



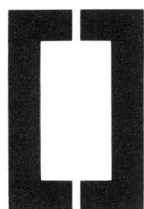
DUTCH STUDIES ON CRIME
AND JUSTICE
A SERIES FROM
THE RESEARCH
AND DOCUMENTATION
CENTRE

Studies on the Dutch Prison System

Edited by
M.J.M.Brand-Koolen



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PREFACE

The Research and Documentation Centre (RDC) is a government criminological research center that conducts policy-oriented research on legislative issues, crime prevention, policing, prosecution and sentencing, child protection, correctional institutions and probation.

The Centre has been publishing research summaries and papers in the English language for some time. However, these publications have been distributed on a finite scale only. The many information requests and remarks made by foreign visitors to the Centre have prompted us to take steps to make the results of our research program accessible to a larger international audience.

The series 'Dutch studies on Crime and Justice' is meant to meet this need for wider distribution. The series will consist of readers, each of which will present the results of research on a specific component of the justice system in The Netherlands. This volume, the first in the series, focuses on the prison system. Future readers will cover such subjects as the Dutch legal system, probation and parole, juvenile delinquency and, we hope, many other topics of interest to the foreign reader.

This reader on the prison system was edited by Maria Brand-Koolen. Two chapters have been written especially for this volume – the introductory chapter, written by the editor, and the chapter on temporary release, written by a researcher with the RDC and a member of the Prison Department. Three contributions by Tony Vinson of Australia, who explored the Dutch correctional system in some detail during his visit to the Centre in 1985, are slightly revised versions of chapters from a recent RDC publication. The remaining contributions are the work of (former) RDC researchers and have been published earlier in the Dutch language. Some of these previously published papers have been slightly revised to provide more recent data.

The general studies in the first part of the two-part volume provide an overview of the main characteristics of Dutch correctional policy and research. The first chapter aims to give the non-Dutch reader a general idea of the criminal justice system in The Netherlands (in particular the correctional system) and to facilitate understanding of the other contributions. In the second part of the book the authors deal with a variety of special topics, among others the mentally abnormal offender, drug users, ethnic minorities and prison leave.

JAN VAN DIJK

Director

Research and Documentation Centre

Ministry of Justice

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PART I

GENERAL STUDIES

THE DUTCH PENAL SYSTEM AND ITS PRISONS – AN INTRODUCTORY NOTE

by Dr. Maria Brand-Koolen

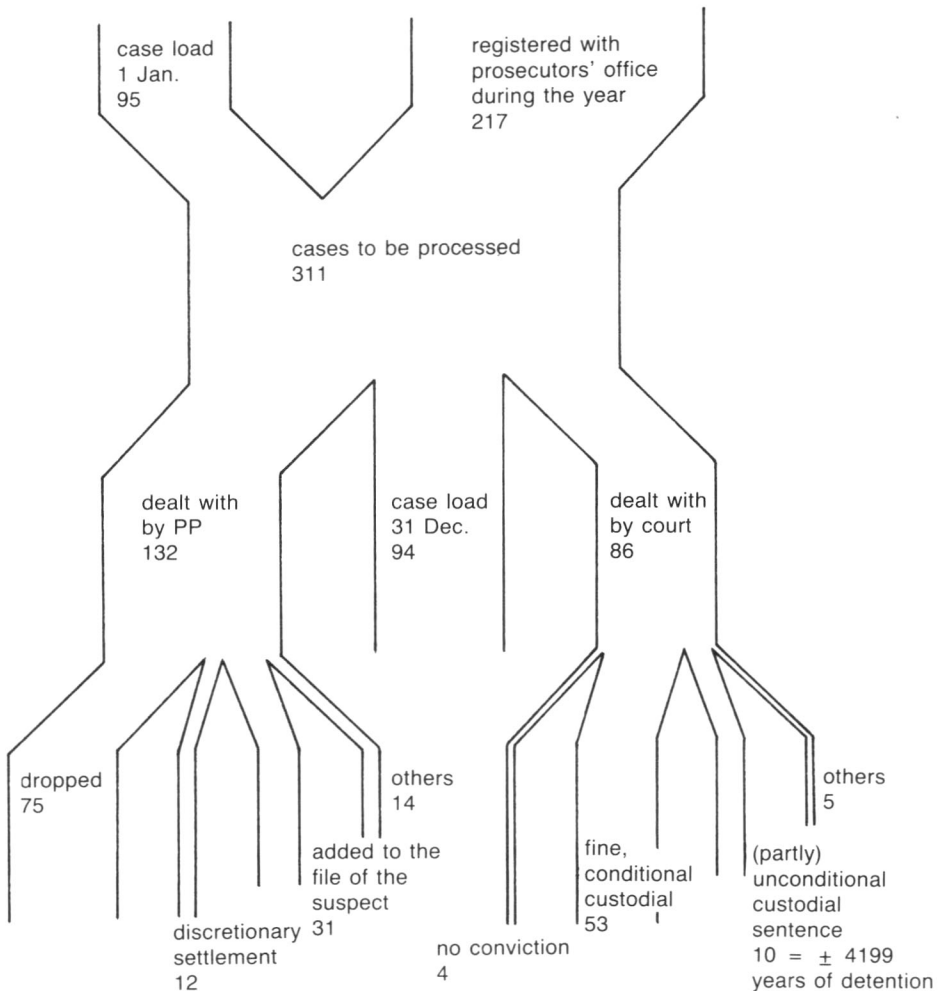
1. The criminal justice system

The Dutch Criminal Code makes a distinction between misdemeanors and felonies: misdemeanors are – originally at least – minor offenses. Most traffic offenses are misdemeanors. Felonies are more serious and include, e.g., theft and burglary. Most misdemeanors never reach the courts. The police or the public prosecutor can propose to settle these cases out of court. The police are not (officially) authorized to settle felonies. In practice they do so however, for example, if the offense is of minor importance. In these cases they will caution the offender, record the incident and take no further action. Most felonies, however, will be dealt with by the public prosecutor. The public prosecutor is the official representative of the state and decides which cases shall be brought to the court. Public prosecutors are professional jurists, working for the state with the exclusive task of prosecuting. The public prosecutor is not obliged to prosecute. He may dismiss a case if he thinks the offense cannot be proven beyond doubt, but also if he thinks it is wiser to do so, for example, in the case of a first offender who committed a minor offense (the *opportuniteitsbeginsel*, the principle of expediency or advisability). A few years ago the public prosecutor was also authorized to propose a settlement, called a *transactie*, usually in the form of a fine.

In 1983 almost one million crimes were reported to the police. The clearance rate is about 25%, which means that about 250,000 crimes are solved each year. This leaves 220,000 cases calling for prosecutorial action; about half of these cases will be brought before the courts. In the end about 10% of all the recorded crimes reach the courts (see diagram.)

Most crimes are dealt with by the district courts. There are nineteen district courts in The Netherlands. In a district court a case may be heard by one judge or by a three-judge panel, depending on the severity and the complexity of the crime. There are possibilities for appeal to higher courts. All judges in The Netherlands are jurists, with the exception of a few specialists for cases requiring expertise in a particular area. Judges are appointed for life by the Queen and are, in contrast with the public prosecutors, independent of

Number of offenses coming to the notice of the police: 973
 Number of crimes solved: 249



The criminal justice system in 1983 (numbers $\times 1000$).

state authorities such as the Minister of Justice.

In some 15% of the cases that reach the courts some form of (partly) unconditional imprisonment is ordered. There are no minimum standards of imprisonment for special offenses. The only minimum is a general minimum of

one day. In practice, the minimum is one or two weeks. About 80% of the custodial sentences are shorter than 6 months, 10% are sentences of 6–12 months and the remaining 10% of more than a year. The average custodial sentence is 3.5–4 months. Conditional release is permitted, and common practice, after two thirds of the sentence and at least six months have been served.

As a rule, about 70% of the inmates who are in the Dutch prisons are serving a custodial sentence and 30% are in custody awaiting trial.

In the Dutch system the police may hold a suspect in custody at the police station for forty-eight hours with the possibility of extending this period for another forty-eight hours. After four days they have to send him home, or the public prosecutor may decide to request the judge of instruction to order detention for a period of up to 12 days; beyond this point detention for renewable periods is possible and is ordered by the district court upon the request of the prosecutor. The defendant must be brought to trial within 102 days of placement in pre-trial detention.

No overview of the criminal justice system would be complete without an explanation of the adjudication system with respect to mentally disordered offenders. The Criminal Code provides that evidence of total absence of responsibility – the ‘defective development or impairment of his mental faculties’ – precludes punishment of an offender. The court may make a hospital order or order a so-called TBR. TBR is an abbreviation of ‘Ter Beschikking-stelling van de Regering’, this is (translated): be put in the care of the government. In English texts it is usually described as detention at the Government’s pleasure. This measure can be taken if it is absolutely necessary for public safety. The aim is to care for the patient and give him (or her) treatment making it possible for him to return to the community eventually. In cases of diminished responsibility, the law stipulates that the offender must be punished according to his guilt, but a TBR order may be made in addition. In recent years the judiciary has shown considerable restraint in ordering TBR. About 100 TBR orders are made each year. The average duration of the TBR confinement is about four years, but may vary considerably.

Detention, imprisonment, and TBR are the principal forms of confinement in The Netherlands*. Today about 4,900 offenders are undergoing some form of deprivation of liberty (offenders serving detention/prison sentences or TBR orders), an average of 30–35 inmates per 100,000 inhabitants. Although this figure was somewhat lower 10 years ago, The Netherlands still has a very low incarceration rate compared with most other countries in Europe (due, as the

* There are some other smaller groups in Dutch confinement, for example, foreigners awaiting extradition.

reader may have noted, not so much to fewer custodial sentences but to shorter sentences, see Steenhuis *et al.*, 1983). The reasons for this low rate have been a point of debate for many years now. The interested reader is referred to an article by David Downs in the *British Journal of Criminology* (1982). Whether the incarceration rate can be kept this low is a subject of much debate at present. The prison system has had capacity problems for several years. The fact that Dutch prison regulations still allow only one prisoner to a cell recently necessitated sending a number of relatively serious offenders home because of lack of cells. The Government has announced the construction of five more prisons. Whether this is a wise decision or not is a hot issue today.

2. The prison system

2.1 History and policy

The Dutch prison system in the 19th century was largely a system of solitary confinement. In the beginning of the 20th century, groups of prisoners were brought together during the day, mostly for work. Criteria were developed to determine which inmates were suited to group living and which inmates required segregation from the general inmate population in order to reduce the risk of criminal contagion. Prison policy was given a new impulse after World War II when a state Commission, named after its chairman Fick, made important proposals regarding further development of the prison system (1947). Most of these proposals have been laid down in the Prison Act (1951) and the Prison Statute (1953). The new legislation established a differentiated prison system, that is, stipulated a system comprising several kinds of prisons (ranging from open to closed), and that an offender should be placed, as far as possible, in the institution with the most suitable regime, given his personality, the length of the sentence and the possibility of rehabilitation. As in so many other countries, there was strong emphasis on rehabilitation. In 1964 the government published its first report on the new system. This document underlined the principles set forth in the above-mentioned prison legislation and added two more important principles, namely no more restriction of the personal freedom of prisoners than absolutely necessary for maintenance of order in the institution and improvement of legal rights of prisoners.

Other reports followed in 1976 and 1982. As research reports from Dutch and foreign researchers cast doubt upon the feasibility of rehabilitation, there was a gradual shift away from emphasis on rehabilitation toward principles of humane confinement and preparation of the offender for return to society. This shift was probably stronger in theory than in practice however; until

recently there were no budgetary cuts and the facilities that were originally created for the purpose of rehabilitation were accordingly considered important for humane confinement. The last few years a growing interest in prison officers constitutes another important issue. In the past, attention was devoted to prison officers mainly because their functioning was considered important for better management of the inmates. Recently, however, interest in the problems of prison officers also includes concern for their personal well-being. This is a fortunate development because many experts agree that the population in the Dutch penal institutions has grown increasingly difficult to handle. Even though this has no doubt been said throughout the centuries and in many other countries, two features do stand out. The first is that prisoners, like Dutch citizens in general, have become much more assertive and prepared to claim their rights. The second is the influence of drugs: use is one aspect of the problem, but drug-trafficking presents even more of a challenge. As larger dealers enter the prisons, they very often try to take their trade with them. Until recently there was relatively little professional, international crime in The Netherlands. With the drug-trafficking this has changed and the change is very noticeable in the prisons.

2.2 Organization

In many countries the prison system is organized on several levels, for example, local, state and federal levels. There are no distinctions of this type in the Dutch system. All prison facilities are run by the central government. The only exceptions are to be found in TBR. Most of the TBR institutions are privately run (but fully subsidized by the government). This has historical reasons and is a left-over of earlier times when initially the churches and later a variety of private organizations representing the various religious denominations took care of the ill, disabled and needy. The Christian Democratic party, which holds a very strong position in Dutch politics, still advocates privatization of social services. Even though TBR institutions are privately run and even though the central government has a tighter grip on the policy of the state-run institutions (which also exist), supervision over private institutions is close too.

The most important distinctions in the Dutch prison system are the distinction between remand centers and prisons and within the category of the prisons the distinctions in the degree of security. There are open, semi-open and closed institutions. There are also separate institutions for men and women.

The remand centers are intended primarily for persons facing criminal charges, but they also house sentenced offenders sitting out short sentences or awaiting transfer to a prison. Each of the 19 court districts in The Netherlands

has its own remand center(s); where there is more than one center some kind of differentiation exists (youth/adults). Some very small districts have only limited facilities.

The prisons are, of course, reserved for convicted offenders. There is wide differentiation in prisons, and in strictness of regime. The above-mentioned distinction between open, semi-open and closed institutions is only a rough categorization; there are many variations in security. There are two maximum security prisons for long-term offenders (a long-term sentence in The Netherlands is a sentence of six months or more after deduction of time spent on remand), four other closed prisons for long-term offenders (one for young offenders, 18 – 23 years), two prisons for offenders with shorter sentences, a variety of semi-open prisons and four open prisons to help ease the transition from the prison community to the free society.

There is also a special group of prisoners known as the ‘walking sentences’. These offenders are not placed on remand. After being tried and sentenced to a term of imprisonment, they are sent home to wait for a directive to arrive at a certain prison on a specific day. If necessary, there is much scope for negotiation about the time to report; for example, an offender may prefer to serve time during vacations so as not to lose his job. Offenders who, without any legitimate reason, fail to show up at the appointed time are arrested by the police. Those who do report are placed in special semi-open institutions. Originally this procedure was meant to separate first offenders from the more sophisticated criminals and to allow them some opportunity to put their affairs in order before going to prison. Nowadays, however, the group of offenders with ‘walking sentences’ includes fewer and fewer of the rather ‘innocent’ individuals for whom the system was designed. Due to lack of capacity in the remand centers, many defendants who should be placed on remand are sent home. These individuals will subsequently be sentenced to a (sometimes stiff) prison term and then enter the ‘walking sentences’ circuit and subsequently go to institutions meant for (the generally less serious) offenders who normally receive such sentences. The shift in type of population in these institutions is resulting in increasing problems for the prison authorities.

2.3 The institutions

As mentioned earlier, there are about 4,900 offenders in penal facilities in The Netherlands: some 400 people in TBR institutions and another 4,500 in the remand centers and prisons. In the following paragraphs we shall be considering only the ‘real’ penal institutions.* Their population is about 4,500, with

* This is exclusive of the 5–10 TBR institutions.

a total capacity of approximately 4,700, the difference being accounted for by the need to keep some cells available for transfers and other reasons. (Dutch prison regulations – as noted earlier – permit only one prisoner to a cell.) Of the 4,500 inmates, almost 4,400 are men and just over 100 women. There are about 23 remand centers and 23 prisons – the number changes regularly; together these institutions have an average capacity of 100. The smallest institutions house about 20 inmates and the largest about 150. In some places a penal facility complex meets various confinement needs. For example, in Amsterdam six high-rise buildings each contain a separate institution with its own administrator, staff, regime, and so on. A number of the Dutch institutions, dating from 19th century, are rather antiquated and drab. Some of these have a wing structure, like several English prisons. Three institutions are dome-shaped panopticons. Other institutions look like modern high-rise buildings, are well-equipped and have good sanitary facilities. The drawback of the high-rise model of construction is the need for extensive staffing. (Because communications between floors are more complicated than in, for example, institutions with a wing structure, prison officers tend to feel insecure if there are not enough other officers around.) Open and semi-open institutions occupy a variety of buildings, e.g. military style barracks, a former boarding house for migrant workers and an old mansion, to mention a few. The average staff to inmate ratio of the institutions is 0.9 staff members to one inmate; this includes everybody, from the prison administrator to the social worker and from the prison officers to the cashier and the typist. The prison officers plus workshop supervisors form about 60% of the total staff.

The population of the institutions varies but it is generally felt that the population today is much more difficult than, say, 15 years ago. Drugs, especially soft drugs, pose a problem in almost all institutions. Many closed institutions, the remand centers and the prisons for long-term offenders in particular, house a considerable number of foreigners and ethnic minorities. In some institutions these groups constitute more than half the population. Another problem group, again in the closed institutions for the most part, is formed by inmates suffering from mental disturbances.

The regimes in the institutions vary. Work is not required during pre-trial detention; sentenced offenders are expected to work; however, this obligation is not strictly enforced. The inmates are paid for their labor, but prison wages are far below anything comparable with the minimum wage. Even so the workshops cost more than they bring in.

Due to budgetary cuts inmates in most institutions now work only half days. They spend the other half day participating in a variety of educational and recreational activities, getting fresh air and exercise, taking a bath, meeting

with defense counsel, the probation officers, the chaplain and so on. Visits from family or friends are permitted once a week for one or two hours. Other contacts with the outside world are possible by telephone and mail. In the closed institutions meals are mostly served in the cells; in the open institutions with small living units inmates eat in the dining room or recreation room. There are many possibilities for recreation. When not involved in official activities, inmates generally must stay in their cells; some of the more open institutions permit the inmates to go for walks on the premises of the institution. The time actually spent in the cell during the day varies from almost all day (for a rather isolated inmate who does not want to work) to almost no time (for an active inmate in a semi-open institution). Until recently this was also true for the weekends. Due to budgetary cuts, however, inmates now normally spend the mornings during the weekend in their cells.

A number of avenues are open to a prisoner who believes that an unfair or unreasonable decision has been made which affects the conditions in which he is required to serve his sentence. Every institution has a board of visitors; a committee from this board hears grievances. There is also a central board and a central committee to which both inmate and governor can appeal on decisions taken in first instance.

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IMPRESSIONS OF AN AUSTRALIAN VISITOR

by Prof. Tony Vinson*, Marisca Brouwers** and Marianne Sampiemon**

1. Introduction

Few prison systems in the world have attracted as much interest as that of The Netherlands. It was, therefore, with a sense of privilege that during April – June, 1985, as a foreign guest of the Research and Documentation Centre (RDC) of the Ministry of Justice, I undertook an extensive observation study of the Dutch prison system. I brought to this task a background of involvement in criminological research and the practical experience of having been the Chairman of the Corrective Services Commission of the state of New South Wales, Australia. It was hoped by the RDC that the impressions of such an ‘outsider’ might raise points of interest for prison administrators steeped in the day-to-day concerns of the system.

Coming from a society that is not given to being too explicit about the aims of social policy, one of my earliest impressions was the widespread awareness of the Dutch Government’s objectives in the prisons field. Many staff referred to the 1981 Departmental Note outlining the nature of standardized institutional structure and the 1982 Ministry of Justice publication on the task and future of the penal system. Almost all seemed aware of the main objectives set for the system by the Ministry.*** Some argued that the objectives were more of a public indication of a route already being traversed than an announcement of future directions. No one questioned the value of having the Department’s aims stated publicly.

However, the fact that the objectives are widely known does not imply that they mean the same thing to all staff. They are abstract formulations of intent that still require interpretation in the concrete circumstances of each institution. This requirement is not necessarily a bad thing. Certainly it has stimulated a great deal of analysis and inventiveness on the part of directors (governors)

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*** Essentially the maintenance of security and good order, the humane execution of the prison sentence, the provision of appropriate educational, social, creative and treatment opportunities (without subscribing to discredited notions of ‘rehabilitation’), and the minimization of the harmful effects of incarceration.