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## 2 - My rights before the case goes to court

### What are the stages of a criminal investigation?

#### Questioning

The police can ask you to come to the police station to make a statement. They may also visit you at work or at home to question you. This is to confront you with facts established during the investigation and to find out whether there is sufficient evidence that you were involved in a criminal offence.

#### Arrest and police custody

If the public prosecutor thinks there is sufficient reason to believe that you committed a criminal offence, he can arrest you. If there are grounds for doing so, he can keep you in police custody for several days in order to investigate the case. This to establish whether there is a case against you.

#### First hearing by the investigating magistrate and remand in custody

If the public prosecutor believes there is sufficient evidence that you committed a criminal offence and that there are reasons to keep you in custody, a magistrate will review the case. The magistrate will then decide whether you must remain in custody.

#### Before the case goes to court

Before the case goes to court, the public prosecutor must gather evidence against you. He has to be able to prove legally and beyond reasonable doubt that you committed a criminal offence.

Before the case goes to court, your lawyer may request the investigating magistrate and the public prosecutor to carry out further investigations.

There may be several hearings before the case goes to court for trial.

### My rights during the investigation

Click the following links for more information about your rights at the different stages of the investigation.

- [Arrest and questioning \(1\)](#)
- [Police custody \(2\)](#)
- [First hearing by the investigating magistrate \(3\)](#)
- [Detention/remand in custody \(4\)](#)
- [Pre-trial investigation \(5\)](#)

#### Arrest and questioning (1)

##### The purpose of this stage

If you are caught committing an offence, anybody may arrest you. Otherwise you may only be arrested by the police with the public prosecutor's authorization. The police may use reasonable force when making an arrest. You may be arrested to enable the police to investigate whether you have been involved in a criminal act or to establish your identity.

After your arrest, you may be detained for questioning for six hours at most. The time between midnight and 9 a.m. is not counted for this purpose. If the police have been unable to establish your identity, your arrest may be extended by six hours.

What will I be told about what is happening?

When you are arrested, the police will tell you what you are suspected of. The police must tell you that you are entitled to remain silent and that you are entitled to a lawyer. At that time neither you nor your lawyer is entitled to inspect the full file.

Will an interpreter be provided if I don't speak the language?

If you do not speak or understand Dutch, you must let the police know this. They will then provide an interpreter while you are being questioned, free of charge. The interpreter will translate the whole interview. You are also entitled to the assistance of an interpreter, free of charge, while you are speaking to your lawyer.

At what stage will I be able to speak to a lawyer?

After you have been arrested, you have the right to speak to a lawyer, free of charge, before you are questioned for the first time. You do not have to do this. If you wish to be assisted by a lawyer of your choice, you must tell the police his name. If it is impossible to reach this lawyer or if you do not have a lawyer, a lawyer will be assigned to you for the time being.

If the police asked you to report to the police station and you came of your own free will, you are not normally entitled to speak to a lawyer at the police station. You can of course consult a lawyer beforehand.

Will I be asked for information? Should I provide information?

The police will ask you for information about the offence. You are not obliged to answer. The police must tell you this; you have the right to remain silent.

What happens if I say something which is bad for my case?

If you say something that may be bad for your case, this can be used against you in the proceedings. If you tell a lie this may also be used in evidence, but it is not an offence to tell a lie.

Can I see a doctor if I need one?

If you are ill or injured, you can see a doctor if you need one. If you take medication, you should say so when questioning starts, so that it can be taken into account.

Can I contact my Embassy if I am from another country?

You have the right to contact the Embassy as soon as you have been arrested.

Will I be asked for fingerprints, samples of my DNA (e.g. hair, saliva) or other body fluids?

The police can ask you to give up body fluids. You are not required to cooperate. The public prosecutor can issue a warrant, in which case you will be required to cooperate. If you fail to cooperate, force may be used.

Can there be a body search?

In certain circumstances the public prosecutor may direct that you undergo an external or internal body search. You will be searched in a closed room and by a person of your own sex. An internal body search will be carried out by a doctor.

Can my home, business premises, car, etc., be searched?

The police may ask your permission to search your home, business premises or car. You are not obliged to give them permission to do this. The police can do a search after obtaining a warrant from the public prosecutor or the investigating magistrate. If you do not cooperate, the police may force entry.

## Police custody (2)

The purpose of this stage

After the arrest and first questioning, the public prosecutor will decide whether it is necessary to continue holding you. If he thinks it necessary and there is a fairly good reason to suspect you, you may be taken into police custody. Police custody lasts three days and may be extended by another three days in exceptional cases.

What will I be told about what is happening?

When you are taken into custody, the police will inform you of your rights and of the further procedure. The police will tell you that you are not obliged to answer questions. After you have been taken into custody you will be assigned a lawyer. The lawyer will inform you of your rights and obligations while you are in police custody. You and your lawyer are not entitled to inspect the file. During questioning the police will confront you with evidence and parts of statements.

Will an interpreter be provided if I don't speak the language?

If you do not speak or understand Dutch, you should let the police know this. They will then provide an interpreter while you are being questioned, free of charge. You are also entitled to the assistance of an interpreter, free of charge, while you are speaking to your lawyer.

At what stage will I be able to speak to a lawyer?

After you have been taken into custody, you will be assigned a lawyer, free of charge, for as long as you are in police custody. If you wish to be assisted by a lawyer of your own choice, you will have to tell the police his name. If it is impossible to reach this lawyer or if you do not have a lawyer, you will be assigned a lawyer.

Will I be asked for information? Should I provide information?

The police will ask you for information about the offence. You are not obliged to answer. The police must tell you this; you have the right to remain silent.

What happens if I say something which is bad for my case?

If you say something that may be bad for your case, this may be used against you. If you tell a lie this may also be used in evidence, but it is not an offence to tell a lie.

Can I contact relatives or friends?

While you are in police custody you do not have the right to contact relatives or friends yourself. Of course you can ask the police to contact them for you. You can also ask your lawyer to contact them. Sometimes, if the public prosecutor thinks this is necessary for the investigation, he can decide that even your lawyer may not talk about the case with your friends or relatives.

Can I see a doctor if I need one?

If you are ill or injured, you can see a doctor if you need one. If you take medication, you should say so, so that this can be taken into account.

Will I be kept on remand in custody or be released?

Before the period of police custody ends, the investigating magistrate will decide whether you will have to be detained for a longer period (see [First hearing by the investigating magistrate \(3\)](#))

Will I be asked for fingerprints, samples of my DNA (e.g. hair, saliva) or other body fluids?

The police may ask you to give up body fluids. You are not required to cooperate. The public prosecutor may issue a warrant, in which case you will be required to cooperate. If you fail to cooperate, force may be used.

Can my home, business premises, car, etc., be searched?

The police may ask your permission to search your home, business premises or car. You are not obliged to give them permission to do this. The police can do a search after obtaining a warrant from the public prosecutor or the investigating magistrate. If you do not cooperate, the police can force entry.

## First hearing by the investigating magistrate (3)

The purpose of this stage

The investigating magistrate will check whether you have been lawfully arrested and taken into police custody. At the request of the public prosecutor he can also decide that you will be kept in custody for another two weeks.

What will I be told about what is happening?

When you are brought before the investigating magistrate, you will be told what you are suspected of and why you are being kept in custody longer. You will also be told that you are not obliged to answer questions.

Will an interpreter be provided if I don't speak the language?

At the hearing before the investigating magistrate you will be assisted by an interpreter free of charge.

At what stage will I be able to speak to a lawyer?

At the hearing before the investigating magistrate you will be assisted by a lawyer. This is the lawyer who also assisted you while you were [in police custody](#). If the investigating magistrate decides that you must be kept in custody, this lawyer will be assigned to you free of charge until the end of the proceedings.

Will I be asked for information? Should I provide information?

The investigating magistrate will question you on the basis of the offence you are suspected of. You are not obliged to answer his questions and he must tell you this.

What happens if I say something which is bad for my case?

If you say something that may be bad for your case, this can be used against you. If you tell a lie this may also be used in evidence, but it is not an offence to tell a lie.

Will I be detained or released?

The investigating magistrate will decide whether the suspicion is sufficiently serious and whether there are reasons to keep you detained for a period of two weeks. At the end of this period, the public prosecutor can ask the court to prolong your detention. For further information see [detention / remand in custody](#).

Can I appeal?

You cannot appeal against the investigating magistrate's decision about whether the police acted lawfully or about your continued detention.

Will I get information about the witnesses against me?

When you are brought before the investigating magistrate, your lawyer will be given the provisional file. This contains the relevant witness statements. In principle you will not be told about anyone else the police want to approach. You will of course be told about all relevant witness statements before the trial.

Will I get information about other evidence against me?

When you are brought before the investigating magistrate, your lawyer will be given the provisional file. This contains all the relevant evidence. The investigating magistrate has the same file, which is the basis for the decisions he takes.

## Detention / remand in custody (4)

The purpose of this stage

The public prosecutor can ask the court to continue your detention until the trial commences, and the court can do so if it believes there is a sufficiently serious suspicion against you and that:

- there is a risk of your reoffending;
- you might frustrate the investigation;
- you might evade prosecution because you have no fixed address in the Netherlands;
- you are suspected of such a serious crime that it would be unacceptable for you to be released.

What will I be told about what is happening?

When the application for your continued detention is heard, you will be told how long the public prosecutor is asking for you to be held. You and your lawyer have the right to comment. The court will give its decision after it has heard what you and the public prosecutor have to say about the application.

Will an interpreter be provided if I don't speak the language?

If you do not speak or understand Dutch, you will be assisted by an interpreter at the court hearing, free of charge.

At what stage can I speak to a lawyer?

If you are being kept in detention, you will have been assigned a lawyer until the end of the proceedings. He will prepare the case and will represent you at the hearings and the trial. The lawyer can visit you in the remand prison.

Can I contact relatives or friends?

Normally you can contact relatives or friends from the remand prison and you may receive visitors. In special cases, however, the public prosecutor can decide that you may not have contact with anyone other than your lawyer for a specified period of time. Your lawyer may file an objection against this decision with the court.

Will information be requested about my criminal record?

Information about your criminal record will be requested. If you have a previous conviction in the Netherlands, this may be a reason for prolonging your detention because of the risk of your reoffending. Convictions in other countries will not be taken into account.

Will I be detained or released?

When you are brought before the investigating magistrate, he may decide that you must be held in detention for fourteen days. If the public prosecutor thinks you should be held longer, he can ask the court for a decision. The court will then decide whether you must be detained for a longer period, up to a maximum of 90 days. The case must be brought before the court before this period ends. Your detention will then continue, unless the court decides to release you. This may be at the request of your lawyer, the public prosecutor or it may be the court's own decision. As long as the investigation is not completed, the case will be brought before the court every three months.

The court can decide that your personal circumstances are more important than your continued detention. You can apply to the court at any time to ask it to suspend your detention on the grounds of your personal circumstances.

If it is unlikely that you will be sentenced to a longer period of detention than your pre-trial detention, the court must release you.

Can I appeal?

You can appeal once against the court's decision to continue your detention. You can also appeal once against a refusal of your application for release.

Can I be sent back to my home country?

If you are from one of the Member States of the European Union and the court holds that you need not be detained any longer, the Dutch Immigration and Naturalisation Service can, in exceptional cases, decide that you will be forcibly deported to your country of origin. In that case you will be detained for the purpose of deportation. You will be assigned a lawyer free of charge.

## Pre-trial investigation (5)

The purpose of this stage

During the pre-trial investigation the police try to get a clear picture of what exactly happened. The police conduct this investigation (if necessary with the assistance of experts) under the supervision of the public prosecutor.

From the time you are brought before the investigating magistrate, you also have the right to ask for investigation yourself. When the investigation is completed, it must be clear whether or not there is sufficient evidence to bring the case before the court.

I am from another country. Do I have to be present during the investigation?

If you have been released you do not normally have to stay in the Netherlands during the investigation. But the court may decide you have to stay available for the investigation, as a condition for releasing you. In that case you must comply with any call to appear.

Can I leave the country during the investigation?

You may leave the Netherlands during the investigation (with the above exception).

Can the charges be changed before the trial?

When you are first brought before the investigating magistrate you will be told what offence you are suspected of. As the investigation continues, the public prosecutor may change the charges, right up to the trial.

Will I get information about the evidence against me and the witnesses testifying against me?

When you are first brought before the investigating magistrate your lawyer will be given the provisional file containing the results of the investigation. If the investigation is still being carried out, the public prosecutor will tell your lawyer about any further results.

Based on this file your lawyer may ask the investigating magistrate or the public prosecutor to carry out further investigations, including hearing witnesses and investigation by experts. You have no right to information about which additional witnesses are being questioned by the police.

If you have not been brought before the investigating magistrate, you will not be given information about the police investigation while it is being carried out.

If you have received a summons, you must tell your lawyer. He can then apply to the court for the full file. Based on this file he can ask the court at the trial to order further investigations, for example hearing witnesses or ordering an expert's report. The court will not usually hear witnesses at the trial but will let the investigating magistrate hear them. The investigating magistrate may then also carry out further investigations.

Related links

[Code of Criminal Procedure](#)

[Criminal Code](#)

[Information for suspects provided by the Public Prosecution Service](#)

[Aliens Act 2000](#)

## Aliens Decree 2000

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