, protecting the victim's interests is more important than protecting the public interest.[52] The fact that these types of offences are categorised as *Antragsdelikte* does not mean that the victim gets to decide that the offender *will* be prosecuted. In these types of cases, too, the Public Prosecution Service has the exclusive power to decide. Once a complaint has been filed, the Public Prosecution Service will decide whether criminal charges are in order.[53] The public prosecutor may decide that this is not the case. (If this happens, the person competent to file a complaint may initiate a grievance procedure within the meaning of Section 12 of the Code of Criminal Procedure with the court of appeal, as described above.) A second, purely theoretical exception concerns a situation wherein a minister, state secretary or member of Parliament (Lower or Upper House) is suspected of malfeasance committed in his capacity as a politician. In such an event, prosecution would require an order issued by Royal Decree or by a Decree issued by the Lower House of Parliament. This route has never been taken as yet.

6. The Public Prosecution Service: the *dominus litis* of criminal investigations

[50] Section 345, 348 and 350 of the CCP.
[51] Section 64 et seq. of the Criminal Code
[52] F.F. Langemeijer, *Het slachtoffer en het strafproces, (*SSR no. 35) 2010/2.2.4.
[53] J.L.F. Groenhuijsen, 'Het aanwijzen van klachtdelicten: een blinde vlek van de wetgever?', *DD* 2019/49, issue 8, pp 629-630.

Not only does the Public Prosecution Service play a crucial role with regard to the decision as to whether offenders will be prosecuted, but it also plays a key role in the legal enforcement of the rule of law in criminal matters, within the meaning of the aforementioned Section 124 of the AJA in general. This constitutes a good reason to return to the subject of the meaningful role played by the Public Prosecution Service in investigations into criminal offences, which we briefly touched on in the introduction. Pursuant to Section 141 of the Code of Criminal Procedure, public prosecutors are also charged with leading the criminal investigations in criminal proceedings. Public prosecutors have been placed in charge of investigations (Section 148(2) of the Code of Criminal Procedure and Section 12 of the Police Act); they lead criminal investigations (Section 132(a) of the Code of Criminal Procedure), and to this end they order other investigators to perform duties (Section 148(2) of the Code of Criminal Procedure). When the police act in the interest of the legal enforcement of the rule of law in criminal matters or perform judicial services, they do so under the authority of the Public Prosecution Service.[54]

Although public prosecutors do have investigative powers themselves, in practice, most of the investigations are conducted by police detectives. The prosecutors oversee their efforts and issue general or more specific instructions as to how the investigations are to be conducted. To some extent, this is because the police have expertise that not all prosecutors have.[55] On the other hand, the more extensive or complex a criminal case is, or the more drastic the coercive measures and investigative powers that must be employed are, the more closely public prosecutors will be involved in the case, in their capacity as the leaders of the criminal investigation. If any charges are filed, the Public Prosecution Service is accountable vis-à-vis the criminal judge and offender for the completeness of the case-related dossier and the case-related documents (Section 149(a) of the CCP).[56] Public prosecutors are also responsible for ensuring that the victims of an offence are, upon their own request, properly informed of their rights and the progress made in the investigation (Section 51(a)(c) of the Code of Criminal Procedure) and that the victims are treated with respect (Section 51(a)(a)(1) of the Code of Criminal Procedure).

Furthermore, the Public Prosecution Service is accountable for the police when it acts in the interests of legal enforcement of the rule of law in criminal matters. It is also accountable to the criminal judge for the lawfulness of the police's actions. In the past, the Public Prosecution Service did not perform this duty or uphold this responsibility stringently enough. As a result, major problems arose with regard to the lawfulness of the police investigations in several high-profile cases pertaining to organised crime. In 2000, the Public Prosecution Service was granted more powers in

[54] P.H. van Kempen, M. Krabbe and S. Brinkhoff, *The Criminal Justice System of the Netherlands*, Antwerp: Intersentia, 2019, p 10.
[55] G.J.M. Corstens, M.J. Borgers and T. Kooijmans, *Het Nederlands Strafprocesrecht*, Deventer: Wolters Kluwer, 2021, p 122-123.
[56] The case-related documents are all the documents that may reasonably be assumed to be important to the decisions about the case to be made by the judge (Section 149(a)(2) of the Code of Criminal Procedure). Public prosecutors may not decide at their own discretion not to present such case-related documents to the judge.

monitoring the police and rules were implemented to ensure that certain major, secret or systematic investigative procedures, such as wiretapping, would only be performed at a public prosecutor's behest.[57] Several even more major investigative procedures are subject to the public prosecutor's obtaining prior permission from a judge – more specifically, the examining magistrate. If, during the trial, a criminal judge arrives at the conclusion that there were irremediable procedural defects in the preparatory investigation in the criminal proceedings against the suspect who is now essentially standing trial, the judge may attach consequences to that fact in relation to the outcome of the trial. Section 359(a) of the Code of Criminal Procedure provides the following potential sanctions: exclusion of evidence that was illegally obtained, a commutation of sentence, and, in very extreme cases in which the suspect's right to a fair trial has been violated severely and irremediably, loss of the Public Prosecution Service's right to prosecute the suspect. The latter sanction is hardly ever imposed in legal practice. In other words, the large degree of latitude and responsibility enjoyed by the Public Prosecution Service in relation to the lawfulness of criminal investigations in criminal procedure may result in a 'rap on the knuckles' after the fact. When it comes to these types of sanctions, the public prosecutor is accountable to the criminal judge during the suspect's trial for the lawfulness of the criminal investigation carried out under his guidance.

[57] P.H. van Kempen, M. Krabbe and S. Brinkhoff, *The Criminal Justice System of the Netherlands*, Antwerp: Intersentia, 2019, p 18-19.

7. The Public Prosecution Service's internal organisational structure

The Public Prosecution Service is one single, nationwide organisation of prosecutors. Unlike the judicial branch, the Public Prosecution Service has a hierarchical organisational structure. Said organisational structure is shown in the following organisational chart:

Board of Prosecutors General								
Prosecution Services						Other components		
Prosecution services at the district court level	Nationwide components			Prosecution services at the court of appeal level	ublic Prosecutor's Office	IVOM Prosecution Service's IT department	DVOM Prosecution Service's service department	F R National Police Internal Investigations Department
10 locations	National Public Prosecutor's headquarters	Functional prosecution office	ervice centre for the Public Prosecution Service	4 locations	oined with the science office			
↓	↓	↓	↓	↓	↓	↓	↓	↓

DPCE online
ISSN: 2037-6677

I nterventions and investigations f rom shoplifting, domestic violence and sex crimes to robberies, drug trafficking and murder	Domestic and international organised crime and subversive crime	Subversive crime, fraud, environmental crime and seizure of assets	Traffic offences	Criminal cases on appeal	elps the Board of Prosecutors General manage the organisation	Helps the Public Prosecution Service with IT-related matters and the provision of information	Executive business positions for the entire organisation	Business-related crimes

Board of Prosecutors General

The Public Prosecution Service is overseen by the Board of Prosecutors General, which has its office in The Hague. The Board draws up the Public Prosecution Service's nationwide investigation and prosecution policy. In addition, the Board ensures that there is cohesion, consistency and quality in the legal enforcement of the rule of law in criminal matters. In doing so, the Board seeks to ensure both the 'right prosecution' and the 'right' investigation of offences; it issues the requisite orders to the heads of the various offices of the public prosecutor (Sections 8 and 140, respectively, of the Code of Criminal Procedure). The Board is made up of three to five members (Section 111 et seq. of the AJA). The members are appointed by the Minister of Justice.

Offices of the public prosecutor

The offices of the public prosecutor are divided into four components: the district offices, the nationwide components, the county offices and the Office General. Each component has been assigned a task of its own.

- *District offices of the public prosecutor*

The district offices address a wide variety of cases, ranging from shoplifting, domestic violence and sex crimes to robberies, drug trafficking and murder. Every year, they deal with hundreds of thousands of criminal cases. The ten district offices employ public prosecutors and support staff, under the supervision of a chief prosecutor. The district offices cover the same regions as the ten regional police service units and are located in the

same cities as the courts of law. The regions are as follows: Northern Netherlands, Eastern Netherlands, Central Netherlands, Province of Noord-Holland, Amsterdam, The Hague, Rotterdam, Zeeland/Western Brabant, Eastern Brabant and Limburg.

- *Nationwide components*
o *National office of the prosecutor*

The national office of the prosecutor combats domestic and international organised crime and subversive crime, such as human trafficking, terrorism, drug trafficking, international crimes and war crimes, child porn and cybercrime.

o *Functional office of the prosecutor for economic, financial and environmental offences*

The national office of the prosecutor for economic, financial and environmental offences investigates and files charges in cases revolving around fraud and environmental crimes. In addition, the office carries out procedures relating to the separate criminal penalty of seizing illegally obtained assets.

o *Service centre, Central processing office (CVOM)*

The office of the prosecutor for centralised processing (CVOM) assesses all notices of objection filed in response to traffic fines. The notices will often concern situations in which drivers had their licences seized by the police, engaged in drunk driving or were guilty of speeding.

- *County office of the prosecutor*

County offices of the prosecutor seek to resolve criminal cases in appeals procedures. There are four offices in the country, which cover the same counties as the courts of appeal. They are located in Amsterdam, Arnhem-Leeuwarden, The Hague and 's-Hertogenbosch. Employees of the county office of the prosecutor are not called public prosecutors, but rather advocates general. Advocates general prepare cases to be brought before a court of appeal.

- *Office General (joined with the Science Office (WBOM))*

The Office General and the Public Prosecution Service's Science Office support the Board of Prosecutors General in the performance of its duty: the legal enforcement of the rule of law in criminal matters. The Board's cabinet consists of the Office General and the directors of the consortiums. The Public Prosecution Service's Science Office is responsible for disseminating knowledge to the Public Prosecution Service's employees and for preparing the recommendations on amendments and updates to applicable law issued to the Ministry of Justice and Security by the Board.

The rest of the organisation: the hierarchical structures of the various offices; delegation and mandate

Each office is headed by a chief prosecutor, who is the head of that office. The county offices of the public prosecutor are headed by a chief advocate general. Members of the Public Prosecution Service work at the

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offices, too, ranked according to their administrative status. If any of them serves as the representative of the Public Prosecution Service in a criminal case, this person, regardless of his/her official rank, will hold the position of public prosecutor at that moment under the provisions of the Code of Criminal Procedure, or, if he/she is active in a case at the appeals level, he/she will hold the position of advocate general. In the Code of Criminal Procedure, the various members of the Public Prosecution Service are referred to exclusively by the position they hold while engaged in criminal procedure. For this reason, the Code of Criminal Procedure only mentions the phrases 'public prosecutor' and 'advocate general'.

Not all the duties to be performed in criminal proceedings need be performed by a member of the Public Prosecution Service who was explicitly trained for said duties and holds the requisite rank. Under the Administration of Justice Act, 'other civil servants' who are employees of the Public Prosecution Service and work at the offices but are not official members of the Public Prosecution Service may perform certain duties under the responsibility of a public prosecutor. Pursuant to Section 126 of the AJA, they can only hold powers that are not contrary to the competence requirements or the nature of the powers. Speaking at a hearing held after criminal charges are filed is a power held exclusively by an actual public prosecutor.

8. Working as a public prosecutor

Until 2014, there was one single uniform training programme in the Netherlands for all judicial officers. This six-year training programme prepared recent graduates for both a career as a judge and a career in the Public Prosecution Service. The programme included a 24-month work placement at an organisation not being a court of law or the Public Prosecution Service, to experience for oneself how the law and society interact and to experience the work done by judges or public prosecutors from a different point of view.[58] In other words, those wanting to become a judge had to follow pretty much the same programme as those wanting to become a public prosecutor. This training system was reformed as of 1 January 2014. Since then, future judges and future public prosecutors have received different types of training. Prospective judges are now required to complete the RIO programme, with 'RIO' standing for 'rechter in opleiding' (trainee judge). To become a judge, candidates must successfully complete a law degree, gain at least two years' work experience outside a court of law upon graduation, hold Dutch nationality and successfully complete a selection procedure performed by the National Judge Selection Committee. Prospective public prosecutors have seen the RAIO programme replaced by the OIO programme, with 'OIO' standing for 'officier in opleiding' (trainee prosecutor). This programme comes with virtually the same entrance requirements as the RAIO programme, the only difference being that candidates here need six years' work experience after graduation, including two years at an organisation not being the Public Prosecution Service. Both programmes take 1.5 to 4 years to complete.

[58] SSR, RAIO programme module catalogue, Zutphen: SSR, 2010, p 11.

After completing their training programme, judges are appointed for a life term, as laid down in Section 117 of the Constitution. This is how independence is safeguarded in the administration of justice. Judges can only be dismissed at their own request or when they reach a predetermined age, specified in the law. Very occasionally, judges will be dismissed for other reasons, e.g., in the event of long-term and chronic sickness absence, or when their professional knowledge and competences are found wanting, or when they are guilty of serious offences or engage in any other form of misconduct. Judges cannot be dismissed for the decisions they make in the line of their work as judges. Dismissals not granted at the judge's own request or due to the judge reaching retirement age are enforced by the judiciary itself – more specifically, by the Supreme Court, in a designated disciplinary procedure. Any other disciplinary measures that may be taken, such as a warning, can also only be imposed by the judiciary (the president of the court concerned).

This means that judges have very different employment positions than public prosecutors: unlike judges, public prosecutors are not appointed for a life term, they are more easily dismissed, and they are dismissed by their own organisation and the Ministry of Justice and Security, which organisations may also impose disciplinary measures in the event that a public prosecutor is found to be unsuited to the profession. This means that the Minister also decides on the promotion and transfer of members of the Public Prosecution Services, but only upon the recommendation of the Board of Prosecutors General.

9. Relationship with the High Council of the Judiciary

In 2002, the High Council of the Judiciary was established for the judiciary charged with the administration of justice, so as to strengthen the courts' autonomy from the Ministry of Justice and Security. The Council's establishment, organisational structure and powers are laid down in the AJA (Section 84 et seq.). The Council was tasked, first and foremost, with the management of the courts and the promotion of high-quality administration of justice. Previously, these tasks were performed by the Minister of Justice and Security. Since the establishment of the High Council of the Judiciary, the judiciary has been more independent than it used to be.[59] However, this High Council of the Judiciary does not get involved in the Public Prosecution Service. There is no such council for the Public Prosecution Service. Nor is one needed at present, now that the Public Prosecution Service is not required to present safeguards for its independence. For more on this, see below, in Section 10. The Minister of Justice and Security is tasked with management of the Public Prosecution Service.

10. One single council for both judges and the Public Prosecution Service, or rather two separate ones?

The High Council of the Judiciary as discussed in the previous section is not the hierarchical leader of the judiciary. On the contrary: because all judges

[59] P.M. van den Eijnden, Onafhankelijkheid van de rechter (SteR no. 3) 2011/5.1.

DPCE online
ISSN: 2037-6677

are independent, the High Council of the Judiciary has only been tasked with the aforementioned duties related to the management of the courts and the promotion of high-quality administration of justice. The Administration of Justice Act explicitly stipulates that the Council must not get involved in the procedural treatment and factual assessment of, and judicial decision on, actual cases (Section 96 of the AJA). The latter means that its powers are different, in principle, from those of the Board of Prosecutors General, which *is* the highest-ranking and governing body within the Public Prosecution Service. The Board has the right to tell individual public prosecutors how to perform their duties in particular criminal cases.

Next to the High Council of the Judiciary and the Board of Prosecutors General, there is no umbrella organisation or institution that represents or governs both judges *and* the Public Prosecution Service.

11. Special offices for specific types of offences

The Public Prosecution Service has several offices with a nationwide focus on investigating particular types of offences and prosecuting offenders. We have already provided some information on this in Section 7, in the organisational chart of the Public Prosecution Service.

12. The relationship between the Public Prosecution Service and the media

Directive (EU) 2016/343 of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings stipulates that EU member states should take appropriate measures to ensure that, when they provide information to the media, public authorities do not refer to suspects or accused persons as being guilty for as long as such persons have not been proved guilty according to law.[60] In so doing, member states should have due regard to the presumption of innocence, but without prejudice to national law protecting the freedom of press and other media. As far as this is concerned, Sections 6 and 10 of the European Convention on Human Rights contradict each other. On the one hand, government agencies are allowed to inform citizens of any criminal proceedings that are taking place, and because we enjoy freedom of press, the media are allowed to publish this information. On the other hand, this should not negatively affect the suspect's right to a fair trial. In making a decision on this subject, the Public Prosecution Service will have to strike the right balance between transparency and integrity, and if it chooses to provide transparency, it will have to do so with due regard to the presumption of innocence.[61] This must

[60] Directive (EU) 2016/343, Article 19.
[61] In the well-publicised criminal proceedings instituted to sentence the people involved in the downing of flight MH17 over Ukraine on 17 July 2014, the court strongly condemned the fact that the Public Prosecution Service had disclosed information contained in the case-related dossier to provide information to the survivors of the victims, even though the case was still sub judice. (The Hague District Court, 17 December 2022, ECLI:NL:RBDHA:2022:14039 (English version).

be communicated to the media in this way, without restricting their right to publish on the subject.[62]

On certain conditions, the Public Prosecution Service can actually use the media – for instance, to share video footage of a suspect and ask people to identify him. Such disclosures to the public are subject to the Public Prosecution Service's Recommendation on Appeals for Information, which stipulates the following: 'The Public Prosecution Service and the police may use appeals for information to ask the public to help them collect information with a view to fact-finding, the enforcement of judicial rulings, the prevention of criminal offences or any other interests pertaining to the legal enforcement of the rule of law in criminal matters.'[63] Publication is also subject to stringent requirements. For instance, the (suspected) offence must be serious enough to warrant an appeal for information. The Public Prosecution Service's recommendation also shows that any decision to appeal to the public for information, which of necessity involves releasing information on the suspect, constitutes a violation of the suspect's privacy (Article 8 of the ECHR). Such violations of a person's privacy are permitted under the recommendation, provided that the competent judicial authorities have carefully weighed the various interests involved in the case beforehand. In so doing, the authorities must look at the lawfulness, proportionality, subsidiarity and efficacy of the appeal for information.

In Dutch criminal procedure, if the boundaries outlined in Articles 6 and 8 of the ECHR are overstepped, the public prosecutor may be guilty of a procedural defect within the meaning of Section 359(a) of the Code of Criminal Procedure. As described above, this may result in a commutation of sentence, the exclusion of certain evidence or even in the case being declared inadmissible. Even without any violations of the right to a fair trial or the right to have one's privacy respected, criminal judges are free, in sentencing the offender, to take into account the negative impact the media attention has had on the offender or his trial, even when this cannot be imputed to any action on the part of the Public Prosecution Service. However, media attention for a case does not *entitle* an offender to a commutation of sentence.

13. A few insights regarding the EPPO in the Netherlands

The European Public Prosecution Office (hereinafter referred to as 'the EPPO') is an independent body of the European Union, charged with

The court closed off by saying, 'It was unnecessary and gravely detracts from the magisterial performance that can and must be expected of the prosecution.'

[62] For more on this, see J.S. Nan, 'Richtlijn 2016/343, betreffende de versterking van bepaalde aspecten van het vermoeden van onschuld; iets nieuws onder de zon?', *DD* 2016/64; and M. de Meijer, 'Focus op de integriteit van het Openbaar Ministerie', *AA* 2019, pp 946-956. For a comprehensive analysis of the relationship between criminal law and public opinion, see L. Noyon, *Strafrecht en publieke opinie. Een onderzoek naar de relatie tussen de strafrechtspleging en het publiek, met bijzondere aandacht voor het Openbaar Ministerie* (PhD dissertation written at Leiden University), The Hague: Boom Juridisch, 2021.

[63] Recommendation on Appeals for Information (*Government Gazette* 2017, 66539), which entered into effect on 1 December 2017.

investigating crimes against the EU's financial interests, and with prosecuting and bringing to justice the offenders. The Netherlands is one of 22 EU member states that have joined the EPPO. A delegated prosecutor works in Luxembourg on the Netherlands' behalf. He is supported by two European delegated prosecutors who work in the Netherlands. The delegated prosecutors who work in the Netherlands have been placed with the national office of the prosecutor for economic, financial and environmental offences, despite their independence of the Dutch Public Prosecution Service (Section 144(c) of the AJA). The prosecutors' placement with the Dutch Public Prosecution Service is a little odd, now that the European delegated prosecutor works under the responsibility of the EPPO. It should be noted that it has been explicitly laid down in legislative history that the European delegated prosecutor enjoys an independent position.[64] This is how the independence required pursuant to Council Regulation (EU) 2017/1939 on the establishment of the European Public Prosecutor's Office can be safeguarded.

Initially, the Netherlands was opposed to the establishment of the EPPO. If the Netherlands were to join the EPPO, it was said, we would, for the first time, find ourselves in a situation in which a non-Dutch authority would be able to operate autonomously and independently in the Netherlands. People were concerned about the violation of the exclusive authority to prosecute people, which is at the heart of the Dutch system, and of the principle of opportunity. After all, the EPPO could decide independently to prosecute a case (as long as it pertained to a crime against the EU's financial interests), and the European delegated prosecutor would be in charge of the criminal investigations into these cases. As a result, there was some fear that the EPPO would take a forceful and coordinating approach, which might thwart the Netherlands' priority-setting and claim manpower assigned to investigations and prosecution procedures. This, it was feared, might cause the focus to shift from national interests to the European Union's financial interests. In 2018, despite its initial misgivings, the Netherlands decided to join the EPPO, after all.[65] So far, the fears of those early days seem not to have materialised.

14. Final considerations

The foregoing illustrates the key role played by the Public Prosecution Service in the legal enforcement of the rule of law in criminal matters in the Netherlands in general, and the position of public prosecutors in the various individual criminal cases in particular. Public prosecutors have held this position since the current Code of Criminal Procedure was introduced in 1926. Their position was strengthened considerably in 2008, when the Public Prosecution Service was granted the right independently to impose (within reason) penalties on people who had committed an offence, by

[64] *Parliamentary Papers II* 2019/2020, 35429, no. 3, pp 17-18.

[65] See *Kamerstukken II* 2017/18, 33709, no. 14; W. Geelhoed, 'Het Europees Openbaar Ministerie en het opportuniteitsbeginsel in Nederland', *Strafblad* 2018, issue 6; and for more information, see P.A.M. Verrest in J.H. Crijns, E.R. Muller & R. Robroek, *Openbaar Ministerie*, Deventer: Wolters Kluwer, 2023, par. 27.

issuing penal orders. This proved a departure from the requirement that an irrevocable penalty involves legal proceedings. Now that prosecutors can issue penal orders, they can process large numbers of minor offences much more quickly, and sanctions can be imposed on more offenders than would be possible in a system where all offenders have to be tried by a judge. So, when it comes down to it, the Public Prosecution Service very often avails itself of the opportunity to issue a penal order instead.

The position of the Public Prosecution Service will not change fundamentally after the pending update to the Code of Criminal Procedure, since the position of the Public Prosecution Service as described there, in particular with regard to the decision-making process about whether or not to prosecute in individual criminal cases and with regard to how to deal with large numbers of criminal cases, fits beautifully into the traditionally accepted fundamental structures of criminal procedure and the faith people have in the Public Prosecution Service, even though that system is occasionally questioned or pressured into becoming a more repressive system due to political trends. Only a very small number of specific aspects may be subject to amendment at some point. Since the instrument of transactions is mainly employed to resolve financial and economic crimes that may involve the payment of very large sums of money, the legislature is considering the necessity and desirability of expanding the range of transactions: from a maximum of up to €200,000, to transactions exceeding €200,000. Furthermore, since 2022, the Public Prosecution Service has been allowed to strike 'deals' with offenders, as a form of agreement and procedural agreement regarding the outcome of the case that will be brought before the criminal judge as a proposal for the resolution of the criminal case concerned. This development, which is still in its infancy, will require more in-depth statutory regulations, which will have an impact on the relationship between the Public Prosecution Service and criminal law.

In conclusion, we can note that the traditionally broad powers of the Dutch Public Prosecution Service in criminal justice in general and also in the resolution of individual criminal cases are still very much part of the fundamental structures of Dutch criminal procedure and will continue to be so in future. At the same time, this fundamental structure is regularly questioned or even put under pressure, precisely because it is so transparent and undefined. In this trend we can see the societal and political engagement with, and debate about, the way criminal justice is administered, as well as the meaning, influence and position of the Public Prosecution Service in criminal justice and in criminal justice policy in general. The Dutch media report on the Public Prosecution Service's actions and failures to act in criminal cases almost daily. Not only are all these things a recurring phenomenon, but they matter to all national legal systems and criminal law systems. We hope the foregoing sketch of the situation in the Netherlands will help others draw up relevant legal comparisons with the criminal law systems of other countries.

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DPCE online
ISSN: 2037-6677

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